CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

Committee

Resumed from 17 September. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 67: Section 47 amended —

Progress was reported on the following amendment moved by Hon Alannah MacTiernan (Minister for Regional Development) —

Page 39, line 8 — To delete "child," and substitute —

child or other vulnerable person,

Hon ALANNAH MacTIERNAN: It seems a bit odd, but we are acting on advice that we could not remove the amendment marked as 4/67 from the supplementary notice paper because we are already in the midst of debating the clause. Members will recall that, originally, the legislation referred to providing protection for a child by the bolting on of furniture. Concerns were raised during the second reading debate, which we attempted to accommodate by including in the amendment the words, "child or other vulnerable person". It was quite clear from consideration in detail on this provision that those words were causing an issue due to uncertainty about what a vulnerable person would be. We have accepted that. It is my view that we will not proceed with an amendment to add "or other vulnerable person". However to accommodate the concerns raised by other people, we propose that the bill refer to "a child or a person with a disability". Disability in relation to a person has the meaning given in the commonwealth Disability Discrimination Act 1992.

It is important that we refocus our attention. Fundamentally, this provision was designed to provide protection for children. We propose to add words that will enable a person with a disability to be considered. People have talked about frail and elderly people. However, it is getting to the point at which we are losing sight of the focus and we have not been able to get a decision, and this important reform is being lost. The Minister for Commerce tells us that these provisions will be reviewed to see whether we can deal with it in other ways. At this time, we are keen to ensure that, as per the coroner's recommendation, we put this measure in for children. We are prepared to include "people with a disability" in a way that is defined, so that the concerns members in this chamber raised about undefined terms will be addressed. It will not cover every other person, but let not the best be the enemy of the good and let us make sure that we can move forward and have some legislative change for the core group—that is, children—that was really the target of this reform.

The CHAIR: Thank you for advising the committee of those matters, minister. We are in the Committee of the Whole House considering the Consumer Protection Legislation Amendment Bill 2018, version 96–2. I draw members' attention to the new supplementary notice paper 96, issue 6, dated today.

Members, the first proposals that the minister was just addressing, are now before you in this new supplementary notice paper. I gather from your remarks, minister, that in a moment you wish to move the amendment standing in your name at 8/67. To facilitate that, I think you might be about to seek leave of the house to withdraw amendment 4/67 presently before us.

Hon ALANNAH MacTIERNAN: Thank you, Mr Chair, for your very thoughtful guidance. I seek leave to withdraw amendment 4/67.

Amendment, by leave, withdrawn.

Hon ALANNAH MacTIERNAN: I move —

Page 38, after line 28 — To insert —

(1A) Before section 47(1) insert:

(1A) In this section —

disability, in relation to a person, has the meaning given in the *Disability Discrimination Act 1992* (Commonwealth) section 4(1).

This amendment needs to be seen in the context of the next amendment on page 1 of the supplementary notice paper, which will add after "child" the words "or a person with a disability". As I said, we are seeking to address some of the issues that were raised by members, but without losing focus that this is primarily directed towards addressing the coroner's recommendation for children. We have sought to not only add "disability", but also provide a definition of "disability".

Hon RICK MAZZA: Before we move on to that, I need a little guidance. Issue 5 of the supplementary notice paper contained a couple of amendments that seem to have fallen off issue 6. I do not have an issue with two of those, but one that has remained on issue 6 will be redundant. Amendment 3/67, which I want to move later, is no longer on issue 6.

Hon Alannah MacTiernan: It is on mine. It is on page 4.

Hon RICK MAZZA: Yes, it is; sorry, I did not look over the page. My apologies.

Getting back to the minister's amendment, I am glad to see that we are looking at a more defined class of person for this issue. I have here a copy of the commonwealth act that outlines all the classes of a person who are considered to be disabled. There was some talk behind the Chair earlier about including elderly people; however, I understand that that would be a little difficult to define. I have been told that according to the elder abuse report, someone is considered elderly at age 65, but for an Aboriginal and Torres Strait Islander person, the age is 55, which seems quite a young age—as I approach those figures! I will support the amendments being moved by the government.

Hon NICK GOIRAN: I share the minister's view that we need to remain focused on what is being sought to be achieved. However, I have to say that the paperwork before members is not assisting that process. I will give two examples. First, order of the day 14 in *Daily Notice Paper* 150, dated Thursday, 19 September, which is the order of the day I believe we are considering, indicates that committee progress is at clause 30. As I understand it, we are at clause 67, not clause 30.

The second matter that I draw to your attention, Mr Chairman, and perhaps seek your advice on is to do with the minister's proposed amendment. I should indicate that I have no issue in principle with what the minister is seeking to do; this is a technical matter.

Mr Chairman, I draw to your attention that we are to insert proposed subsection (1A) before section 47(1). It is not at all clear to me why we would have in a statute what would effectively be section 47(1A) before section 47(1); that would normally be after, not before. Perhaps we could just get some clarification on that.

Hon ALANNAH MacTIERNAN: I thank the member for that. We understand that this is the basic technique—that the definition is put before the commencement of the section; that is what we are advised. The numbering then reflects that. This is the standard technique, apparently, for the parliamentary counsel at this time.

Hon Nick Goiran: By way of interjection, I agree that the definition should appear before the section. What is not clear is why the numbering would be (1A) before (1). Normally (1A) would be after (1), not before.

Hon ALANNAH MacTIERNAN: I understand the point the member is making, but we are told that this is not unusual and that this was the only way to avoid renumbering the entire section.

