Legislative Council

Monday, 21 December 1987

THE PRESIDENT (Hon Clive Griffiths) took the Chair at 11.00 am, and read prayers.

BILLS (16): ASSENT

Messages from the Governor received and read notifying assent to the following Bills --

1. Local Courts Amendment Bill (No 2).
2. Silicon (Picton) Agreement Bill.
3. Door to Door Trading Amendment Bill.
4. Transport Co-ordination Amendment Bill (No 2).
5. Pay-roll Tax Assessment Amendment Bill.
6. Pay-roll Tax Amendment Bill.
7. Acts Amendment (Port Authorities) Bill.
8. Bills of Sale Amendment Bill.
9. Acts Amendment (Parliamentary Superannuation) Bill.
10. Fisheries Amendment Bill (No 2).
11. Acts Amendment (Child Care Services) Bill.
12. Criminal Code Amendment Bill (No 2).
13. Motor Vehicle (Third Party Insurance) Amendment Bill.
14. Gold Banking Corporation Bill.
15. Stamp Amendment Bill (No 2).
16. Chattel Securities Bill.

RESIDENTIAL TENANCIES BILL

In Committee

Resumed from 18 December. The Chairman of Committees (Hon D.J. Wordsworth) in the Chair; Hon Kay Hallahan (Minister for Community Services) in charge of the Bill.

Postponed clause 34 put and passed.

Postponed clause 35: Payment of rent by post-dated cheques, etc., prohibited --

Hon N.F. MOORE: Will the Minister say whether the use of postdated cheques is illegal?

Hon KAY HALLAHAN: I understand that matter is covered by Commonwealth legislation, but I will need to get detailed information to the member.

Hon MAX EVANS: Persons going away for two or three months might wish to use postdated cheques so that those cheques cannot go through a bank account before the appropriate time. What will happen, for instance, if a person who is going overseas for a couple of months wants to pay rent in advance?

Hon KAY HALLAHAN: It is not necessarily illegal -- I take back what I said earlier -- because this clause says that no person shall require a postdated cheque or other negotiable instrument that is postdated in payment of rent; however, that does not preclude a party agreeing to so do in the circumstances such as those mentioned where it is necessary to make particular arrangements, but only if both parties are in agreement.

Hon MAX EVANS: I would like an explanation of the reason for prohibiting the payment of rent by postdated cheque.

Hon KAY HALLAHAN: I understand there have been some problems, and a postdated cheque can be used as a way of getting rent in advance, so the clause aims to close a loophole and to make very clear the relationship between tenant and landlord or landlord's agent.

Postponed clause put and passed.

Postponed clauses 36 and 37 put and passed.

Postponed clause 38: Tenant's responsibility for cleanliness and damage --

Hon N.F. MOORE: The Opposition is concerned about this clause and certain other clauses which talk about the conduct of tenants but make no provision for any penalty in the event that the tenant transgresses. If owners transgress the requirements of the Bill, they can be fined up to $2 000 in some cases, but if the tenants fail to comply, there is no penalty, except perhaps for the ultimate dissolution of the agreement or the owner being able to obtain compensation through the tribunal. It seems that the Minister is arguing that for tenants to lose their accommodation is sufficient penalty, whereas landlords who lose their tenants ought to be fined as well. I wonder whether it is not a very lopsided reflection of the intent of this Bill. We find a similar situation existing when we go through some other clauses in this part of the Bill, where the tenants' only ultimate punishment for transgression is that they lose their tenancy, whereas landlords not only lose their tenancy but can be also fined.

Hon KAY HALLAHAN: It would perhaps expedite the business of the Committee if I did not get up in response to expressions of concern from members unless there is something substantial to say. In a case such as that outlined by Hon Norman Moore, an order could be obtained from the tribunal that that circumstance would constitute a breach of agreement, and tenants could then be up for a maximum fine of $2 000. This Bill is not as lopsided as the member suggests, and I would like to counter the impression the member has formed by looking only at clause 38 and not taking into account that a breach-of-agreement ruling could be obtained from the tribunal in such a matter and that a penalty would apply, in addition to the ultimate termination of the tenancy.

Hon E.J. CHARLTON: This is the first clause to provide tenants and landlords with the option of opting out of the agreement and drawing up their own agreement. There are several clauses in the Bill that are part of the amendments moved by the National Party in the other place. Clauses 38 to 43, 45 to 50, and 55 and 56 are clauses that can be excluded from this Bill and where people can, if they so desire, opt out of the provisions of the Bill.

Postponed clause put and passed.

Postponed clauses 39 to 41 put and passed.

Postponed clause 42: Owner's responsibility for cleanliness and repairs --

Hon N.F. MOORE: I would like to talk about two matters regarding this clause. The first is the requirement under clause 42(1)(b), which says that the owner --

> shall provide and maintain the premises in a reasonable state of repair having regard to their age, character and prospective life; and

I would like the Minister to explain to what extent "maintain" applies; whether normal wear and tear could be considered to be a responsibility of the tenant; and also what responsibility would apply to the owner in respect of wear and tear. The second matter concerns clause 42(2), which says --

> The terms prescribed by subsection (1) apply notwithstanding that the tenant has notice of state of the premises at the time when the agreement is entered into.

I have an amendment on the Notice Paper to delete that subclause, and I will talk about that after the Minister has been able to answer my questions.

Hon KAY HALLAHAN: The owner is essentially required to provide the premises in a reasonably habitable state and to perform any maintenance required to keep them in that state, except where the need for maintenance arises from the fault of the tenant, and I guess that would go beyond normal wear and tear.

Hon N.F. Moore: Is the tenant responsible for normal wear and tear?

Hon KAY HALLAHAN: No.

Hon N.F. Moore: The owner is responsible?

Hon KAY HALLAHAN: Yes. The question of wear and tear is built into the rent, and that is a generally accepted provision which operates now, so I do not think that is a problem.

However, we have to look at the habitable state of the premises, and I think there are generally accepted standards. People can go to the tribunal if they have disputes about this matter.

Hon N.F. MOORE: Just in case the Minister decides to again use the argument that this now happens and therefore we can expect it to remain the case, I make the point that we have here an entirely new piece of legislation dealing with matters not previously covered by this type of legislation, and it is my intention to find out what this new legislation means in reality and whether it changes any existing circumstances. If the existing circumstance is that the owner is responsible for wear and tear, I want to know whether that is contained in this Bill. The Minister tells me it is, so I take that on board. Problems may arise with the maintenance of properties especially in a situation where someone rents a rundown building at a cheap rent. We need to have regard for the age, character and prospective life of property but we are introducing a question of degree here. Unfortunately, the clause could be interpreted in such a way that an owner may let out a rundown property with the expectation of a small rent and then find the tenant will try to invoke clause 42 to have the property repaired. Is this clause designed to some way override the law of estoppel?

Hon KAY HALLAHAN: This clause was included to overcome the situation where an owner gives an undertaking to do work before a tenant moves in, the tenant turns up to move in and the work has not been done. I have met people who have experienced precisely just that on a number of occasions. I can understand the temptations in this regard. However, the provision which addresses the problem is needed.

Hon N.F. MOORE: The law of estoppel says: If a person enters into an agreement aware of the contents of that agreement, he cannot then, further down the track, use the argument of ignorance to win the case, because he entered into the agreement knowingly. The clause says that regardless of whether a person agrees at the time of agreement he can then go to a tribunal and argue that something different should happen. A similar situation applied in clause 32 in connection with excessive rents where a tenant could go to a tribunal and complain about excessive rents even though he had agreed to that rental. We should not be passing laws which say a tenant and owner can sign an agreement and the tenant, even though he was aware of the situation at the time the agreement was entered into, can then go to a tribunal and seek a change. Presumably when an agreement is entered into part of that agreement will be that he takes up tenancy when the repairs have been carried out. Bearing in mind that this is an opting-in and opting-out clause, the tenant should state as part of the agreement that he will move in when the repairs are done -- not make an agreement knowing the state of disrepair and then renege on the agreement. I move an amendment --

Page 27, lines 4 to 6 - To delete subclause (2)

Hon KAY HALLAHAN: I urge members not to agree to this amendment. I will try to give another example: An agreement may be entered into where a property has been inspected and car bodies or other rubbish are in the backyard; a clear verbal assurance is given that the rubbish will be removed before the tenant moves in; the contract makes no reference to this; the rubbish is not removed, and the person has to move in and live with the backyard rubbish. That is a situation where this provision applies. The clause can be agreed to or not; it can be opted into or out of in the making of an agreement. For that reason the provision is important and should remain in the Bill. I urge members to support the clause as printed.

Hon E.J. CHARLTON: Hon Norman Moore's amendment is clear. On the aspect of verbal arrangements which may or may not be entered into at the time of signing of any agreement, surely if something is not acceptable and the tenant is given an undertaking to remedy the situation then this is an area in which the Minister considers problems will be created by the deletion of the subclause.

Hon Kay Hallahan: Yes. It is not something that is not written into an agreement. It is something which needs no agreement and should be straightforward.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Ayes.

Division resulted as follows --

Ayes (12)		
Hon J.N. Caldwell	Hon G.E. Masters	Hon D.J. Wordsworth
Hon E.J. Charlton	Hon N.F. Moore	Hon Margaret McAleer
Hon Max Evans	Hon Neil Oliver	*(Teller)*
Hon Barry House	Hon P.G. Pendal	
Hon A.A. Lewis	Hon W.N. Stretch	

Noes (11)			
Hon J.M. Brown	Hon John Halden	Hon Robert Hetherington	Hon Doug Wenn
Hon T.G. Butler	Hon Kay Hallahan	Hon Garry Kelly	Hon Fred McKenzie
Hon D.K. Dans	Hon Tom Helm	Hon Mark Nevill	*(Teller)*

Pairs

Ayes	Noes
Hon P.H. Lockyer	Hon S.M. Piantadosi
Hon C.J. Bell	Hon J.M. Berinson
Hon John Williams	Hon Tom Stephens
Hon Tom McNeil	Hon Graham Edwards
Hon H.W. Gayfer	Hon B.L. Jones

Amendment thus passed.

Postponed clause, as amended, put and passed.

Postponed clause 43: Compensation where tenant sees to repairs --

Hon E.J. CHARLTON: Before I move my amendment, I ask the Minister for clarification concerning urgent repairs. In discussions with representatives of the department, it was pointed out that this aspect is covered satisfactorily in other areas of the Bill. At the moment clause 43 provides --

> (1) It is a term of every agreement . . . or any reasonable expense incurred by the tenant in repairing the premises --

We would not want a situation to arise where a tenant carries out repairs and then simply says he could not get hold of the owner to ask if he should proceed. We would like to ensure that this clause provides that only urgent repairs should be carried out.

Hon KAY HALLAHAN: This aspect is perfectly clear. I would prefer that we stay with the Bill as it is rather than make amendments unless there is a very strong case for doing so. The safeguard in the Bill states --

> -- is likely to cause injury to a person or property or undue inconvenience to the tenant;

A clear example of where injury could arise concerns electricity. If something happened to a power point which made it a hazard to children, it would need to be dealt with promptly rather than waiting perhaps several days to contact the landlord or agent. Something of a similar nature may happen over a weekend and the tenant may need to move quickly. I am not opposed to making this clear, but I think it is already covered. I would be interested to hear what Hon Norman Moore has to say.

Hon N.F. MOORE: I am pleased that the Minister is interested. We have an identical amendment on the Notice Paper for the same reasons put forward by Hon Eric Charlton. The words "urgent repairs" should be included to clarify exactly which repairs are specified. Members who are not familiar with this clause should realise that it allows a tenant to arrange for repairs to be undertaken without reference to the owner. We are suggesting that this should only happen in the case of urgent repairs and not those which could be arranged by the owner, which are not urgent. The owner may have an arrangement with a particular tradesman who carries out repairs for him at a reduced rate. He may carry out repairs himself because he is a tradesman or a qualified person, which offers considerable saving for him. If a tenant simply arranged to have non-urgent repairs carried out and engaged someone from the Yellow Pages, it may cost the owner considerably more than he would

normally pay. I agree with this amendment which specifies that this clause should relate to urgent repairs only. It is up to the owner, who is required to maintain the property, to decide how much he plans to have fixed up and how it should be done.

Hon E.J. CHARLTON: This aspect is probably covered by subclause (1). This is another clause where agreement may be reached between the landlord and the tenant. However, this is another example of where, by adding the words "urgent repairs", the intention of the Bill is made more clear, yet does not go against the direction of the original clause. I move an amendment --

Page 27, line 12 -- To delete the line and substitute the following --

in making urgent repairs to premises where -

Amendment put and passed.

Hon N.F. MOORE: I have not put this further amendment on the Notice Paper. Clause 43(3) is similar to a subclause in the previous clause which says that certain things will happen notwithstanding that the tenant has notice of the state of the premises at the time when the agreement is entered into. Again, it has been put in to override the law of estoppel, and I do not believe it should be there. I move an amendment --

Page 27, lines 27 to 29 -- To delete subclause (3).

Hon KAY HALLAHAN: I strongly oppose this amendment for the same argument I raised before. Someone may inspect a property, and perhaps notice something wrong with a power point. They may point this out, receive a verbal undertaking that it will be fixed up, and be told, "You can move in on Saturday." The tenant may move in on Saturday, which is not a normal business day, and find it has not been fixed. It could be a life-threatening situation. If this subclause remains in the Bill, the option is there for the tenant to have that repaired as a matter of urgency. I understand the honourable member's concern and his philosophical position, that he cannot quite see how practical things can occur and need to be dealt with.

Hon N.F. Moore: What an absurd comment. It is your philosophical position that causes this Bill.

Hon KAY HALLAHAN: My position allows for things that happen in reality --

Hon N.F. Moore: This is the most impractical Bill ever invented.

Hon KAY HALLAHAN: It is not an impractical Bill. It works very well in other places and has done for years.

Hon N.F. Moore: Don't believe everything they tell you about that.

Hon KAY HALLAHAN: Nevertheless we are stuck with the member's notion that it is an impractical Bill and that makes it very difficult for Western Australians to get a good piece of legislation. However, we will all do our best. This clause should stand as printed because it has a practical application. It is not meant to make life horrendous for landlords, and in this State where housing vacancy rates are so low, landlords are in a very strong position.

Hon N.F. Moore: This Bill will transcend all economic climates. It will be in effect during good and bad times.

Hon KAY HALLAHAN: I agree about that, but our economy is going in such a way that we are not going to have huge vacancy rates for foreseeable years.

