

RESIDENTIAL TENANCIES AMENDMENT BILL 2023

Committee

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

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon NEIL THOMSON: What I was getting to, following the minister's point about COVID and all the disruption in the market, is that there has been an inverse peak in the vacancy rate. The vacancy rate peaked from about 2017 to 2021. During COVID it dropped considerably; after 2021 it got down to around one per cent. As the minister rightly pointed out, it is running at about 0.7 per cent. There is an inverse relationship between that and the rental price. The relevance here is that the percentage of investment loans for new construction was 14 per cent in 2022 and 20 per cent in 2023. Did the government consider the real cause of some of these challenges for housing affordability in the state, which, quite frankly, is that there is insufficient investment in new rental housing? I think probably the number one factor is that we have a low level of investment. The argument we have put is that the government has gone to quite a lot of trouble to create a very complex piece of red tape that, as far as I can see, will penalise lessors. I will ask another question about that shortly. In the main, the government could have done more to really improve the construction market and encourage the development of new residential tenancies, particularly in new homes. What was the government's thinking on that, given all the work it did on the Residential Tenancies Amendment Bill 2023?

Hon SUE ELLERY: The bill before us is about the rights and obligations of renters and lessors. To the extent that it fits within the spectrum of housing-related matters—obviously it plays a part—no claim has been made that this is going to address supply issues. No claim has been made to that effect. This legislation was not designed to do that; it is not its intention. This is about the rights and obligations of renters and lessors and trying to get a balance in those rights and obligations. I make no apology for the fact that this bill does not address supply; it was not intended to. I do not know that I can take that issue much further.

Hon NEIL THOMSON: In the minister's reply to the second reading debate, she tried to provide some comfort to the lessor community that she had tried to get a balance, and she referred to some of the comments from my colleagues on the crossbench about how far this bill would go. In fact, the minister said that what was discussed in the chamber reflected the broad views that had been received in the consultation process. But on several occasions, she has said that she is trying to get the balance right between the lessors and lessees. When I go through the key points on the Department of Energy, Mines, Industry Regulation and Safety's website in terms of this bill and what it does, I struggle to find anything in there that actually helps the lessor. Those seven key points refer to tenants keeping pets; allowing minor modifications; rent increases being limited to once every 12 months; a bond disposal process; a disputes process; rent bidding; and a court process for recourse so that tenants can get relief when landlords take retaliatory action. What in this bill, if anything, will encourage, help or assist lessors?

Hon SUE ELLERY: The member can look at one item alone: the dispute resolution procedure. Under the current regime, disputes are settled in the Magistrates Court. The member would be aware that the Magistrates Court, for example, does not issue reasons for decision. One of the key policy aims with the changes that we are making to the dispute resolution procedure is that the Commissioner for Consumer Protection will, one, publish reasons for decision, but, two, establish a set of precedents and publish those so that in dispute matters of a similar nature, the parties will have a much greater degree of certainty about where that decision will land and the likely outcome of taking a similar matter to the commissioner for resolution, for example. That is a very significant improvement on the current situation. It means that lessors will get consistency in decisions. Currently, with absolutely no disrespect to the court, the decision is dependent on the views of the particular magistrate presiding over the matter. The intention here is to effectively build up a bank, if you like, of precedents to provide much greater certainty to lessors about what they can and cannot do in the event that they are in dispute with the tenant. That is a very significant improvement. The other measures will provide a much greater degree of certainty and clarity for everybody, including lessors.

Hon NEIL THOMSON: Will this process reduce the amount of time spent on these cases in the courts?

Hon SUE ELLERY: We would anticipate it might, but there are a couple of factors. Quite a number of matters do not go to the Magistrates Court because it is an onerous, confrontational, time-consuming and quite intimidating process to go through. We might expect on that ground alone that the commissioner might get a lot more disputes than we have seen reflected in the number of matters going before the courts, but I suspect that we will be able to put the themes of those disputes into bundles of similar issues. I also expect that once that bank of decisions has built up, and it will not happen immediately, we will see a reduction in matters for dispute resolution—full stop. It is also the case that this is a two-tiered system. The commissioner will not deal with some matters, for example,

when the sum of money is greater than the bond that is held or a termination, and the Magistrates Court is, if you like, the Court of Appeal in the event that the party is not happy with the commissioner's decision. I do not know what the actual percentage change will be in what does or does not go before the court, but it will be a very significant change that will try to remove red tape for everybody and try to ensure that everybody gets clarity about what is and is not reasonable.

Of course, for some matters the particular set of circumstances will be different, but that is not to say that once the commissioner has made a series of decisions about the kinds of themes, we will never hear a dispute again because it will always depend on the circumstances. The idea is to make it easier for everybody, including lessors.

Hon NEIL THOMSON: Does the minister think that the workload of the commission will be significantly impacted by the amendments?

Hon SUE ELLERY: Yes, I do. The government has already decided to resource the commission accordingly because it is a significant addition to the functions of the commissioner.

Hon NEIL THOMSON: Will there be an overall reduction in cost for both lessors and lessees to front the commission?

