RESIDENTIAL TENANCIES AMENDMENT BILL 2023

Committee

Resumed from 13 March. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Sue Ellery (Minister for Commerce) in charge of the bill.

Clause 2: Commencement —

Progress was reported after the clause had been partly considered.

Hon MARTIN ALDRIDGE: We only briefly touched on clause 2 yesterday. I just reminded myself with the uncorrected *Hansard*; I think the last contribution made by the minister was her characterisation of the consultation occurring with stakeholders. She said that she asked them for feedback on a number of questions, but also that she provided a possible list of minor modifications and asked whether things should be added or removed. Is the minister in the position of tabling or at least outlining the survey so that we can appreciate where that is at?

Hon SUE ELLERY: While the officers are finding that I will say that yes, I am happy to table that. Those have gone out and are with stakeholders now. We do not have the feedback yet, but they are out there now. We will see if we can find it. We will make sure that we can get it to you. In fact, I know someone from my office is watching, so they can get the questions that were sent out to stakeholders around minor modifications. Hang on—ignore that.

[See paper 3013.]

Hon MARTIN ALDRIDGE: Thanks, minister. I think that will be particularly useful when we get to those later clauses to understand what implications may or may not be from there. My last question on clause 2 refers to phase 3 of the implementation, which I understand is targeting early 2025. It requires the development of new processes and an upgrade to information technology systems. It always sends a shiver down my spine when the government considers upgrading IT systems. Are those existing IT systems, or is that something that is going to have to go out to tender? Has it gone out to tender? Is there any information that the minister can provide around that?

Hon SUE ELLERY: I have been advised that it is all being done internally and it is underway now.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended —

Hon Dr BRAD PETTITT: I appreciate that clause 4 is largely about providing definitions and the like, however, I intend to introduce an amendment that has implications for clause 4 around introducing minimum standards. With the permission of the chair, I will speak to that issue more broadly and seek to move all those amendments as one tranche. I will briefly talk to the key issues around minimum standards now and ask some questions on that, noting that it will obviously come up in later clauses.

The first question I have on this one is: Why did minimum standards not appear in this first tranche? Has the government looked at those? Are they expected in the second tranche? To the best of my knowledge, and I am happy to be corrected here, all other states except Western Australia and the Northern Territory have legislated minimum standards for rental problems. Why has WA not gone down that route and tranche order?

Hon SUE ELLERY: I have a couple things to say. We already have some existing minimum standards in place around residual current devices and smoke alarms. Some of those already exist. A decision was made by the previous minister to separate items out into tranche 1 and 2 and minimum standards is in tranche 2. Yes, it is an active consideration. Different jurisdictions include different things in the minimum standards. I think it is included on the list of national cabinet work being done as well.

Consideration is underway as part of tranche 2. There is a lot to consider about what we might include and the cost, as well as the timing: Should we stagger it? How will we do it? Those are complex matters, they are not minor, but I guess they are being given live consideration.

Deputy chair, it might help if I do this. On the supplementary notice paper, members will be aware that there are amendments in the names of Hon Dr Brad Pettitt and Hon Wilson Tucker. They fall around three or four key matters. Once the principle is established on each of the key matters—for example, minimum standards—then a bunch of the other amendments either stay or fall away depending on what the chamber does. It is minimum standards, rent, caps, no-grounds evictions and a fourth one —

Hon Dr Brad Pettitt: Rent bidding.

Hon SUE ELLERY: There is rent biding as well. I am happy to have a debate that kind of captures the principle around those issues rather than having an artificial debate about an amendment that might fall away if the chamber does not agree to the principal position. At the outset, I indicate that the government will not support the amendments.

The DEPUTY CHAIR (Hon Steve Martin): Thank you, Leader of the House. It might be useful if Hon Wilson Tucker, who is away on urgent parliamentary business, is made aware of that. If we are having a debate that is broader than clause 4, which I think was indicated by the Leader of the House, he should be made aware.

Hon Dr BRAD PETTITT: Noting that Hon Wilson Tucker is away on urgent parliamentary business, I have spoken to him and he will be returning to the chamber. I do not think clause 4 impacts his two amendments, which are around rent bidding and no-grounds evictions. The focus on this part is around minimum standards.

I appreciate that there are a range of minimum standards that can be put in place, but there are three that I think are quite urgent. My amendment today aims to bring those forward because I think they are highly desirable, not that controversial and are pretty fundamental to having houses that are safe and good to live in. The three are quite simply ceiling insulation, houses being free from mould and privacy coverings on key windows for rooms needing and deserving of privacy.

They are the three that I will be moving down the track. We believe they should be brought in with this first tranche of changes. The Leader of the House has just said the government will not support the amendments, but I certainly hope that at minimum we will see these in the second tranche. I want to make the case for that now. In doing so, I also want to talk to some stories that have come from people to whom we have spoken through our survey. As I said, over the last fortnight we have run a regular survey. Over 200 people have responded in the last fortnight and told us their stories about what renting means. Minimum standards came up again and again as a fundamental thing that people wanted to see. It is useful to put on the record some of those comments. Let us start with mould.

Research has found, perhaps not surprisingly, that rental homes are more likely to be mouldy than other homes. The World Health Organization recognises that mould, of course, can be harmful and certainly, if not harmful, at least a source of stress. I am just going to read one of the things that was said in the survey that we did. One of the many renters who is living with mould wrote, according to my notes —

> We were told the black mould in the bathroom was our problem, —

This is by the landlord —

> even though we had cleaned it and tried to get rid of it, the bathroom had no window and the exhaust fan was very old. The came to ‘fix it’ and just painted over the mould.

Another renter commented, according to my notes —

> Before covid, I was paying $360/week for a two bed where mould destroyed the master bedroom and my mattress in the first week of the lease. Never got a rent reduction for only have one bedroom useable for over 6 months and it took months of begging them to actually send someone to investigate dry the room, do the repairs.

Obviously, these are key issues and landlords should be required to address them. As we have heard in those stories about mould, it should not be at the begging of somebody. It should be a legal and legislative requirement that they address it.

Ceiling insulation is another one. For me, this is a really important one. If we are serious about rentals being liveable, we need to make sure that they all have ceiling insulation. It is some of the lowest hanging fruit. Victoria and the ACT have already improved a minimum standard for ceiling insulation in rentals. The *Bankwest Curtin Economics Centre: Energy poverty in Western Australia* report found that rental properties were dramatically less likely to be insulated than other homes in Perth. Similarly, Better Renting’s report *Sweaty and stressed: Renting in an Australian summer* found —

> WA was one of the hottest jurisdictions. From December 1 to February 9, renters recorded temperatures above 25°C for about 15 hours a day, with over 2 hours a day above 30°C.

This is inside the house. That was in 2023 and we just experienced a February that has broken many records in Perth, so we can reasonably expect that the results would have been even worse. Again, renters have spoken to us about the lack of ceiling insulation and having the experience of being cooked from above as heat radiates down on them through the ceiling. The temperature inside houses is matching the temperature outdoors and, in some cases, exceeding it. Ceiling insulation can make a very big difference in homes and reduce heat gain by about 20 to 25 per cent, which is just as important as the role of windows, which is a really interesting case. These are some of the things we can do. As we live in a world where temperatures are rising, it is the very least we can do.

The final one is around window coverings, which should be a basic standard that public and social housing stock does not have. Certainly, all rentals should have coverings to block light and heat and ensure privacy for renters. These three things are some of the fundamentals. There are plenty of other minimum standards that could and should be upheld and, if these amendments pass, they could be done through regulations. This certainly would allow for that to happen. I do not agree with the idea that we will continue not to have minimum standards beyond

the very limited ones that the Leader of the House mentioned—largely around smoke alarms and electricity safety. We need to go further than that. Certainly, this should be a key moment when we do that. That is why I have on the supplementary notice paper a series of amendments at clause 4 to introduce minimum standards as having a key role in the Residential Tenancies Amendment Bill.

I seek leave to move the amendments en bloc.

The DEPUTY CHAIR (Hon Steve Martin): I will clarify that you seek to move the amendments at 6/4, 7/4, 8/NC20A and 17/55 on the supplementary notice paper.

Hon Dr BRAD PETTITT — by leave: I move —

Page 4, after line 7 — To insert —

exempt, from complying with a minimum housing standard, means exempt from complying with the standard under a regulation under section 27D(3)(b);

Page 4, after line 15 — To insert —

minimum housing standard has the meaning given in section 27D(1);

Page 23, after line 21 — To insert —

20A. Part IV Division 1B inserted

After Part IV Division 1A insert:

Division 1B — Minimum housing standards

27D. Meaning of minimum housing standards

(1) Each standard set out in subsection (2) or prescribed under subsection (3)(a) is a ***minimum housing standard*** for residential premises under a residential tenancy agreement.

(2) Each of the following is a minimum standard —

(a) the premises must be free from mould;

(b) the premises must have privacy coverings for windows in all rooms in which tenants or residents are reasonably likely to expect privacy;

(c) the premises must have adequate ceiling insulation.

(3) The regulations may —

(a) prescribe other minimum standards for premises under a residential tenancy agreement, including in relation to physical accessibility, energy efficiency, safety and security, sanitation and amenity; and

(b) provide for exemptions for premises from complying with a minimum standard.

27E. Lessor's obligations about minimum housing standards

(1) In this section —

compliance day, in relation to residential premises that do not comply with a minimum housing standard, means —

(a) if a period in which the premises must comply is prescribed — the end of the prescribed period; or

(b) in any other case — the day that is 1 month after the day on which a residential tenancy agreement for the premises is entered into.

(2) A lessor must ensure that residential premises offered for a tenancy under a residential tenancy agreement comply with the minimum housing standards or, if the premises do not comply with a minimum housing standard, that the premises comply with the standard by the compliance day.

(3) Before a residential tenancy agreement is entered into for the residential premises, the lessor or lessor's agent must give each prospective tenant a written statement that contains the following information —

(a) a statement about whether the premises comply with the minimum housing standards;

(b) if the premises do not comply with a minimum housing standard and are not exempt from complying with the standard —

(i) the reason why the premises do not comply with the standard; and

(ii) the compliance day by which the premises are required to comply with the standard;

(c) if the premises do not comply with a minimum housing standard and are exempt from complying with the standard — the reason for the exemption.

(4) If, after entering into a residential tenancy agreement, the lessor becomes aware that the premises do not, or no longer, comply with a minimum housing standard, the lessor must ensure the premises comply with the standard as soon as practicable after becoming aware of the noncompliance.

(5) For paragraph (b) of the definition of ***compliance day*** in subsection (1), if a residential tenancy agreement that creates a tenancy for a fixed term has been renewed or extended, or continues as a periodic tenancy under section 76C, the day on which the agreement was entered into is the day on which the agreement that created the initial fixed term was entered into.

27F. Lessor must keep records about minimum housing standards

A lessor must keep the following records for residential premises let under a residential tenancy agreement —

(a) if the premises are required to comply with a minimum housing standard — evidence that the premises comply;

(b) if the premises are exempt from complying with a minimum housing standard — evidence supporting the exemption;

(c) any other prescribed record.

Page 71, after line 5 — To insert —

98A. Phase-in period for minimum housing standards

Part IV Division 1B does not apply to a residential tenancy agreement until the day that is 1 year after the day on which the *Residential Tenancies Amendment Act 2023* section 20A comes into operation.

Hon SUE ELLERY: The question of minimum standards is an important one that is acknowledged and, as I said, work is underway. It is one of the items that was put in tranche 2. A lot more work needs to be done on it than is set out in the provisions that the honourable member, I know with best intentions, has put in his amendments. The current situation is that the lessor —

(b) must maintain the premises in a reasonable state of repair having regard to its age and character and must conduct any repairs within a reasonable period after the need for the repair arises; and

(c) must comply with all requirements in respect of buildings, health and safety under any other written law insofar as they apply to the premises.

