

**RESIDENTIAL TENANCIES AMENDMENT BILL 2023**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Sue Ellery (Minister for Commerce) in charge of the bill.

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

Committee was interrupted after the clause had been partly considered.

**Hon MARTIN ALDRIDGE:** We were discussing the conditions relating to pets with reference to the Department of Communities current housing guidelines to tenants. The minister drew my attention to proposed section 50E(3)(a), which states “the premises are unsuitable for keeping the pet”. A footnote over the page, under the heading “Examples for this subsection” states —

1. For the purposes of paragraph (a), premises may be unsuitable for keeping a pet because of a lack of fencing, open space or another thing necessary to humanely accommodate the pet.

This could be the place where the commissioner upholds lessors’ refusal based on those grounds, but also may not. From what I can work out, it will be more of a case-by-case approach, given the individual circumstances. This brings me back to the guidelines the Department of Communities provides to its tenants that if they live in a flat or unit without an enclosed separate yard, dogs and cats are not allowed. Is it correct to assume that the commissioner is probably not going to take the same approach as the Department of Communities and that its guidelines will have to change to reflect the passage of this bill which, as I understand, will allow for cats and dogs to live in apartments?

**Hon SUE ELLERY:** I think we can assume that the commissioner will take into account the views and guidelines that the Department of Communities issues to its tenants and I am sure an accommodation will be reached accordingly. I do not think the member can make an assumption either way. The provisions exist in respect of the facilities at a premise. I am sure the commissioner will take that into account but will also take into account the views of the Department of Communities.

**Hon MARTIN ALDRIDGE:** I find it interesting only that I thought that rather than the commissioner taking into account the guidelines of the Department of Communities for its tenants, it would be the department that would take into account the law of Western Australia as outlined in the Residential Tenancies Act 1987 and its regulations, and the precedents established by the commissioner through her decisions. I suspect that we are probably on a path to allowing dogs and cats to live in an environment that does not have access to an enclosed separate yard, but that is probably just me trying to join a few dots. I suspect that the guidelines will have to change to accommodate the passage of the bill and, indeed, precedents established by the commissioner. Members should keep in mind that the Residential Tenancies Act applies to public housing and Government Regional Officers’ Housing. If the lessor, the state of Western Australia, wants to refuse a pet, it is subject to the same provisions as any other lessor. It will need to make an application to the commissioner and set out the grounds on which it objects and seek her approval for such.

I have one more question: it is about pets on strata properties. We have a carve-out in this bill that does not disrupt the bylaws that exist within strata companies under which companies fall. Why has the government taken an approach to effectively choose freehold properties as its target with respect to pets and not gone as far as disrupting the bylaws of strata companies?

**Hon SUE ELLERY:** I disagree with the member’s characterisation about who we are targeting; we are trying to codify arrangements for tenants to have pets. In any event, if we were to force the owner of a unit within a strata property to breach the bylaws, there would then be flow-on consequences of that, and that is not our intention.

**Hon MARTIN ALDRIDGE:** It would have been within the power of the government to bring, along with this bill, amendments to the principal legislation that governs strata companies to effectively do that.

**Hon Sue Ellery:** Yes, but we have chosen not to.

**Hon MARTIN ALDRIDGE:** I do not understand why. I asked in my contribution to the second reading debate—I do not know whether this information is available to the minister—whether the government has an understanding of how many rental properties are within strata companies versus freehold.

**Hon SUE ELLERY:** No, we do not have that information.

**Hon MARTIN ALDRIDGE:** It is still not clear to me, minister. I think, legislatively, if the government had taken a policy position that this should apply to all rental properties—it does not matter whether they are freehold or strata—it should apply in the interests of tenants and pets. It should apply fairly to all lessors, regardless of whether they own a freehold title or a strata title; it does not matter. I think it is within the government’s and Parliament’s power to act in that way. The government has taken a policy decision not to, and it is not clear to me why we will

effectively be giving immunity to strata companies but will apply the policy to freehold titleholders. Can the minister give me a better understanding of the government's policy approach to these two circumstances?

**Hon SUE ELLERY:** If the member thinks about strata properties, depending on the actual contract, they may or may not have common areas. People do not choose whom they live in very close proximity to, so it is right that the state respects the current laws around strata properties being able to set their own by-laws and does not seek to restructure that whole arrangement, which may have unintended consequences. That is why.