Hon SUE ELLERY: Yes, there will be because there will not be a fee. They will also not be losing time, which is what happens for property managers, for example, when a matter goes to the court.

Hon NEIL THOMSON: The minister's comments are encouraging. We would like to see a transparent approach when reporting on the performance of this legislation after it becomes law. Has some thought been given to the annual reports providing some performance indicators around the management of these matters inside the commission vis-a-vis the current process?

Hon SUE ELLERY: Yes, I am advised that it is expected that the commissioner will report in the annual report on the number of matters heard and the general patterns, if you like, of what has been observed in the new process.

Hon NEIL THOMSON: In terms of best practice regulations, we are unhappy with a number of aspects of this legislation. Some of them are unknown, so it is fair to say that the government and the opposition have to make a judgement call in terms of the effectiveness of some of those matters. We both share similar concerns around landlords who may not do the right thing by their tenants, or things that will become vexatious that might otherwise have been considered to be okay, but, obviously, some practices seem to have driven the need for this legislative response.

Is there any scope, not within the legislation but within the government, to assess this and provide some sort of performance report on the outcomes of this legislation that would provide comfort to industry, particularly those investors who we want to encourage, that this is actually going to work? Was any consideration given to that by the government? During the determination of this legislation, was any consideration given to the potential for a sunset clause within certain elements of these provisions?

Hon SUE ELLERY: No. There was no consideration of a sunset clause. Good policy practice says that you would constantly review how the processes are working. This is an outward facing service, if you like. We will find out pretty quickly if it is not working because none of these stakeholders are shy, in my humble opinion, about coming forward.

Hon NEIL THOMSON: If I could draw back to that issue around balance. To my mind, at least, I still think, notwithstanding some of the assurances you have given with respect to the Dutch, and I do hope, for the sake of everybody, that there is a reduction in the red tape, you could say, and possibly some diversion from the Magistrates Court. I think that would be useful. I note in the decision on page 45 of the review that the respondents noted concerns. These were from one of the advocacy groups with respect to the tenant's advocacy —

The current process of bond disposal is cumbersome and administratively expensive, particularly in the case of abandonment;

That was actually a comment. Maybe I will step through these, but, if the member could possibly comment on that in relation to abandonment and what that actually means.

The concerns in the review continue —

The existing bond disposal process is biased towards lessors because they often have the benefit of representation by the property managers, who are familiar with the process;

I found that a rather unusual statement because it seemed that there was a bias. I was wondering what that bias was, given that, in your presentations to this place, it is more that it is complex. On those two points, did you have any comment, and how will the bill deal with that abandonment case, and what were your decisions in putting this bill together because there was some perceived bias towards lessors?

Hon SUE ELLERY: I have two things. Abandonment is referring to what is done with the bond when a tenant abandons the lease. This will be much easier for the lessor because they will not have to go to court to get a decision made about that money. The commissioner will be able to make a decision about that. The commissioner will need to go through the 14-day process to make sure there is not another person who can be contacted to pursue that, but it will be much more streamlined and will not require time to go to court or the court's time either.

On the second point of the existing process being biased because lessors have the benefit of representation by property managers, this whole new system is about the commissioner being available to resolve disputes without parties needing to have representation. It will be on the papers, which parties will be able to provide, and there will be forms and templates and all that sort of thing, and a bank of decisions which kind of set precedence on particular areas. With the current process, the people in the review are for the changes because they say the existing court-only process is intimidating for tenants and that the lessors have the benefit of being represented by a property manager from the real estate agency. In the first instance, under the new system in the legislation in front of us now, those things will not be necessary, and it will be a decision of the commissioner.

Hon NEIL THOMSON: We hope you are right. The member mentioned in her response forms and precedents. Is the department up and ready? Is the department ready to go with all of this and able to make this work?

Hon SUE ELLERY: An awful lot of work has gone into this to date. We anticipate being ready for 1 July. I am hopeful that, with due consideration of the house, we might even finish this bill tomorrow. That would be great if we did. An awful lot of work has been done already. We anticipate being ready to go on 1 July. There will be ongoing work and consultation around regulations and the like as well.

Hon WILSON TUCKER: I would just like to piggyback on the line of questioning by Hon Neil Thomson about the commissioner. The member mentioned building up a body of evidence on the decisions that have been made public. Is that under proposed section 11E, "Disputed tenancy matters"?

Hon SUE ELLERY: Yes, if you read together proposed section 11E, proposed section 11J, which is about the notice of decision, and proposed section 11K about publishing decisions and reasons.

Hon WILSON TUCKER: There are some prescriptive reasons or disputes in the bill around modifications and pets. Is this disputed tenancy matter considered largely a catch-all by the commissioner, and will there be regulations to back that in terms of what is considered a disputed tenancy matter?

Hon SUE ELLERY: The powers that the commissioner will be able to exercise in the dispute resolution process will be around minor modifications, pets and bonds. There is a head of power in proposed section 11E in the event that it became obvious that there was some other area that needed, and would benefit from, having that kind of less adversarial approach to resolving disputes. There is a power to add to that, but there is no plan at this point, and there is no sense of what that might be or whether we need to do it at all.