Hon NICK GOIRAN: The minister's advice indicates that this is not unusual. Are there any other examples, either in this bill or in another piece of legislation, where that kind of numbering is used?

Hon ALANNAH MacTIERNAN: I ask the member to look at part IV of the Residential Tenancies Act 1987, in which division 1A appears before division 1. Obviously, in the amendment process, this is not entirely unusual and, indeed, in the main body of the Residential Tenancies Act we see an analogous provision.

Hon MICHAEL MISCHIN: If I might assist, I understand Hon Nick Goiran's concern about this, but I think that the practice is to be fairly flexible with how the numbering is done to avoid wholesale renumbering of sections through inserting a provision, to keep some sensible order, because there cannot be a paragraph 0 before a paragraph 1. An example of that is what happened in section 22 of the Residential Tenancies Act, "Presentation of cases". Subsection (1A), which provides a definition of "proceedings", comes before subsections (1) and (2), and then subsection (3A) comes before subsection (3), and this legislation inserts proposed subsections (3B) and (3C), in that order, after subsection (3A). I can understand the member's concern. It is not a perfect system by any means, but in my experience it happens from time to time, if that is of any assistance to the minister.

Hon NICK GOIRAN: I thank the minister and the shadow Attorney General for that, and I am grateful to the minister for drawing to our attention to the fact that division 1A under part IV of the Residential Tenancies Act appears before division 1. It is a good example of how this type of, shall I say, peculiar numbering system is implemented in the act. If that is consistent with the remainder of the statute, it has my support.

My substantive question to the minister is that the intended definition of "disability" to be inserted here makes reference to a commonwealth act. What is that definition under the commonwealth act?

Hon ALANNAH MacTIERNAN: It is quite a lengthy definition under the Disability Discrimination Act 1992, but I will set it out —

> ***disability***, in relation to a person, means:
>
> (a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

(h) presently exists; or

(i) previously existed but no longer exists; or

(j) may exist in the future (including because of a genetic predisposition to that disability); or

(k) is imputed to a person.

To avoid doubt, a ***disability*** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

Hon NICK GOIRAN: Why has the government chosen to make reference to a commonwealth act rather than any reference to a Western Australian act in respect of the definition of "disability"?

Hon ALANNAH MacTIERNAN: Apparently the parliamentary counsel advised that we do that because the state act is far more limited, so it was suggested that we use the commonwealth act.

Hon NICK GOIRAN: I am looking at the Western Australian Disability Services Act 1993. Section 3 contains a definition of "disability", which states —

disability means a disability —

(a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments; and

(b) which is permanent or likely to be permanent; and

(c) which may or may not be of a chronic or episodic nature; and

(d) which results in —

(i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility; and

(ii) a need for continuing support services;

I have not had the opportunity to give that definition much thought in comparing and contrasting it with the definition that the minister has just read. One of the reasons is that I was alerted to the supplementary notice paper only a few minutes before 2.00 pm, when we resumed. That is not a criticism; that is just a statement of chronological fact. In the absence of some persuasive argument, I am somewhat concerned that we are choosing to refer to a commonwealth act. We will have no capacity to ensure that its current terms will remain the same, whereas this Parliament and this chamber will have a great deal of capacity to control and monitor the Western Australian legislation to ensure that it does not fall outside the remit of what we require. I would have thought that as part of good, ordinary lawmaking practice, we would prefer to refer to a Western Australian statute rather than a commonwealth one. I wonder whether that is something that the government would consider.

Hon ALANNAH MacTIERNAN: Frankly, I would be personally happy with either, but the advice from the parliamentary counsel was that because of the range of concerns that people raised during the debate, it was felt that as the commonwealth act has a broader provision than the state act, it was better to include the commonwealth definition to try to encompass as many of the concerns that have been raised as possible. The member is quite right; we could have used the state one, but I am told that this was done on the advice of the parliamentary counsel. Having considered the debate that had taken place during both the second reading and consideration in detail, it was felt that perhaps the fuller suite of disabilities that people were concerned about was better considered in the federal legislation. We could have used either, but, as I said, my concern is that we need to get on and get this in place because of the children involved. I certainly am getting very concerned that the add-ons are impeding the basic point of the legislation.

Hon NICK GOIRAN: I accept that explanation and, in particular, I am happy to rely upon the advice that the minister has been provided with; that is, the commonwealth definition is broader in scope than the state definition, and that is why the government has chosen to use that definition. On the face of it, that seems to be a sound decision. However, my concern remains that I would rather we uplift the commonwealth wording that the government prefers and insert that as the definition here, rather than using whatever definition the commonwealth Parliament decides at any moment in time will be in section 4(1) of the Disability Discrimination Act 1992. My concern is that next week, next month or next year, the federal Parliament could change or repeal section 4(1)—it could do all manner of things to that definition—and we would have no control over that; whereas if we simply uplift the words in that commonwealth statute, which the government prefers and I accept that, and we insert that, at least we would have complete control over that rather than leaving it to federal Parliament. Indeed, it would be interesting to know what the Standing Committee on Uniform Legislation and Statutes Review thinks of a provision such as this.

Hon ALANNAH MacTIERNAN: Again, I think this is very much a theoretical rather than a practical problem. If the member wished to move a further amendment to detail the words—obviously, it would take a bit of time to do that because it is quite a lengthy definition—we would not be overly concerned about that. We are happy to proceed on that basis, but that would have to be an amendment from the member.