Hon N.F. Moore: That is true, but I am not arguing that; I am saying the Act will be around when the reverse applies.

Hon KAY HALLAHAN: It will be reviewed in two years and we will amend it if there are any practical problems. I ask members to support the clause as printed.

Hon E.J. CHARLTON: There is a significant difference between this clause and clause 42. The latter clause talked about cleanliness and repairs and this clause talks about compensation for tenants who have repairs made. We have inserted in the Bill an amendment referring to urgent repairs, and members should bear in mind that this clause talks about compensation and not things needing to be done. It refers to people being reimbursed, and unless someone can convince me I am wrong, I take it that subclause (3) does not have the same connotation as the previous clause.

Hon N.F. MOORE: We are dealing with a question of principle as well, which is that if one signs an agreement one should not be able to say at some future time that one is no longer bound by it. The previous clause and an earlier one in relation to excess rents on which I was unable to get the National Party's support, are all the same -- it is a question of principle. If a person enters an agreement he should not be able to renege on it some time down the track because the law says he can. If he knew the state of the nation at the time of signing the agreement he should be bound by the state of the nation during the time of the agreement's operation. I will persist with my amendment.

Hon E.J. CHARLTON: This is another clause where the two parties involved in drawing up an initial agreement can have the whole thing sorted out at the beginning.

Hon KAY HALLAHAN: I do not think the point of principle to which Hon Norman Moore refers applies here. He is quite right -- the agreement will stand. However, we cannot ignore the informal things which happen. If something urgently needs attention -- and we have inserted those words into the Bill to reinforce it -- the person who gets the repairs done should be able to be reimbursed. I think the honourable member is misrepresenting the situation when he talks about reneging on agreements. That is not part of this clause.

Question put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN (Hon D.J. Wordsworth): Before appointing the tellers I cast my vote with the Ayes.

Division resulted as follows --

Ayes (11)			
Hon Max Evans	Hon P.H. Lockyer	Hon Neil Oliver	Hon D.J. Wordsworth
Hon Barry House	Hon G.E. Masters	Hon P.G. Pendal	Hon Margaret McAleer
Hon A.A. Lewis	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*

Noes (14)			
Hon J.M. Brown	Hon D.K. Dans	Hon Robert Hetherington	Hon Doug Wenn
Hon T.G. Butler	Hon John Halden	Hon Garry Kelly	Hon Fred McKenzie
Hon J.N. Caldwell	Hon Kay Hallahan	Hon Mark Nevill	*(Teller)*
Hon E.J. Charlton	Hon Tom Helm	Hon S.M. Piantadosi	

Pairs

Ayes	Noes
Hon John Williams	Hon Tom Stephens
Hon H.W. Gayfer	Hon B.L. Jones
Hon Tom McNeil	Hon Graham Edwards
Hon C.J. Bell	Hon J.M. Berinson

Amendment thus negatived.

Postponed clause, as amended, put and passed.

Postponed clause 44: Quiet enjoyment --

Hon E.J. CHARLTON: I am looking forward very much to quiet enjoyment, but I do not know when it is going to come -- whether tomorrow, Wednesday, or Christmas Day. Subclause (a) talks about the tenant's having quiet enjoyment of the premises, but we would not want to see that taken advantage of. I would be interested to hear what the Minister has to say about subclauses (b) and (c) because they seem to cover the same ground as subclause (a). Subclause (c) which says that the owner shall take all reasonable steps to enforce the obligation of any other tenant in occupation of adjacent premises puts a lot of emphasis on the responsibility of the owner to control the actions of other people. This subclause seems to be placing a lot of emphasis on the owner. After all, a home owner who is given a hard time by the people in the next house rushes in to deal with that at his own risk. Alternatively, he can ring the police and complain and they may or may not be able to help.

Hon N.F. MOORE: I agree with Hon Eric Charlton that clause 44 is particularly onerous in some parts. The Opposition is prepared to agree to the amendments foreshadowed by the National Party.

Hon KAY HALLAHAN: I can see Hon Eric Charlton's point that paragraph (a) spells it out clearly and, therefore, that perhaps (b) and (c) may not be necessary. A lot of thought has been given to this clause; a Queen's Counsel was consulted, and advised that it was important to include paragraphs (b) and (c) which make quite clear the implications of (a). Those paragraphs will be used by the court when interpreting the conditions of (a). Having considered the concerns expressed about clause 44 generally I propose to move that subclause (2) be deleted, rather than for the Committee to proceed with the amendment on the Notice Paper in the name of Hon Eric Charlton. Therefore, I ask members to reconsider their views on this clause and, although to the layman paragraph (a) may seem sufficient in itself, legal advice clearly states that it is not. In an attempt to reach a suitable outcome, the Government is prepared to delete subclause (2).

Hon N.F. MOORE: I ask the Minister to explain the meaning of the word "permit" in paragraph (b). If it means what I think it means, it is saying that the owner shall prevent any interference by a third party in the reasonable peace, comfort or privacy of the tenant. That could possibly involve a situation in which some yahoo throws a bottle through the tenant's window and the owner is required to physically restrain the person throwing the bottles, to avoid being in breach of clause 44(1). Does this paragraph mean that the owner must prevent a third party from disrupting the peace, comfort and privacy of the tenant?

Hon KAY HALLAHAN: This subclause relates to agents or people who are in the owner's commission. The type of behaviour to which Hon Norman Moore referred would be dealt with in the normal course of events by the police, and the owner is not held responsible for that sort of behaviour. In some circumstances agents or caretakers can make life awfully miserable for tenants, particularly if they call at unreasonable hours. They should not be permitted by the owner to do that. The owner has some control over that behaviour by the agent or caretaker.

Hon N.F. Moore: This applies to people over whom the owner has no control.

Hon KAY HALLAHAN: No, it does not. It applies only to people such as caretakers or agents whom the owner is in a position to cause or permit to interfere with the reasonable peace, comfort or privacy of the tenant.

Hon N.F. MOORE: Paragraph (b) applies to every circumstance, not just to circumstances in which the owner has control over the people involved. The clause states quite clearly --

> that the owner shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant . . .

That will apply to a whole range of circumstances, some of which the Minister has acknowledged, such as the actions of the agent or the caretaker. However, it also applies to other people in the community who may cause interference to the peace, comfort and privacy of the owner.

Hon Kay Hallahan: But the owner is not responsible.

Hon N.F. MOORE: Perhaps the clause should be reworded in such a way as to make that quite clear.

Hon E.J. CHARLTON: I take on board the point made by Hon Norman Moore and it is quite clear that the owner should not be held responsible for someone acting without his authority. If some harassment takes place by a third party over whom the owner has no control, that is totally outside the contract, and would be dealt with by the police or the courts. If I do not give someone permission to do something in my house, I am not held responsible.

Hon KAY HALLAHAN: This Bill does not override the provisions of the Criminal Code. If someone murders a member of a tenant's family, the owner is not held responsible. That is the logical extension of Hon Norman Moore's argument.

Hon N.F. Moore: No, it is not. The word "permit" has several meanings.

Hon KAY HALLAHAN: That is why I made it clear that the Government had received advice from Queen's Counsel. Bearing in mind that that advice was to include paragraphs (b) and (c), there is no suggestion that the owner will be held accountable for illegal and antisocial acts by a third party. I ask the member to read the Bill and its clauses in the spirit

in which they were framed. There is nothing to be gained from any of us here, or the Government, introducing a ridiculous clause such as that suggested by the member.

Hon N.F. MOORE: It has not stopped the Government before. The word "permit" has several meanings. One can say the owner shall not permit any interference. That means no permission can be given to anybody to interfere. That is all right; he should not do that. If the Bill says he shall not permit anything to happen, it means he has an obligation to stop it from happening. If that refers to persons other than agents, he cannot stop them.

Hon Kay Hallahan: He has no power over anybody else.

Hon N.F. MOORE: If we read the word "permit" in both its contexts, we get two different versions of the situation. The first is that he shall not give permission to, but the second is that by not permitting something to happen he has an obligation to stop something happening. Does the Minister understand what I am saying?

Hon Kay Hallahan: I have great difficulty in following the line the member is taking.

Hon N.F. MOORE: By permitting something, one could say to the agent, "You are not permitted to cause any difficulty for the tenant." I accept that as sensible; but "permit" also means, "You shall not allow it to happen."

Hon Kay Hallahan: That is in respect of the agent.

Hon N.F. MOORE: It does not say that applies only in respect of agents. The Bill says that the owner shall not permit any interference to take place. Read in that context, the owner shall not permit any interference to take place. That can be construed to mean that he shall not allow it to happen. It could occur in all sorts of other circumstances outside his control.

Hon KAY HALLAHAN: Taking the line being pursued by the honourable member, if one is to cause or permit, one must have authority to cause or permit. The owner has authority only over caretakers, agents, or people associated like that. The owner has no authority to cause or permit anybody from the wider community to do anything, so this clause would not apply in that circumstance. I hope that explanation of "cause" and "permit" is of some comfort to the member.

Hon N.F. Moore: I am not worried; I am not a landlord.

Hon E.J. CHARLTON: I accept that as a logical and commonsense situation. I think every member understands Hon Norman Moore's argument; I do not think any of us disagrees with it in this specific case. I will not proceed with my amendments to this clause, mainly because the Minister will move later to remove subclause (2), which comes back to its relationship to clause 44(1). We had a great deal of difficulty with that subclause, as the onus is put on the owner, and we wanted the tenant to be equally responsible. If the Minister will move an amendment to withdraw subclause (2), I will not proceed with my amendment.

Hon N.F. MOORE: I am disappointed that the National Party has decided not to proceed with its amendment, because regardless of the views of the Queen's Counsel, I think paragraphs (a) and (b) are wrong. I take no comfort from the Minister's explanation of the interpretation of the word "permit" --

Hon Kay Hallahan: Or "cause".

Hon N.F. MOORE: They are separate words, "cause or permit".

Hon Kay Hallahan: You have to have authority to do either.

Hon N.F. MOORE: I guess if the tribunal referee has a problem with this, he will extract from *Hansard* the Minister's explanation and he will understand the spirit in which the Bill has been passed.

The clause was amended, on motion by Hon Kay Hallahan, as follows --

Page 28, lines 15 to 18 -- To delete subclause (2).

Postponed clause, as amended, put and passed.

Postponed clause 45: Locks --

Hon N.F. MOORE: May I ask the Minister what "reasonably secure" means in the context of the Bill? This clause requires that the premises should be reasonably secure. To some people that means the sorts of locks on doors and so on that would to keep the cavalry out.

Hon KAY HALLAHAN: This would have to be left to the interpretation of the tribunal.

Postponed clause put and passed.

Postponed clause 46: Owner's right of entry --

Hon N.F. MOORE: Clause 46 deals with the owner's right of entry into what is his own property. I want to use this clause to comment upon a newspaper article which appeared on 3 December. It was headed, "MP: Iron firms' tactics despicable". That is related to a speech made by Mrs Pam Buchanan, Labor, Pilbara, on a previous occasion. It talks about the owner's right of entry onto property. The member for Pilbara took the view that Hamersley Iron had adopted despicable tactics by seeking to search the houses of its tenants. When I read this article I was very annoyed indeed. Anybody who has been in the Pilbara for any period of time will know that Hamersley Iron has provided its tenants with what I consider to be Rolls Royce accommodation. They were provided with a brick veneer home, which was fully air-conditioned and furnished, and in most cases their water and electricity were free. When I was living in the Pilbara this cost the tenants $6 a week; never in the history of mankind can there have been a more benevolent landlord than Hamersley Iron. Indeed, one of the problems was that Hamersley Iron was too benevolent in those days and provided too many good things for its employees, to the extent that the employees took it for granted.

Secondly, the member for Pilbara raised the matter of the company's wishing to search the houses of its tenants, which she regarded as quite disgusting. The company wished to search the houses in order to find missing property. Everybody who lives in the Pilbara knows that if one were to go through the houses of the Hamersley Iron towns, one could fill three warehouses with brand new equipment that has come out of the store. For many years people would drive out of the minesites with their trucks full of gear. It was endemic.

Hon Mark Nevill: That is an exaggeration.

Hon N.F. MOORE: Not at all.

Hon Mark Nevill: Does it happen in your electorate?

Hon N.F. MOORE: I am talking about the Pilbara. When the member for Pilbara could raise a stupid matter like this and gain headlines, someone has to get up and say that it is nonsense. The situation in the Pilbara is such that I would have thought the company should have every right to search for stolen goods. For the member for Pilbara to describe that as "despicable" indicates her lopsided view of the way in which tenancies have been arranged in the Pilbara. She talked about a terrible weapon of conflict and so on, and all of us who know what goes on in the Pilbara know that is ridiculous.

Clause 46 deals with the owner's right of entry to his property. It is a difficult area and it is necessary to get a balance between looking after the rights of the tenant who does not wish to be visited by the landlord on a too frequent basis, and, at the same time, respecting the landlord's view that he owns the property. It is a large capital investment for the owner, which he is anxious to ensure is kept in a reasonable state of repair, bearing in mind that the cost of maintenance and repairs these days is extraordinarily high. It is difficult to get a balance which suits both sides of the agreement. I think the Committee should amend clause 46(1)(a), which deals with inspection of premises except in the case of an emergency. The landlord has to give seven days' notice to inspect the premises; a subclause says that this can be at any time, but I think that if the tenant does not want the landlord to inspect the premises and the landlord cannot establish a case of emergency, that seven-day period is too long. Therefore I move an amendment --

Page 29, line 15 -- To delete the number "7" and substitute the number "3".

This will mean the landlord only has to give three days' notice if he wishes to inspect the premises in the event that he cannot justify a case of emergency or where there is not an agreement between the landlord and the tenant.

Hon KAY HALLAHAN: I strongly oppose the proposed amendment. I do so because there are many reasons outlined in clause 46 which give the owner the right to enter premises. Hon N.F. Moore's point is not valid at all because under the clause as it now stands the owner may enter the premises in an emergency, once a week to collect the rent, after 72 hours' notice for the purpose of non-urgent repairs, after reasonable notice in the last 14 days' of the tenancy for the purpose of showing prospective tenants the property, after

reasonable notice at any time for the purpose of showing the premises to prospective buyers, and at any other time with the consent of the tenant. All those reasons exist to enable the owner or the owner's agent to have right of entry to the premises. This clause just covers other circumstances which do not apply there and, as we all know, those generally do cover most reasons for owners needing to inspect the property -- that is, if the property needs to be re-let because notice has been given of a tenant wishing to leave, the owner is selling the property, there is need for repairs, collection of rent, or indeed an emergency. If we carry what Hon N.F. Moore wants, we will virtually give the right of entry to the premises by the landlord every three days for no reason.