The lessor must provide and maintain prescribed security on the premises. Other legislation contains requirements relating to minimum standards of rental premises. The Building Regulations require the lessor to have compliant smoke alarms; the Electricity Regulations require the lessor to have at least two residual current devices; and the Health (Miscellaneous Provisions) Act requires all residential premises to have sanitary conveniences as well as bathroom, laundry and cooking facilities.

The honourable member made the point that he sees nothing controversial in his proposed minimum housing standards, but one part certainly is. It refers to "the premises must have adequate ceiling insulation". That is controversial. There is a huge cost. There is a range of issues with retrofitting into older houses, for example, and "adequate" is not defined. The member might think it is straightforward with mould, for example, but we would have to differentiate between mould that occurs because there is some structural problem with the building and mould that occurs because of something the tenants have done. We need to be quite careful that we do not create something that has unintended consequences. It is not to say these matters are not important for consideration. They are, and they are being considered as part of the second tranche, but in the form that they are before us now, we will not be supporting those amendments.

Hon WILSON TUCKER: I take the minister's point when she mentioned that there is work in progress around including minimum standards in tranche 2. Can the minister confirm whether they will be included in tranche 2? Will we see minimum standards in the future?

Hon SUE ELLERY: There is a whole list of things. They were set out in the consultation regulation impact statement. A previous minister took that whole list, separated the items and said that certain items will be considered in tranche 1 and certain items will be considered in tranche 2. We are considering minimum standards in tranche 2. That is not a commitment to legislate minimum standards. That is not a commitment to legislate a particular form of minimum standards. We are considering the issue of minimum standards as part of our consideration of all those matters in tranche 2.

Division

Amendments put and a division taken, the Deputy Chair (Hon Steve Martin) casting his vote with the noes, with the following result —

Ayes (3)

Hon Dr Brad Pettitt	Hon Wilson Tucker	Hon Dr Brian Walker *(Teller)*

Noes (26)

Hon Martin Aldridge	Hon Sue Ellery	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Donna Faragher	Hon Stephen Pratt	Hon Dr Steve Thomas
Hon Sandra Carr	Hon Lorna Harper	Hon Martin Pritchard	Hon Neil Thomson
Hon Peter Collier	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Colin de Grussa	Hon Steve Martin	Hon Tjorn Sibma	
Hon Kate Doust	Hon Kyle McGinn	Hon Matthew Swinbourn	

Amendments thus negatived.

Clause put and passed.

Clause 5: Section 3A inserted —

Hon MARTIN ALDRIDGE: I am curious as to why we need to clarify the terms in proposed subsection 3A, "References to residential premises or premises". Has an issue arisen—perhaps before the courts or in some other place—with respect to the interpretation of this provision?

Hon SUE ELLERY: This provision was included at the recommendation of parliamentary counsel. If a provision refers to residential premises or premises, additional words are needed in the provision to link the premises to a residential tenancy agreement or to the lessor or to the tenant. It is clunky unless we change it as per the provision in clause 5. The provision in clause 5 means that those extra words are not needed in other provisions.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Sections 10 and 11 replaced —

Hon NEIL THOMSON: Just quickly, I see that proposed section 10 includes a power to delegate any power or duty of the commissioner. The minister mentioned the increased role of the commissioner earlier. What are those duties likely to be? The provision states —

> … delegate any power or duty of the Commissioner under another provision of this Act to another employee of the Department.

What sorts of duties are we likely to see delegated as a result of this provision?

Hon SUE ELLERY: This is not a new provision; there are provisions for delegation in the existing act. The functions include investigations, education and conciliation. They are the same functions. The capacity to delegate is not new. This clause was put in by parliamentary counsel to modernise the language in the delegation clause.

Hon NEIL THOMSON: That is what I expected. Section 11 is being replaced. Proposed section 11(2) states —

> The State is also relieved of any liability that it might have had for another person having done anything described in subsection (1).

What sorts of liabilities are likely to arise that would necessitate this protection?

Sitting suspended from 1.00 to 2.00 pm

Hon NEIL THOMSON: I will finish what I was saying. I was looking at clause 8, "Sections 10 and 11 replaced". What liabilities might arise from what parliamentary counsel or the State Solicitor's Office have decided is required to be included in the provision?

Hon SUE ELLERY: As I understand the question, is the member asking whether there is any difference?

Hon Neil Thomson: By means of interjection, that would be useful.

Hon SUE ELLERY: There is not. This is a standard protection from liability clause that is consistent with other consumer protection legislation such as the Fair Trading Act 2010.

Hon NEIL THOMSON: Noting that it is a standard provision, is there anything in this legislation that would preclude a complainant from lodging a matter with the State Administrative Tribunal if there were concerns about the administrative actions of any delegate or decisions made by the commissioner or any potential harms that may have occurred in relation to the matter?

Hon SUE ELLERY: In the first instance, complaints about decisions made by the commissioner are appealable to the Magistrates Court—we have already talked about that. If there is a complaint about an officer or an administrative decision, depending on the circumstances, it goes to either the Public Sector Commission or the Ombudsman. That is where the complainant would go in the first instance.

Clause put and passed.

Clause 9: Section 11AA inserted —

Hon NEIL THOMSON: Clause 9 is reasonably large and covers a number of items. The first item is about the disclosure of bonds. What is the material difference of the impact of deletions and additions on the information about bonds that is available to the commissioner?

Hon SUE ELLERY: This amendment is required to permit the bond administrator to disclose certain information to the Housing Authority in the Department of Communities. That information is required by the Housing Authority to assist in the performance of its functions as the landlord for public housing tenants, including the management of bond assistance loans, payment of bond refunds to tenants and the assessment of rental data. Disclosure to the Magistrates Court and within the Department of Energy, Mines, Industry Regulation and Safety is also required to better facilitate the performance of functions in relation to residential tenancies.

Hon NEIL THOMSON: Was that bond information from the Housing Authority not required to be disclosed to the commission? Is that a change?

Hon SUE ELLERY: There was not a head of power. There is not a head of power under the existing legislation.

Hon NEIL THOMSON: I think that is something that we would support. I think it is important that Housing Authority tenants should be treated with similar requirements as private tenants. I think that is a step forward, given also, as we mentioned, other provisions in the bill talk about the repayment of bonds when bond assistance has been provided, but we will get onto that when we get there, I hope.

Proposed section 11E, "Disputed tenancy matters", states —

> (1) A regulation may prescribe a matter (a ***disputed tenancy matter***) relating to the rights and obligations of the parties to a residential tenancy agreement as a matter about which the Commissioner may make decisions if the parties to a residential tenancy agreement are in dispute about the matter.

I assume the regulations are not yet developed; is that correct?

The CHAIR: Hon Neil Thomson, you are asking a question that appears at clause 11. We are dealing with clause 9 at the moment.

Hon NEIL THOMSON: My apologies; I have gone to clause 11.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Part III Division 1 inserted —

Hon NEIL THOMSON: This is to do with the provisions about disputes. I note proposed section 11E refers to the regulations. Do I need to repeat my question?

Hon SUE ELLERY: No. As I understand it, what the member was asking was if there are any matters that were being considered to be included. Is that correct?

Hon Neil Thomson: By way of interjection, has the government produced the regulations and what is anticipated will be added to the regulations?

Hon SUE ELLERY: I thank the honourable member for clarifying that question. This head of power will enable regulations to be made to add to the matters that might be subject to disputes determined by the commissioner if it becomes necessary. We did touch on this a little bit in the clause 1 debate and I indicated then that there is no thinking as to whether we will or what those matters ought to be. It is really a head of power in the event that there became some other area in which it was clear it would be helpful for a less adversarial dispute resolution procedure to apply.

Hon NEIL THOMSON: I refer to this clause in the general sense—I am not referring to any specific provision—we did touch on it during the clause 1 debate, and I thank the Leader of the House for those clarifications. I would have thought that this might take up the largest part of the commissioner's job going forward. Could the Leader of the House provide a bit more clarification on the kinds of matters that might come up in the process of dispute management? Has there any been any consideration about the total number of disputes that are likely to arise due to the additional changes or the changes that have been put through this bill today?

Hon SUE ELLERY: Yes, the agency has looked at where similar dispute resolution processes apply in other jurisdictions. To a certain extent, some thought has been given to what we might anticipate, but it is a bit hard to predict. Government has committed to resources, so that is a given, and we will have to watch the process to see how many matters are referred and whether those resources are adequate. Government is committed to making this work. It is much more cost effective for all parties for this system to work well, so government is committed to ensuring that it is resourced accordingly.

Hon NEIL THOMSON: I refer to the amount of resources. Could the minister remind me and the chamber of the amount of resources coming in.

Hon SUE ELLERY: I can remind the member of what I said at clause 1, which was that it will all be revealed in the budget as part of the budget process.

Hon STEVE MARTIN: If the Leader of the House could excuse me for raising the broader subject of the role of the commissioner because I did not take part in the debate on clause 1. Excuse my ignorance, but I refer to the regional aspect of this. I assume, and from what the Leader of the House said I think it is right, that there will be an expanded role, and disputed tenancy matters will be dealt with in a range of ways. What is the physical process for someone in Esperance who has a tenancy dispute? How might it progress? What additional resources, if any, are planned for those regional centres?

Hon SUE ELLERY: In the first instance it is worth bearing in mind that the agency has offices across Western Australia, but in any event, this process will be done online. It will be done on the papers, so it does not matter where someone is; they will be able to provide the information and there will be staff to provide assistance if people need to understand what a particular bit of the form refers to. That is the process. A person will not have to physically appear or lodge papers; it will all be done online.

Hon STEVE MARTIN: Getting back to the disputed tenancy matters, which as the Leader of the House described, will be sorted in regulations, have discussions with stakeholders led the government down a path of there being a number of matters anticipated? What stage are we at? Do we wait to see what happens and then work out what those disputed matters might be?

Hon SUE ELLERY: We already know that the commissioner will deal with bonds, minor modifications and pets. If the member listened to the exchange between Hon Neil Thomson and me just now, there is a head of power in clause 11 that will enable further regulation to add matters if we find out down the track that there is another area of tenancy law that is subject to significant dispute and would benefit from a less adversarial, fast-tracked process. To complete my answer, we have no notion right now of whether we will need to do that or what it might be about.

Hon STEVE MARTIN: I realise that there might be other matters apart from those three. I was referring to what "minor modifications" actually means, which I assume will be in the regulations. Is that part of the regulation process that the government has some idea of now?

Hon SUE ELLERY: Yes. I think the member might have been out of the house on urgent parliamentary business, but I tabled a document at the request of Hon Martin Aldridge. There is consultation now, and a document has gone out in the standard way that an agency does consultation; for example, in the case of minor modifications there is a list of things that might be considered to fall within the definition. There might be a question of whether stakeholders think this list is adequate and whether we should add or remove anything. That has now gone out to all stakeholders.

Hon NEIL THOMSON: I thank the Leader of the House. My memory is not that bad and I now know why I was not able to work out what the resources were, and that is because the Leader of the House had not revealed them yet, so there we go. Proposed section 11K is "Commissioner may publish decision and reasons". How will they be published?

Hon SUE ELLERY: It is on the website. To remind everybody, the idea is that we will build up a bank of precedents, if you like, of decisions on similar themes. Of course, everything is subject to particular circumstances, but the idea is that all parties will get a sense of how the commissioner views particular themes of disputes, and people will be able to make their own judgement about whether in their circumstances they think they should pursue that or not.

Hon NEIL THOMSON: It says "Commissioner may publish", so is there is no obligation to publish?

Hon SUE ELLERY: No. It is an enabling provision, but it is the intention of the commissioner to publish the reasons for decision.

Hon NEIL THOMSON: I guess we will watch that closely because there is a need for transparency and to be aware of how well this goes. Fundamentally, our aims will be very much aligned to this, minister, because I think we will want to see that this is working to provide the capacity to streamline some of the complaints that might otherwise end up going to the Magistrates Court.