Hon MICHAEL MISCHIN: For the assistance of members, I happen to have a copy of section 4(1) of the commonwealth Disability Discrimination Act 1992. For the assistance of the minister and her advisers, I will give her two copies—that is the sort of bloke I am! I think there is a practical difficulty with this and I accept that the government is trying to be accommodating. As I understand the history of this, Hon Rick Mazza raised in his second reading contribution the rather limited scope of the protections that are being sought to be applied here by mentioning "vulnerable person". That term seems to have been taken as the term that is going to be used. We have had the debate about what that might mean in fact and how it could be interpreted or not interpreted. I accept that this has been a progressive evolution of the seed of a worthy idea that has gone beyond the scope of what was originally contemplated by the government, and the government has been doing its best to accommodate the concerns that the member raised and that have been reinforced by Hon Alison Xamon and others. That may be the difficulty that we are facing.

If we are going to go down the path of mandating an entitlement to protect children in this way, I do not have a problem in principle with extending it to others who logically may fall within the same risk, but I do not think that terms like "elderly people" help. If I had a grandmother, she might come to the place I was renting and want to climb the bookcases, but I would hope that she would not need this sort of protection from me and that I would not then have to require my landlord to affix bookcases to the walls. I can understand the use of the term "people with a disability", particularly if they have a cognitive impairment, a mental illness or the like whereby they may be a risk to themselves or others and there may be problems with the stability of furniture, but we need to work on that.

The difficulty I have with adopting a definition from a federal act is several-fold. Firstly, Hon Nick Goiran raised the point that in due course there may be some amendment to the commonwealth legislation, which we would then as a matter of course adopt. Secondly, we have a perfectly good statute called the Disability Services Act 1993, which is the focus of Hon Stephen Dawson's responsibility and which seems to serve the purpose. The definition in that act seems to be broad enough, but with perhaps one irrelevancy, and that is that paragraph (d)(ii) of the definition of "disability" provides for a need for continuing support services. I do not think that is necessary.

The definition that we are being asked to adopt goes well beyond what we may need to address in this legislation. The minister has read out most of it, but it states —

> ***disability***, in relation to a person, means:

It then lists paragraphs (a) to (g) —

> and includes a disability that:
>
> (h) presently exists; or
>
> (i) previously existed but no longer exists; or
>
> (j) may exist in the future (including because of a genetic predisposition to that disability); or
>
> (k) is imputed to a person.

I do not think we are trying to protect people with a disability that no longer exists, so that does not seem apt to the mischief we are trying to remedy through this amendment. Secondly, we are asking a tenant or a lessor not to look at the Residential Tenancies Act to work out the metes and bounds of their responsibilities and obligations but to grub around and find a copy of the federal act to look it up and make sense of it.

Hon Alannah MacTiernan: Member, can I say by way of interjection just to move this along that if we were to substitute that for the definition —

The CHAIR: Order! This is more than a casual exchange so, minister, I will formally give you the call.

Hon ALANNAH MacTIERNAN: So that we can work out whether we are getting somewhere, can we perhaps get an indication from the member whether he thinks that if we were to substitute the definition that appears in the WA act, which is not as broad and does not include some of those quite unusual provisions that the member has read out, this would be a way forward?

Hon MICHAEL MISCHIN: The minister has pre-empted my thinking on this. I think we probably could. Given that we have been told that a review of this legislation is due this year, my first preference is that we stick to the original point, which is to protect children. That is what the coroner's recommendation was about and that was the mischief that was being addressed. That seems relatively simple in the circumstances. If we want to go further than that, my preference is that we put the definition of "disability" in the Residential Tenancies Act so that people can look it up and be certain about how it operates. If that is not acceptable for some reason, my third preference is that we adopt the term used in a piece of legislation that is readily ascertainable as part of the Western Australian law, and that is the one in section 3 of the Disability Services Act 1993, except for paragraph (d)(ii) of the definition of "disability", which does not seem to be relevant and rather limits the scope of the definition. I am not sure whether that is of much assistance, but having regard to what the coroner was looking at, I think the easiest way through is to simply stick with that and see whether there is a means of addressing a broader issue, if there is a broader issue, during the review of the legislation, or otherwise perhaps refine the term "disability" so that it is suitable for the Residential Tenancies Act rather than trying to apply something that has been crafted for a particular social service purpose to a very different type of legislation.

Hon ALANNAH MacTIERNAN: As I said, a number of members have indicated that they want an expansion. The legislation is replete with references to other commonwealth and state legislation, but I accept the point that has been made that the state legislation seems to be more crafted and better suited to this end. Perhaps we could seek to make a further amendment to this amendment to substitute the words "Disability Services Act 1993 (WA) section 3(a) to (c)". As I said, the legislation that the bill is amending is replete with references to other acts, so I do not think that in any way we should consider that it is too difficult, just by referencing that other act. I accept the commentary that the state legislation seems a better fit than the federal legislation. I am prepared to move in that way, so that we still accommodate the members who wanted that broader definition, but let us not keep this going on forever. Perhaps I can seek some guidance on how we might do that.

The CHAIR: We could explore a number of opportunities. One mechanism to achieve what the minister has outlined for the Committee of the Whole House to consider would be to put this matter to one side and move on with other clauses, but I do not know whether there is a desire to do that. Probably the cleanest way would be to withdraw the current amendment and simply redraft it afresh, and we will deal with it on the spot. It is up to the Committee of the Whole House how it wishes to proceed, but that would seem to be the cleanest way to do it.

Hon NICK GOIRAN: If I may assist, through the Chair, I have a number of other questions on clause 67 that I would be happy to ask now. That might give a bit of time for the drafting of an alternative amendment, if the minister wants to consider that as an option.