Hon N.F. Moore: Why would the landlord want to do that?

Hon KAY HALLAHAN: That is the power this amendment will give the landlord.

Hon N.F. Moore: You could do it every week under your proposition.

Hon KAY HALLAHAN: That is better than every three days. We have to look seriously at it, although admittedly that is an extreme.

Hon N.F. Moore: Landlords want to keep tenants.

Hon KAY HALLAHAN: I agree, so I do not know why the member wants to change that clause.

Hon N.F. Moore: Because if a tenant does something absolutely ridiculous, such as repairing a motor bike in his lounge room, it might help.

Hon KAY HALLAHAN: That would be an emergency in my view.

Hon N.F. Moore: It depends what an emergency is. It is a very subjective term.

Hon KAY HALLAHAN: I think it would be serious. I have outlined the clause, which is very clear in the reasons for the owner having access to the premises. I think the Government's proposal is reasonable, even if one says the landlord has power to come every seven days for no other reason -- if that is indeed reasonable, although one would wonder if it is. I ask the Committee to reject this amendment.

Amendment put and negatived.

Hon E.J. CHARLTON: The National Party is not happy with the 14 days referred to in clause 46(f), which is for the purpose of showing the premises to prospective tenants. Obviously, this subclause is trying to limit the period preceding termination of agreement. I move an amendment --

Page 29, line 28 -- To delete the number"14" and substitute the number "21"

On the one hand we are saying in respect of the owner's situation that he will only have 14 days to show people over the premises, while the tenant has to give 21 days' notice to the owner before he vacates the premises. The National Party thinks it would be fair and equitable to all concerned if the 14 days were extended to 21 days. Also, in a situation where the tenant has to give 21 days' notice, he will be liable for rent for that period. If the tenant wanted to take on other premises, he would also be liable for the rent of those premises for that period. If he took it on and the owner has the flexibility to agree to the new tenant moving in within a shorter period, I think that the tenant could lose out financially. That point is similarly related to this particular aspect. I understand that it can be unfair on a tenant -- even for a period of one week -- to have people coming through his premises. At the same time, it is obvious that if an owner has an opportunity to show someone over his property, that will always create a situation where commonsense must prevail. Tenants may say that they are not home during a certain period so it is not convenient for the person to look over the property at that time and, if a landlord or agent takes advantage of that fact, whether the period be seven days or 14 days, it is hard to accept; the longer the period, the worse the situation. I have moved this amendment in response to approaches from people who have been directly involved in such a situation.

Hon N.F. MOORE: I also have an amendment on file to delete 14 and substitute 28. I agree with the comments of Hon Eric Charlton that the period of 14 days allowed for an owner to have inspections of his property is too short a period. One should bear in mind that this provision relates to prospective tenants, and it is important for owners that there be a smooth

and rapid turnover of tenants. All owners are anxious to ensure that when a tenant moves out not too many days pass before the next tenant moves in. The reason for this is that most properties are an expensive drain on resources for owners who are paying mortgages, land tax, rates, and other costs associated with maintaining their property; and they do not want that property to be vacant for long. Fourteen days is too short a period to allow for owners to show prospective tenants through their property, particularly at a time when there is a glut of rental accommodation on the market. It has been said before that the state of the economy affects the amount of rental accommodation available. There have been times in recent history when many properties have been available for rent and other times when few properties have been available for rent.

I am looking at the situation where there may be a glut of available accommodation and an owner may need a month in which to get a new tenant. There have been times in the recent past when a landlord was unable to get a new tenant within 14 days. I will not argue for long about whether a period of 21 days or 28 days should pertain during which to show prospective tenants over properties, although I prefer a period of 28 days. I hope that the National Party is willing to forego its amendment mentioning 21 days and to support my amendment, which mentions a period of 28 days and which I believe is a more sensible proposition under the circumstance. I do not support the amendment.

Hon KAY HALLAHAN: I ask members to support the amendment moved by Hon Eric Charlton. I am persuaded by his view, particularly after looking at clause 68(2). It is a sound argument. I reiterate that the period during the termination of a tenancy is an unsettling time for the people involved. People I have known in this situation say that it is awful having people checking in and out while they are packing, particularly if they have young children. The shorter the period the better, and that is why we went for 14 days in the Bill. I would prefer that period to remain, but having examined clause 68(2), and having listened to the logic of Hon Eric Charlton with regard to this matter, his amendment is difficult to argue against, so I support it.

Hon N.F. MOORE: The Minister's argument is really one which would support the extension of that period to as long as one likes, because what she said is that during the period at the end of a tenancy there is the most disruption because people are packing and getting children organised. Those things are more likely to apply during the final 14 days than they are during the 14 days preceding that, so I argue that it would be better to have inspections several months before a tenant leaves, which would remove that problem. It may be that we should say that landlords can only have prospective tenants inspect a property during a period six weeks before and up to two weeks before a tenancy ends so that that disruption mentioned in the Minister's argument does not happen. On her logic it would be better if the inspection occurred in the last six weeks and up to the last two weeks before a tenant moved so as to cause minimal disruption to people who are shifting.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 47: Right of tenant to affix and remove fixtures, etc. --

Hon N.F. MOORE: Hon Eric Charlton has an amendment on file which would resolve the problem in relation to this clause. Will the Minister explain the intent of the clause and will Hon Eric Charlton indicate whether he intends to move his amendment? This clause provides two options in the absence of a written agreement. Will the Minister say which of those two options applies? If I have a verbal tenancy agreement and no decision has been made with respect to the affixing or non-affixing of fixtures, one part of clause 47 says that a person "shall not affix any fixture or make any renovation or alteration" etc, while part (b) says that a person may do it with the consent of the owner. Two sets of circumstances are provided for where there is an agreement, but I wonder what is the case in the absence of a written agreement.

Hon E.J. CHARLTON: Clause 47 says that an agreement may provide that a tenant shall not affix any fixture or make any renovation, alteration, or addition, or may provide that a tenant may affix any fixture or make any renovation, alteration, or addition. The terminology is not very precise, and I intend to pursue my amendment unless the Minister can explain the reason for the terminology that is used.

Hon KAY HALLAHAN: I cannot understand why members have a problem about this

clause. The clause says the agreement may provide either that the tenant shall not or that the tenant may affix any fixture, etc.

Hon N.F. Moore: I am concerned about the situation arising in the absence of a written agreement, when the provisions of this Bill shall apply.

Hon E.J. Charlton: Can there be a verbal agreement?

Hon KAY HALLAHAN: If there is not an agreement, then the tenants can do what they like.

Hon N.F. Moore: Then we should support Hon Eric Charlton's amendment, to cover that situation.

Hon E.J. Charlton: I take it from what the Minister says that in the absence of an agreement, there is no authority to do anything.

Hon KAY HALLAHAN: There is no authority and no restriction.

Hon N.F. Moore: The Minister has confirmed my concerns. She says that if there is not a written agreement, tenants can do what they like. The Bill says that an agreement may provide for two sets of circumstances, but how do we find out which set of circumstances will apply if there is not an agreement?

Hon KAY HALLAHAN: I cannot see the problem, because the clause provides for two sets of circumstances. We have also to keep in mind that the Bill provides in other clauses that a tenant cannot damage the property, if that is what members are concerned about.

Hon N.F. Moore: As I understand it, the provisions of the Bill will apply in the absence of a written agreement, so we are looking at what is in the Bill to see what will apply in every circumstance; but the Bill here provides for two sets of circumstances.

Hon E.J. CHARLTON: We are not dealing with the content of what can be agreed to; we are dealing with the situation where there is not a written agreement, and we want to ensure that position is adequately covered, either by another clause within the Bill or by our amendment. The Minister has not yet explained to us that this is not a problem. We are not trying to change the Bill or to put restrictions on anyone where there is an agreement, but we are saying that subclause (a) should apply if there is not an agreement.

Hon KAY HALLAHAN: It is the Government's view that is better left up to the owner and the tenant to agree between themselves.

Hon N.F. Moore: Are we not trying to get rid of areas of dispute between owners and tenants?

Hon KAY HALLAHAN: Yes, we are, but clause 38 covers any damage.

Hon N.F. Moore: That would involve going to the tribunal. Why not clarify the position by accepting the proposed amendment?

Hon KAY HALLAHAN: I am advised the amendment would cause a drafting problem, and rather than having to redraft the clause, it is my view the clause as it stands is clear.

Hon N.F. Moore: This Bill provides that there can be a written agreement between tenants and landlords, and they can write whatever they like into that agreement, subject to the Act, but in the event there is not a written agreement, then all the clauses of the Bill will apply to the relationship between landlords and tenants. So if we look, for example, at clause 46, all the conditions of that clause relating to the owner's right of entry will apply to that unwritten agreement.

Hon KAY HALLAHAN: That is not correct.

Hon N.F. Moore: Then what is correct? Are you saying the Act does not apply to an unwritten agreement?

Hon KAY HALLAHAN: Just to some parts of it.

Hon N.F. Moore: Which parts of it?

Hon KAY HALLAHAN: It does not apply to clause 49, for example.

Hon N.F. Moore: I have the same problem with that clause, where there are three options.

Hon KAY HALLAHAN: But the provisions of the Act do not apply in those cases. It has not been the will of the Bill, if I can put it that way, to force people into certain arrangements, but if they do enter into arrangements and there is an agreement which says this or that shall apply, then that needs to be specified. That is not the case if there is not an agreement, and I would be surprised if members think we ought to compel people to go in that direction. This Bill allows for flexibility in certain areas of negotiations between tenants and owners, and it is thought to be valuable to retain some of these areas as a level of flexibility and to not straitjacket the arrangements between tenants and owners.

Hon E.J. CHARLTON: The Minister is saying quite categorically in connection with the tenant's right to affix or remove fixtures that the tenant could have an agreement to put them in or not?

Hon Kay Hallahan: Yes.

Hon E.J. CHARLTON: If there is no agreement then there is no situation where anyone can be either/or?

Hon Kay Hallahan: Yes, except for the overriding provision about damage.

Hon E.J. CHARLTON: If a tenant then decides to affix any fixture or make any renovation, alteration or addition, and the owner does not agree to such, they will go to a tribunal?

Hon KAY HALLAHAN: In that situation they can only go to a tribunal under clause 38, where damage has been made.

If we are having difficulty with this clause, and as we are so close to the luncheon adjournment, perhaps we should adjourn and have a few moments' discussion on the clause.

Hon E.J. CHARLTON: That is fair enough. I take the point that by having this amendment we could restrict both the owner and the tenant inasmuch as the tenant wants only to hang another light fitting and he should not do so because this is not allowed for in the agreement. This provision is obviously for the benefit of both the owner and the tenant.

Hon Kay Hallahan: It is for the benefit of both.

Hon E.J. CHARLTON: So far, the Minister has not made that clear. When first read this clause made no sense in that it seemed to say one could do one thing or another provided there was an agreement; if there were no agreement the situation was still one or the other. We wanted the situation clarified. Having heard the discussion taking place and trying to put myself in the position of the tenant wanting to install an extra light fitting, I understood this should not be done without the permission of the owner. This is not a make or break situation whichever way the provision goes; however, we wanted clarification.

Sitting suspended from 12.44 pm to 2.30 pm

Hon N.F. MOORE: Prior to the suspension for lunch we had an informal discussion about this clause and, before withdrawing my objection to it, I would like the Minister to explain what happens if there is no written agreement between the tenant and the landlord, the tenant makes some renovation or affixes some fixtures, and the landlord does not agree that that should happen? Is the landlord able to take action against the tenant?

Hon KAY HALLAHAN: In the case of it being determined that the work has damaged the premises, certainly the landlord can take action. If it changes the nature of the building -- I am not too sure what is meant by renovations --

Hon N.F. Moore: It is your Bill.

Hon KAY HALLAHAN: -- that could be interpreted as damages. I cannot think of anything the honourable member might have in mind which would not be subject to those provisions, other than it actually improving the building.

Hon N.F. Moore: If there is no damage, no action can be taken?

Hon KAY HALLAHAN: Right.

Hon N.F. MOORE: This is a difficult clause, which still contains ambiguity in my view. I am told it does not, so I will accept the advice I am given and hope that circumstances do not arise where somebody is caught out by it.

Hon E.J. CHARLTON: Clause 47(b) states --

. . . but only with the owner's consent.

Having had satisfactory debate on this subject prior to the suspension, I will not proceed with my amendment.

Postponed clause put and passed.

Postponed clause 48: Owner to bear outgoings in respect of premises --

Hon MAX EVANS: This clause states --

. . . the owner shall bear all rates, taxes or charges imposed in respect of the premises --

This practice has changed in the commercial world. In a commercial tenancy agreement, the tenant always pays the water rates, council rates, and land tax. With the rapid escalation in the cost of such charges these days, if this has not already been written into residential agreements, it should be. Can the Minister confirm whether an agreement to pay these taxes can override the Act? I think it should, and will do so in some residential tenancy agreements which I shall introduce. Otherwise, the owner will be caught with having to pay these charges out of his profit, and may not know how much he will have to pay.

Hon KAY HALLAHAN: This is one of the clauses which can be opted into or out of. The Act would not override an agreement in that case.

Hon MAX EVANS: This option has been introduced by the provision before the Chamber; before that there was no ability to opt out.

Postponed clause put and passed.

Postponed clause 49: Right of tenant to assign or sub-let --

Hon E.J. CHARLTON: The Minister, Hon Norman Moore, members of the department and I discussed my proposed amendments to this clause during the luncheon suspension. There is a gentlemen's agreement between us as to how we should proceed. I move an amendment --

Page 31, line 8 -- To insert before "consent" the following --

written

Amendment put and passed.

Hon E.J. CHARLTON: During discussions members of the three parties involved agreed that the amendments I have on the Notice Paper should be proceeded with. However, there was some debate as to whether the amendments would follow the exact wording on the Notice Paper. I have just been handed a copy of the new wording by the Minister, and it might be appropriate to let her move the amendment.

Hon KAY HALLAHAN: Counsel worked during the luncheon suspension to arrive at the new wording. I move the following amendments --

Page 31, line 9 -- To insert after "makes" the following --

or is deemed to make

Page 31, after line 14 -- To insert the following --

(3) Where an agreement does not make any of the provisions described in subsection (1), the agreement shall be deemed to contain the provision described in subsection (1)(c).