Hon WILSON TUCKER: Is that head of power in proposed section 11E, which mentions that regulations have been made to prescribe a disputed tenancy matter by the commissioner?

Hon Sue Ellery: By way of interjection, the power to determine the dispute will be about three matters: bonds, pets and minor modifications. There is a head of power, the regulation-making provision within the bill which says if we think we need to give her the power to resolve other matters, we have the capacity to do that.

Hon WILSON TUCKER: Okay. Will that be through regulations?

Hon Sue Ellery: Yes.

Hon WILSON TUCKER: Okay. But there is no thought to do that or it is only if some unforeseen circumstances arise? Is the idea to keep it quite prescriptive around what the commissioner will be disputing?

Hon SUE ELLERY: We already know what the biggest areas of dispute are now, and we can anticipate what they will be going forward. Bonds is the major one. There are new provisions obviously around pets and minor modifications. We anticipate there will be some around that as well. Like I said, there is the provision within the act. In the event that some other area became really obvious that it was a problem—I do not know what that might be—we could add that to the list. There are three things now that can be resolved using this dispute resolution process. It might be at some point in the future that there is a fourth. We do not anticipate what that might be. We have no plans to add another one. But the power is there in the event that we need it.

Hon WILSON TUCKER: There are now these three provisions for the commissioner. If something falls out of those three provisions, where can a renter go currently? There are some provisions by which the matters of retaliatory actions by the lessor or the tenant go to the courts. Ignoring that workflow and input into the courts, where can a renter go?

Hon SUE ELLERY: It is the Magistrates Court.

Hon NEIL THOMSON: I hope to get through clause 1 relatively quickly. Before we get to the clause-by-clause part of the debate, I want to touch on the things that were not included, given the decision. A couple of items in the decision regulatory impact statement were not considered. They are not things that we necessarily want to be included, but for the record I would at least like to get an understanding of the rationale of why they were not included. Without-grounds terminations and fixed-term tenancy agreements were included in the decision regulatory impact statement. Of course, there were all of the other items such as the disposal of security bonds, dispute resolution process, frequency of rent increases, modifications to premises, and pets. Those things were included.

As far as I can tell, the two things not included in this bill are without-grounds termination and fixed-term tenancy agreements. If I am right, can the minister just elaborate on why they were not included?

Hon SUE ELLERY: There is actually only one—no grounds apply to both of those matters; they are both linked to no grounds.

Hon NEIL THOMSON: And are they not included in the bill?

Hon Sue Ellery: Correct.

Hon NEIL THOMSON: The first recommendation is that without-grounds terminations by the lessor be replaced with a list of grounds for termination. Recommendation 2 is a related matter. It states —

That fixed term tenancy agreements of any duration continue to be permitted, but that termination of a fixed term tenancy agreement by the lessor only be permitted without reason at the end of the first fixed term.

Those matters have not been included; is that correct?

Hon Sue Ellery: That is correct.

Hon NEIL THOMSON: I thank the minister for the interjection.

What was the rationale for not including them?

Hon SUE ELLERY: I think I addressed this in my reply to the second reading debate, and I have addressed it in answers to parliamentary questions as well. The government took the view that given the state of the rental market and that the problem of the rental market was supply, we did not want to take any action that may have resulted in putting someone off from making a decision about what they do with their investment. That is the decision that we made; that is, we will not pursue that set of circumstances. If the honourable member follows the debate, Hon Wilson Tucker tried to make the point about what the science and economics were behind that. It is a judgement call, and in our judgement, in our current state, when we really need to address supply, do we put something in place that may change someone's mind about making an investment? That is a judgement call, and there are people, including two members sitting behind Hon Neil Thomson, who have a very different point of view about that. I understand and respect it, but that is not the view of the government.

Hon NEIL THOMSON: I just put on the record that we support that judgement call about those one or two matters—depending on how we look at them. Given the potential state of nervousness that lessors might have about these new laws, I hope there is some level of communication going on with real estate agents through the Real Estate Institute of Western Australia about the changes. The minister can comment on that as well, if she likes. Regarding making sure lessors are informed of the new laws, is there an ironclad guarantee that the government will not progress those other changes if the vacancy rate suddenly goes up a little and we have less pressure on the rental market?

Hon SUE ELLERY: We are not going to because it is not in the bill before us. It is pretty clear that we are not going to because it is not in the bill. Who knows where the market will end up. None of the advice available to me from REIWA or anybody else in the residential construction market is saying to me that there will be some sudden spike in vacancies, so I do not see a change in economic circumstances or the state of the rental market in the foreseeable future. Governments should never say they will hold a position irrespective of what is going on in the market. They need to take account of what is going on in the market, but in the current circumstances and with all the predictions available to me, we will not get to 2.5 per cent to three per cent vacancy rates in the foreseeable future.

Hon Dr BRAD PETTITT: I just follow up on that. There are two parts to this question, which is about tranche 2. Is there an expected time line for tranche 2? There has been talk about it being later this year. The second part of my question follows on from Hon Neil Thomson's line of questioning. I am trying to understand what is expected in tranche 2. If there will not be no-grounds evictions, what will be the substance of it?