I move to proposed section 11L, which talks about the commissioner's discretion when declining or deciding whether an application is to be referred to the Magistrates Court. There does not seem to be any guidance about the types of applications that might be referred to the Magistrates Court. Will there be any provisions or procedure associated with this head of power that might give the commissioner some guidance about what type of matters might be referred to the Magistrates Court?

Hon SUE ELLERY: The policy intention is for it to apply to a dispute that in the commissioner's view is too complex or difficult to be decided or that it involves additional disputes. Those things are set out in proposed section 11L(1). These matters are more properly determined by the court, which is equipped to deal with complex disputes. The commissioner may consider that the application cannot be decided on the information available to him or otherwise consider that it is appropriate to refer the matter to the court. He might be aware that another dispute relating to that tenancy agreement is before the court, for example, a bond release, and he does not have contact details for a party or considers that the amount of the dispute is more than the security bond itself—we canvassed that in the debate in clause 1 yesterday.

Hon NEIL THOMSON: Counter to proposed section 11L, thinking about whether a matter might be referred to the commission for an applicant who might be a lessee, will this and other provisions related to these matters under this general clause preclude the other party, which might be the lessor—it could be other way around; it could be to lessor versus the lessee—from seeking redress in the Magistrates Court? If a dispute is referred to the commissioner, is there any scope for the other party to still go to the Magistrates Court directly?

Hon SUE ELLERY: In the first instance, no, there is no option in respect of bonds, minor modifications and pets, other than to go to the commissioner. Of course, they can appeal the outcome of the decision to the Magistrates Court. Alternatively, depending on the facts before the commissioner, the commissioner can decide that they cannot deal with that and they will hand it over to the Magistrates Court.

Hon NEIL THOMSON: To be clear, an added sequence is that it would have to be for those matters prescribed under the legislation. It would have to be considered by the commissioner in the first instance and, sequentially, is the option to appeal to the Magistrates Court.

Hon SUE ELLERY: The commissioner herself will not hand the matter to the Magistrates Court. If the commissioner is of the view that she needs to decline to deal with the matter for one of the reasons we have canvassed already, she will advise the parties and say that she is of the view that she cannot deal with this matter for the following reasons and that their choice is to refer it to the Magistrates Court. The onus is on the parties to the dispute to refer. She says to them, "I can't deal with it. You now have a choice. You can refer it to the Magistrates Court."

Hon NEIL THOMSON: I ask the minister to indulge me a little on this matter. I note that the scope of matters considered by the commissioner are limited to matters that are effectively empowered by this bill. It is not the broader scope of things that are under the current legislation that can be handed to the commission. Again, I seek the minister's indulgence because this is by exclusion and is not really part of this clause. Given that the amendments to the act are supposed to result in a streamlined approach, was consideration given to include some of the other matters that exist within the Residential Tenancies Act 1987?

Hon SUE ELLERY: There are a couple of things to consider for completeness. Other matters of dispute—not related to bond, minor modifications or pets—can still go to the Magistrates Court. Contemplation was given in the process of consultation about whether terminations should be determined by the commissioner. However, that was viewed as not appropriate and probably best resolved by the Magistrates Court. The power we talked about before to make a regulation was included so that if in the future it became clear that there was another area of tenancy dispute that would be best served by the simpler process, the capacity would exist to do that.

Hon MARTIN ALDRIDGE: I have a few questions on this clause. It is a section of the bill that I think is sensible and one that I can support, so long as it works. The success of that will ultimately come down to the resourcing that is

provided to the commissioner and her agency. We will do two things that will add to the resourcing. One is obviously the alternative dispute resolution process. We will also introduce new matters that are likely to give rise to new disputes. There are two pressure points on this dispute resolution process. I have been listening to Hon Neil Thomson's questions. As I understand it, if the dispute relates to a bond disposal within the value of the bond, minor modification or a pet, the dispute resolution in the first instance must be via the commissioner. What happens in the future if the demand on the commissioner becomes such that time starts to blow out? I will draw a comparison: we have an Information Commissioner to mediate disputes between applicants and recipients of an FOI notice. I am sure we are all aware that is dragging into the years now, not months. When the commissioner sends to applicants who seek her services template letters saying that it will be 60 days, 180 days or 240 days to resolve the dispute, am I hearing correctly that there is no ability for the applicant to bypass the commissioner and seek resolution in the Magistrates Court?

Hon SUE ELLERY: That is correct. However, it is worth noting that the notion that we need to keep a careful eye on the number of applications, the number of dispute matters that are referred, and keep an eye on resourcing, is a live issue before government. The government has put its mind to that very specific question and that will be a decision by the government of the day if it needs to adjust resources. Best endeavours have been put to predict what the demand will likely be. The member said in his opening comments that these are new matters. In fact, these matters are regularly the subject of dispute before the Magistrates Court. The actual subject—minor modifications and pets—are matters that have been subject to dispute in the Magistrates Court. We are changing the rules around what is allowed and what is not allowed, and what the processes are. In any event, the point the member makes about the success or otherwise of this being driven by resources is a live issue. We understand that. Government has committed to resource it and government has also committed to keep a watching brief so that we do not get to the point at which we are blowing it out because then it becomes —

Hon Martin Aldridge: Counterproductive.

Hon SUE ELLERY: Yes.

Hon MARTIN ALDRIDGE: On the issue of bond limit, the commissioner will have a jurisdictional question: can I hear this or can I not? One of those tests will be the value of the bond and the claims that are made. Obviously, one of the things that is often in dispute is the claim itself. If the lessor says that the repairs will cost $5 000 and the tenant says, "Actually, it is more like $1 500, but if you factor in the condition of the property when I rented it, fair wear and tear calculations et cetera", there could be two values. One could be outside the bond limit; one could be within the bond limit. At what point does the commissioner decide whether she has jurisdiction in the matter?

Hon SUE ELLERY: That will be based on the information that is provided to the commissioner. She will have to make a judgement about whether it will fall within her remit or otherwise—whether someone is gilding the lily or is underestimating the value. They are the judgements that will need to be made. I make the point that the intention here is to build up a bank, if you like, of decisions. In the beginning it will be a little bumpy because the commissioner will be setting in place those precedent decisions. The hope is that over time that smooths out because everybody knows that if you do this, you will end up in the Magistrates Court and if you do that, you are likely to get it resolved much more quickly. The hope is that that will settle down into a pattern.

Hon MARTIN ALDRIDGE: I guess the first decision is whether the commissioner has jurisdiction, and then the commissioner making the decision on the application. The minister said that is done on the papers. Effectively, the commissioner will have just what is available to her in terms of the applicants to the dispute. Will the commissioner have the power to go back to the applicants and seek further information, documents and quotes et cetera?

Hon SUE ELLERY: Yes. Proposed section 11G sets out the provisions under which she can ask for further information.

Hon MARTIN ALDRIDGE: This is a circumstance I have been in—namely, having a joint tenancy arrangement and one of the tenants dies. The current process is that it is an application to the Magistrates Court for disposal of the bond. What will happen with the release of the bond in those circumstances once this bill passes?

Hon SUE ELLERY: The officer is looking at whether there is a specific reference. Currently, we need to have everybody's signature to release the bond. If the intention in the circumstance the member described is: if the Commissioner for Consumer Protection is provided with evidence—for example, a copy of the death certificate—that would suffice for her to then act on the release of the bond. I am just going to see whether there is a specific reference. I will not hold up the chamber, but that is the intent, honourable member.

Hon MARTIN ALDRIDGE: Obviously, a death certificate would prove that the tenant has passed, but I would have thought that the more difficult question is: to whom ought the bond be paid? I think this is why the Magistrates Court is often involved because it has to legally determine who should be the recipient of the bond in those circumstances and not just that the tenant is actually dead. Is this something that is going to be considered by the commissioner? It can be quite a complex legal question. Is it appropriate for the commissioner and her agency to be considering such a matter?

Hon SUE ELLERY: The member is quite right in that sense. If it is not easily clear—here is the estate, here is the death certificate—and easily established, the commissioner will just make the decision that it needs to go to the court because it is a complex legal matter.

Hon NEIL THOMSON: I note that my question straddles a couple of clauses. It comes back to a matter we were discussing earlier at proposed section 11L, "Commissioner may decline to decide application and refer parties to Magistrates Court". I am sorry to do this, but this is the way the bill is structured. If we turn to clause 15(1), if the minister does not mind, it states —

> (1A) A lessor or tenant under a residential tenancy agreement who is given a notice under section 11L may apply to the Magistrates Court for relief in relation to the matter the subject of the application to the Commissioner referred to in the notice.

I thought I was clear about the sequencing of the matters as they are to be considered by the commissioner. The minister is nodding, which means she has a bit of an idea about where I am going with this. Is the decision either referred by the commissioner to the —

Hon Sue Ellery: No, honourable member. Remember I stood and corrected it?

Hon NEIL THOMSON: Yes, the minister did. I will sit and let the minister elaborate on that, thank you.

Hon SUE ELLERY: Thank you. Remember that I stood and I corrected it. Therefore, in the event that the commissioner forms a view that she cannot deal with the matter, for a whole range of reasons that we have already canvassed, she will advise the parties that she cannot deal with the matter and that it is then open to them to refer it to the Magistrates Court. Therefore, they need to refer the matter to the Magistrates Court. She cannot do that.

Hon NEIL THOMSON: I am getting enthusiastic here; my apologies, deputy chair. Is giving the notice the key element in that piece there? Do the parties have to be given a notice for that to then trigger?

Hon Sue Ellery: Yes.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Section 12 amended —

Hon MARTIN ALDRIDGE: Clause 13 relates to a prescribed dispute, the definition of which retains the requirement for a claim to be under the prescribed amount, which is currently $10 000, unless it is a dispute about a security bond release application. That is in the explanatory memorandum. This relates to the next clause, which is effectively the jurisdiction of the Magistrates Court. The explanatory memorandum suggests that that $10 000 value may change.

I assume that figure is prescribed by regulations and is not in the act. How does this relate to our consideration of the previous clause, which was clause 11, with respect to the alternative dispute resolution process? If someone has a very high value property and the rent is $5 000 a week and the bond is $20 000, does the commission not have jurisdiction in those circumstances, and, therefore, the commissioner must decline to consider the matter because the prescribed amount is $10 000? Am I mistaken, or is that correct?

Hon SUE ELLERY: That $10 000 figure is taken directly out of the Magistrates Court Act 2004. Under the definition of a "prescribed dispute", it keeps the requirement for a claim to be under the prescribed amount, which is $10 000, unless it is a dispute about a security bond release application, which may be for a claim over the prescribed amount. Does that not answer the member's question?

Hon MARTIN ALDRIDGE: Yes, it does. Therefore, the $10 000 is still the threshold, except for a security bond dispute that can be above $10 000, so there is effectively no limit on whatever that value might be.

Hon Sue Ellery: Yes.

Hon MARTIN ALDRIDGE: However, could there be other disputes whereby the $10 000 threshold is relevant such as a dispute about minor modifications?

Hon Sue Ellery: Theoretically, yes.

Hon MARTIN ALDRIDGE: Would the commission have jurisdiction there, or would it be a magistrate's matter, or do they all come back to the security bond at the end of the day?

Hon SUE ELLERY: I think we just need to look at what this clause is dealing with. This clause deals with disputes that are determined by the Magistrates Court. Therefore, the matter might go before the Magistrates Court because there is a dispute about minor modifications that is very complex, such as somebody got out a jackhammer to put

a nail in the wall and has done massive damage. That is the sort of circumstance. However, what we are dealing with here is when the matter gets to the Magistrates Court, this is how matters will be dealt with in that court.

Clause put and passed.

Clause 14: Section 13C inserted —

Hon NEIL THOMSON: I am talking here about clause 14, proposed section 13C(3), which states —

> The appeal must be started within 7 days after the day on which notice of the Commissioner's decision …

Has any consideration been given about how that notice will be provided, noting that if someone lives in remote Western Australia, if it is provided in writing, it can take over a week for that notice to arrive. Therefore, why was the provision of seven days put in there? How will that notice be provided by the commissioner?