Amendments put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 50 put and passed.

Postponed clause 51: Tenant to be notified of owner's name and address --

Hon N.F. MOORE: I have an amendment on the Notice Paper to this clause which would take out the words "and any person having superior title to that of the owner". I am told my interpretation of "superior title" is not correct and does not mean a bank, building society, or

second mortgage holder. It really means the owner regardless of whether the property is mortgaged, and the question of "superior title" arises in relation to subletting. I ask the Minister to confirm that my understanding is correct and to explain what the clause means.

Hon KAY HALLAHAN: I confirm that Hon Norman Moore's understanding is now accurate. I understand the amendment arose from a different interpretation of "superior title". The most superior title is that of the owner, and if somebody sublets he can expect to be told who the owner is, but it does not relate to the financial arrangements under which the owner purchased the property. I think that was where the member's concern arose. The financial institution does not enter into it at all unless the mortgage arrangements are not met and the mortgagor takes over the position of owner. That is the only time anyone would become aware of the financial arrangements as such. I think that allays Hon Norman Moore's concern. In subletting one could have three or four subletting arrangements and it is reasonable that the person who is subletting should know who is the final arbiter; that is, the owner. He is the top of the tree in this regard.

Hon MAX EVANS: How can a subtenant be referred to as an owner when the clause refers to "the full name and address of the owner and any person having superior title to that of the owner"? There cannot be two owners even one above the other -- there is an owner or a subtenant.

Hon KAY HALLAHAN: I refer Hon Max Evans to the definitions on page 2 of the Bill where he will see that "owner" means the grantor of a right of occupancy under a residential tenancy agreement or his successor succeeding subject to the interest of the tenant. In that case the owner can be what we would normally regard as the tenant because he is in a position to grant the subletting to the next person. That is why they are referred to in clause 51(1)(a) as the owner. I grant it is confusing, but I am sure that people working with the Bill will know what it means.

Hon MAX EVANS: I pity those poor people whose first language is not English. There are tens of thousands of people who lease properties in this State; they are going to have a ball here.

Hon N.F. MOORE: I say pity all those people for whom English is their first language. Why not write a clause which says the full name and address of the owner shall be made available to the person subletting the property? Then it would be clear to all of us. When a Bill uses language like this it invites people to continue asking questions. I will not proceed with my amendment.

Postponed clause put and passed.

Postponed clause 52 put and passed.

Postponed clause 53: Tenant's name, place of occupation and forwarding address --

Hon N.F. MOORE: Subclause (3) says a tenant under an agreement shall, at the time of delivering up possession of the premises, notify the owner of his next address or his postal address, and there is a penalty of $100 for noncompliance. What happens when a tenant does not know what his next address or his postal address will be?

Hon KAY HALLAHAN: It is usually the experience that even if people do not know where they are going to reside -- there would not be a lot of cases like this -- most people have a "care of" address for relatives or someone else where mail can be directed, and they would be obliged to provide that.

Postponed clause put and passed.

Postponed clause 54 put and passed.

Postponed clause 55: Cost of written agreement to be borne by owner --

Hon N.F. MOORE: If a tenant and owner decide to have a written agreement about a tenancy the cost of preparation is to be borne by the owner. It seems to me that in most other arrangements the consumer or purchaser, or person who is renting the property, is the one who bears the cost of most of the documentation. It was suggested in another place that the cost should be borne by the tenant, but in the spirit of compromise I think it should be shared. I have given notice of an amendment which says that instead of the cost of preparation being borne by the owner it should be borne equally by the owner and the tenant. I think that is

probably a fair and reasonable way of going about documentation which is for the benefit of both people involved. I cannot see any reason why they should not share the cost. I move an amendment --

Page 33, line 28 -- To delete the words "by the owner" and substitute the following --

equally by the owner and the tenant

Hon KAY HALLAHAN: I ask members to reject the amendment. In his opening comments Hon Norman Moore indicated he did not realise the importance of the words in the first line of the clause which say "Where an owner requires" the written agreement he shall bear the consequences. We would have to change the whole clause to accommodate this amendment. I guess there will be standard forms available for agreements which will not have great costs associated with them, so if an owner wants a particular agreement it would seem reasonable that he should pick up the cost. It would be most unfair to lumber tenants with what could be quite costly legal agreements and have the Act demand that the tenants pick up 50 per cent of the cost. That would be quite unreasonable and is probably not the intent of the amendment. I ask members of the Committee not to support the amendment.

Hon N.F. MOORE: I take on board the Minister's comments. Would she be interested in a different amendment which allowed that if the owner required the execution of a written agreement or memorandum of an agreement the cost would be borne by the owner; if the tenant required the execution of a written agreement or memorandum of an agreement the cost would be borne by the tenant; and where the tenant and owner both agreed, they would share the costs?

Hon KAY HALLAHAN: It seems a complicated way to do things because clause 82 allows them to do that anyway.

Hon N.F. Moore: Why is it included in clause 82?

Hon KAY HALLAHAN: The National Party made that amendment.

Hon N.F. Moore: This is an opting-out clause.

Hon KAY HALLAHAN: Yes. Although I want to accommodate any amendments the Government can accept in the interests of getting the greatest consensus, I ask members to vote against the amendment.

Hon MAX EVANS: I cannot see any reference in clause 82 to the point we are discussing.

Hon KAY HALLAHAN: The clause states that they can agree to whatever they want to agree to. It is absolutely wide open about what they can contract out of.

Hon N.F. MOORE: I take on board the Minister's comments and realise that it is an opting-out clause. I am concerned that this opting-out clause will be effective more or less depending on the supply and demand of properties, with people making decisions based on how easy or difficult it is to get tenants. Could clause 55 be rewritten to cover circumstances where the tenant wants a written agreement and the landlord does not, or the landlord wants a written agreement and the tenant does not, or the occasions when both want a written agreement? I suggest that we consider including the provision that the cost of the preparation of a written agreement or memorandum of agreement shall be borne by the party requiring its action and, when mutually agreed, the cost shall be borne equally. That new wording would take into account the three potential circumstances that could arise.

Hon KAY HALLAHAN: If we move to that amendment, tenants wanting to rent a property will have to pick up the account. I suppose we are talking about investors in the rental property market and I would expect such people to take into account the costs involved for agreements and other things relating to that investment. The amendment twists the whole thing round quite unrealistically from existing general practice and puts a much greater onus on tenants. It is an undesirable practice in principle and I ask the Committee not to support it.

Hon E.J. CHARLTON: When we discussed this last week, it was stated that one of the clauses allowed for charges to be imposed for the setting up and servicing of a tenancy by the owner. If the tenant wants a written agreement, the owner has an opportunity to include that cost in that setting-up fee, by way of the letting fee and so on. Clause 55 states that the owner pays for the agreement where he requires that agreement. If it is only to protect the

owner, the tenant cannot be asked to share the cost. If the tenant requests the agreement, the owner has an opportunity to recoup that cost through the rent, servicing or letting fees.

Amendment, by leave, withdrawn.

Hon N.F. MOORE: I move an amendment --

> Page 33, lines 26 to 28 -- To delete the clause with a view to substituting the following new clause --
>
> > The cost of the preparation of a written agreement or memorandum of an agreement shall be borne by the party requiring its execution and, where mutual agreement exists, the costs shall be borne equally.

This amendment provides that the costs shall be borne by the person seeking the agreement. If it is mutually agreed that there shall be a written agreement, the costs will be shared; if it is mutually agreed not to have an agreement, no costs will be involved. It has been suggested that the owner can recover his costs by increasing the rent -- that is six of one and half a dozen of the other. I would rather the situation were clarified in this way than have the owner seeking to recover his costs in some other way. That is not necessarily the way for the owner to go bearing in mind that it may be more difficult to attract a tenant if the rent is increased.

Hon KAY HALLAHAN: What Hon Norman Moore wants to achieve is achievable under clause 82 of the Bill as it now stands. That provides for opting out.

Hon N.F. Moore: We are talking about the spirit of the legislation. There are opting out clauses for many things.

Hon KAY HALLAHAN: That is the reason this provision was accepted in the other place; members there thought the opting out clause gave flexibility in a number of significant areas of the Bill, and gave some protection against having to include amendments and safeguards right through the Bill. Some consistency remains in certain areas in the Bill. Everyone knows that clause 82 is there for that purpose. I would like members to think carefully when voting, because we need to vote against Hon Norman Moore's amendment and vote that the clause stand as printed.

Hon E.J. CHARLTON: Mr Chairman, the question you will be putting will be for the deletion of clause 55, will it?

The CHAIRMAN: No, I will be putting clause 55 as printed. If it does not pass, there will be the opportunity for Hon Norman Moore to put his amendment. If it does not pass, he will not have the opportunity.

Hon E.J. CHARLTON: I have to go back to something we mentioned earlier. The National Party in the other place moved a series of amendments, one of which was to allow people to opt out of the provisions of certain clauses of the Bill. We have attempted to put in various other changes in this Chamber. If I were to move to support something different from what is written in clause 55, that would be going against what we set out to do. One of those changes allows an owner to come to a written agreement. Where he does that, he may be changing what is provided for in this Bill, and he has the option to do that, in which case he has the option to pay for it. I agree with Hon Norman Moore's point that if the tenant wants to change the agreement, he should have to pay for it. If the owner does not want to vary the agreement, he should not have to pay. That is the bottom line. I am satisfied that, as the amendment was agreed to by the Government in the other place, it should be left as it is.

Hon N.F. MOORE: While this Bill contains clauses allowing the parties to opt out, it retains the general thrust of the Bill. The clauses indicate the general view of the Government about how tenancy agreements should be drawn, notwithstanding that they could count in the other place. The only way to get the Bill through this Chamber was to make some amendments, but clause 55 still stands, and provides that if the owner requires a written agreement he should bear the cost.

Hon Kay Hallahan: It might be a dollar or two.

Hon N.F. MOORE: That in itself is not the normal procedure with regard to the purchase or rent of other articles. The normal procedure is that the purchaser pays the costs of the legal document. The purchaser of a house pays the cost of the legal documents. In this case the

Government is stating that as a general principle it should be the other way around. We should write into this clause, notwithstanding that the parties may opt out, the principle that whoever requests the agreement, in the event that the other party does not want a written agreement, should pay the costs. If both want a written agreement, they should share the costs. It is a very simple principle. In fact it is a compromise compared with what happens in other areas of commercial practice. I cannot understand why the Committee could not agree to that without any argument.

Postponed clause put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell, I give my vote with the Noes.

Division resulted as follows --

Ayes (13)

Hon J.M. Brown	Hon John Halden	Hon Garry Kelly	Hon Fred McKenzie
Hon T.G. Butler	Hon Kay Hallahan	Hon Mark Nevill	*(Teller)*
Hon J.N. Caldwell	Hon Tom Helm	Hon S.M. Piantadosi	
Hon E.J. Charlton	Hon Robert Hetherington	Hon Doug Wenn	

Noes (10)

Hon Max Evans	Hon P.H. Lockyer	Hon Neil Oliver	Hon Margaret McAleer
Hon Barry House	Hon G.E. Masters	Hon W.N. Stretch	*(Teller)*
Hon A.A. Lewis	Hon N.F. Moore	Hon D.J. Wordsworth	

Pairs

Ayes	Noes
Hon Tom Stephens	Hon John Williams
Hon B.L. Jones	Hon H.W. Gayfer
Hon Graham Edwards	Hon Tom McNeil
Hon J.M. Berinson	Hon C.J. Bell
Hon D.K. Dans	Hon P.G. Pendal

Postponed clause thus passed.

Postponed clause 56: Discrimination against tenants with children --

Hon N.F. MOORE: This clause provides that no landlord shall prevent a tenancy where the tenant intends to have children in a particular property. I do not want to argue about the clause because it is an "opting out" clause. This sort of argument arouses passions, and people become unnecessarily emotional about these things. Quite simply some properties are not suitable for children; perhaps the premises have a swimming pool, are a part of a multistorey building which is not safe for children, or are in a set of units specifically set aside for elderly people, and having children there would be against the spirit of the way the property was developed. I do not propose to argue about it because there is an opting out provision in the clause. However, could the Minister explain what happens in the event of discrimination on other grounds, such as race, sex, or marital or non-marital status? What laws apply in respect of alleged discrimination against tenants other than for having children?

Hon KAY HALLAHAN: The Equal Opportunity Act applies in respect of most of those grounds. I tried to take account of what the member listed, but from memory the things he did list are covered under the Equal Opportunity Act. An owner can decide not to rent a property to somebody he believes will not be a good tenant. It is the owner's right to do that.

Hon N.F. Moore: Under which clause?

Hon KAY HALLAHAN: There is nothing in the legislation to prevent that. If the owner believes that the tenant will not be a good tenant, the owner is under no obligation to rent that property to that person. An owner cannot say it is because a potential tenant has children.

Hon N.F. MOORE: The Minister is saying that the owner does not have to agree to a

tenancy with anybody and that that is okay, provided the owner does not say it is because a person is black, has children, or is not married.

Hon Kay Hallahan: Absolutely.

Postponed clause put and passed.

Postponed clauses 57 to 61 put and passed.

[Questions taken.]

Postponed clause 62: Notice of termination by owner upon ground of breach of term of agreement --

Hon E.J. CHARLTON: This is an important clause as it relates to the termination of agreement because of a breach. How would the Minister describe a situation where there is a breach which is remedied continuously so that matters remain in a state of flux and are not dealt with to the satisfaction of the owner? Will the Minister clarify this clause? I refer in particular to subclause (1) where it makes mention of notice of termination of agreement to a tenant being given and to a breach being remedied.

Hon KAY HALLAHAN: I would be concerned if the Committee decided to support the member's proposed amendment. Members should have clearly in mind the fact that, if there is no breach, termination of a tenancy is not a logical course to follow. Significant penalties are contained in the Bill which make termination of a tenancy a last resort -- it is a bit like prison being the last resort. Taking the remedial steps will hopefully rectify these situations. I believe that this will be sufficient in most cases to put the matter straight and to sort out any problems. The first recourse should be clause 15(2)(a), (b) and (c) which relate to problems where a referee would be involved. It allows the tribunal to remedy a breach either by specific action or by ordering payment of compensation, so a range of things can be ordered, which is important. If a tenant fails to comply he faces a maximum fine of $2 000, so it is not insufficient coercion, if one likes to call it that, to remedy a breach. I again make the point that termination should be seen as the last resort; it exists to be brought into play if necessary, but things can often be put right and expectations be set clear, particularly when a matter can be followed up with a maximum fine of $2 000. A court may choose to impose a lesser fine, but $2 000 is a significant fine which provides protection for owners. I ask Hon Eric Charlton to consider, in the light of that information, whether it is necessary for him to proceed with his amendment.