Hon SUE ELLERY: There is not a defined time period to deal with tranche 2. If the member goes to the consultation regulatory impact statement about the Residential Tenancies Act that was issued in 2019, a previous Minister for Commerce made a decision to split the matters in the CRIS into two tranches. Tranche 1 is what we are dealing with now; tranche 2 is all of the other things that were in the CRIS. They include, for example, minimum standards. There is a whole bunch of other things in there. Work on tranche 2 is ongoing. It is a complex set of policy provisions that we have to work our way through, and we are doing it diligently. We have already done some

of them and we are part way along the way with others. Then there is the work that is being done at national cabinet. At national cabinet it is being determined that from WA's point of view, we will work with the other jurisdictions on what policy settings might look like for standardised no grounds, for example, but we are not committing to doing it in the life of this government. The Premier has made that clear and I have made it clear. That does not mean we will not do the work with the other jurisdictions on what a best practice model might look like, bearing in mind that there are variations between all the jurisdictions. We will work on that, but we have no intention of making that policy change in the foreseeable future.

Hon WILSON TUCKER: What is WA's role in the national cabinet discussion, and who is responsible for having that discussion and working on the uniform policy position?

Hon SUE ELLERY: The Minister for Housing is responsible for feeding in what the Premier takes to the national cabinet. Everybody in the national cabinet knows what Western Australia's position is. We have said that we are happy to participate, but we are certainly not leading the work and we are not going to change our policy on it in the foreseeable future. As to who feeds information to the Premier when he goes to national cabinet, it would be Minister Carey. My office works very closely with Minister Carey, and if information or policy assistance is required, we work together on that.

Hon WILSON TUCKER: Is it a national cabinet discussion that moves the needle that then agrees on this national approach, or is someone allocated within a government department somewhere in WA having those behind-the-scenes discussions?

Hon SUE ELLERY: No, nobody is doing that. If work were to be done on that now in Western Australia, it would be led by Minister Carey. That work is not being done right now. We have said at the national cabinet that we are happy to work with the other states on what a best practice model might look like. We are not going to lead the work. We are not going to implement it. That is not our policy position. Work on that particular matter is not being done in Western Australia right now.

Hon WILSON TUCKER: Given that the minister has ruled out revisiting no-grounds evictions within the term of this government, she said it might be on the table in the next term of government if Labor —

Hon Sue Ellery: I didn't say that.

Hon WILSON TUCKER: The minister did not say that?

Hon Sue Ellery: No. Tell me when I said that.

Hon WILSON TUCKER: So what is the government's position on no-grounds evictions moving forward in light of the national cabinet discussion?

Hon SUE ELLERY: I understand that this issue is important to the member. I do not know how to say it another way. We are not doing it for the reasons I have outlined. This government is not doing it. I cannot possibly speak for a future government; I will not be part of it.

Hon WILSON TUCKER: I am just trying to work out whether the minister is taking it off the table until the next election or she is taking it off the table for the next term of government if Labor were to be re-elected.

Hon SUE ELLERY: I cannot possibly make a commitment about what the next government may or may not do. First, I will not be a part of it —

Hon Martin Aldridge: It won't be a Labor government either!

Hon SUE ELLERY: That is funny. It cannot be an alliance because, well, the member does not want to be part of one.

Honourable member, what the Premier has made clear and I have made clear is that this government is not shifting its position on that issue.

Hon Dr BRAD PETTITT: I will follow up on that. Since we debated this yesterday, there is a headline in *The West Australian* online this afternoon that reads "Cook Government didn't consult counterparts over no-ground evictions ban but insists it would hit rental stock". I am just trying to understand, if the government is ruling it out categorically now—this is the strongest I have heard the minister say it—on what basis is it doing that? As I said yesterday, lots of states have done this, but there was no consultation with them around what impact it had on their rental stock; in fact, there is no evidence, to the best of my knowledge, that it does impact rental stock. Therefore, I am trying to understand: on what basis is this so categorically a no, given that every other state is doing this?

Hon SUE ELLERY: I feel like I might be talking to myself!

Hon Dr Brad Pettitt: Sorry?

A government member: I got the message.

Hon SUE ELLERY: Thank you.

Hon Dr Brad Pettitt: Why?

Hon SUE ELLERY: This lot behind me read the code.

Honourable member, I have a couple of things. None of the other jurisdictions consulted with us about what their policy position would be, and I am not offended by that; I would not expect them to. We each make our own decisions as they impact our respective communities and, of course, we will always stand up for what is right for Western Australia. This is an easy segue that the honourable member gave me. Therefore, I have already outlined the reasons. Our judgement is that there may be a risk to investors' decisions on the critical issue that we need to address, which is the supply of rental stock. We did not want to take that risk. The member may disagree with me, and if he follows the —

Hon Dr Brad Pettitt: By interjection, though: what is the evidence of that judgement?

Hon SUE ELLERY: That is the argument that Hon Wilson Tucker has been trying —

Hon Dr Brad Pettitt: I am trying to work it out. You didn't consult with stakeholders.