Hon SUE ELLERY: There are two elements to that provision. It is intended to advise the parties of the decision by email, so remember that is how they lodged the complaint in the first place, and then if the member goes down to the next proposed subsection (4), it states, in any event —

> A magistrate may extend the period … and may do so even if the time has elapsed.

Hon NEIL THOMSON: I suppose my question is: what discretion would be given to the commissioner if extenuating circumstances arise? There may be an email or something that got lost in the ether or sent to the wrong address. Actually, that probably would not be a valid notice, but there could be other means. It often takes remote and regional Western Australians many days or weeks before those notices get to them. If it is not by email —

Hon SUE ELLERY: I will just remind everybody again that the bit we are at now is about what the Magistrates Court can do. If it were the case that an email went missing in cyberspace and the person did not get the decision within those seven days, it is open to the magistrate in proposed section 13C(4) to say "I am going to take into account the circumstances that you put before me and I am not going to not hear this matter because you did not do it within the seven days because you have explained to me —

Hon Neil Thomson: They're extenuating.

Hon SUE ELLERY: Yes.

Hon MARTIN ALDRIDGE: I have a question on this issue. I listened to what the minister said about how the applications will most likely be by email and the decisions will be conveyed via email as well. Is someone able to make an application to the commissioner by a written form other than email?

Hon SUE ELLERY: I am advised that that will be made available to people if that is what they need to do.

Hon MARTIN ALDRIDGE: The circumstances around the seven days that Hon Neil Thomson raised are still a real issue. Let us think about the circumstances. If somebody has left a tenancy and there is a dispute over the bond, that person may well be homeless and may not have access to an electronic device, let alone email. They may not even have a fixed address. When I read this bill, I thought it was quite a limited period of time, particularly if someone is to receive a notice, consider it and contemplate legal action such as appealing the decision of the commissioner to a court, which may include seeking independent legal advice. The time frame of seven days is extremely tight for a lot to go wrong. I assume this is not something that is current, because there is currently an appeal mechanism. The best comparison I could make is if a Magistrates Court decides a matter, I assume the next competent court of appeal would be the District Court, but I may be making that up. What limitations would apply to an appeal to the District Court based on the magistrate's decision?

Hon SUE ELLERY: I was just trying to check where the number actually came from. We think it came from discussions with the registrar, but we cannot confirm that at the table. In any event, the intent by practice is for the commissioner to be in regular contact, in any event. If there was a problem with the mail process, as the member put, the commissioner would already know, because the papers would have been lodged in a different way from email. We would expect, and the commissioner is telling me, that it would be her intention by practice to stay in contact with the parties in any event. That is unlikely to happen. Nevertheless, the safety net is that the magistrate has the power, without any restrictions, to extend the period.

Hon MARTIN ALDRIDGE: I would prefer that 30-day period or something a bit more generous to allow for other circumstances. Keep in mind, this is likely a period of transition. An application to the commissioner might be made whilst the tenant remains in the existing tenancy—which may well change in the days and weeks following the end of the tenancy when they move home—and they may not even be moving to another home. At the end of my previous call, I asked the question: if I were to appeal a decision of the Magistrates Court, is the District Court the next competent court to consider that appeal? What are its limitations in terms of the time frame of appeal?

Hon SUE ELLERY: There is no appeal from the Magistrates Court.

Hon MARTIN ALDRIDGE: Is the decision of the Magistrates Court final? Is there a legal right to review a magistrate's decision?

Hon Sue Ellery: That is correct, honourable member. By interjection, this system already has a first tier. That is appealable.

Hon MARTIN ALDRIDGE: Okay. I wrongly assumed that there would be a right of appeal through the hierarchy of the court system and that one magistrate considering a matter would not necessarily be the end of the road if it were a matter of such significance to the parties. We have just learnt that there are seven days to appeal to a magistrate with some flexibility, as appears in proposed section 13C(4), depending on the view of the magistrate; however, the view of the magistrate is final. Once a magistrate's appeal decision has been reached, that is it: case closed. If the magistrate is the first person to hear a matter because the commissioner has given notice that they are declining to hear it, will that be appealable?

Hon SUE ELLERY: I will take the member to the current act. This is not new. Section 26 sets out that an order made by the court under the act is final and binding. This is not a new provision. What is new is that we have added a new tier, if you like, to the front end.

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Part III Division 3 inserted —

Hon NEIL THOMSON: I think this clause will probably be subject to quite considerable debate from the discussions I have had with my colleagues here. I wonder about it. It has raised quite a few alarm bells to me regarding how it will work. In the words of Shakespeare, I wonder if this was a "A rose by any other name" regarding the application of a no-grounds eviction. We have gone by another path with what we have done. It will establish a mechanism in which at the end of a tenancy, there might be an adversarial approach to say that the motivation of a landlord was wrong and was some form of retaliatory action.

I am particularly concerned about some of the provisions under proposed section 26B, which refers to retaliatory action taken by a lessor. It has some definitions around that. When reading that, I guess it really comes down to the interpretation of the motivation of the landlord. In some ways, it could even be more extensive than just including an effective no-grounds eviction provision—that provision has been retained anyway. To some extent, I think this would create the most adversarialism within the system and would almost create opportunities for misinterpretation and vexatious types of applications by the tenant.

I am sure my colleagues will also have something to say about this, but I refer to proposed section 26B(2), which states, in part —

> … a tenant reasonably believes the lessor took retaliatory action against the tenant after any of the following matters arose —

It is based on a reasonable belief. I am not sure how that is ascertained, but, I guess, there is a very low threshold to activate this provision. For example, proposed section 26B(2)(a)(i) is "asking for repairs or maintenance to the premises;" I do not know what evidence the department or the advisers who undertook the consultation had that there was ever a situation in which a lessor had asked somebody to undertake repairs or maintenance and it was considered retaliatory. I would have thought it would be a clear-cut situation if repair and maintenance arose from some specific damage that was caused by the lessee and that would have been reasonable. I would have thought normal wear and tear was pretty well covered and governed through the existing arrangements. Could we start on that example? How would that be defined? I refer to proposed section 2B(2)(a)(i). When there is evidence that damage was caused by the lessee, how could it, in any way or circumstance, be considered to enable the tenant to form a reasonable belief that it was some form of retaliatory action?

Hon SUE ELLERY: I think we need to just pull back a little bit from the shock and horror about this provision because provisions about orders for the termination of an agreement have been in the legislation for a significant time, in sections 71 and 72.

Existing section 71(3) states that the court may —

> (b) refuse to make the orders … if it is satisfied —
>
> (i) that the lessor was wholly or partly motivated to give the notice by the fact that the tenant had complained to a public authority or taken steps to secure or enforce his rights as a tenant;

That is the law right now. The bill will expand those provisions to apply to the other elements that we have introduced into the regime, including not renewing the lease, a rent increase and the issue of a breach notice. The actual proposition that a retaliatory action can play a part in determining whether a decision is made is the law now and

has been for the period of this legislation. Another point to note, bearing in mind what we said about extensive consultation, is that stakeholders on the side of the lessors did not object to this provision. We come from that basis.

The member's question was: what kinds of things are taken into account? In the first place, the complaint would be made to the commissioner, who will look at the information provided and make a decision. Let us say the sequence of events is that an action is taken by a lessor to assert a right about one of those things that I just described. The lessor takes action by saying, "Well, I am going to do X and terminate the agreement." The renter has said, "I have advice and I can do this. I understand what my rights are and I am entitled to do this", and the lessor takes action on that basis. That goes to the Magistrates Court.

The tenant may make an application to the court for relief in relation to a lessor's retaliatory action. The court can make an order that the court considers appropriate, including an order—which is what exists now—to set aside the lessor's action or for payment of compensation to the tenant.

Hon Dr STEVE THOMAS: Minister, this is one of two proposed sections that I raised in my fairly broad contribution to the second reading debate, but I would like to run through it a bit and probably get it more firmly in my mind. Like the Leader of the House, my understanding is that we are dealing effects and issues with contract law to some degree in terms of a residency contract. My understanding is that the issues that are proposed to be included in clause 17 will go to the Magistrates Court in the first instance and, basically, the magistrate will make a decision on almost all these things anyway. I can remember cases that have come to me in which a magistrate has made a decision based on whether they thought an action by a lessor was a retaliatory action. As I understand it, an aggrieved person on either side, but we are talking particularly about the lessee here, would go to the Magistrates Court in the first instance and seek redress. That process could then be appealed by either side to the District Court, from memory.

Hon SUE ELLERY: No.

Hon Dr STEVE THOMAS: No higher court—just the Magistrates Court. Effectively, what the government is proposing, as I understand it, largely exists anyway. My question is: what additional strengths will clause 17 provide that would otherwise not be in place, because my understanding is a magistrate must address these in the fullness of time anyway? I might start with that.

Hon SUE ELLERY: As I just said, the current provisions relate to termination. The provision that I read out relates to termination. It states —

> … the lessor was wholly or partly motivated to give the notice by the fact that the tenant had complained to a public authority or taken steps to secure or enforce his rights as a tenant;

The bill before us will add that the court can also make a determination on whether there was retaliatory action in respect to those other matters, so this will expand the range of matters. Termination is already covered; we will expand the range of matters that can be considered by the court as subject to retaliatory action to include rent increases, the issue of a breach notice and non-renewal of a fixed-term agreement. I want to make this absolutely clear. The proposition that this is somehow no-grounds eviction by stealth is not true. It already exists in respect to terminations. We are expanding the scope of matters in which the court can determine whether an action was retaliatory. It will be related to not only terminations, but also those other things I just read out.

Hon Dr STEVE THOMAS: Under the current law that applies before this bill is implemented and becomes an act, what appeals process exists for a rent increase outside the contract that was signed? That is probably the easiest one to look at. Is there absolutely no appeals process?

Hon SUE ELLERY: We have to be careful to separate what this provision is referring to. This is the court's powers in respect to retaliatory action. That is the division that we are dealing with right now. If the honourable member's question is more broadly what other matters—irrespective of whether there is retaliatory action involved—can be dealt with before the Magistrates Court, I have already been over that. I understand the honourable member was not in the chamber, but I have been over this. The matters that will be determined by the commissioner, unless she decides she cannot for the reasons we have already canvassed, are bonds, minor modifications and pets. Any other dispute can go to the Magistrates Court, but the bit that we are dealing with right now is the court's capacity to exercise its power in the event that a complaint is made that retaliatory action was taken. All we have done is expand the grounds or the scope, if you like, of matters that can be taken to the court seeking a determination that retaliatory action was taken.

Hon Dr STEVE THOMAS: I will finish with this. I am not disagreeing with the intent of what this bill is trying to do, because, ultimately, it goes to the Magistrates Court and an independent decision is made. Whether we believe that magistrates and the court system always get it right is too big a debate for today. The fact that the matter will be able to go to the court and that this bill expands the scope of matters that can do that is interesting. There is potentially the opportunity for the courts to get bogged down in the "he said, she said" of retaliatory action, but the

reality is that it will be for the Magistrates Court to make that determination and work it out. Whilst it may still be an imperfect system, I wanted to narrow down what will be changing, and the minister has outlined that for me.

Hon WILSON TUCKER: I would like to follow on from that line of questioning. Notwithstanding the existing protections under section 64 of the act around retaliatory actions, I can tell the minister that those determinations do occur, and I have a number of those stories, but I will leave that to one side. Under these existing protections, how can we determine that a determination notice, for example, will be retaliatory when there is this no-grounds provision, which is this catch-all. The onus of proof will go to the tenant to prove that this action was retaliatory in the face of this no-grounds provision. It will be extremely difficult to argue that point when we have this catch-all, no-grounds provision. Can the minister give an assurance that the provisions around retaliatory action will have any weight in the face of this no-grounds provision?