Hon Alannah MacTiernan: Yes, go ahead.

Hon NICK GOIRAN: Given that we are broadly looking at clause 67, I want to ask the minister about the definition of "child". I know that this was briefly touched on the other day when this issue was looked at, and I note that the term "child" is not defined in the Residential Tenancies Act or the Interpretation Act 1984. My understanding is that a court would therefore interpret this to mean a person under 18 years of age. Can the government indicate what type of furniture a tenant needs to affix to a wall for the safety of a 17-year-old? The point I am driving at here is that a 17-year-old is able to drive unsupervised if they have a licence. It is not apparent to me why a person who is able to drive a motor vehicle unsupervised would need furniture to be affixed to a wall for their safety, and that that would be any different from an 18, 19 or 20-year-old, or any other adult. I just want clarification on the necessity for the definition of "child" to be interpreted as somebody aged 18 years or younger.

Hon ALANNAH MacTIERNAN: The recommendations from the coroner, as I understand it, focused on a child. It is true that, probably in most instances, a 17-year-old would not be more vulnerable than an 18-year-old, but where do we draw the line? We should always look at how this legislation will play out in practice. The person seeking to have furniture affixed to the wall must pay for it. It is not the obligation of the landlord; the tenant has to pay for it, and the tenant must make it good. The idea that a tenant will trivially state that because they have a 16-year-old, who technically is a child, they want to anchor furniture to the wall is just not going to happen in

the real world. In any event, in the worst-case scenario, if that does happen, the tenant has to pay for the affixing, and then has to pay for the correction. There are always issues of definition and the point at which we accept that a person is fully an adult. It is certainly our expectation that tenants will seek to do this for small children, but if we established the age at 12 years old, it could be asked, "What about a small 13-year-old who may not be very smart?" It is just endless. We can always craft endless examples of what might be different. At some point we must, as legislators, say what is reasonable. Given that this is a cost to the person requesting it, we need to take that into account. We have used the ordinary meaning of the word "child", and the member is quite correct; that is a person under 18 years of age. Will this, in a practical sense, affect many 17-year-olds? Probably not, but the constraint is that the person has to care enough to apply for permission and then pay the cost of affixing the furniture and of repairing the wall.

Hon AARON STONEHOUSE: I would like to get some clarity about how the tenant may affix furniture. I am looking for rather technical or very specific information. What is the extent of the work that a tenant may be able to carry out to affix furniture to a wall, in specific detail if possible?

Hon ALANNAH MacTIERNAN: This will vary from one piece of furniture to another, but normally we would imagine it would be an L-shaped bracket, wall plugs and bolts anchoring the item to the wall.

Hon AARON STONEHOUSE: There would be anchor points in the wall, but this would also presumably permit the use of some kind of tether, such as a wire, chain or rope.

Hon ALANNAH MacTIERNAN: Mostly, the experience has been the use of brackets, but some perhaps involved tethers.

Hon AARON STONEHOUSE: It is important that we clear this up, so that tenants know what their rights are when they apply for these, as well as knowing what is reasonable and what is within the law and should be consented to or refused. What would be the extent of furniture, for the purposes of this clause? A set of drawers, a wardrobe or something like that makes sense, but I am wondering about other things that some people may not consider furniture, such as a large television. A large television, or other audiovisual equipment, could easily be knocked off a unit, fall on a child and cause injury. Could that type of equipment be tethered or fixed to a wall under this clause?

Hon ALANNAH MacTIERNAN: The Australian Competition and Consumer Commission guide definitely indicates that for these purposes a television is considered to be furniture. The member would be aware that some televisions are bolted to the wall. He should also bear in mind that tenants must take into account that this will be done at their cost. The ACCC safety checklist includes bookcases, cabinets and chests of drawers, and it suggests that people test furniture in the shop and secure all tall furniture to a wall using angle braces or anchors. However, I am advised that a television is included.

Hon AARON STONEHOUSE: To be clear, large consumer electronics are considered to be furniture for the purposes of this clause, and that is based on an ACCC regulation or legislation. Is that document a guide? What can people look at to get guidance on what meets the definition of furniture for the purposes of this clause?

Hon ALANNAH MacTIERNAN: It is a practical matter of considering what mischief we are dealing with here, which is children finding objects that will topple on them and cause them physical damage. Obviously, those objects would need to be large enough to cause injury to a child. As I said, I think it is pretty much commonsense. It does say "furniture". Our understanding is that very often furniture includes a television. For example, a small speaker is unlikely to damage a child, so that will not be required to be affixed to the wall. The guiding principle would be whether this is something that is required to mitigate the risk of toppling. The ACCC refers to an object and how the child's weight could cause unsecured furniture to topple. We do not imagine that a small radio, record-player or other electronic thing to which the member has referred would be included. The focus is very much on freestanding bookcases, drawers, wardrobes, sideboards or objects that are large enough to cause injury to a child if they were to topple over them.

Hon MICHAEL MISCHIN: I have looked at the definition of "disability" in the Disability Services Act 1993. I posit to the minister that the government might be prepared to agree to an amendment that includes this wording. I will pass the minister a copy. The minister might want to seek the advice of her advisers. She will see that the definition is fairly broad. For the benefit of members, the definition reads —

> ***disability*** means a disability —
>
> (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments; and
>
> (b) which is permanent or likely to be permanent; and

(c) which may or may not be of a chronic or episodic nature; and

(d) which results in —

(i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility; and

The definition also contains subparagraph (ii), which is irrelevant.

Hon Alannah MacTiernan: Can I shortcut this by saying that we are happy with that?