Hon SUE ELLERY: He has been trying to skewer me on it.

Hon Dr Brad Pettitt: I am just trying to understand on what basis that decision was made.

Hon SUE ELLERY: Yes, I know the honourable member is trying to understand it; I am trying to help him understand it. The position we took was that it may have an impact on an investment decision by someone looking to buy a rental property to rent out, and we were not prepared to take that risk. It is as simple as that. Now, the member will disagree, and he will say, "Well, I think you should've relied on economic study X or economic study Y, and I think you should've taken a different decision." I respect that that is the member's point of view, but we took the point of view that this was the right thing to do at the right time given the state of the market, and that we really need to properly address supply and not put something in the way that may be an impediment to supply. I get that the member does not agree with that, but that is our position.

Hon WILSON TUCKER: This may frustrate the minister, but I will continue down this line of inquiry. Can the minister confirm that the Minister for Housing, Hon John Carey, and the minister herself did not consult or look at other jurisdictions when they came to the decision to not include no-grounds evictions?

Hon SUE ELLERY: There are two different questions in there. There is a question about whether we consulted and there is a question about whether we looked at the policies of other jurisdictions. Of course we looked at the policies of other jurisdictions; that is the standard way of conducting the process by which a decision regulatory impact statement is done—it looks at what is being done in other jurisdictions. Therefore, of course we looked at what was being done in other jurisdictions, and that happened at officer-to-officer level. Did Minister Carey or I ring up our equivalent ministers in each state and territory and ask them? No, we did not, and they did not do that to me, and I would not expect them to. But, of course, looking at what is the state of play in other jurisdictions was part of the information that was put in front of the government. Of course it was.

Hon WILSON TUCKER: I take the minister's point when she mentioned that if the government were to remove no-grounds evictions, that is a potential risk that would affect the housing supply, and I understand that. But there are approximately 700 000 renters in WA, and I think they deserve a bit of insight into the sausage making, if you will, of how that decision was arrived upon, rather than just that there was a risk. We have heard that the housing minister did not consult, so I guess my question is: who was consulted within WA to arrive at the decision to not remove no-grounds evictions?

Hon SUE ELLERY: All the relevant stakeholders were consulted. I think they are even listed. This was a very consultative process. A document goes out in the first instance, which is called a CRIS, or consultative regulatory impact statement, that asks stakeholders a series of questions and what their view is on those questions. From that, a DRIS is prepared for consideration by the government. The DRIS looks at the questions that were asked, and, on the one hand, this group of people we consulted said this and, on the other hand, this group of people we consulted said that. This is a very deeply consultative process. On top of that, since I have been the minister, which was December 2022, as is my practice and how I do my business, I have regular meetings with all the stakeholders across my portfolios. I have had numerous meetings with all the stakeholders about what the DRIS might look like and what the government's thinking was, and I tested various ideas with them. Therefore, this has been a deeply consultative process.

I think it is quite mischievous to suggest that there is anything in the proposition that neither Minister Carey nor I consulted with ministers in other jurisdictions. We would not do that and we do not do that. We rely on the advice that is provided to us by the officers—"Here is the regime in each jurisdiction around Australia." Occasionally, they might even say on a particular issue, "Here's what they do in New Zealand or somewhere else." That is normal practice when developing this kind of regulatory policy change. That is normal. That headline is a bit cheeky in that it suggests that there is some inadequacy in John Carey not ringing up the Minister for Housing in Victoria,

South Australia or Tasmania. It suggests that he has done something wrong. That is not the way that these policy formulations happen.

Hon Dr BRAD PETTITT: This is where we are coming from, though. I am pulling up all the other states because I am trying to understand. New South Wales, Victoria, Queensland, South Australia this year, Tasmania and the ACT have all come to the same conclusion—that landlords should not be able to terminate without grounds. It feels like there is a bit of a vibe around why we should not, but I think there is a legitimate question that this place should ask. I come back to the evidence, both around best practice for what works in other jurisdictions and what is best practice for renters. It feels to me like there must have been some very strong evidence to suggest that it would somehow stymie investment. If so, what was that evidence? There is strong evidence on the other side that best practice for renters, across the country, is to get rid of no-grounds evictions. Was there any clear evidence that said that that would stymie investment, or was it just a bit of a vibe?

Hon Sue Ellery: A bit of a what?

Hon Dr BRAD PETTITT: A vibe. It is a reference from *The Castle*.

Hon SUE ELLERY: I know. I get the reference; I love the movie.

I have known Hon Dr Brad Pettitt for a long time and I know that he is a smart person. I have known Hon Wilson Tucker for a shorter period of time —

Hon Wilson Tucker: And you're still not convinced!

Hon SUE ELLERY: I would still say that he is a smart person. I think they understand what I have been saying to them, but they disagree with it. That is okay; they can disagree. They can keep prosecuting the argument that because I cannot pull out an economic study and say, "Here is the economic study on which we made this particular policy decision", they can say that this was a faulty decision. I understand that that is the point they are making.

Hon Dr Brad Pettitt interjected.