Hon SUE ELLERY: If the member turns to the bill, proposed section 26B(2) sets out the kinds of matters that the tenant will be able to put before the court. If the member turns the page and goes to proposed subsection (4), the court, as is always the case, will decide that it is satisfied on the evidence provided to it that the action was or was not retaliatory. The decision will be made on the basis of the evidence provided to and put before the court. That is what happens now, and that is what will happen in future on an expanded range of matters.

Hon WILSON TUCKER: I think the minister would agree with me that trying to gather a body of evidence to prove that retaliatory action occurred can be difficult. Unless the tenant has a string of angry text messages saying, for example, "I wanted a modification to my property. The lessor thought it was inconvenient and decided not to renew the contract, but to come to the end of the fixed-term lease", how can they argue that point in court? What I am trying to say is that it will be incredibly difficult to argue that point when we have this catch-all provision, which is no-grounds evictions.

Hon SUE ELLERY: That is why it is always useful for a member to make sure that they are properly briefed on the existing arrangements. Right now, under the act, the burden of proof lies with the lessor to prove that they were not wholly or partly motivated to give notice by the fact, because that recognises the imbalance, if you like, in the power relationship. The onus lies with the lessor to prove that they did not act because the person said, "I know what my rights are and I'm entitled to X, Y and Z." The existing law already takes that into account and we are not changing it. We are expanding the range of matters to which that will apply.

Hon NEIL THOMSON: Thank you, minister, for the clarification earlier on my first question. I thought that was helpful. I want to get clarification on proposed section 26B(2)(a)(iii) that states —

> requiring the lessor to reimburse the tenant for a reasonable expense properly incurred by the tenant for urgent repairs;

Have we got any examples in which urgent repairs have been undertaken that the landlord has thought were unreasonable and have motivated the need for this provision to be included in this legislation?

Hon SUE ELLERY: Under the existing act, there is a provision, for example, around urgent repairs that states —

> … the tenant is unable to contact the lessor or, having notified the lessor of the need for the repair, the lessor fails to ensure that the repairs are carried out by a suitable repairer as soon as practicable after that notification —
>
> (a) the tenant may arrange for the repairs to be carried out by a suitable repairer to the minimum extent necessary … and
>
> (b) the lessor must, as soon as practicable … reimburse the tenant …

That is the existing law. The new provisions in proposed section 26B(2), for example, allow for the following to occur. If the tenant were to say, "I did that repair and then the lessor took action against me. I believe they took action against me because I was asserting my right to fix the toilet on a Friday night when I couldn't get hold of the landlord or the owner", and the lessor refused to reimburse them, that might be grounds for the matter to go to court.

Hon NEIL THOMSON: Thanks for that. I appreciate the minister providing that background. In open-and-shut cases, what will be classified as urgent repairs? It is defined in the existing legislation, so it cannot be someone going in and doing urgent repairs without conforming to the act. I am still trying to work out why this provision needs to be included under the division on retaliatory action, given that the magistrate will be considering the matter anyhow. I would have thought that this type of matter would be an open-and-shut case. Sorry to be pedantic here. If reimbursement does not occur, I would have thought that the tenant will be able to seek to reimbursement through the court.

Hon SUE ELLERY: We are talking about two different things. We have the tenant's rights and the lessor's obligations and who can determine a dispute when there is a disagreement about urgent repairs. That is one matter.

The provisions that we are dealing with in the bill right now apply if a lessor takes retaliatory action by saying, "I'm going to terminate this lease because I don't like the way you spoke to me when you tried to get an urgent repair done", or words to that effect. That is what this bit is about. It is not about what happens in the ordinary course of events around fixing urgent repairs. This applies when there is an allegation of retaliatory action.

Clause put and passed.

Clause 18: Section 27A replaced —

Hon NEIL THOMSON: I got this question from reading the blue bill. If the minister could just give me a moment. Clause 18 will replace section 27A. It states —

> **Written residential tenancy agreement to be in approved form**
>
> A lessor or property manager must ensure a written residential tenancy agreement entered into by the lessor …

Apologies, I had some notes here, but I have not properly cross-referenced them because it is a little complicated. My question might not be relevant. When a property manager is appointed, will the lessor be able to rely on this provision to remove responsibility for compliance with proposed sections 27A and proposed amended sections 27B and C? I apologise if I am not being clear.

Hon SUE ELLERY: I will tell the member what we will do.

Hon Neil Thomson: Yes, sorry. You are helping me.

Hon SUE ELLERY: The member was going down a rabbit hole that I could not follow. This clause does two things. Firstly, it will change the form of a tenancy agreement; instead of being prescribed in the regulations, it will be a form that is approved by the commissioner. To change regulations, a process must be gone through because it is a disallowable instrument. Got that? This will make it much easier to change the form over time without having to go through the terribly important but sometimes time-consuming parliamentary process. Secondly, it will add property managers to the agreement. That will make it clear that a lessor or property manager must ensure that a written residential agreement is in the approved form. Previously, this section of the act did not refer specifically to property managers. It will now name the property managers. They are the people who most commonly deal with these matters.

Hon NEIL THOMSON: Thank you, minister. That gave me time to collect my thoughts. I think this is a good thing to do. To clarify, it will be a lessor when there is a reliance on the property manager. It is not a matter of becoming liable in any way when there is a reliance on the property manager. That was my question. The word "lessor" is cross-referenced in other clauses. Clauses 19 and 20 refer to "a lessor". Can a lessor rely upon a property manager? It seems that a property manager will be relied on in clause 18. Was any consideration given to it being a defence for a lessor to rely upon a property manager for other matters, as outlined in clauses 19 and 20?

Hon SUE ELLERY: They could both be liable, but under the existing provisions in section 87A of the act there is a defence when a lessor and property manager are both charged with the same offence. It is a defence to the charge for one of them to prove that they did not aid, abet, counsel or procure the act of the other giving rise to the offence and was not in any way directly or indirectly involved in it.

Clause put and passed.

Clause 19: Section 27B amended —

Hon NEIL THOMSON: Sorry to double down on this, if the minister does not mind. Why was the insertion of the words "or property manager" included? Would the minister mind providing an omnibus answer to clauses 19 and 20, please, so that it is not too painful?

Hon SUE ELLERY: It is for the same reason, which is to make clear that the obligation is on both of them.

Clause put and passed.

Clauses 20 and 21 put and passed.

Clause 22: Section 27AA inserted —

Hon Dr BRAD PETTITT: I have a number of questions on clause 22, which deals with rent bidding. What is to stop landlords and property managers from giving the impression that they will accept a higher bid, given the lower vacancy rates and huge demand at the moment? This change alone will not stop rent bidding. Sorry, I am not quite sure whether that makes sense.

Hon Sue Ellery: I am sorry, honourable member, can you give it one more go?

Hon Dr BRAD PETTITT: I think the problem was at my end. I am reading some questions here. The heart of the question is: if a property is advertised and it is rented above the advertised price, will there be any mechanisms to monitor and address that?

Hon SUE ELLERY: We canvassed this a little bit last night. A secret shopper will test whether people are acting within the new laws. The commissioner will also obviously accept complaints, and there are all the processes that sit around the registration and how people can make complaints about real estate agents through the existing regime. It is important to appreciate that we will be proactive on this. We will do an education piece, and REIWA intends to do a significant education piece for its membership. The agency will do the secret-shopper business to make sure that if that is happening, the agency will try to catch it out.

Hon WILSON TUCKER: I have an amendment on the notice paper on rent bidding. Before we get to that, I would like some clarification from the minister regarding soliciting or inviting a person to offer a bid. Could the minister expand on the terminology that is included in this proposed section?

Hon SUE ELLERY: The conduct that will constitute soliciting rent bidding is broadly defined to capture circumstances when the lessor or the lessor's agent pressures or encourages the prospective tenant to offer more than the advertised price. For example, it is intended that the following types of phrases will be captured by the provisions: Someone else has made an offer. Would you like to match it? There are lots of people interested in this property; you can secure it if you offer more rent. You have not been working full time for very long; you might want to strengthen your application by offering more rent.

Hon WILSON TUCKER: Are they examples that would go beyond the threshold of solicitation? Is that correct? Are there others? Where is that contained?

Hon SUE ELLERY: They are not set out in the bill. The question was about the sorts of things that we know from examples that have been given of the language used when people try to do rent bidding. I have given the member some examples. There are probably a million others. Members can think of them for themselves, but they are examples of the sorts of things that we are talking about.

Hon WILSON TUCKER: I appreciate the examples. I am trying to determine what the threshold for solicitation will be. We know it can be verbal and non-verbal. What is considered the threshold for solicitation?

Hon SUE ELLERY: We will not prescribe that because that would provide an opportunity for people to come up with another way of achieving the same end. It would be silly and counterproductive, I think, to prescribe the language. The evidence will be provided to a court, and it will be able to decide whether it happened based on the evidence that is presented to it.

Hon WILSON TUCKER: We touched on this yesterday, but I think it is worth revisiting it and re-clarifying. Is the government's intention to outlaw the solicitation of the bid? Was a more comprehensive regime looked at about outlawing rent bidding?

Hon SUE ELLERY: We had an extensive debate yesterday and I am not going to repeat it. The point of a clause 1 debate is to go across the policy of the bill. We talked about each of the matters that are subject to members' amendments in detail. I am happy to clarify anything I have not already clarified, but I am not going to repeat the debate we had yesterday. I made it clear yesterday that this is the extent of the provisions that we are putting in place. I was asked questions about whether we would take action to prevent a lessor or their agent accepting a bid that was offered by a potential tenant, and I said, "No. We are not doing that." I am not going to repeat the arguments.

Hon WILSON TUCKER: The Leader of the House said she was not going to do that. That is fair—we did touch on that quite extensively yesterday. However, I do not think we really touched on the "why". Why did this government not take the next step to ban rent bidding entirely, because I think the Leader of the House would agree that a massive loophole exists within this bill when it comes to rent bidding?

Hon SUE ELLERY: The member needs to go and read the pink, because we canvassed that. I specifically answered the question about why we did not consider it. I am not going to repeat it. There was an extensive clause 1 debate—I was comfortable with that—and I am not repeating the whole debate.

Hon NEIL THOMSON: I would like to clarify proposed section 27AA, which states —

> (3) A person must not solicit or otherwise invite a person to make an offer to become a tenant of residential premises at a rent higher than the amount advertised as the rent for the premises.

I would like reassurance from the Leader of the House about the restricted market and not imposing the following, particularly in regional towns. When a person enters a real estate agent's office, and as there is no advertising and they say, "I am desperately looking for a rental property." There may be discussion between the prospective tenant and the property manager about what rent they may be able to afford. I ask this because this is exactly the sort of

situation that can occur in a small town in which there is a restricted market. It is not rent bidding, as such; it is simply a negotiation that goes on between the prospective tenant and the property manager, who might be doing a very good job of trying to find the scarce properties that are available, and sometimes that can be difficult in an overheated market. I assume that it must be to pass the test of being a solicitation or invitation. There must be an advertised rental price that has been put for that premises in the first place.

Hon SUE ELLERY: That is correct.

Hon WILSON TUCKER: I asked the question as to why; however, I did not receive a satisfactory answer. I am going to continue —

Hon Sue Ellery: By way of interjection, that is different from me not providing an answer. The member is not satisfied with it, but I provided the answer.

Hon WILSON TUCKER: Well, I cannot be blamed for trying again, Leader of the House. It is my understanding that every other state and territory has outlawed rent bidding. Victoria has proposed to go one step further and outlaw the acceptance of a rent bid above the listed price, whereas WA is only looking at the solicitation component. The Leader of the House has mentioned the secret shopper program. I have a question about that, which I will come back to. I think it is fair to say that the secret shoppers, as exciting as this announcement is, cannot be at all the home opens. A massive hole exists with rent bidding, and the government's policy is only looking at a narrow part of that with the solicitation and acceptance. There are verbal and non-verbal ways in which to communicate a message that if someone wants to secure a property, they will have to go above the listing price. I think the Leader of the House and I can agree on that. There will be a massive loophole here. Victoria is looking to close that loophole; meanwhile, WA is only playing catch-up. It could be years between the laws we are dealing with now and the second tranche. This loophole could exist for a number of years, and this government does not have an effective way of policing, monitoring or really dealing with it that I have heard so far.