Hon MICHAEL MISCHIN: Thank you. For the benefit of members, subparagraph (ii) provides for a need for continuing support services, which is not necessary in this case; in fact, I think it would restrict the scope of people who would be protected.

If the minister is prepared to agree—she has indicated that she is—might I suggest that the amendment incorporates the relevant bits of that definition?

Hon Alannah MacTiernan: That is what we are having drafted as we speak.

Hon MICHAEL MISCHIN: It is rather than by reference.

Hon Alannah MacTiernan: Yes.

The CHAIR: We still have the question of amendment 8/67 before us.

Hon Alannah MacTiernan: We understand that parliamentary counsel is drafting the new amendment. It has arrived on an electronic device.

The CHAIR: We are very old-fashioned here; we do not have electronic devices. Thank you for clarifying that. We are expecting momentarily a hardcopy of a new amendment to replace the one before the chamber; is that the situation?

Hon ALANNAH MacTIERNAN: Yes. Our advice is—given that we are in agreement, I gather, with the provision—that we can move it on the floor of the chamber without the formal document. We have done that before with other legislation.

The CHAIR: No, we will need something in writing.

Hon Michael Mischin: I can provide my copy of that.

The CHAIR: The document that the minister has in front of her can form the basis of that. Is the thing in your hand right now in writing?

Hon ALANNAH MacTIERNAN: It contains a definition of "disability", but it does not refer to where this would fit in the bill; it is simply a page from the Disability Services Act. I understand that the amendment is being printed now. Mr Chairman, when that document comes into the chamber, what will the precise process be? I want to withdraw the amendment before the house which is set out at 8/67 on supplementary notice paper 96, issue 6.

Amendment, by leave, withdrawn.

Hon ALANNAH MacTIERNAN: I move —

Page 38, after line 28 — To insert —

(1A) Before section 47(1) insert:

(1A) In this section —

disability means a disability —

(a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments; and

(b) which is permanent or likely to be permanent; and

(c) which may or may not be of a chronic or episodic nature; and

(d) which results in a substantially reduced capacity of the person for communication, social interaction, learning or mobility.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 39, line 8 — To delete "child," and substitute —

child or a person with a disability,

Amendment put and passed.

Hon NICK GOIRAN: I seek the call, because the line of questions I have now are about lines in clause 67 prior to the ones that are being proposed to be amended. I take the minister to page 39 of the bill, where we are dealing with clause 67. It sets out in proposed section 47(2A)(b) a list of circumstances in which it would be acceptable for a lessor to refuse consent. My question is about line 24. What are the intended reasons that will be prescribed?

Hon ALANNAH MacTIERNAN: I thank the member for that question. There are in fact no plans for that at this point in time, but the provision is there in order to allow some flexibility should circumstances arise that we have not previously thought of. As I said, the refusals can centre around asbestos products or there being a heritage or strata title issue. For the protection of the landlord, we wanted the ability to add other factors that the landlord might take into account that we might not have thought of. Of course, this would be a regulation and it would be a disallowable instrument. It is important to understand that that is for the protection of the landlord. If it turns out that there is another set of unanticipated circumstances that make it practically impossible for the landlord to allow this, that provision gives us the mechanism to deal with it by way of regulation.

Hon NICK GOIRAN: It is my consistent position on any bill before the house that when a government of either persuasion is unable to articulate the reason for a proposed statutory power to prescribe some subsidiary law, I will not support it. "Futureproofing", which is the term often used, is not a persuasive reason to allow that. If, despite all of the consultation and all of the work that has been done by the current government and its advisers, they are unable to think of any situation that would require a further reason to be prescribed, that does not seem to provide a basis for us to give power to the executive to do that. Would the government object to the deletion of line 24?

Hon ALANNAH MacTIERNAN: I think it would be unwise to do that. As I said, this is a measure to protect the landlord if it turns out that there are other circumstances that we have not thought of. It is a disallowable instrument. As I said, it would be for practical matters that make it very difficult for a landlord to allow this to happen. For example, we may find, as we constantly do, that there are products that have turned out to be unsafe. We might become aware that a product is hazardous when we were not previously aware that it was hazardous. We were not initially aware that asbestos was hazardous, but we subsequently learnt that that product was hazardous. Knowing the difficulty in making legislative change I think is the whole rationale for regulations. We are very clear that it is a very limited range. It would have to be something that, as a matter of principle, would be difficult for a lessor or would impose obligations on the lessor that they would not be able to safely comply with. Although this provision is not actually essential to the bill, I would be very surprised if people argued that we should take out this protection for the landlord in the event that there is another set of circumstances we have not thought about that would be challenging for the landlord to allow. It will be a disallowable instrument.

Hon NICK GOIRAN: In the list we are looking at, there are three other matters: whether there is material containing asbestos, whether it is heritage related and whether it is a premises in a scheme under the Strata Titles Act. What was the genesis of those three elements in the list? Did they come out of the coroner's recommendations or was it some other form of consultation? Where did those three items come from?

Hon ALANNAH MacTIERNAN: It was from consultation with the Real Estate Institute of Western Australia. REIWA recommended that consent by the landlord could be withheld for heritage-listed homes, as well as for asbestos walls and certain strata properties. We note that the science changes all the time. For example, people might be aware that products such as Caesarstone are now said to generate certain problems. REIWA raised those specific issues that related to strata title, heritage and asbestos in the walls. We are just putting this provision in to ensure that if there are, as I said, other emerging issues that come about that would create a practical problem, we have that ability to respond in a timely way.