Hon SUE ELLERY: Look at how many questions Hon Wilson Tucker has asked me. I get the argument that those members are putting; I really do. The decision was made that, given the particular circumstances in Western Australia, we did not want to take the risk. Now, those members can say, as they did in their contributions to the second reading debate, that that was too timid. I get it. I get that that is their point of view, but that is what we decided.

Hon NEIL THOMSON: I find myself in furious agreement with the minister at this point in time.

Hon Sue Ellery: Now I am anxious!

Hon NEIL THOMSON: Look what I have done! I wanted to pass that on.

Members know that I am from New Zealand. As a young person growing up, I lived under the Muldoon prime ministership. We had a thing called a maximum retail price, which tried to stop inflation. It did not work. Price controls do not work. There are all sorts of impacts from interventions in the market. I suggest that the crossbench members in this place look at some of the challenges faced in some of the more interventionist markets, like San Francisco. There is an article in the *American Economic Review* from 2019 headed "The effects of rent control expansion on tenants, landlords, and inequality: Evidence from San Francisco", written by Rebecca Diamond, Tim McQuade and Franklin Qian—I think that is how to pronounce that surname, but I probably got it wrong. The abstract to that article is quite pertinent to this discussion. I think it is a case of how far one goes. That is the bit on which I think we disagree with the government—that is, how far it goes and whether to have any further controls. I am talking particularly about price controls and not so much about no-grounds evictions or no-grounds termination of contracts. Those issues are related. I will quote the abstract because I think it is something that needs to be considered. It states —

Thus, while rent control prevents displacement of incumbent renters in the short run, the lost rental housing supply likely drove up market rents in the long run, ultimately undermining the goals of the law.

This study is detailed in the article in the American Economic Association's *American Economic Review*, volume 109, number 9 of September 2019. People can make up their own minds as to the veracity of that. I know that those studies exist across the world. I know that there are concerns about the scope of some of the rental controls that were introduced in New Zealand under the previous Labor government. I am hopeful that standards will be addressed when the government does the so-called phase 2 reforms, as they could have a deeper impact. There can be a one-size-fits-all approach to standards for heating and things like that. That can create additional cost, particularly for older homes when something might be hard to retrofit. I will finish on this point, but in consideration of the so-called phase 2 reforms and the message that has been sent to the marketplace, it is not just about what we are doing here today but also the intent and residual concern in the marketplace about excessive controls and the impact that they might have on the marketplace going forward.

Hon Dr BRAD PETTITT: Deputy chair.

Hon Neil Thomson: I've got you stirred up.

Hon Dr BRAD PETTITT: Yes. What I would say is that no-one is talking about rent controls; we are talking about no-cause evictions. They are very different things; they are miles apart.

Hon Neil Thomson interjected.

The DEPUTY CHAIR (Hon Sandra Carr): Honourable members, I will interrupt for a moment. The debate should be happening between the minister and the speaker on their feet.

Hon Sue Ellery: No; they can go for their lives!

The DEPUTY CHAIR: I would appreciate it if you would return to that.

Hon Dr BRAD PETTITT: On that basis, I will return to a different line of questioning around housing standards. Obviously, I think that rental standards generally are important. There has been some really good work on that. As the biggest owner of rental housing in this state, does the government know what the standards are across its housing stock in terms of energy efficiency and the like? If the minister knows the answer to that question, how is the government measuring and enforcing those conditions in terms of both social and public housing?

Hon SUE ELLERY: I thank the honourable member for the question. I am not in a position to answer that. I am not the minister with responsibility for public housing, so he would need to direct that question to Minister Carey. I am happy to take something on notice to see whether I can get an answer for the honourable member, but there are other ways to pursue that question. On the question of minimum standards, that was one of the issues that was hived off and put into the second tranche. That work will be done in the second tranche. In terms of giving the member data on what is and is not a minimum standard right now in public housing, I am not the right minister to answer that question.

Hon Dr BRAD PETTITT: I have just one other broader question. I do not need to know the data, but does the minister know whether the government is reviewing whether public housing has insulation or fans or other energy-efficient aspects as part of the department of housing's building condition assessment program? Is she aware of that? If not, I can certainly ask the minister. Obviously, it is an important element as we go down this route.

Hon SUE ELLERY: No, I am not. The member would need to address that question to the relevant minister. What I can say to the member is that this legislation will also apply to public housing in terms of the rights and obligations of renters and lessors. In working on the matters that are before us now and in working on the matters that will be in tranche 2, we will consult with them because it will impact them in the same way that it impacts private renters and lessors. We will work with them on that. In terms of the specifics about public housing stock, the member will need to address that question to Minister Carey.

Hon WILSON TUCKER: I am going to go back to no-grounds evictions. We have determined that there was no consultation with east coast counterparts; that is fine. The article mentions that the Minister for Housing, Hon John Carey, insists that removing no-grounds evictions would hit rental stock. The language the minister has used so far is that there is a risk and the language that the housing minister used is that he is confident that removing it would have a detrimental effect on housing stock. I am trying to understand where that confidence or insistence is coming from. We have determined that there was no consultation with other states. I am trying to determine what consultation there was about no-grounds evictions specifically and what were the inputs and drivers. We know that a fair amount of consultation was undertaken by this government. Can the minister boil this down and perhaps give me the names of the proponents who raised concerns about no-grounds evictions specifically?