I have an amendment and I intend to move it. I move —

> Page 24, after line 23 — To insert —
>
> (4) A person must not accept an offer from another person for the other person to become a tenant of residential premises at a rent higher than the amount advertised as the rent for the premises.
>
> Penalty for this subsection: a fine of $10 000.

Hon SUE ELLERY: As I indicated yesterday and again today at the outset of the committee, the government will not be supporting this amendment. It may well be the case that tenants may offer more than the advertised rental price without being encouraged by the lessor or the agent. It is our view that the proposal as set out, in fact, would be far more difficult to police than the other and that the amendment may also have the unintended consequence of inflating the advertised price, so instead of advertising at a lower rent with the flexibility to accept a higher rent if it is offered, the lessor may advertise a higher rent. I appreciate the points that the member has made, and I understand what the jurisdictions he has referred to elsewhere are doing. Our government's position is that this is the right step for us to take at this point. If the evidence changes or there is a model that demonstrates that there is a better way of doing it, I am sure government in future will look at that, but we cannot accept the amendment and we will be rejecting it.

Hon WILSON TUCKER: I agree with the government and its policy and intention to outlaw rent bidding. What this amendment intends to do is close the loophole that will exist in the system. The example the Leader of the House gave, in which she said that the unintended consequence could be that a fixed price may be increased if we were to properly outlaw this, is really an indication that the government expects that rent bidding will still occur under this bill. This bill does not go far enough. I am confused as to why this is a half-measure, in which the government says, "We want to get rid of rent bidding in WA, but we're not going to do it properly. We will penalise you on the first part of that bid if they offer that acceptance and leave a gaping hole in the remainder."

The Leader of the House mentioned that if she finds a better model to outlaw or enforce it, she is open to looking at it. Has she consulted with Victoria, which is considering, in its view, a better model for rent bidding?

Hon SUE ELLERY: No.

Hon WILSON TUCKER: I think that raises the obvious question: why has the Leader of the House not consulted with Victoria?

Hon SUE ELLERY: Victoria made an announcement about a law it intends to introduce. There is no evidence of its success or otherwise.

Hon WILSON TUCKER: They obviously did not wake up one day and just come up with an announcement because they felt like it. There is obviously some evidence behind that to show that rent bidding is an issue in Victoria. They have found a loophole in their existing laws and now they are trying to close that loophole. I would have thought that, looking at best practice and what other jurisdictions are doing, it would make sense to have a look at Victoria, which has had a law in existence—a solicitation of rent bidding—working in the wilds of Victoria for a number of years. I would have thought it would be good practice and good lawmaking to reach out to the consumer protection department in Victoria. Can I ask why that did not occur?

Hon SUE ELLERY: To date, the member has made a number of pejorative comments in his contributions. I will not respond to those. I have said what the government's policy is; I said it yesterday and I said it again today. I have nothing further to add.

Division

Amendment put and a division taken, the Deputy Chair (Hon Stephen Pratt) casting his vote with the noes, with the following result —

Ayes (4)

Hon Sophia Moermond	Hon Dr Brad Pettitt	Hon Dr Brian Walker	Hon Wilson Tucker *(Teller)*

Noes (30)

Hon Martin Aldridge	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Klara Andric	Hon Donna Faragher	Hon Shelley Payne	Hon Dr Steve Thomas
Hon Dan Caddy	Hon Nick Goiran	Hon Stephen Pratt	Hon Neil Thomson
Hon Sandra Carr	Hon Lorna Harper	Hon Martin Pritchard	Hon Darren West
Hon Peter Collier	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Louise Kingston	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Colin de Grussa	Hon Ayor Makur Chuot	Hon Tjorn Sibma	
Hon Kate Doust	Hon Steve Martin	Hon Matthew Swinbourn	

Amendment thus negatived.

Hon MARTIN ALDRIDGE: I have a couple of questions on this clause. I might start with this one. I think I raised this issue of prevalence in the second reading debate, if not clause 1. I think I made some characterisation about the fact that it is more commonly seen on properties for sale rather than for lease, and I was struggling to find properties for lease within a price range. The minister said that the department has some intelligence or awareness of it. Is this something that it monitors? Is it an anecdotal understanding of the problem or is it something that can be quantified?

Hon SUE ELLERY: From time to time, the agency will do research on prospective search agencies, and the Making Renting Fair Alliance provided the department with examples of properties being advertised for rent from $500 or $600.

Hon MARTIN ALDRIDGE: I refer to what the minister has described as the "secret shopper enforcement program". This will effectively be departmental people pretending to be potential applicants and seeing whether there are any breaches. I suspect this is a sort of thing that law enforcement agencies do quite regularly, but from a legal perspective, is the department allowed to entrap somebody, for example, if they are there to set someone up and see whether they start a conversation in which they are not breaching the act? Do police or other law enforcement agencies have certain powers or protections to do that? If that is the kind of thing that departmental officers will do, will they be legally authorised to do so?

Hon SUE ELLERY: I am advised that it is something the agency does across the range of its consumer protection responsibilities, so there is that. The other point that was made to me by the commissioner is that it is intended to be more of a deterrent in that it is saying to the Real Estate Institute of Western Australia and its members, "You don't know when we are going to turn up at your showing." That is the purpose of it. As I said, it is done now in a range of other consumer protection areas.

Hon MARTIN ALDRIDGE: I want to ask about proposed section 27AA(2), which is a defence. It states —

> A person does not commit an offence against subsection (1) if the person places a sign advertising or offering residential premises for rent at or near the premises and the sign does not state an amount of rent for the premises.

Unless it is a sign at or near the premises, any other advertisement, whether it is a poster in my local IGA window, on the internet or, really, any other form of advertisement, it must clearly state the advertised price, and that price must be not be fixed within a range. Is that correct?

Hon SUE ELLERY: Yes, it is.

Hon MARTIN ALDRIDGE: Are there any limitations on the definition of signage "at or near"? It is quite common for property managers or real estate agencies to provide wayfinding signs that say "for lease", and they can sprawl through a suburb, directing someone to 54 Tucker Street, for example. Would those signs be considered under the definition of "at or near"?

Hon SUE ELLERY: Yes.

Hon MARTIN ALDRIDGE: I refer to offers. Price is obviously a significant part of an offer, but there could be other aspects to the offer that could be attractive to a lessor, for example, payment up front of the rent. They might offer the fixed price but they might say, "I have got Neil and Sofia, and they are both really good applications and have both offered me my asking price of $500 per week, but I have said to Neil that I will give the property to him if he pays six months' rent in advance." Is that lawful?

Hon SUE ELLERY: Yes, I have been advised that it is.

Hon NEIL THOMSON: I come back to the issue of advertising. Is it lawful for there to be advertisements simply saying "offers"?

Hon Sue Ellery: Do you mean no price, just, "Make an offer"?

Hon NEIL THOMSON: Yes.

Hon SUE ELLERY: No, that would not be allowed.

Hon NEIL THOMSON: I assume that is in the existing legislation, and that it is already the case that there must be a listed price?

Hon SUE ELLERY: No, that is new. That is in the rent bidding provisions. The provisions state that the advertisement must indicate the amount of rent.

Hon NEIL THOMSON: I think this is problematic to a certain extent, particularly for bespoke rentals. I am thinking of some of the more high-end rentals. Although I do not support the bill, I can understand the situation of a regular apartment block, with 40-odd apartments. One can go online and see what an apartment in the CBD is going for. There might be three or four rentals on offer in an apartment block for $600 or $620, depending on the kitchen and a range of things. We can see why the market has already been established clearly. The problem with some of the more bespoke rentals is that I do not know whether even the lessor would know what the value was. I do not know what the response from the Real Estate Institute of Western Australia was on this matter, but the legislation could constrain some of the higher end or more restricted rentals. In a small regional town, for example, it is difficult to tell what the price might be because there is no comparator; or a particular bespoke premise might have features that are non-standard. I am not sure why there would be such a broadly based law that would impact on those when we would be restricting effectively what was a normal marketplace and would seem not to have any negative consequences to the general tenant.

Clause put and passed.

Clause 23 put and passed.

Clause 24: Section 29 amended —

Hon NEIL THOMSON: The minister covered this to some extent in discussion on the pet bond. There is a prescribed amount. To what extent will this clause alter the existing arrangement, noting the pet bond that is already in place?

Hon SUE ELLERY: This clause includes provisions to expand the reasons for which a pet bond may be required to include the cost of any damage caused by a pet in addition to fumigation costs. The current laws cover only fumigation, not the scratching of a board or whatever. It will expand the use to which a pet bond may be put.

Hon NEIL THOMSON: Did the government consider reviewing that pet bond? Where is it at with the review of the amount of the pet bond?

Hon SUE ELLERY: The government will explore whether that is a satisfactory amount in the consultation on the drafting of the regulations. We do not have a set point of view. That will be subject to negotiations with the relevant stakeholders.

Hon MARTIN ALDRIDGE: The last point that appears in the consultation questionnaire that went to stakeholders states that the amount of the pet bond currently prescribed under regulation 10A is $260 and that the September 2023 consultation on the bill notes that the quantum of the pet bond will be reviewed to account for inflation. When was the pet bond set at $260, and what would be its inflationary representative value today?

Hon SUE ELLERY: The best advice at the table is that we think that figure was from 2015 or 2016. I do not know that we have the calculations.

Hon NEIL THOMSON: We will discuss pets in more detail under clause 33; however, it seems a bit rich to just say "on inflation". Clearly, the pet bond is insufficient given that we have had not only inflation, but also an expansion of the rights of tenants for the keeping of pets, and usually the judgement of the lessor on these matters is quite accurate. Examples exist, given the nature of the premises, whereby damage can be excessive. It depends on the type of premises. For example, the premises might have a reliance on a lot of reticulation points. The lessor might not want a dog that is prone to biting off reticulation, resulting in a lack of watering of plants and the destruction of a garden worth tens of thousands of dollars. I am giving an extreme example of the sorts of damage. There is an idea that somehow the pet bond can be increased by inflation. Given the expanded rights of tenants, I thought there would be an opportunity to address that. What will the government do about the assessment of damage? Will it poll real estate agents, for example, and ask for feedback on specific damage that is experienced in rental properties?

Hon SUE ELLERY: It is important to remember that the whole of the bond, not just the pet bond, can be used. That is a change to, basically, increase the amount of money that is available to be used. The matter is out for consultation now.

Hon MARTIN ALDRIDGE: I think I said this in my contribution to the second reading debate, but I will make a submission to the minister now on the government's consultation paper, particularly given that clause 33 would be far better if it contained reference to the value of the rent. Effectively, we have an arbitrary figure of $260. I suspect the government will not land on a figure north of $300 once it factors in inflation since 2015–16. Security bonds are four weeks' rent. My submission is that if the pet bond were two weeks' rent, it would link it to the value of the property. If people are renting property for $200 a week or $2 000 a week, it is commensurate to the potential value, but also the potential cost of the damage that might be incurred. I still think that is probably grossly inadequate in some circumstances when we contemplate the ability for a pet to do damage. However, I think two weeks' rent on top of the four weeks' security bond would be a better landing point than simply adding inflation to $260, keeping in mind that in the current circumstances, the $260 was for only fumigation, not any other purpose.

I want to ask this here about this clause. When I look at the marked-up blue bill, I see that we will effectively be expanding the application of the pet bond. At the moment, if a tenant is permitted to keep on the premises any pet capable of carrying parasites that can affect humans, a prescribed amount of money to meet the cost of any fumigation of the premises may be required, and that will be $260. The test is that it has to be an animal that is capable of carrying parasites that can affect humans. We are saying that if the tenant is permitted to keep at the premises a pet, which is a defined term and means any animal, a prescribed amount to meet the cost of any damage caused by the pet or for fumigation of the premises may be required on the termination of the tenancy. Therefore, we want to expand it to apply not only for damage and fumigation more generally, but also to the definition of an animal. If a tenant wants to keep sea monkeys or a goldfish—they are both animals—the pet bond, as it is currently framed, will apply. Is that the government's intention?