Hon NICK GOIRAN: Is the recommendation from REIWA on this issue contained in the form of a letter that might be able to be tabled?

Hon ALANNAH MacTIERNAN: We have a document dated 28 February 2018, which states in part that REIWA recommends that —

> 1. Consent by the landlord can be withheld for heritage listed homes, asbestos walls, stud walls, walls with a decorative finish (eg wall-papered walls) —

The government did not accept that recommendation —

> and certain strata titled properties;
>
> 2. Consideration be given to an opportunity for the landlord to require that the tenant's security bond be increased …
>
> 3. The tenant is required to engage a suitably experienced person …

Those three provisions were put forward and accepted by the government as reasonable, after consultation with REIWA.

Hon NICK GOIRAN: Can that document or letter be tabled?

Hon ALANNAH MacTIERNAN: I am happy to table a copy of the letter.

[See paper 3075.]

Hon NICK GOIRAN: The minister indicated that REIWA raised at least one item that the government did not agree with. Can the minister clarify how many items REIWA raised that the government did not agree with, and the basis for objection by the government?

Hon ALANNAH MacTIERNAN: We are now talking about the exemptions that REIWA put forward. The particular exemption that we did not accept was the use of stud walls with decorated finishes. We thought that was too broad and had potential to undermine the very point of the legislation.

Hon MICHAEL MISCHIN: My copy of the tabled letter from REIWA dated 28 February 2018 has only one page. There is a technical problem. I will move on to something else while we are waiting for the second page to be distributed.

I understand that under this scheme, we are essentially statutorily importing into every residential tenancy agreement a provision that a tenant may affix items to the walls of premises for the purpose of ensuring the safety of a child or a person with a disability. It states that that can be done only with the lessor's consent. However, the reality is that although it is suggested that the lessor will have a say, the lessor will be able to refuse consent in only very limited circumstances. That departs quite substantially from the State Coroner's report and recommendations upon which this proposal claims to be based. I raised this subject during my second reading contribution, and I was told that the coroner's report on the tragic death of young Reef states that the landlord had refused consent to affix this particular chest of drawers. However, I do not see that in the coroner's report. It may be in the transcript somewhere, which I do not have the benefit of. I refer the minister to paragraph 24 on page 5 of the report. This leads on from the coroner's comment that the Victoria tallboy drawer chest involved in this case was not sold with any fixing apparatus and did not come with safety or warning instructions. It states —

> Reef's mother gave evidence at the inquest to explain that she was, nevertheless, aware of the benefits of securing such furniture to the wall but the chest of drawers was not bolted to the wall because she had not been given permission by her landlord to do so. She also believed it to be relatively stable.

The coroner's report does not state specifically that she had asked for permission, or that permission had been refused. That might be somewhere else in the report, and I have missed it, but I could not find it.

I refer now to the coroner's conclusions. Paragraph 49, at page 11 of the report, which was referred to in the minister's second reading reply, states —

> I noted during the inquest that there can be an issue for tenants obtaining permission to fix furniture to walls, which Reef's mother indicated had been a problem for her in this case.

The coroner does not state that a request had been made and how it had been framed, or that the request had been refused. There is comment about what a witness had said, and about the landlord's obligation, if a property is leased furnished, to secure any furniture that may pose a hazard. There is also comment about advice on the Consumer Protection website about furniture that may topple over.

Paragraph 50 states —

> Nevertheless, the difficulty remains that under the current legislation governing residential tenancies, landlords are entitled to decline consent to a tenant affixing any fixture and remove any fixture that a tenant has affixed to the rental premises without the landlord's consent. I note that depending upon the terms of the residential tenancy agreement, the *Residential Tenancies Act 1987* (WA) provides that the lessor shall not unreasonably withhold such consent, although that obviously leaves open the question of what is unreasonable.

Paragraph 51 states —

> Given the importance of this issue, I recommend that the State government give consideration to amending the *Residential Tenancies Act*.

The coroner then made the following recommendation —

> **I recommend that the State government give consideration to amending the *Residential Tenancies Act 1987* to ensure that a residential tenancy agreement cannot preclude a tenant from affixing a fixture, if the fixture relates to anchoring a television or item of furniture to a wall for the purposes of child safety. Rather, the Act should provide that for those specific fixtures, such an item may be affixed with the lessor's consent (and the lessor shall not unreasonably withhold such consent).**

There is no provision in this bill for the withholding of consent on the basis of reasonableness or otherwise; on the contrary, there is a limit to the lessor refusing consent in specific circumstances. Some of those circumstances

would be that if affixing the item to the wall will disturb material containing asbestos, if the premises is entered in the state Register of Heritage Places, or if the premises is a lot in a scheme under the Strata Titles Act and the bylaws prohibit affixing an item to the wall of the premises. I will leave aside "a prescribed purpose" for a moment. Why has the government taken this approach rather than following the recommendation of the coroner and providing that there be consent that cannot be withheld unreasonably, and specifying the sorts of furniture that the coroner has recommended? If the minister has access to the transcript of the inquest, I am interested to know whether a request was made by the child's mother to affix the furniture that was refused or it had not been dealt with or she did not have that permission for some other reason. If there was a refusal, it is not what the coroner has said anywhere that I could find in the coroner's report.