Hon SUE ELLERY: While I wait to see whether the officers can find anything more specific that I need to say, let us deal with the first proposition, because I think the member mischaracterised what I said about consultation. I said that it is silly or mischievous to think that there is something awry in the Minister for Housing for Western Australia not personally consulting with the Minister for Housing in any other jurisdiction about the development of this policy. I did say that I am sure that there were conversations officer to officer and, indeed, material was provided to government about the policies in other jurisdictions. That happened, but let us put that to one side.

I am happy to answer the member's questions, but if he really wants to get across this policy, he should read the consultation regulatory impact statement and the decision regulatory impact statement, because it is all laid out there. Three hundred and fifty submissions were received in response to the CRIS, and there is probably a list of them somewhere that we can get for the member. When it came to the particular policy point of no-grounds evictions, from the point that I got the portfolio, which was in December 2022, I liaised with the Make Renting Fair Alliance, including Shelter WA and all the members of the alliance, and with the Real Estate Institute of Western Australia, both of which had different points of view about no-grounds evictions. Before I got the portfolio, a whole lot of work had been done on the CRIS and in preparing the DRIS, when more stakeholders were consulted than just those two groups.

Hon WILSON TUCKER: We know that the DRIS recommends the removal of no-grounds evictions. I believe the minister mentioned previously that the pandemic played a role in the government not supporting the recommendation from the DRIS. Can she confirm the time line of when the decision to not remove no-grounds evictions was taken?

Hon SUE ELLERY: It was a decision of cabinet and I cannot remember the date. The point I was trying to make about COVID is that I think it would be unfair to judge where we ended up and say that somehow the DRIS or the CRIS was inadequate. I think that would be unfair because they were started when the market was at a very different point. That is the point I was trying to make—nothing more or less than that. That was the point about COVID. The process started and then there was a gap, because we all then had to scramble and pivot to put in place moratoriums and all sorts of things to protect people during the peak of the pandemic. Then we could revisit policy settings more generally going forward in a post-COVID world and, by that point, the market had fundamentally changed. That is the point I was trying to make.

Hon WILSON TUCKER: Is the minister able to give an approximate time frame for when that decision of cabinet was made? The first time that I saw that no-grounds evictions were not supported by the government was last year at a press conference with former Premier Hon Mark McGowan. The then Premier basically scrapped no-grounds evictions and took them off the table very quickly in a very flippant manner. I have had some discussions with people about how the decision was arrived at and, apparently, there was a conversation between the then Premier and REIWA and a captain's call decision was made and was publicly announced, and here we are. Can the minister elaborate on when that decision was made or how it was arrived at?

Hon SUE ELLERY: It is not unusual at all for the Premier of the day or even the minister of the day to say, "This is where we think our government is going to be on this position." That is not unusual; it is perfectly normal. The former Premier, the current Premier, former ministers for this portfolio and I regularly met with stakeholders. The former Premier regularly met with the Western Australian Council of Social Service and others, for example. I have no clue whether there was some particular meeting when he said something to REIWA. I would not know about that. I know that it was my job to present the cabinet submission, and I did that and a decision was made in the terms that we see in the legislation before us.

Hon WILSON TUCKER: Is it fair to say that in the consultation process with proponents who were for and against no-grounds evictions, it came down to the Make Renting Fair Alliance on one hand and REIWA on the other?

Hon SUE ELLERY: Honestly, I feel like I have said this about five thousand times. There was a long process. It started in 2019. By the time I took over the portfolio, views were coalescing about the key issues in tranche 1. Although I certainly took note of all the work that had been done on the CRIS, which led to the DRIS, and I was aware of all the different views, in the consultation about what the government might consider putting in legislation for tranche 1, I was really dealing with the alliance and REIWA. I meet a lot of people and I go to a lot of events and functions, and I cannot stand here and put my hand on my heart and say that nobody else raised it with me because I just cannot remember. Bear in mind that I meet WACOSS about a whole bunch of things and, in a meeting with WACOSS, which is also a member of the alliance, it might raise this. I also meet WACOSS when it comes to see me as part of the alliance. I meet Shelter about a whole lot of things and it is also part of the alliance. A lot of conversations went on. It is certainly accurate to say that when the finer points of the policy were being settled, after all the consultation and whatever number of submissions were received, the two major groups that I was dealing with were REIWA and the alliance.

The DEPUTY CHAIR (Hon Sandra Carr): Honourable member, I have been listening to the debate very closely. There does seem to be some degree of repetition taking place. I urge you to perhaps refresh your line of questioning.

Hon WILSON TUCKER: This is the last question that I have on no-grounds evictions. I take the minister's point, and I largely understand—I am not quite the whole way there—how the government got to this position. I want to get some level of insight into or have something to take away with me when I talk to people about why the government made the decision to remove the no-grounds eviction as part of this reform. What can I tell them? What assurance or import or insight can I give to them other than that it was a risk or the housing industry insisted that it would affect supply? What else can I give them?