Hon SUE ELLERY: Yes.

Clause put and passed.

Clause 25: Section 30 amended —

Hon NEIL THOMSON: This provision will delete the words "6 months" and insert the words "12 months". Does that mean that the intended 12-month exemption would make no change whatsoever to section 30, "Variation of the rent (except where calculated by reference to tenant's income)" of the original act? Does that relate to social housing in the main, or does it relate to any other landlords who might have formed a contract based on the tenant's income? Will that still be permissible? Will there be an ongoing adjustment due to the tenant's income?

Hon SUE ELLERY: It is all landlords, honourable member.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Before I give the member the call, I draw members' attention to the amendment on the supplementary notice paper relating to this clause.

Hon NEIL THOMSON: If I can, before we go to the amendment, I have just one more question about the interaction between six-month contracts and 12-month contracts. I have always been a little bit perplexed about them. If a tenant has a short-term contract under which they stay for six months and then move on, and the landlord has back-to-back six-month contracts with different tenants, will the landlord still be required to charge the same rent that they charged the previous tenant?

Hon SUE ELLERY: If it is a new tenant, it is a new lease, and the clock starts ticking with the new lease. If it is the same tenant, it will be seen as a continuous period of 12 months.

Hon Dr BRAD PETTITT: As the deputy chair indicated, I have an amendment to this clause, which flows through to a series of other amendments. Once again, with the deputy chair's permission, I would like to package them up as they are in the broader area of variations to rent and how it is controlled. I will start with a question following on from Hon Neil Thomson. Is there anything that will stop a landlord from increasing rents by the same amount at 12 months as they might have done with two six-month increases?

Hon Sue Ellery: I might have to hear that again.

The DEPUTY CHAIR: The minister would like you to repeat the question, please, honourable member.

Hon Dr BRAD PETTITT: This provision will mean that the rent increases only once a year. Is there anything that will stop that increase from being more —

Hon Sue Ellery: Do you mean the amount?

Hon Dr BRAD PETTITT: The amount, yes. I am trying to work out what the advantage will be in terms of rising rents.

Hon SUE ELLERY: Sorry; I understand the member's question now. Will there be any cap on the amounts?

Hon Dr Brad Pettitt: Yes.

Hon SUE ELLERY: No, there will not. The intent of the 12 months is to provide greater certainty for everybody so that there is a longer period between the opportunities to increase rent. It is about providing greater certainty.

The DEPUTY CHAIR: Honourable member, can I just seek some clarification?

Hon Dr Brad Pettitt: Yes.

The DEPUTY CHAIR: Are you seeking leave of the chamber to move the four amendments together?

Hon Dr Brad Pettitt: That is correct, yes.

The DEPUTY CHAIR: Would you like to do that now so that you will know whether you have leave, and then you can subsequently move them?

Hon Dr BRAD PETTITT — by leave: I move —

Page 26, after line 20 — To insert —

(2) After section 30(3) insert:

(4) This section applies subject to section 31AA.

Page 26, after line 30 — To insert —

(2) After section 31A(2) insert:

(3) This section applies subject to section 31AA.

Page 27, before line 1 — To insert —

26A. Sections 31AA and 31AB inserted

After section 31A insert:

31AA. Limit on increase in rent

(1) A lessor cannot increase the rent payable under a residential tenancy agreement under section 30 or 31A by an amount greater than the increase limit.

(2) Despite subsection (1), the lessor may increase the rent payable by an amount greater than the increase limit only if —

(a) the residential tenancy agreement sets out the amount of the increase or the method of calculating the amount of the increase; or

(b) after the lessor gives the tenant notice of the increase of rent, the tenant agrees to the increase in writing; or

(c) a competent court approves the amount of the increase.

(3) The notice of increase of rent a lessor gives a tenant under section 30 or 31A must state —

(a) the amount of the proposed increase; and

(b) whether the amount of the proposed increase is more than the increase limit; and

(c) if the proposed increase is more than the increase limit — that if the tenant does not agree to the proposed increase, the lessor may only make the increase with the approval of a competent court.

(4) The ***increase limit***, in relation to an increase in the rent payable under a residential tenancy agreement, is the amount calculated using the following formula —

$$R \times \frac{\text{current CPI} - \text{initial CPI}}{\text{initial CPI}} \times 1.1$$

where —

R is the current rent payable;

current CPI is —

(a) the CPI published most recently before the lessor gives the tenant the notice mentioned in subsection (3); or

(b) if the CPI mentioned in paragraph (a) is less than the initial CPI — the initial CPI;

initial CPI is the CPI published most recently before —

(a) the day the residential tenancy agreement commenced; or

(b) if the rent payable has been increased previously — the day on which the lessor gave the tenant notice about the previous increase of rent under section 30 or 31A;

CPI is the quarterly index number for the rents subgroup of the housing group of the Consumer Price Index for Perth published by the Australian Bureau of Statistics.

31AB. Lessor's application to increase rent above increase limit

(1) In this section —

increase limit, in relation to an increase in the rent payable under a residential tenancy agreement, has the meaning given in section 31AA(4).

(2) A lessor under a residential tenancy agreement may apply to a competent court for an order approving an increase in the rent payable under the agreement by an amount greater than the increase limit.

(3) In deciding the application, the court must have regard to the following matters —

(a) the general level of rents for comparable premises in the locality or a similar locality;

(b) the estimated capital value of the premises;

(c) the amount of the outgoings in respect of the premises required to be met by the lessor under the agreement;

(d) the estimated cost of any services provided by the lessor or tenant under the agreement;

(e) the value and nature of the chattels provided with the premises for use by the tenant;

(f) the accommodation and amenities provided in the premises and their state of repair and general condition.

(4) Subsection (3) does not limit the matters the court may have regard to in deciding the application.

(5) If the court decides not to approve the increase in rent by the amount requested, the court may, having regard to the justice and merits of the case, order that the rent payable under the residential tenancy agreement from a specified day not exceed a specified amount.

(6) An order made under subsection (5) has effect for the period of 1 year starting on the day specified in the order as the day on which it takes effect.

(7) A court may, on the application of the tenant, vary or revoke an order made under subsection (5) if satisfied it is just to do so, having regard to the matters set out in subsection (3).

(8) A person must not demand or receive rent for the residential premises that exceeds the amount ordered by the court under subsection (5).

Penalty for this subsection: a fine of $5 000.

Page 71, after line 25 — To insert —

(4) Section 31AA, as in force from the commencement —

(a) does not apply to an increase in rent under the residential tenancy agreement if a notice of the increase in rent was given under section 30 or 31A before the commencement; and

(b) otherwise, applies to the residential tenancy agreement.

I appreciate the deputy chair's assistance with that. Let me explain why I am moving these amendments. As the Leader of the House just indicated, increasing rents just once a year is a small improvement to give certainty to renters. However, this does not actually provide any substantive change in a market in which rents have been going up steeply. As I said in my contribution to the second reading debate, we have seen rents go up by 67 per cent since the COVID pandemic, putting rentals out of reach for an increasing number of people. Although this provision may give certainty over a year, there is nothing to stop those rents going up by a very large amount at the end of that year.

As I said before, in the lead-up to this debate, we did a survey to try to understand where renters were at. From the survey, we found that 80 per cent of the respondents had had a rent increase in the past 12 months. More than 25 per cent of respondents had had two rent increases, and the average rent increase was about $100 a week. The accepted measurement of financial hardship is when someone spends 30 per cent or more of their income on rent, and more than 70 per cent of survey respondents fell into this category; in fact, 25 per cent of them are spending more than half their income on rent. This is at the heart of why I am putting these amendments before the committee today. Unless there is a much stronger rent cap, it does not really matter whether the contracts are six months or 12 months; we will continue to see rents get further out of reach for many people.

This is actually not a radical idea. This is an idea that already occurs quite successfully in the ACT. The ACT has a cap on rents at the consumer price index plus 10 per cent. If CPI is four per cent, landlords can put up the rent by 4.4 per cent, unless the landlord makes a case. Landlords can make a case through the appropriate channels if rent needs to be put up by more than that, and there might be a good reason, such as adding a new bedroom. There may be other substantive reasons why the rent is worth more than the CPI increase. Unfortunately, we have seen a small number of exploitative landlords making the most of the housing shortage across the state. They are putting up rents by quite extreme amounts in some places, which is literally forcing people to live in cars. This week my office has been speaking to one of those affected people, who is a single mum, has a son and a pet and is now literally sleeping in her car because although she was a good tenant and had done nothing wrong and always paid the rent on time, the rent got so extremely expensive that she was unable to continue to pay it.

I think one of the things that we can do in this place is to make sure that we do not have that situation happening again and again. It is really quite a straightforward package. The formula might be a little complicated, but it is really just putting a simple cap of the consumer price index plus 10 per cent on all rentals, unless it happens otherwise. It is a sensible and moderate thing that we have already seen working successfully in other parts of the country and I think it would be of great value here in Western Australia. I commend the amendments as a whole to the chamber.

Hon SUE ELLERY: I thank the member for setting out the reasons for his amendments. As I have already indicated, the government will not be supporting them for two reasons. Firstly, I have talked before about how the minister before me separated matters out for consideration into tranche 1 and tranche 2. This proposition is part of the matters being considered in tranche 2. However, I have to be clear with the member that I cannot see the government accepting a proposition that goes to the degree of intervention in an investor's capacity to earn money from their investment as rent caps do. I cannot see the government agreeing to that. Nevertheless, that was one of the matters that was raised in the consultative regulatory impact statement, and it has therefore been considered in the second tranche. To put it in place now would be pre-emptory of that. The consequences and implementation arrangements would need to be put in place and deserve much further consideration than they have had since this supplementary notice paper was issued. We will not be supporting this block of amendments.

Amendments put and negatived.

Clause put and passed.

Clauses 26 to 30 put and passed.

Clause 31: Section 47 deleted —

Hon MARTIN ALDRIDGE: Clause 31 quite simply will delete section 47 of the act. That is because clause 33 will insert a replacement provision. I have a few questions about the deletion of section 47. Section 47(2A)(b)(iv) states that a lessor may refuse consent only for a list of reasons and subparagraph (iv) states "for a prescribed reason". Have any other reasons been prescribed for the purpose of that section?

Hon SUE ELLERY: No.

Hon MARTIN ALDRIDGE: Section 47(2A)(e) states —

> if the tenant causes damage to the premises when affixing or removing the item or restoring the wall to its original condition —
>
> (i) the tenant must notify the lessor in writing that damage has been caused to the premises; and
>
> (ii) the lessor may require the tenant to repair the damage and restore the premises to their original condition or compensate the lessor for the reasonable expenses incurred in doing the repair and restoration.

Has the circumstance anticipated in subparagraph (i) about the notification of damage been retained in the new provisions that the government will include about the fixing and removal of fixtures?

Hon SUE ELLERY: Yes, it has. I have been told that it will be retained in proposed section 50ZE.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Part IV Divisions 2A and 2B inserted —

Hon NEIL THOMSON: This is obviously a significant clause that considers a numbers of matters, some of which we probably would have supported if they had come in a separate bill, and others that we have some questions on. I want to start on proposed section 50A, "Keeping pet at residential premises", as I mentioned earlier.

I think this is quite a serious issue. I do not quite understand the intent of it. We all love pets. I am a pet lover, too. I love dogs. I have owned dogs for many years. I have had to sadly give up dog ownership in this particular role. Our lovely dog passed away shortly before I was elected to Parliament. My wife and I made the decision to not get another dog because we would be on the road so much and would have an issue actually caring for it.