Hon N.F. MOORE: I listened with interest to the Minister, as I did to Hon Eric Charlton's argument, which argument is very much the same as mine. It is possible to remedy a breach every couple of weeks. For example, a person who has not paid his rent breaches an agreement by not paying again on the due date and then, when the owner goes through the procedure to get the rent, the breach is remedied a week or so down the track. The principle of rent in advance can disappear under such conditions because of permanent and ongoing breaches of an agreement that are remedied at the end of the period allowed for those sorts of things to happen. A situation could arise when tenants repeatedly offend against aspects of an agreement, remedy the breach and carry on with their tenancy. The continuation of such breaches may drive the owner to distraction and he may decide that it is time that that tenant was got rid of. It may be that a compromise would be that, if a person were given one or two chances and continued to offend on a regular basis, there were grounds for giving notice for termination of an agreement. To allow a person to breach an agreement ad infinitum and to then remedy that breach so that action cannot be taken against him could lead to people having prematurely grey hair, so maybe we should look at a better way of doing things.

Hon E.J. CHARLTON: There are several options available to deal with this situation. I would like the Minister to give examples of positions where an agreement could be remedied. As I understand, if there were a noisy party which caused a hullabaloo, that could not be remedied because it had already happened. Is that correct? Another example would be of a person who is not supposed to have an animal on the premises, who is asked to get rid of it, and does so. Am I right in saying that that breach has been remedied?

Hon N.F. Moore: They can bring another one back the following day.

Hon E.J. CHARLTON: That is right; that is the grey area. Can the Minister give some examples of how determination of a breach can be arrived at? If the Government does not

want to change all those parts of clause 62 which refer to a breach -- because obviously it does not want to change them -- as a bottom line, where a tenant has been given notice of breaches under subclauses (3) and (4) in the previous six months, it may be that notice of termination could be given at the same time as the notice notifying of the second or subsequent breach. We want to stop a situation arising where the tribunal is put in a position of trying to do the right thing by the owner and a tenant, but because the breach is being remedied the tribunal must allow the tenant to stay. If there are continuous breaches, and they are on record, and the tribunal has agreed that those breaches have breached the contract, then it would be in a position to say whether or not the tenant remedies, or the tenant has continued to do something in breach of the agreement and will therefore have to go.

Hon KAY HALLAHAN: I think it is clear, but I am not sure that what I will say will suit the member. Clause 15(2)(a)(i) says an order can be given to restrain any action in breach of the agreement; and that will overcome the ongoing problem the member is talking about. I am worried about the honourable member's proposition because it may be that someone breaches the agreement by letting the yard become unruly because there is ill health in the family or the husband leaves, and the maintenance of the property becomes a problem, but all the neighbours and relatives rally around to help clean up the yard, and so remedy that breach. Three months later there is another breach of the agreement, but related to different circumstances, and the situation is again remedied because the tenancy is important to that person. According to the honourable member's proposition, such a person would be wiped out the first time there is a breach.

Hon N.F. Moore: The referee has to make that decision. All we are doing is making the application.

Hon KAY HALLAHAN: That is true, but the court can at present impose very severe fines.

Hon N.F. Moore: All Hon Eric Charlton's proposition means is that an application can be made to the tribunal to make a decision; the agreement is not terminated simply by giving notice. If the Minister agrees with what Hon Eric Charlton said, the tribunal still makes the decision.

Hon KAY HALLAHAN: Yes, but Hon Eric Charlton has indicated he is going to take away that discretion. The tribunal will be pretty unsympathetic to a tenant if a breach occurs, which is remedied, but there is again a similar breach. Such a situation does become a problem tenancy for the owner, but I think there are sufficient safeguards in the Bill.

Hon N.F. Moore: It is not possible to go to the tribunal with a notice of termination if the breach has been remedied.

Hon KAY HALLAHAN: Yes, but is the member saying he does not want to bother telling people to fix things because they are in breach of their agreement, and even if they do fix things, he is still not happy?

Hon N.F. Moore: Not if they keep doing it all the time.

Hon KAY HALLAHAN: If they do it again in three months, it is very harsh to not give them a chance to remedy the breach.

Hon E.J. CHARLTON: We have to remember that tenants usually do not want to leave the premises, and there are procedures they must follow if they do wish to leave -- by giving notice, and so forth. Owners have a procedure they must follow if they want tenants to vacate the premises. This is obviously an area we do not know much about because the Bill is not yet in place and we have not yet seen what can happen, but we want to put in place a backstop so that tenants know that if they continue to breach the agreement they stand the chance of losing occupancy of the premise other than by the ordinary methods. This amendment would put in place the opportunity for the tribunal to tell the tenants to remedy the situation because they have broken the agreement two or three times -- or whatever the case may be -- and the owner is then in a position to take action to evict them.

Hon N.F. MOORE: Clause 62(1) says --

> An owner may give notice of termination of an agreement to the tenant on the ground that the tenant has breached a term of the agreement and the breach has not been remedied.

So if the breach of the agreement has been remedied, notice of termination cannot be given; therefore the tribunal cannot hear the matter. If we agreed to remove the words "and the breach has not been remedied", that would give the owner the right to give notice of termination of the agreement, and the tenant could then take the matter to the tribunal, which could rule against the owner if it was of the view that the owner was being unreasonable. I draw the Minister's attention to subclause (4), which says --

> Where notice of termination is given under this section upon the ground of a breach of the agreement to pay rent --
>
> (a) the notice is ineffectual unless --
>
> (i) notice of the breach is given to the tenant not less than 7 days before the notice of termination is given; and

So in effect we have to wait seven days after the rent is not paid before notice of termination can be given, but if the tenant still does not pay his rent, another seven days' notice is required before that rent can be asked for, and if the tenant then remedies the breach by paying the rent, the owner cannot do anything about it but has to sit back and wait. It could happen that every time the rent is due, it is paid a week or so late. A person could have a dog and take that dog out every time somebody complains about it, and then bring it back again, so remedying the breach, which means the owner cannot give notice of termination. So we are allowing for a continuation of breaches of an agreement, which are remedied when the owner complains, but ultimately the owner is driven to distraction because the tenant is not abiding by the spirit of the agreement, but the owner cannot get rid of him.

Hon KAY HALLAHAN: I say to Hon Eric Charlton that at present a landlord can go to the Local Court to remedy these problems, so we do have legislation that currently applies and we are not in unknown land. We are concerned that we might end up with a rise in vexatious litigation because people could take action on trivial matters. If a tenant is causing trouble by continuing to breach the agreement, and the owner would prefer to get rid of him, the requirement to give 60 days' notice applies anyway. We are talking about someone breaching an agreement and not remedying the situation. If remedial action were taken I am not sure that an owner would not be pleased to have a tenant who complies with the terms of the agreement. Hon Eric Charlton said that no legislation was currently in place and that we are working in the dark. This is not so because under the Local Courts Act landlords go to the Local Court to seek a solution. The provisions of this clause are significant and members should consider them very carefully before adopting the amendment before us. The amendment should be considered in the light of a Bill which is trying to bring in processes which already exist. This legislation provides real incentives to remedy breaches, and penalties under clause 15 where breaches are not remedied. In the case of ongoing troublesome tenants without significance, members seem to be hooked on saying if remedial action is taken the owner then cannot taken action -- if the situation is remedied why should the owner take action? With regard to the suspicion that a dog is being brought back to a property and a remedy being taken again, the owner should say, "I am giving notice; the tenant is more trouble than he is worth." That is the way to go. The provisions should not be short-circuited when people have been shown to be in breach of the agreement and not prepared to remedy the situation. I think we should be careful with this clause.

Hon E.J. CHARLTON: Would it be an advantage, considering the way we sorted out a problem prior to the luncheon break, to take a few minutes to look at the clause? The two main clauses to be dealt with are clauses 62 and 71 concerning breaches and terminations. If we were to have a few minutes' discussion to allow for an exchange of views we may save time during the remainder of the day.

Sitting suspended from 3.43 to 4.05 pm

Hon E.J. CHARLTON: As I stated before, the terminology of this clause makes its intent unclear. This clause is related to clause 71 which also deals with termination. We are concerned about the situation which may arise where a tenant repeatedly breaches his agreement. It is important that the tribunal take account of all the breaches. It must not simply be a matter of remedying the breach, proceeding until the next one, and so on, until the owner decides that he has to use one of the other provisions of the Bill -- perhaps the 60 days' notice -- to get rid of his tenant and find somebody else. I have had discussions with

other members during the afternoon tea suspension, and have decided that I will not proceed with any amendments to clause 62. I will deal with it either when we get to clause 71 or, depending upon a couple of other possible solutions which have been put forward, I may move to recommit clause 15.

Hon N.F. MOORE: The spirit of compromise has not totally washed over me. I am not altogether satisfied with the arrangements that have been reached; however, I will save the time of the Chamber by not pursuing the argument any longer. I have another question about subclause (7), which says --

> (7) Failure by a tenant under an agreement that creates a tenancy for a fixed term to deliver up vacant possession of the premises at the expiration of the term does not constitute a breach of the agreement.

I wonder why it does not. If somebody has a fixed term which expires on a certain date, and does not shift out, that is a breach of the agreement. I would like to know why this clause is there.

Hon KAY HALLAHAN: There is a different mechanism for dealing with the situation once the term of the agreement has been concluded. That is why it does not constitute a breach.

Hon N.F. Moore: What is the mechanism?

Hon KAY HALLAHAN: The honourable member will find the remedy to that situation in clause 72.

Hon N.F. MOORE: I will read clause 72 in a moment. It is absurd to have an agreement between two people which exists for a certain period of time, and if the tenant does not vacate the premises at the end of the agreement, it is not a breach of the agreement. If I can look a bit further ahead, I presume the owner has to take action to have the tenant removed under the provisions of clause 72. It seems a crazy situation that a person who does not vacate the premises is not in breach of the agreement. It seems absurd to me.

Postponed clause put and passed.

Postponed clauses 63 to 68 put and passed.

Postponed clause 69: Notice of termination by owner or tenant where agreement frustrated --

Hon N.F. MOORE: This clause deals with notice of termination by the owner or tenant where the premises are destroyed or rendered uninhabitable or cease to be lawfully usable or are appropriated or acquired by any authority by compulsory process. In the event that that happens an owner must give seven days' notice of termination and the tenant must give two days' notice. What happens in the event of an earthquake rendering the house uninhabitable -- say it collapses? Presumably the owner has to give seven days' notice of termination, but clearly the tenant cannot live in the house. Is the owner under any obligation to find accommodation for the tenant for the seven days, and where the tenant has to give two days' notice, does it mean he has to pay two days' rent?

Hon KAY HALLAHAN: Under subclause (1)(a) the rent ceases immediately once the premises become uninhabitable. The seven days' notice is in the Bill so as to give the tenant that time to collect any property which may be salvageable. It is thought that people may need some time to do that in some circumstances. They may not be able to do it immediately.

Hon N.F. Moore: Is there any obligation on the owner to provide alternative accommodation?

Hon KAY HALLAHAN: No.

Postponed clause put and passed.

Postponed clause 70 put and passed.

Postponed clause 71: Application by owner for termination and order for possession --

Hon E.J. CHARLTON: When I requested the brief discussion with the Minister prior to the afternoon tea suspension I included all those members who are involved in the Bill, and it did not mean Hon Norman Moore was not invited or encouraged to participate. I did that because clauses 62 and 71 are central to completion of the debate in the Committee stage,

and I thought it was better to go through that channel and get some answers to questions so that we knew where we stood and we would achieve the best possible results. We want to insert a new subparagraph (ii) so that the referee will take into account any previous breaches of the agreement by the tenant where an owner is applying for termination of an agreement. It will not be good enough for the referee to say everything is okay and it looks as though the situation has been fixed up. The important thing is that he should take into account any previous breaches of the agreement by the tenant. We are specifying that these previous breaches cannot go unrecognised and the referee must take them into consideration in handing down his decision. It could be said that he would do that anyway and that it is up to the owner to specify those previous breaches when lodging his application for a termination order. We are seeking to put a situation in place whereby everybody is clear, particularly owners, that this is what the referee will do.

Hon KAY HALLAHAN: I expect that the tribunal would do that in any case, so the Government has no problem in accommodating this amendment because it spells out the situation quite clearly. It is in the spirit of trying to have greater parity, despite some of the comments that have been made.

Hon N.F. MOORE: We agree that this is a reasonable compromise in view of the previous amendments foreshadowed and not moved, and the decision made to take a different direction.

Hon E.J. CHARLTON: I trust that the Committee will agree to recommit clause 15 for the purpose of inserting similar words.

Hon Kay Hallahan: Do we need them?

Hon E.J. CHARLTON: Clause 15 on page 12 deals with applications for relief and orders thereon and it will be necessary to insert after line 26 a new subclause (4) stating that upon an application in respect of breach of an agreement, the referee shall take into account any previous breaches of the agreement by the tenant. I seek the Minister's assurance on that point.

Hon KAY HALLAHAN: I am happy to support the move to recommit clause 15 and to add a new subclause at line 27. We should now proceed with the inclusion to clause 71.

The clause was amended, on motion by Hon E.J. Charlton, as follows --

Page 41, line 20 -- To insert after "breach" the following --

, but in every case the referee shall take into account any previous breaches of the agreement by the tenant

Hon N.F. MOORE: I move an amendment --

Page 41, lines 25 to 30 -- To delete subclause (4).

I draw the Committee's attention to the wording of this subclause which in simple language means that the owner must prove he was not motivated to give notice to the tenant by virtue of the fact that the tenant had complained to a public authority or taken steps to secure or enforce his rights as a tenant. The onus of proof should be the other way around. The tenant has complained that he has been convicted because he went to a public authority and in my view the onus of proof should be on the tenant to convince the tribunal that he has been victimised because he took that course of action. The onus of proof should be on the person making the allegation, not on the person alleged to have done something. It is a reversal of the normal requirements for proof in such hearings. I ask the Committee to agree to delete this subclause which is totally unjust.