Hon ALANNAH MacTIERNAN: My understanding from the officer's assertion is that Reef's mother requested that approval and the landlord has indicated that they regret that they did not give that approval. As noted by the coroner, this has occurred in many other instances. I do not believe that we have departed in a meaningful way from the schema proposed by the coroner. We have sought to do what I think is a very practical thing. After consultation with the Real Estate Institute of Western Australia, we wanted to minimise the number of disputes and maximise the clarity. We therefore thought it would be best to articulate what could constitute unreasonably withholding consent. We would be having this debate from another point of view if we had not put those in. We would be debating right now what is unreasonably withholding consent. To deal with a real world problem, we are looking at the fundamental schema proposed by the coroner that the tenant have the right to do that, but recognising that in some circumstances it is not unreasonable to withhold that consent, we have sought to articulate in the legislation those circumstances, all again aimed at reducing the level of disputation and increasing the level of clarity for all the people involved here.

Hon MICHAEL MISCHIN: Getting back to what happened in this case, the subject of the coroner's inquest, the minister said that the landlord regrets not giving permission and that the mother requested permission.

Hon Alannah MacTiernan: That's what I am advised.

Hon MICHAEL MISCHIN: Was permission refused or simply that the landlord did not get around to it and forgot about it?

Hon Alannah MacTiernan: My advice is that the permission was refused.

Hon MICHAEL MISCHIN: Thank you. It is not to be found in the coroner's reasoning, but I take it that it is found somewhere in the transcript of the inquest.

Hon Alannah MacTiernan: Was that a question?

Hon MICHAEL MISCHIN: Yes.

Hon Alannah MacTiernan: What was the question?

Hon MICHAEL MISCHIN: It is not to be found in the coroner's reasons, so is it to be found in the transcript of the inquest?

Hon ALANNAH MacTIERNAN: I am advising what the staff have said from their dealings with that. I acknowledge that there is some ambiguity in the actual description of whether a request was made, but I understand from the officers who have dealt with this person that that request was indeed made. Regardless of that, as the coroner pointed out, this has happened on quite a number of other occasions. Indeed, there is a Facebook site with all those "Bolted Back for Reef" Facebook pages of parents setting out the circumstances in which it happened to their child and the many instances in which they were denied permission to bolt the furniture through. The key point is that, having looked at all the evidence, the coroner made a very, very clear recommendation. I understand that recommendation—to ensure residential tenancy agreement cannot preclude a tenant from affixing a fixture for the purposes of child safety—had cross-party support. I am not sure what more we can add there.

Hon MICHAEL MISCHIN: I am concerned because we have had the experience on other occasions of certain assertions being made. I think many aspects of the second reading of the Occupational Safety and Health Amendment Bill 2017, were not accurate. The assertion has been made here that the furniture was not affixed due to a refusal of permission that was unreasonably made, but it does not appear from the evidence I have seen.

Hon Alannah MacTiernan: I refer you to paragraph 24.

Hon MICHAEL MISCHIN: Yes; I have read it. I will read it again —

> Reef's mother gave evidence at the inquest to explain that she was, nevertheless, aware of the benefits of securing such furniture to the wall but the chest of drawers was not bolted to the wall because she had not been given permission by her landlord to do so.

That is different from saying that the landlord refused permission to do so. It is a significant difference. I would have thought that if permission had been refused, the coroner would have said so in light of the recommendation

saying that permission ought not be refused. If it is not applied for or it is applied for and the landlord does not make a decision one way or the other, it is very different from saying it has been unreasonably refused. That is why I was trying to clarify the true position.

Hon Alannah MacTiernan: What is the point here?

Hon MICHAEL MISCHIN: The point is that I am trying to find out exactly what has happened. This is the premise on which the legislation is based. If it is not correct, the record needs to be corrected. At the end of the day, it may not much matter to the policy behind it. However, I am pointing out that what has been asserted happened is not evidenced by the coroner's inquest. I asked this during my second reading contribution and the minister pointed me to page 11 of the coroner's findings. Nothing on page 11 says permission was refused. There may very well be evidence to that effect in the transcript of the inquest, but it is not evidenced in the coroner's reasons or findings—and that is the relevance of it. It is also relevant because the coroner did not say that because of the latitude that is permitted—I accept that it raises the fact there may be a question of what is reasonable, but that is not unknown to the law and is subject to numerous citation in other statutes—consent ought not to be unreasonably withheld. That is not the schema that is being adopted in this legislation. On the contrary, saying it must be done with consent but whether there is consent or not is irrelevant. A landlord is obliged to consent, is required by law to consent, unless they fall into certain exceptions. That is quite an imposition on people. It will be prescribed rather than going through the relatively farcical charade of saying, "It's up to you, but you have to do this, unless." Why was this particular schema adopted? The minister told us it was because it limits the amount of dispute that might be had. That does not seem to me to be a good basis for public policy and for obliging people to do something as a matter of law.

Moving on from that, if the primary purpose of this is the protection of children, what happens to those children who happen to be living in or frequenting a place where the tenant cannot affix their furniture because the landlord has refused it on the basis that there is asbestos in the walls? How are they to be protected under the scheme? What if they cannot affix their furniture because it is a strata-titled property within the meaning of one of the exceptions, or it is heritage listed? What is supposed to happen in those circumstances?

Hon ALANNAH MacTIERNAN: Moving forward, I am looking at an ABC news report, which also confirms what the mother of Reef had said. It states, in part —

> … and her landlord refused to let her secure it to the wall.

Hon Michael Mischin: Is that a quote from the evidence?

Hon ALANNAH MacTIERNAN: No, this is reportage from the ABC. Quite clearly, after looking at this, the coroner has taken the view that this was a real problem. We have tried to balance the needs of the child or the disabled person against the difficulties or challenges a landlord might face if they have a heritage property. That is not to say that we can create perfection in any piece of legislation. It is about getting the balance right. It has been identified by the coroner and confirmed by plenty of the parents who got behind this campaign that this is a problem. We believe this can be dealt with by giving the person the right to bolt the furniture, but we recognise that there are some circumstances in which this may provide a level of difficulty to the landlord because the property is a heritage property or because there are provisions relating to the Strata Titles Act.