These are hard-earned properties. As I said to the member, the biggest cohort of investors is women earning under $100 000. Wealthy people do not generally own these homes. They are people who care for their homes. We know that the reality is that there is a range of pets. Some people have quite manageable little dogs. Some people have beautiful dogs that I would be more than happy to see in the chamber here. They would behave beautifully and sit down. There are dogs that are trained for the visually impaired and other people. There are some very beautiful dogs. However, we know that some dog breeds are actually a big issue. Quite frankly, I think that there is more the government could do to manage dangerous dogs, but I know that is outside the scope of the bill.

Right now, someone can own a whole range of dogs in Western Australia that I do not think they should be able to own, quite frankly. Under this law, lessors will have restricted rights to stop tenants from having dangerous dogs on the property.

Several members interjected.

Hon NEIL THOMSON: I can hear the little mumblings from the other side and interjections, but this is actually quite an important issue.

It is very important for the people —

Hon Darren West: This is going to make —

Hon Sue Ellery: Stop. I want to get this bill done.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Honourable member, I am just going to stop you there. Hon Peter Collier, I will save you from the embarrassment of the way that you got to the water station by not repeating it and therefore doubling the nature of the offence. You can thank people on the government's side of the chamber for allowing me to interrupt Hon Neil Thomson. I am sure that you will walk around the back and therefore not walk between the chair and the lead speaker.

Hon Peter Collier: I most definitely will.

The DEPUTY CHAIR: You also should not speak except from your chair, honourable member, as you well know.

Hon NEIL THOMSON: It encourages me that I am not the only one ever to have made that infringement in this place in the forty-first Parliament. I thank my colleague Hon Peter Collier for making it so that I am not alone on that matter.

My question relates to the grounds for refusing consent to keep a pet, which, to me, seem a little complex. We seem to be creating a bit of a bureaucratic nightmare. I refer to proposed section 50E, "Lessor's application for approval to refuse consent to keep pet at premises", for example. It states, in part —

> (1) A lessor may apply to the Commissioner for an order approving the lessor's refusal of a tenant's request …

Notwithstanding that we have created the role of commissioner to deal with and fast-track things, we are creating a massive job for the commissioner because I imagine a lot of lessors will be challenged with requests to have certain pets. I want to focus on proposed section 50E(3), which says that the Commissioner may make an order. It will have to go to the commissioner. I assume that the lessor can say no, they do not want the tenant to have a pet because they saw their dog and it was one of those dangerous dogs and a breed that they do not like. I suppose they may have even referred to the tenant handbook on the matter to work out how to do this. Anyhow, then we end up with a decision to take it to the commissioner. Could the Leader of the House outline the process? The lessor will be able to refuse the pet provided they meet one of the grounds outlined in proposed section 50(3)(a) to (f); is that correct?

Hon SUE ELLERY: The commissioner just put it to me this way, and I think it is quite a good analogy. This matter is like the Uber of the taxi business in that tenants have pets now. They might even do what I can recall doing when I was a student living in a shared house and hide the dog on the day that the rent inspection happened. I am sorry that I did that, but that is what happens.

Hon Neil Thomson interjected.

Hon SUE ELLERY: It was a long time ago. This will put in place a regulatory framework around something that everybody knows everybody does.

In the first instance, without the need to get the commissioner's approval, a lessor can say no if it contravenes a written law or a scheme. We canvassed this in the clause 1 debate when we spoke about strata title rules. The member referred to it being with the commissioner's approval under proposed section 50E(3) if the commissioner is satisfied that one of those matters is met. It will be assessed on a case-by-case basis. We have to read this alongside what we already talked about on how disputes are to be resolved. The commissioner intends to make a number of decisions that, if you like, will set a precedent. She intends to have a bank of precedented decisions that provide everybody with a sense of which way she is likely to go on a matter of dispute.

If we use the example that the member gave about the dog being a particular breed that is worrisome to the lessor, that may well be captured under proposed section 50E(3)(d), which is—

> keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person;

A range of criteria can be met and the intention of the commissioner is to build up a bank of precedents, if you like, so that people get a clear sense of what is reasonable, what is not reasonable and what she is likely to determine and not likely to determine.

Hon NEIL THOMSON: Thank you for the clarification. Just to further clarify the matter, in the initial instance, the lessor's refusal to consent to a tenant having a pet would simply be based on the elements outlined in proposed section 50C.

Hon SUE ELLERY: It is proposed section 50D, "Grounds for refusing pet being kept at premises".

Hon NEIL THOMSON: That reflects the same intent as proposed section 50C—the Leader of the House is right—in terms of the approval conditions. On that, the initial grounds for refusal are quite open-ended to some extent in that we do not know what "a prescribed ground" in proposed section 50D(c) will be. Can the Leader of the House please explain how that prescription will be made?

Hon SUE ELLERY: It will be in the regulations, consultation on which will be extensive. There is no draft or notion at this point about what that might look like, but that is what that refers to.

Hon NEIL THOMSON: All I can do is encourage that because this could give us some assistance. One of the challenges we in opposition have on a regular basis is that we do not see the regulations or know what the law is going to end up being because we have "a prescribed ground" as a single line in the legislation and it is pretty hard to tell. I certainly impress upon the government that those prescribed grounds might be quite specific in terms of the breed or type of animal. Prescribed grounds might take into consideration the type of premises in relation to the fragility of the premises. They might not be the words that are used, but we can all understand what "fragility of the premises" means in terms of how easily it would be damaged by a dog or other pet. There might be other sorts of pets. I am picking

on dogs only because they are generally the ones that cause the most problems. I encourage the government to get the prescribed grounds out there as quickly as possible and have as many prescriptions in there as necessary to be clear to lessors so they can protect their assets. I think we have to look at that with a reasonable degree of being reasonable.

Let us just keep on the dog angle; we all know that dogs' behaviour varies greatly depending on the way they were trained. I do not know how we can prescribe that. Maybe we need a licence based on how well someone trains their dog. That would be an interesting line. Anyhow, we will not go there.

Let us look at the matters that the commissioner can look at in dealing with a refusal. The commissioner is going to be swamped with these because the expectation has been set. Basically, the expectation of the bill is that we are opening it up to pets and we are not going to stop people having pets; we are out there defending the rights of tenants. I think that will create some management-expectation issues for the commissioner because we are heading to 1 July when this law will be in place. I assume the prescribed grounds will be in place by then. Maybe that is a good question. Will those prescribed grounds be clarified by 1 July?

Hon SUE ELLERY: There is no intention at this point. If we need to do it because the commissioner sees repeated complaints from lessors, for example, that will be done. But there is not an intention at this moment.

Hon NEIL THOMSON: I am disappointed in that.

Hon Martin Aldridge interjected.

Hon NEIL THOMSON: No, prescribed grounds. There is no intention to clarify the prescribed grounds before 1 July, just for the clarification for those listening, which I think is somewhat disappointing. That means lessors will be a little at sea and exposed to potential complaints. There is an expectation by the average punter from reading the material in the media that the government has put out that we will let people keep pets on premises. That is great. We know that the government is good at stopping dogs being taken onto a range of locations on state land. We see how onerous the restrictions are on people who want to take their very well behaved pet into some of the pristine areas of our state. The government seems to have a double standard on this matter. When it is someone else's property, people can do whatever they like. That is the expectation. I know that is not the reality of the law, but we do not have closure on that with regard to the prescribed grounds and therefore I have some concerns about it. I assume that under proposed section 50E(3), the commissioner will have some scope about the premises being unsuitable. The number is pretty clear. We will not have any puppy farms on rental properties because we will not want too many dogs. That has been a priority of this government over a range of other things.

Hon Martin Aldridge interjected.

Hon NEIL THOMSON: It has not been proclaimed, even though it was such a priority that it had to be forced through because the government wanted to stop that from happening. We hope that the regulations will prescribe that there can be no puppy farms on rental properties. Keeping a pet on a premises if the likelihood of the damage caused could not be repaired for less than the amount of the security bond would almost preclude every large dog in the state, especially if it was not well trained. I am not sure how the commissioner will make that assessment if an appeal reaches the commissioner. Has the commissioner given any thought to this matter—or has the state given any thought to this matter when drafting the legislation in order to give directions to the commissioner, should I say—around the how the commissioner will exercise proposed section 50E?

Hon SUE ELLERY: If the question is: has the government given a direction to the commissioner, no, the government has not.

Hon Dr Steve Thomas: Any thought to how it would give direction.

Hon SUE ELLERY: I was responding to what the member actually said. If he wants to change that, that is fine. No, we have not given thought to directing the commissioner. I think that perhaps what is missing from this piece is that this whole process has involved extensive consultation with the stakeholders. The intention was to work extensively with the stakeholders on establishing the ground rules and whether anything needs to be prescribed and how these provisions will be applied.

Hon MARTIN ALDRIDGE: I raised this issue during my contribution to the second reading debate and Hon Neil Thomson touched on it a moment ago. I refer to the guidance given to tenants by the Department of Communities. I have said before, and it has not been challenged so I will keep saying it, that the state government, through the Department of Communities, is the largest single lessor in Western Australia. The department obviously prescribes certain things in its handbooks and in the advice that it gives to both public tenants and government employee tenants. One is that they are not permitted to keep dangerous dogs of restricted breeds. They are listed, I understand, according to a commonwealth standard. The commonwealth prevents the importation of certain types of dogs. Equally, our Dog Act places significant restrictions on them because of the threat they pose to the community.

I thought an easy approach would be to include in the bill that a restricted dog or a declared dog for the purposes of the Dog Act shall not be given a green light under this legislation. Why has the government not done that? Can the minister guarantee that when making the regulations, the government will provide an absolute restriction on declared dogs in the regulations under the Residential Tenancies Act?

Hon SUE ELLERY: Proposed section 50D is the grounds for refusing to keep a pet on a premises. Proposed paragraph (a) states —

> keeping the pet would contravene a written law …

If there is a prohibition on a particular breed of dog, it would be captured under that provision.

Hon MARTIN ALDRIDGE: Currently there are six breeds of dog on the list. Obviously, they cannot be imported. We do not want to import any of them. However, the ones that are here are significantly restricted. They have to wear a special collar; they must be confined to an enclosure that prevents their escape and release without permission and a child less than seven years is restricted from entering any part of their body into the enclosure, such is the risk; they must be muzzled; and they must be held by means of a chain, cord, leash or harness of not more than two metres in length. There are significant restrictions on them because of the threat faced by not only their owners and family members, but also the community. Will these dangerous dogs be prohibited from being accepted as a pet subject to the provisions in Residential Tenancies Amendment Bill?

Hon SUE ELLERY: Yes, if there is an existing law about a specific breed. Otherwise, proposed section 50E(3)(d) would apply if —

> keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person …

Hon MARTIN ALDRIDGE: I want to get some clarity around this. If the commissioner receives a refusal from a lessor that refused the pet on the grounds that the dog was a restricted breed in accordance with the Dog Act because it poses a threat to human safety, will the commissioner accept that as a grounds for refusal?

Hon SUE ELLERY: On the basis of the information that the member just relied on, and from what I have already said about proposed section 50E(3)(d), the lessor's application for approval to refuse consent would be a reasonable one because the case had been put to the commissioner that keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person.

Hon MARTIN ALDRIDGE: Thanks. That provides some comfort. I would have preferred it to be in the bill in black and white that says if someone has a dangerous dog in accordance with the Dog Act, the dog cannot be kept on a rented premises. I hope that the commissioner and commissioners after her will hold the view that I have just heard expressed from the government on this matter.

Another issue that is outlined in the expectations of tenants established by the Department of Communities is that to keep a dog or cat, the property should have a separate yard that is properly enclosed in accordance with the local authority's by-laws. Dogs and cats are not allowed to be kept by people who live in a flat or unit without an enclosed separate yard. Will that be the standard that the commissioner will accept when determining whether to accept dogs and cats in rental premises?

Hon SUE ELLERY: The proposition is that the premises are unsuitable. That is captured under proposed section 50E(3)(a).

Committee interrupted, pursuant to standing orders.

[Continued on page 873.]