Hon KAY HALLAHAN: I ask the Committee not to support the amendment moved by Hon Norman Moore. The provision is included to provide a safeguard against victimisation of tenants where there might be retaliation because a tenant has complained, for example, to the Small Claims Tribunal. People will tell me that landlords do not do such things and, in that case, the clause is innocuous and inoperative anyway. In power relationships tenants can be very vulnerable, as they have been in this State. We should provide this protection and it is easy for an owner to prove that he was not wholly or partly motivated to give notice because a tenant complained to a public authority. I am not sure whether it is a reversal of other requirements for people to prove their innocence. This Bill does not run on the normal legal

processes; when dealing with Bills with conciliation as the main thrust rather than a conflict determination, we are dealing with a new area of legal procedures .

Hon N.F. Moore: It has nothing to do with conciliation, it is about the onus of proof.

Hon KAY HALLAHAN: The whole Bill is about conciliation, which is turning upside down some of the ways in which we approach things in our community. I ask the Committee not to support the amendment.

Hon N.F. MOORE: I am not against the safeguard, but I am against the principle that the person accused of doing something has to prove that he did not do it, whereas the person making the allegation does not have to prove it. We should either delete the whole clause, which I do not think will have a great effect on the Bill, or rewrite it so that the burden of proof is on the tenant. That would be the proper way of handling this matter. The Government has it totally the wrong way around, so I will proceed with the amendment to delete the clause, because I do not think the deletion of the clause will affect the Bill in total. If I am convinced that it will, I shall move another amendment that the burden lie on the tenant to prove that the owner was motivated by that fact.

Hon E.J. CHARLTON: To get that clear, we are talking about any proceedings on an application under this clause where the referee is satisfied, and so on and so forth. We are talking about proceedings at the tribunal, are we not?

Hon N.F. Moore: Yes.

Hon E.J. CHARLTON: Hon Norman Moore is concerned about subclause (4). He is worried, as I would be, that it is for the owner to prove his position. I would have thought that would be in hand anyway -- this business about the burden lying on the owner to prove that he was not motivated by that fact. We are talking about that question being before the tribunal, are we not? If he is at the tribunal, obviously he will put his position forward. It is a question of the onus of proof.

Hon N.F. MOORE: The owner is required to prove before the tribunal that he is terminating the agreement because the tenant has taken certain action. The tenant is complaining that the owner is evicting him because the tenant has been to a public authority. The onus of proof should be on the person making the allegation. In this case, the tenant is clearly making an allegation that the owner is evicting him because he, the tenant, went off to see a public authority, namely the Department of Consumer Affairs. Because the tenant is making that allegation, it should not be for the owner to prove that it is not correct. This clause provides for the owner to prove that it is not correct, and that is the wrong way around.

Hon KAY HALLAHAN: It is a case of the owner having to establish before the tribunal that this is a bona fide termination. That is all the clause is saying. I cannot see a problem in that, or too great a demand. Many more demanding things will be brought up than that, but it is up to the owner to establish that the termination is a bona fide one.

Hon E.J. CHARLTON: I cannot see a problem here because we are talking about this application. If the owner takes proceedings, he will obviously put forward reasons why he wants something to be done. If within a period of six months before the notice is given by the owner the tenant complains to a public authority, or takes steps to secure his rights as a tenant, I cannot see why the owner would not do that anyway. He wants that to happen; he is the one who has initiated it, so obviously it would be in his interests to have the whole thing as part of the proceedings.

Hon N.F. MOORE: Referring back to subclause (3), the referee may refuse to make an order if he is satisfied that the owner is wholly or partly motivated to give notice by the fact that the tenant has complained to a public authority. So if the referee is of the view that the owner is seeking to terminate a tenancy because the tenant has been to a public authority, subclause (4) then requires that the owner prove that he did not go to a public authority.

Hon Kay Hallahan: No, that is not a reason; not that he didn't go.

Hon N.F. MOORE: All right, it is not a reason, but why should the tenant not be the one? The tenant is going before the tribunal to say, "Section 71 is being used to evict me from these premises. I have read the Act, and subsection (3)(b)(i) says that if the owner is wholly or partly motivated by the fact that I went to see the Department of Consumer Affairs the referee may refuse to make the order", in which case the referee may refuse to make an order.

Hon Kay Hallahan: Yes.

Hon N.F. MOORE: It is then a requirement for the tenant, who is making that allegation that this is the reason why he is being evicted, to prove it; not for the owner against whom the allegation is being made to prove that it did not happen. Normally the onus of proof is on the person making the allegation to prove that it did happen. That is the principle of the onus of proof; but this clause has that principle the wrong way around.

Hon KAY HALLAHAN: The honourable member seems to be hooked up on a particular point which I am not sure is helpful to the understanding of this clause. All the owner has to do is to show that he or she had good reason for making the application for the termination. All the rest disappears. I do not want to go into legalise.

Hon N.F. Moore: That is a pity, because that is what we are talking about. It is a question of law.

Hon KAY HALLAHAN: The owner's defence to that allegation is that he has good reason for proceeding with the termination. Why would he go without good reason?

Hon E.J. CHARLTON: The tenant has complained to a public authority because of a problem. The owner then proceeds to bring this other action. If the owner wants the tenant out, he will simply say, "These are the reasons I want these proceedings to take place." It would have nothing to do with whether the tenant went to some authority or to whom he talked. The owner wants him out because he has done something wrong according to the agreement, not because he has talked to someone else. I can see no problems.

Hon N.F. MOORE: Quite clearly the honourable gentleman cannot. He has not thought through the principle of what attaches to proving something in a court of law. This clause deals with a tenant who tells the tribunal, because he is being evicted, that he should not be evicted because he believes he is being discriminated against by the owner because he went to see the Department of Consumer Affairs. But it is not for him to prove it; it is for the owner to prove that he did not do it.

Hon E.J. Charlton: Can the owner not say that is totally out of order?

Hon N.F. MOORE: Of course he can, but that is not what I am talking about. I am talking about whose responsibility it is to prove certain things. It is the responsibility of a person making an allegation to prove it, not the responsibility of the person having an allegation made against him to prove that it was not the case. If I cannot get that through, I will proceed with the amendment.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Ayes.

Division resulted as follows --

Ayes (10)

Hon Max Evans	Hon P.H. Lockyer	Hon Neil Oliver	Hon Margaret McAleer
Hon Barry House	Hon G.E. Masters	Hon W.N. Stretch	*(Teller)*
Hon A.A. Lewis	Hon N.F. Moore	Hon D.J. Wordsworth	

Noes (13)

Hon J.M. Brown	Hon John Halden	Hon Garry Kelly	Hon Fred McKenzie
Hon T.G. Butler	Hon Kay Hallahan	Hon Mark Nevill	*(Teller)*
Hon J.N. Caldwell	Hon Tom Helm	Hon S.M. Piantadosi	
Hon E.J. Charlton	Hon Robert Hetherington	Hon Doug Wenn	

Pairs

Ayes	Noes
Hon John Williams	Hon Tom Stephens
Hon H.W. Gayfer	Hon B.L. Jones
Hon Tom McNeil	Hon Graham Edwards
Hon C.J. Bell	Hon J.M. Berinson
Hon P.G. Pendal	Hon D.K. Dans

Amendment thus negatived.

Postponed clause, as amended, put and passed.

Postponed clauses 72 to 76 put and passed.

Postponed clause 77: Order that premises are abandoned --

Hon N.F. MOORE: This is an unusual clause, if I can use that adjective to describe it. It provides that where an owner believes the tenant has abandoned the premises the owner may apply to a referee for an order declaring that the tenant has abandoned the premises, so if the owner goes around, after giving due notice to inspect, and finds that the place is deserted, instead of being able to walk in, secure the place, and take possession of it he must apply to the referee for an order declaring that the place has in fact been abandoned. If we look back to the previous clause, we know how long it takes to get a hearing. We are told that hearings shall be determined wherever practicable within 14 days. That 14-day period would probably be a minimum, so for that 14 days the property is unoccupied and not declared abandoned. Until it is declared abandoned the owner cannot do anything with it; he must still abide by the agreement.

Hon Garry Kelly: Fourteen days would be a maximum, wouldn't it?

Hon N.F. MOORE: It is better the member does not get involved now because that will just add to the pain of all this.

The point I am trying to make is that, in the event that the place appears to be unoccupied and abandoned, the owner makes an application to the tribunal to have it declared abandoned and must wait until such time as there is a hearing and an order is made. Only when the order is made is the property deemed to be abandoned. During that period of time I presume all the other conditions of the contract will continue to apply, such as how often the owner can go and inspect the premises, and so on. I wonder whether this is not a slightly ridiculous clause.

Hon KAY HALLAHAN: It is not at all a ridiculous clause; in fact, it makes it easier for the landlord to bring the whole matter to an end. Sometimes it is not clear that tenants actually have flown the coop. Sometimes they leave personal possessions, furniture, and so on behind and this clause allows the whole matter to be terminated and places the landlord back in control of the property and able to make arrangements to relet it. It saves the whole business of getting a tenant whom the landlord may not be able to find into the tribunal, and allows him to proceed as expeditiously as possible in making new arrangements for the property. So it is not at all a ridiculous clause; it is a tidying-up clause and there are a number of them from time to time where there is an inconclusive situation and it may not always be clear, although there might be grounds for reasonable belief, that the tenants have gone -- they might not have been seen, and so on. It provides a means by which the landlord can speed things up and have the situation clarified.

Hon N.F. MOORE: I would like the Minister to tell me whether I am right when I say that it could take 14 days or even longer to have a hearing, or maybe there is provision somewhere that I have not found for an urgent hearing under those circumstances.

Hon KAY HALLAHAN: Urgent hearings are at the discretion of the tribunal, so the tribunal can hear a matter as quickly as it determines desirable to do so. However, this certainly is a much quicker process for doing it than the landlord's having to give notice to the tenant to terminate. This does allow the landlord to get on with the action without having to involve the tenant in it at all. I would have thought this a reasonable provision in such circumstances. I reiterate that if it is deemed to be an urgent case the tribunal can decide to hear it in under 14 days, but in any case it is a much quicker process than the landlord's having to involve the tenant in a notice of termination in order to bring the agreement to an end.

Hon N.F. MOORE: I am interested in that because in most cases it probably will take a few days, but I would expect that with the amount of business this court will have it will take at least 14 days and during that time the owner's right of entry is specified in clause 46. Under that clause, unless he can establish an emergency he cannot go onto the property in less than seven days for the normal purpose of inspecting the premises; he can go to collect the rent, but of course there is nobody there; he can go and carry out necessary repairs or maintenance

after giving the tenant 72 hours' notice, but the tenant is not there so he cannot do that either. He must then give 21 days' notice for the purpose of showing the premises to prospective tenants, and similarly with prospective purchasers of the property – with the permission of the tenant at any time. As I understand, during the period that the owner is waiting for the referee to make an order he cannot get in within seven days. That is against the interests of maintaining the property in a reasonable state of repair. If it becomes obvious that premises are not inhabited because the milk bottles are left out or newspapers are on the front lawn, people might find them an easy mark to break into. I wonder whether there is a better way of doing this. However, if there is not a conscious decision by the tribunal to have an urgent hearing, a real problem will develop in relation to some properties.

Hon KAY HALLAHAN: I take the member's point about maintenance, but if it is a case of security of a building I guess an emergency would exist and the matter would get prompt attention.

Hon N.F. Moore: Who decides what is an emergency.

Hon KAY HALLAHAN: The tribunal.

Hon N.F. Moore: The person has to get before the tribunal; he has to lodge an application for a hearing.

Hon KAY HALLAHAN: I do not understand why the honourable member interjected and said that that cannot be the case.

Hon N.F. Moore: The tribunal does not decide what is an emergency; people have to wait 14 days to get before the tribunal, anyway.

Hon KAY HALLAHAN: People can go to a clerical worker and say that an emergency exists and they wish to put a case for a quick hearing because they need to secure a property to do this or that to it. The tribunal will then make a determination to hear the matter and speed it up in that case. Nobody wants property sitting around in a vulnerable state with a possibility -- although it does not happen much in this State -- of squatting. I suppose there is a greater likelihood of vandalism, and people are well aware of the damage to property that can result from that. I think that would be an area for an urgent hearing, which would cover the member's concern.

Postponed clause put and passed.

Postponed clause 78 put and passed.

Postponed clause 79: Abandoned goods --

Hon N.F. MOORE: This clause takes about three pages of the Bill to describe what should be done if goods are abandoned on a person's property. This will add to an owner's costs and this cost will eventually be passed on to tenants. This clause, together with other clauses of this Bill, will militate against owners ultimately because the cost of rent will increase as a result of the complicated and convoluted way in which goods found on premises must be dealt with.

Hon KAY HALLAHAN: I agree with the member that this is a lengthy and complex clause, but it is designed to be much fairer to owners than is the case under present law. It ensures that neither party is treated unfairly.

Hon MARGARET McALEER: It is not clear to me whether, under subclause (2), an owner must bear the cost of storage for 60 days and, if so, whether he is compensated for that.

Hon KAY HALLAHAN: If the value of the goods to be stored is deemed to be less than the cost of storage then the owner is in a position to dispose of those goods.

Hon MARGARET McALEER: So somebody values the goods and it is then decided whether or not they should be stored because the cost of storage would be greater than the value of the goods. However, if they were more valuable than the cost of storage, which is pretty high, who pays for the storage of these abandoned goods? The owner who had to store them on behalf of somebody else?

Hon KAY HALLAHAN: The owner is obliged to store them, is then able to sell them and, if there is a shortfall, is compensated from the fund, so the member's worst fears are not confirmed.

Postponed clause put and passed.

Postponed clauses 80 to 85 put and passed.

Postponed clause 86: Letting fees --

Hon N.F. MOORE: I move an amendment --

Page 51, line 6 -- To delete "4" and substitute

2

This clause provides that a real estate agent may charge a letting fee not exceeding four weeks' rent. In my view, that is too much. If one looks at previous clauses one sees that the tenant is required to pay one week's letting fee, so presumably the other three weeks' letting fee would come from the owner. Therefore, under this legislation an agent is entitled to ask an owner for three weeks' letting fee. That does not necessarily mean that the owner would pay that fee but it does provide the agent with the right to make that request. A much fairer arrangement would be that a letting fee of two weeks' rent be charged, one week paid by the owner and one week paid by the tenant. That would be sufficient recompense for the onerous task the agent has in relation to these letting fees.

Hon E.J. CHARLTON: I move an amendment --

Page 51, line 6 -- To delete "4" and substitute

2

The reasons for this amendment have been stated previously. It is excessive to suggest that four weeks' rent be paid in this regard.

Hon KAY HALLAHAN: The Government takes the position that this Bill maintains the status quo in current practices, and it does not support the amendment.