Hon SUE ELLERY: The honourable member can tell them whatever he wants. It is not my job to tell him how he needs to consult with his constituents. He might like to re-read *Hansard* if he is unsure of anything I have said, but that is for the member.

Hon Wilson Tucker: I am not unsure; I am just a little disappointed.

Hon SUE ELLERY: I can live with it. I do not mean that disrespectfully at all. It is for the honourable member to determine how he wants to characterise this decision. I do not expect him to defend the government's decision; we are capable of doing that ourselves. I do not take anything away from the strength of feeling that he has on this issue; I understand it and I respect it.

Hon Dr BRAD PETTITT: I have one last question on no-grounds evictions before we move on. I understand that there are seven existing grounds for evicting people, including being a nuisance and not paying rent. What certainty would landlords need to have as investors when there are clearly already existing grounds? I note that Canberra has the highest vacancy rates in the country at the moment. It was also the first jurisdiction to introduce no-grounds evictions. There is a really good reason for that. I want to come back to that. There are existing grounds. Does the minister have any examples of what certainty investors would need to have clear and existing grounds?

Hon SUE ELLERY: If I understand the question, the member is asking what certainty I think investors would need. I cannot tell the honourable member that. All I can tell him is what I have said before, which is that in our judgement in the current circumstances, making all the other changes that we are making, we did not think it was appropriate to take the risk that we might influence someone's investment decision when the biggest issue we are facing is supply.

Hon WILSON TUCKER: Madam Deputy Chair —

Hon Sue Ellery: Oh, come on! You said it was the last.

Hon WILSON TUCKER: That question was on no-grounds evictions. I have some questions on rent bidding. The proposed changes to rent bidding relate to the solicitation of the bid. I am pretty sure that every other state and territory has also included that same provision. Victoria is moving to remove or outlaw the acceptance of a bid. Did WA consider a similar model to Victoria and taking a more comprehensive ban of rent bidding?

Hon SUE ELLERY: No, we did not consider it when drafting the legislation. There is a view that says we might end up with a perverse effect whereby the prices are put up, if you like, to artificially try to get around that. I know that a couple of other jurisdictions are looking at doing it. We will see how it goes for them, but there is no intention for us to do that in the short to medium term.

Hon WILSON TUCKER: When these laws come into effect, how will the government measure them to ensure that rent bidding does not happen?

Hon SUE ELLERY: This is a very exciting part of the portfolio. The department will have secret shoppers! Spies will go out and make mock applications to test whether the system is working as it should. I am being flippant when I say "spies" because they are not really spies.

Hon WILSON TUCKER: That is very exciting. That is my excited voice.

Today I asked a question about the existing rent bidding wars. Two complaints relating to rent bidding have been made since February 2020—one in September 2023 and the other in October 2023. That is obviously a very small number that have gone to the Consumer Protection division. The government is beefing up these laws under this reform. It seems like there is an education piece in the public about these laws and the existence of the complaint avenues. What is the government doing in that space?

Hon SUE ELLERY: It is currently not illegal to do that. It is not surprising that more formal complaints have not been made. I also make the point that, anecdotally, all the members of the Make Renting Fair Alliance were telling me that is what was happening, and others.

Yes, an education campaign is being planned because a lot of changes are being made. We will seek to ensure that people understand their rights and obligations.

Hon WILSON TUCKER: I believe that the penalty for engaging in rent bidding is \$10 000. That seems quite a large amount. How was that figure landed upon?

Hon SUE ELLERY: That is the maximum amount. The penalty is up to \$10 000. It does not mean that every offender will receive that fine; it will depend on the circumstances of the case.

Clause put and passed.

Clause 2: Commencement —

Hon MARTIN ALDRIDGE: I want to ask a question about implementation. I understand from the information I received during my briefing that there are three phases of the implementation. Phase 1 will occur immediately upon the passage of the bill, which are the technical amendments, disclosure of bond data, rent bidding and retaliatory action provisions. Phase 2 is targeted for mid-2024 and includes the rent increases, pets and minor modifications provisions. These amendments require changes to the standard agreements, new regulations and the development of new processes. I think the minister touched on this in her second reading reply. I am paraphrasing the minister; I think she said that engagement with stakeholders had commenced, but obviously the government would not anticipate the finalisation of regulations until Parliament had spoken.

What is the government engaging in with stakeholders? I presume it is the minor modification provision and pet bonds, amongst other things. Can the government share what it is thinking about those landing points in terms of its engagement with external stakeholders?

Hon SUE ELLERY: Certainly, engagement has commenced around the matters that the member mentioned—minor modifications, pets and bonds et cetera. I am not sure whether I can be any clearer for the member. The way that the department does this is by asking stakeholders a series of questions and then asking for their feedback. The closer we get to landing a position, the better. The department often does workshops on a range of matters. Some questions have been sent to the relevant stakeholders around minor modifications. For example, here is a list of possible minor modifications: is that list appropriate? Should anything be added or removed? That is the sort of consultation that happens.

Progress reported and leave granted to sit again, pursuant to standing orders.