**Hon MARTIN ALDRIDGE:** I guess then, equally, if a strata does not have a by-law that prohibits pets, it would be able to, at any point in the future, create that by-law. I think many of them are going through a consolidation of their by-law process now, which is as a result of some other amendments. But there would be nothing stopping a strata from bringing in a by-law, particularly given the passage of this bill, and saying that this is something it cannot agree with and that it will bring in a by-law at the next annual general meeting to prohibit pets under all circumstances from its strata complex. There is nothing preventing it from doing so. The perverse outcome could be that we see fewer properties, particularly strata complexes, with the ability to accommodate pets than perhaps there are now.

**Hon SUE ELLERY:** It is the owners themselves who are making those decisions about bringing in a by-law. But if the member's question is: can they bring in a by-law if they do not already have one? Yes. There is nothing in the bill that will change that.

**Hon MARTIN ALDRIDGE:** I will not pursue this any further because I think we will get to a point at which we will not agree. I find it bizarre that, on the one hand, we are respecting the owners of properties in strata complexes and their right to make decisions about their property and the amenity of the complex. We are even making assumptions about how confined or expensive their properties are because not all stratas are necessarily units wall to wall. On the other hand, we are saying to this other group of people, the freeholders, that they have no discretion, unless on these very limited grounds they have a right of refusal, and even then the commissioner might not agree with them. I understand the policy intent. I do not understand the way in which we are applying it differently from freehold versus strata properties.

**Hon Dr BRAD PETTITT:** I have another question about pets. Does a tenant have to disclose on their rental application whether they have a pet?

**Hon SUE ELLERY:** Yes. If a person has a pet and they are applying for a lease at a new property, yes; they would make the application then.

**Hon Dr BRAD PETTITT:** What is stopping a landlord from discriminating against the application in favour of someone without pets? That is one part of it. People who are looking for a rental and have existing pets could be put in the precarious situation of being knocked back. Is there anything in the bill to stop this? I know the bill says that people will be able to have pets now, but what will stop someone choosing a tenant without pets over a tenant with pets?

**Hon SUE ELLERY:** It is not going to be possible to provide the honourable member with a precise answer to that. It is not going to be possible, particularly in the current market, to determine whether the fact that someone made an application to have a pet at the same time as they applied for a lease is the reason that they did not get the lease.

**Hon Dr BRAD PETTITT:** If somebody gets a pet just after they have signed a lease, are they required to notify the landlord?

**Hon Sue Ellery:** Yes, they are required to make an application.

**Hon Dr BRAD PETTITT:** So the landlord would not be able to do anything about that. I am trying to work out how that situation is different from now.

**Hon SUE ELLERY:** I am not entirely sure where the member wants to go. Someone has made an application for the lease and successfully got the lease. If they did not have a pet at the time they made the lease and they subsequently got a pet, they would need to follow the procedures that are set out under the new provisions and make an application. The grounds upon which a lessor can refuse that application are the ones we have just been talking about in proposed section 50D.

**Hon NEIL THOMSON:** I will make a couple of comments on Hon Martin Aldridge's comments on strata. It is a real risk that an increasing number of strata bodies will put a blanket ban on pets. When I am down here in Perth on parliamentary business, I live in a small apartment in the city. There was a ban on pets in that building, but recently the strata company decided to lift the ban. The strata body chose to allow some flexibilities, with some ground rules around that. This is eminently sensible in a multi-storey apartment with 50-odd units of two by ones. They are tiny little units that are cheek by jowl. There are balconies with gaps where, even though they conform with safety standards, a small pet might fall off. If someone who has influence over the strata body was worried about pets, and given that most of the building is probably rental accommodation anyhow, they might reconsider easing the pet restriction. The challenge then becomes that those buildings are not really designed for pets—all pets—particularly

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Hon Martin Aldridge; Hon Sue Ellery; Hon Dr Brad Pettitt; Hon Neil Thomson

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if there are some limitations. I will take a slightly different angle from Hon Martin Aldridge. When the strata body has a ban on pets and has certain by-laws that relate to pets, would those —

**The DEPUTY CHAIR (Hon Sandra Carr):** Order, member. Noting the time, I am required to report progress of the bill.

**Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).**

*House adjourned at 5.20 pm*

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