Hon N.F. Moore: I wonder whether maintaining the status quo has anything to do with the reason why REIWA eventually supported this Bill, or whether REIWA agreed to support the Bill prior to its knowledge of the four weeks' letting fee being included.

Hon E.J. CHARLTON: The Minister obviously does not know.

Hon Kay Hallahan: I have the right to not respond.

Hon N.F. Moore: The Minister thinks a deal is a four letter word.

Hon E.J. CHARLTON: I do not know anything about deals, but it seems to me that if real estate agents are going to be in this position, we are giving an incentive to them to recommend tenants who are not the best or who do not measure up to other prospective tenants, so that they can keep turning them over and double their money. I do not believe that encourages the sort of business we hope will result from this legislation. A letting fee of four weeks' rent would be a disincentive to having tenants who intend to stay for a long time. Owners and real estate agents have the opportunity to set the rent and the letting fees or commissions, and it should not be in the form of requesting tenants to pay four weeks' rent as a letting fee.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell, I cast my vote with the Ayes.

Division resulted as follows --

Ayes (12)

Hon J.N. Caldwell	Hon P.H. Lockyer	Hon D.J. Wordsworth
Hon E.J. Charlton	Hon G.E. Masters	Hon Margaret McAleer
Hon Max Evans	Hon N.F. Moore	*(Teller)*
Hon Barry House	Hon Neil Oliver	
Hon A.A. Lewis	Hon W.N. Stretch	

Noes (11)

Hon J.M. Brown	Hon Kay Hallahan	Hon Garry Kelly	Hon Doug Wenn
Hon T.G. Butler	Hon Tom Helm	Hon Mark Nevill	Hon Fred McKenzie
Hon John Halden	Hon Robert Hetherington	Hon S.M. Piantadosi	*(Teller)*

Pairs

Ayes	Noes
Hon John Williams	Hon Tom Stephens
Hon H.W. Gayfer	Hon B.L. Jones
Hon Tom McNeil	Hon Graham Edwards
Hon C.J. Bell	Hon J.M. Berinson
Hon P.G. Pendal	Hon D.K. Dans

Amendment thus passed.

Postponed clause, as amended, put and passed.

Postponed clauses 87 to 89 put and passed.

Schedule 1 --

Hon E.J. CHARLTON: Clause 2(2) of the schedule deals with the payments made under subclause (1), which shall be paid within seven days of receipt of the bond in the case of persons other than real estate agents, or within 28 days in the case of real estate agents. Why is such a preference shown to real estate agents, when everyone else is forced to pay within seven days? Unless the Minister can convince me otherwise, I believe everyone should have the same requirement to pay within 28 days, and I therefore move an amendment --

Page 53, line 3 -- To delete "7" and with a view to substituting "28".

Hon N.F. MOORE: I agree with the amendment moved by Hon Eric Charlton, but before speaking about that I want to say it is an absolutely scandalous situation that this part of the schedule requires the payment of all the interest from bond moneys into a rental accommodation fund, to be administered by the Government, and to be used to administer the Act and to pay for welfare housing. I called it taxation when we dealt with it before. I cannot see why tenants ought not to receive interest on their bonds.

Hon Garry Kelly interjected.

Hon N.F. MOORE: We passed legislation about that, and I am prepared to agree with it. However, on many occasions in this unfortunate situation under which we operate where tenants receive interest on their bond, this depends on an arrangement with the landlord. Under this proposal no tenant will receive interest on the bond and the Government will use the revenue to carry out the business of Government which is normally paid for out of taxation. Generally, revenue raised by Government departments goes into the Consolidated Revenue Fund and is not used by the collecting department; and the legislation does not specify how that revenue will be allocated. Here we have the situation where revenue received is to be used to administer a department and to enable the Act to function; it is also proposed that the revenue will be used for welfare housing. That provision goes against the normal principles in connection with the way in which income is ultimately disbursed.

The proposal in this schedule for the disbursement of these funds is the worst part of this Bill. I find the provision very hard to accept, and while I will continue to argue against it, I realise that it will ultimately become a fact of life. However, when the tenants realise the effects of this legislation the Government will wear it. The Government is not only taxing their income but also taxing a component of their tenancy agreement; that is, a double dose of taxation. Why should tenants pay for the total cost of the operation through interest on the bond when owners do not pay anything? On the other hand, the owners will say they pay enough taxation through land tax and rates, and that they have already contributed their share.

The whole schedule is based on a wrong premise. To improve the situation, Hon Eric Charlton has sought to make the conditions applicable to an owner the same as those that apply to estate agents when considering how long bond money may be held. I have been told no deal exists between the Real Estate Institute of WA and the Government so I can only assume that this is a reflection of normal practice -- that real estate agents can keep bond money for 28 days and use it however they deem necessary through trust accounts. Of course the more money placed in trust accounts the better placed they are for other financial transactions. They have prevailed upon the Government to allow for such placement of funds to be for a period of 28 days. We cannot see why an owner who is doing exactly the same thing with bond money as an agent should not be entitled to hold onto it for 28 days before payment into a rental accommodation fund or building society.

Hon KAY HALLAHAN: I note Hon Norman Moore's philosophical opposition to the alleged wrong premise on which the schedules are based. I hope members will reconsider whether it is necessary to proceed with this amendment. Under the Real Estate and Business Agents Act 1978 agents are obliged to immediately pay moneys into a trust account. An ordinary landlord who is not an agent has no such obligation -- which is why the schedule allows seven days in which to place the money into a special bond account. Agents have no right to hang on to such moneys for 28 days at all; they are obliged by law to pay the moneys immediately into a trust account and then obliged within 28 days to move the moneys over to a special bond account. No deals have taken place and no deals will be taking place in this regard. Landlords do not have the same legal obligations as real estate agents, and for that reason the seven day requirement was included. It is unreasonable for anyone to be able to hang on to these moneys for 28 days, and to make whatever use they want and not lodge it. We are contemplating a serious situation, and I hope members will reconsider the necessity to support it.

Hon N.F. MOORE: What happens to the interest earned on funds lodged in the trust account of real estate agents?

Hon KAY HALLAHAN: The answer is a complex one because some funds ultimately go into a real estate fidelity fund and so on. I do not have the information the member requires.

Hon N.F. MOORE: Can an agent acquire part of those funds for his own purpose, or is it all accounted for in some other way? If an agent is able to use some of the interest on the bond moneys for his own purposes during the 28 days, the same situation should apply to owners. If the Minister can convince me that an agent does not in any way benefit personally or in a business sense from the interest during that time, I am prepared to support the Government on this amendment.

Hon E.J. CHARLTON: Hon Norman Moore's final point is correct. We are seeking to make sure that one group is not disadvantaged by this schedule. If real estate agents are required to pay these moneys directly into an account within seven days, owners should be required to do so as well.

Hon N.F. MOORE: We have already agreed that agents can charge a letting fee and owners cannot, and this provision is an additional discrimination against owners. If there is an advantage here to real estate agents over owners in this schedule, I am inclined to support the amendment; if there is no advantage I will not go along with it.

Hon KAY HALLAHAN: I have been leafing through the Real Estate and Business Agents Act 1978 during the short time available. That legislation contains 33 clauses of controls over funds administered by real estate and business agents which are not applicable to private landlords' administration of such funds. Therefore I maintain that it would be a very unsatisfactory situation to have moneys not paid into trust accounts or special bond accounts for the whole period of 28 days; and that seven days is ample time for such money to be floating around.

Hon A.A. LEWIS: The requirement for real estate agents to pay bond money into trust accounts came about because the tenant or the owner has no other way to ensure control over those funds. An owner can use his property as security, but the real estate agent has no such backing. Hon Norman Moore is quite correct in saying that the owner can hold this money without having to have a trust fund.

Hon E.J. CHARLTON: Surely the Minister can be more specific. We want this matter to be clear-cut for everyone involved. The Minister says that there are 33 clauses, but it does not matter if there are 133. Is the Minister saying that if it is changed back from 28 days to seven days we will have to amend another Act?

Hon Kay Hallahan: No, I am not indicating that.

Hon N.F. Moore: If you make it 28 days for the agent you have to amend the Real Estate and Business Agents Act.

Hon Kay Hallahan: We could accept bringing them both back to seven days.

Hon N.F. Moore: Can you do that without amending the Real Estate and Business Agents Act?

Hon Kay Hallahan: That is no problem. That would not need amending.

Hon N.F. MOORE: I refer to clause 2(2) of the schedule. I assume that the Real Estate and Business Agents Act requires 28 days, and if we were to make this Bill seven days instead of 28 days, we would have to change that Act.

Hon Kay Hallahan: No.

Hon N.F. MOORE: Could the Minister tell me where I am wrong.

Hon KAY HALLAHAN: The Real Estate and Business Agents Act says that the money is to be paid forthwith into a holding account. If we make the term seven days in this Bill, we will not conflict with that because that Act already has the word "forthwith" in it. What we would be saying is that within seven days it has to be in the special bond account. It means the money would have less time in the real estate agent's trust account, and the seven days could apply to both equally. At present, under the Real Estate and Business Agents Act, estate agents are obliged to put the money immediately into their trust accounts. This Bill does not cut across that Act.

Hon E.J. CHARLTON: Having heard the Minister's comments, I do not think we are taking anything away from the real estate agents by bringing them back to seven days.

Hon N.F. MOORE: I think 28 for both would be better. As I understand it, when the real estate agent collects the bond he immediately puts it into a trust account, then within 28 days of receiving it he pays it into the rental accommodation fund, the bank account, or building society to which it is designated. While the money is in the agent's trust account for up to 28 days, does he derive any personal benefit from it? Does the estate agent use his trust account for any purpose other than maintaining a bank account? I would like the Minister to provide me with the answers to those questions.

Hon MAX EVANS: There is no interest accruing on the trust account which benefits the Real Estate Institute of Western Australia member.

Hon KAY HALLAHAN: Page 47 of the Real Estate and Business Agents Act provides --

> 68. (1) Every agent who holds a current triennial certificate shall maintain at least one trust account, designated or evidenced as such, with a bank in the State, or with a building society in the State investments in which are authorised trustee investments and shall, as soon as practicable, pay to the credit of that account all moneys received by him for and on behalf of any other person in respect of transactions.
>
> (2) Moneys so paid into any such trust account shall not be available for the payment of the debt of any other creditor of the agent, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditors.

I do not know whether that answers honourable members' queries. The point raised by Hon Max Evans that no interest accrues, and therefore there is no gain, answers the question raised by Hon Norman Moore.

Hon MAX EVANS: It is similar to the legal practitioner's trust account. The money is held in the trust in case of defalcation. One of the reasons why a lot of real estate agents' accounts were transferred from the Swan Building Society was because that building society wanted the benefit of those trust accounts.

Hon E.J. CHARLTON: The reason the National Party is moving this amendment to delete seven and substitute 28 is to enable everybody involved to be evenly placed to advance the regulations in the Bill. The real estate agents have to pay the money into the trust account straight away. As long as everything is legal -- and we have seen some examples of where the law has been broken -- that is to the benefit of everyone involved in the transaction. I cannot understand why the Government will not accept the amendment and say that for various reasons the real estate agents have to have 28 days, but the extra time will not be granted for the owners.

Hon Garry Kelly interjected.

Hon E.J. CHARLTON: Those sorts of points may be argued. We are not arguing against that. The Government says that owners have to put their money in an account for seven days, but the other Act has it for 28. These are people who run their own affairs without an agent, and have to negotiate the whole deal themselves. They will not gain the benefit of this extra time. The impression given to those people by this Bill is that the real estate agents have 28 days, but even though the money has to be paid in by them --

Hon Garry Kelly: They benefit from it.

Hon E.J. CHARLTON: No, they do not. Why not give these people an incentive? We have just helped the tenants by reducing the provision for four weeks' rent in advance to two. The Government should not try to establish that the owner will get any advantage out of having the extra 21 days.

Hon MAX EVANS: I support Hon Eric Charlton. The trouble with stipulating seven days is that after seven and a half or eight days the law has been broken. Seven days is not a practicable length of time to get money out of one bank account and into another, especially as it includes the weekend. I would ask if all the members are able to pay all their accounts like licence fees on the due dates. A lot of these people have only one or two houses or properties. They do not rush into town every day; they do not have an electorate secretary who can go to a bank for them and draw a cheque. They have to do it themselves. It would not be so bad if one was not breaking the law in seven and a half days, but one could be had up for doing that and one is not committing any great crime by not putting a cheque into a particular account. The owner probably puts it into his own account before transferring it across. The owner has the assets; he owns the house or has an equity in the house, so the money is not going to disappear. It is not as though it is in unsafe hands.

Hon N.F. MOORE: I suggest that we proceed with the amendment moved by Hon Eric Charlton for all the good reasons given by Hon Max Evans. Twenty-eight days for both is the most appropriate way to go and I suggest we vote on that.

Hon KAY HALLAHAN: I have given quite a deal of consideration to this point throughout the debate on the schedule and would like to put to the Committee the notion that we make the time 14 days for both. From our point of view, somebody having access to the money or having it in their pocket and doing Christmas shopping or whatever for 14 days is a much preferable situation to 28 days. It gives real estate agents plenty of time to shift it out of their trust accounts and into the special bond account. I foreshadow an amendment along those lines.

Hon MAX EVANS: If one is running a business like a big real estate agency one pays sales tax and group tax at the end of the month. One adds up the cash book and finds out how much is there. Real estate firms have hundreds of cheques coming in each month, maybe thousands, where an agent has a big rent roll. If the money is collected on the seventh of the month it is impractical to say a cheque has to be drawn on the fifteenth of the month so it can go into the special bond account. The agent should be able to rule off his book at the end of the month so that all the payments which came in on the seventh or tenth or fifteenth are included. There may be $50 550 in bond money, and it can all be drawn out and transferred with one cheque. There are 22 or 23 working days in a month and under this proposal a real estate agent would be drawing a cheque every day of the month. It is crazy. The original period of 28 days should stand, and at the end of the month all the money can be drawn and put on deposit. It would save a lot of unnecessary drawing of cheques, but under this proposal a big firm would be drawing cheques every seven or fourteen days.

Amendment put and passed.

Hon KAY HALLAHAN: I move an amendment --

> Page 53, line 3 -- To insert the number "14".

Under my amendment subclause (2) would say that --

> A payment under subclause (1) shall be paid within 14 days of the person's receipt of the bond.

The rest of the subclause would be deleted because if the subclause applies to both, there is no need to make reference to either party.

Hon E.J. CHARLTON: I withdraw my intention to substitute the figure "28".

Hon N.F. MOORE: I move a further amendment --

Page 53, line 3 -- To insert the figure "28".

This will replace the figure "7" which we have just deleted. I do so for all the good reasons put forward by Hon Max Evans and by Hon Eric Charlton in his original amendment. If we were to reduce the time to 14 days for real estate agents we would be disadvantaging them. We have already taken two weeks' letting fee off them a couple of minutes ago. To suggest that they should reorganise their trust accounts to pay every 14 days instead of every 28 days is another move which will not help real estate agents very much. I cannot see any reason why we should agree to the reduction from 28 days to 14. No reason has been given why 28 days should not apply to owners as well.

Hon E.J. CHARLTON: The reason the National Party moved this in the first place was that we should not discriminate against one group of people in the industry. We initially wanted 28 days to bring the two periods into line because we believed there may be some reason why real estate agents needed 28 days. Obviously they do not. I accept it is a lot better for them to pay every 28 days rather than every 14 days, but that money is in the trust account and they do not get any interest, whereas an owner can take advantage of having the money for 28 days. That is the reason I will not support that figure. We wanted 28 days so there was no preference. I do not think the argument about it being inconvenient to pay twice a month instead of once a month holds much water. They are running a business and the money is in their trust account. The money will be paid in immediately and they do not write cheques once a month for everyone.

Hon N.F. Moore: It is helpful if they can do it that way and that is why it states 21 days.

Hon E.J. CHARLTON: That may be, but surely Hon Norman Moore accepts the other view that an owner should not be given preferential treatment over the people dealing with an agent.

Hon N.F. Moore: The attempted equity will be of no use to anybody. It would be better to leave it at 14 days for the owner and 28 days for the agent.

Hon E.J. CHARLTON: I do not agree with that.

Hon MAX EVANS: The real estate agents will not draw cheques every time a 28-day period comes up. It will be easier for them to draw one cheque at the end of the month, irrespective of how long the money has been in that account. It is a very simple accounting exercise. I am sorry Hon Eric Charlton is trying to drop the time allowed for the real estate boys from 28 days to 14 days. Talking on behalf of people in business, I think that is counterproductive.

Amendment on the amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before appointing the tellers, I cast my vote with the Ayes.

Division resulted as follows --

Ayes (9)

Hon Max Evans	Hon N.F. Moore	Hon Margaret McAleer
Hon Barry House	Hon Neil Oliver	*(Teller)*
Hon A.A. Lewis	Hon W.N. Stretch	
Hon G.E. Masters	Hon D.J. Wordsworth	

Noes (12)

Hon T.G. Butler	Hon Tom Helm	Hon Doug Wenn
Hon J.N. Caldwell	Hon Robert Hetherington	Hon J.M. Brown
Hon E.J. Charlton	Hon Garry Kelly	*(Teller)*
Hon John Halden	Hon Mark Nevill	
Hon Kay Hallahan	Hon S.M. Piantadosi	

Pairs

Ayes	Noes
Hon John Williams	Hon Tom Stephens
Hon H.W. Gayfer	Hon B.L. Jones
Hon Tom McNeil	Hon Graham Edwards
Hon C.J. Bell	Hon J.M. Berinson
Hon P.G. Pendal	Hon D.K. Dans
Hon P.H. Lockyer	Hon Fred McKenzie

Amendment on the amendment thus negatived.

Amendment put and passed.

Hon KAY HALLAHAN: I move an amendment --

Page 53, lines 4 and 5 -- To delete all words after the word "bond",.

Hon N.F. MOORE: I ask the Committee to vote against this amendment and leave the subclause as it is. It has been realised that it is not possible to get equity between owners and real estate agents; we are dealing with different animals and to remove the 28 days allowed to real estate agents would impinge upon their normal accounting procedures. It is not necessary to do so. When the Government drew up this legislation it was prepared to accept 28 days as fair and reasonable. That complies with normal business practice and means that any bond would be paid into the rental accommodation fund within the 28 days of receipt. Some of that money may have been in the account for 28 days and some for only one day. If the period is reduced to 14 days, the agent will be required to pay cheques to the rental accommodation fund on a more frequent basis, and it could even be every day of the month. That would place an unnecessary burden on the estate agent. The Committee should oppose the Minister's amendment.

Hon MAX EVANS: I ask Hon Eric Charlton to explain why the National Party is now prepared to have this period amended to 14 days for owners and agents.

Hon E.J. CHARLTON: Very simply because the Property Owners Association believes the provision discriminates against its members, in that real estate agents could allow this money to sit in their trust accounts and not be paid for 28 days, but private property owners to pay the money within seven days of signing an agreement. Members of that association could see no reason for that discrimination and that is why the National Party initially moved the amendment. Unless someone can convince me otherwise, I shall go along with that 14-day period for both groups.

Hon MAX EVANS: I do not go along with that argument, because the real estate agents do not get any benefit from the money in that trust account, but individual owners can gain some benefit in interest from that money.

Hon KAY HALLAHAN: I make it clear to the Committee that I thought the 28-day period was quite unsatisfactory. I discussed that with Hon Eric Charlton and we were able to agree to a period of 14 days for both groups. I ask the Committee to support the amendment to delete the words.

Hon N.F. MOORE: We have reached the ridiculous situation whereby if we agree to the Minister's proposition we shall severely disadvantage a group of people unnecessarily. It has already been established that it is not possible to have equity between owners and real estate agents because of the way in which funds are used.

I agree that we should try to equate conditions for the two groups but that cannot be done because one is required to put money into a trust account, on which no interest is gained, and the other can keep any interest gained. We have extended the period to 14 days for owners, which improves their circumstances, but if we reduce the period to 14 days for real estate agents, it will disadvantage that group in the way it operates its business. It would do them a great disservice and I hope the Minister will withdraw the amendment.

Hon E.J. CHARLTON: I do not know. I mean that the National Party discussed the matter with the Property Owners Association, which went out of its way to make its point. Its members were being disadvantaged. During the debate which has taken place, this thing has gone deeper and deeper. It has been pointed out where the real estate people stand. I am not convinced about the arguments which have been put forward to say that the real estate people

are being disadvantaged. Property owners are disadvantaged -- those who run their own businesses -- in that they have only seven days. Whether we want to give them an extra seven days and leave the real estate people at 28 days I do not know; that might be the subject of a further compromise. Obviously this Bill must go to another place, and the amendments must be accepted or rejected. I do not know how many times we can compromise to reach a satisfactory situation, but perhaps we should insert 14 days in the place of seven and leave the 28 where it is.

Hon KAY HALLAHAN: In view of the debate, I would be prepared to withdraw the amendment standing in my name for the deletion of these words.

Hon N.F. Moore: I commend the Minister on her good sense.

Amendment, by leave, withdrawn.

Schedule, as amended, put and passed.

Schedule 2 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Recommittal

On motion by Hon Kay Hallahan (Minister for Community Services), resolved --

That the Bill be recommitted for the further consideration of clause 15.

In Committee

The Chairman of Committees (Hon D.J. Wordsworth) in the Chair; Hon Kay Hallahan (Minister for Community Services) in charge of the Bill.

Clause 15: Applications for relief and orders thereon --

Hon E.J. CHARLTON: I move --

Page 12, after line 6 -- To insert the following subclause --

(4) Upon an application with respect to the breach of an agreement, the referee shall take into account any previous breaches by the tenant of the agreement.

Amendment put and passed.

Clause, as amended, put and passed.

Report

Bill again reported, with a further amendment, and the report adopted.

Third Reading

HON KAY HALLAHAN (South East Metropolitan -- Minister for Community Services) [5.56 pm]: I move --

That the Bill be now read a third time.

This has been a long and difficult Bill for the Committee to consider, and I pay tribute to the spirit of cooperation which existed. Some members made it clear they did not like the Bill at all, but in the end they contributed in a constructive way to the amendments. Other members did that throughout the passage of the Bill.

At this stage I extend my appreciation to the representative of the Department of Consumer Affairs for his advice throughout the course of the debate and also to the Parliamentary Counsel who has been here today to assist the Committee with amendments. While some members still have misgivings, this Bill is a watershed in Western Australia's consumer law legislation, and I hope that in the two years the Bill will run we will have an assessment of it which will show that it is serving our State well.

HON N.F. MOORE (Lower North) [5.57 pm]: In case it is suggested that I am one of those who became cooperative as the Bill went through the Chamber, I say that it is bad legislation

brought in at the wrong time of the year. It should never have been debated at this time. The Bill is a disaster; it is badly worded, hard to understand, and it will be very difficult for tenants and landlords to know what this legislation is all about. I expect all the interest paid on the bond money will be required for advertising and to educate people as to how the Bill operates. There will be little left over for public housing. The whole thing has been a charade and a disgrace.

Question put and passed.

Bill read a third time, and returned to the Assembly with amendments.

ADJOURNMENT OF THE HOUSE: SPECIAL

On motion by Hon J.M. Berinson (Leader of the House), resolved --

That the House at its rising adjourn until 3.00 pm tomorrow, Tuesday, 22 December.

House adjourned at 6.00 pm

QUESTIONS ON NOTICE

YOUTHFORCE, NARROGIN
Funding

555. Hon A.A. LEWIS, to the Leader of the House representing the Minister for Labour, Productivity and Employment:

Further to his answer to question 542 of 10 December 1987 on the removal of funds from Youthforce in Narrogin --

(1) What are the determined criteria for funding?

(2) Where does Narrogin fail in meeting those criteria?

Hon J.M. BERINSON replied:

(1) Applications for funds each year are evaluated as part of the total strategy for Western Australia as follows --

(a) Numbers of unemployed in the area to be serviced;

(b) direct application of funds to employment-related activity;

(c) other Federal and State services accessible to the unemployed;

(d) local response;

(e) project initiative;

(f) management and administration capability.

(2) Youthforce evaluation was weakest in the areas of (a), (c), (d), and (e).

SOUTH WEST DEVELOPMENT AUTHORITY
Travel Costs

557. Hon A.A. LEWIS, to the Minister for Sport and Recreation representing the Minister for The South West:

Further to his answer to questions 478 and 556 of 1987 --

(a) In relation to part (2), what were the details of --

(i) travel costs; and

(ii) fares;

(b) In relation to part (3) of the letter from the Minister in response to the questions, what were the details of --

(i) advertising;

(ii) printing?

Hon GRAHAM EDWARDS replied:

The Minister for Agriculture will advise the member in writing in due course.

ROEBOURNE SHIRE COUNCIL
Ward Boundaries

558. Hon N.F. MOORE, to the Minister for Sport and Recreation representing the Minister for Local Government:

(1) Has a decision been made to rearrange the ward boundaries of the Roebourne Shire?

(2) If so --

(a) what changes are anticipated;

(b) why are these changes being made, and at whose instigation?

Hon GRAHAM EDWARDS replied:

A decision on ward boundaries in the Shire of Roebourne has been deferred at the request of the shire until a pastoral councillor is able to join the shire's deliberations.

QUESTIONS WITHOUT NOTICE

PRISONER: AMANDA WILBRAHAM
Pregnancy

513. Hon G.E. MASTERS, to the Minister for Corrective Services:

(1) Is the female prisoner, Amanda Wilbraham, pregnant?

(2) If yes, when was she transferred to Greenough Regional Prison, and when was the pregnancy confirmed?

(3) Is the identity of the father of Miss Wilbraham's child known to either the Minister or to his department?

(4) If yes, is the father of the child a prison officer, a prisoner, or some other person in the employ of the Government?

(5) Will the Minister name the father of the child, and if not, why not?

Hon J.M. BERINSON replied:

(1) Yes.

(2) (a) 6 October 1987;

(b) 27 November 1987.

(3) Yes.

(4) A prisoner.

(5) No. Any such disclosure is regarded as the prerogative of the parties concerned.

CATT CORPORATION
Receiver-manager's Report

514. Hon MAX EVANS, to the Attorney General:

In January of this year a receiver-manager was appointed to the Catt Corporation Ltd. I understand that in August this year the receiver-manager put in a report in respect of the officers of that company. Could the Attorney General advise the House what action has been taken by the Crown Law Department in respect of the complaint by the receiver-manager, which should have required action?

Hon J.M. BERINSON replied:

To the best of my recollection, no such report has come to my attention. I can add that reports of receiver-managers do not, as a general rule, come to my office in any event. My understanding is that they go to the Department of Corporate Affairs rather than the Crown Law Department; and to the extent that Crown Law might be involved, that would only be on the basis that the Department of Corporate Affairs had approached Crown Law in a client capacity.

COMMUNITY SERVICES
Integrated Furniture Scheme

515. Hon A.A. LEWIS, to the Minister for Community Services:

(1) Has there been any change to the Department for Community Services financial assistance scheme in respect of the integrated furniture scheme?

(2) If so, what have these changes been?

Hon KAY HALLAHAN replied:

(1)-(2)

It depends how far back the member's question goes. There were provisions in the last Budget with regard to the furniture scheme and the low interest loans. I am not sure what the honourable member wants to know, but I would be very happy to give him a response in writing.

COMMUNITY SERVICES
Integrated Furniture Scheme

516. Hon A.A. LEWIS, to the Minister for Community Services:

Is it a fact that money for the scheme mentioned in my previous question and the criteria involved have been tightened up because so much of the money was used early in the Budget year?

Hon KAY HALLAHAN replied:

The department administers that. However, I could make inquiries about any administrative changes.

COMMUNITY SERVICES
Integrated Furniture Scheme

517. Hon A.A. LEWIS, to the Minister for Community Services:

In this time of happiness sitting around the House in century heat, we are finding that people who previously would have been able to get integrated furniture scheme loans are now not able to get them because the criteria have been made much tighter than they were five or six months ago.

Hon KAY HALLAHAN replied:

My answer remains that I would have to get a detailed answer for the member. I am happy to do so if he would like to put that question on notice.

COMMUNITY SERVICES
Emergency Relief Scheme

518. Hon A.A. LEWIS, to the Minister for Community Services:

I may as well ask this question too because the Minister will probably do the same with it as she has done with my previous questions. Is the State emergency relief money going to be deleted from the next State Budget?

Hon KAY HALLAHAN replied:

At this stage it would be difficult for me to say what will be in the next State Budget, but I point out to the member that in this State the Government has been committed to providing assistance to people in necessitous circumstances in a way that far outweighs commitments made by other State Governments. There is no indication at this point that there will be a retraction from the Government from that point of view, and I can only say that I expect it would go into the Budget considerations in the same way it has since the Labor Party became the Government.