This legislation is part of a suite of things. Part of that is getting parents to understand those difficulties. If they go to a landlord and the landlord says, "I'm sorry, I can't give you that consent because that is an asbestos wall", it will be incumbent upon the parents to try to take some other steps to ensure that the furniture is secure. The legislation does not seek to solve every problem in the world. It is about finding a proper balance and saying, "Here is clearly a problem." It is not just a problem in respect of Reef's mother; a whole heap of parents have identified that they had not had permission and that a number of children had died because of that. At the same time, we are trying to get that balance right so that we provide some protection to children while taking into account circumstances in which there might be particular difficulties for a landlord in doing that.

Hon MICHAEL MISCHIN: I thank the minister for referring to the ABC, but it is not evidence, yet. As I understand it, it is not suggested that that was a verbatim recording or report of the evidence that was given. It does not have to be done now, but to satisfy my curiosity that this whole debate has proceeded on the right foot, I ask the minister, so I know what the true situation was, to provide me with a copy of the evidence at the inquest concerning the request and refusal, and the basis for the refusal to permit the affixing of furniture; I would appreciate that. Is that possible, minister?

Hon ALANNAH MacTIERNAN: Yes.

Hon MICHAEL MISCHIN: Let me get back to the scheme and striking the right balance. I have a tenant who says to me that they want to affix a bookcase or a chest of drawers to the wall and I say, "Sorry; I can't give you

consent to do that" or "I don't want to give you consent to that because these premises are entered in the Register of Heritage Places", to which the tenant says, "What do I do about my child or the children who are going to come and visit me?" I say, "That's your problem", to which the tenant says, "I'm going to have to find another way to protect them, aren't I?" and I say, "Yes, that's right." The tenant might buy a chest of drawers with four legs rather than three, or whatever other necessary means there are to protect their children. Why is that not a basis more generally for a reasonable refusal whereby the obligation falls equally on parties? Under the formula in proposed section 47(2A)(b)(iv), the lessor may refuse consent for a reasonable reason, so why can the question of reasonableness not be determined by negotiation at the time? Why does it have to be as prescriptive and limited as this? The reason I ask is that although it is said that the tenant must remove the item and the cost must be borne by the tenant, the Real Estate Institute of Western Australia has suggested a number of other reasons why there may be a problem. It could be because the nature of the wall is such that it would create significant damage that cannot be repaired. It may disturb wallpaper or decorative coverings that cannot be repaired. Why are these not reasonable bases for a landlord to say, "Don't affix that furniture to that wall because you're not going to be able to fix or repair the damage. Get yourself a piece of furniture that is more stable or find another way of stabilising it so that it can't be misused"? Why are those sorts of quite reasonable objections to why a landlord might not agree to damage being done to their premises not reflected in the legislation?

Hon ALANNAH MacTIERNAN: Obviously, we do not want people drilling into asbestos. There are clear health reasons, so it is very clear why we made that an exception. We believe it is important not to create this difficulty for a landlord of a property on the Register of Heritage Places who might be found to have compromised the heritage place; likewise, it is within the Strata Titles Act. As I said, in the negotiation with REIWA, it wanted to have an envelope around this. At one stage, matters such as stud walls and decorative fittings were put forward, but our judgement after negotiation was that these matters could be managed. When we balanced the child's life and the obligation of the landlord, we weighted this towards child safety. Of course, Kidsafe WA has ongoing programs to educate parents. We are not relying entirely on this, but we are saying that there are some very clear circumstances.

It was the request of the Real Estate Institute of Western Australia to have some boundaries around this. The big concern was that REIWA did not want this open-ended situation of an ongoing dispute about the grounds on which it can be unreasonably withheld. It is not in anyone's interest to go down that path. We have outlined the areas we thought that REIWA had made the case that a challenge was presented to the landlord if they were to comply with that, but it was very concerned to have a level of clarity to avoid what anyone who has had any dealings in this area wants to avoid—an ongoing proliferation of disputes between landlords and tenants.

Hon NICK GOIRAN: Further to this line of questioning, I thank the minister for providing and tabling the letter from REIWA. The minister indicated that this list that has been provided, and the desire of REIWA to have an envelope around this, was pursuant to some negotiations. I notice that the final sentence of the tabled letter indicates that REIWA looks forward to discussing these recommendations with the minister. The minister has also drawn to our attention that the letter was dated 28 February 2018. Was this letter subsequently discussed, and what was the outcome of those meetings? Was there a face-to-face meeting, or was there a further exchange of correspondence? The minister referred to a negotiation.

Hon ALANNAH MacTIERNAN: As I said when this was last being debated in this chamber, there were meetings of the Property Industry Advisory Committee, of which REIWA is a member, in February, June and October. That is when this matter was consulted on. I read into the house a letter from REIWA dated 7 November, outlining that it was generally satisfied with what was proposed. It was concerned, as I said the day before yesterday, that an agent might become liable for the sins of a staff member, and Minister Bill Johnston had written back and made it clear that there would be no risk of imprisonment for any individual. This has been a matter of consultation through the medium of the Property Industry Advisory Committee.

Hon NICK GOIRAN: The minister mentioned that REIWA had written indicating that it was generally satisfied, bar one matter. Is that a letter that it has provided to the minister that has previously been tabled in the course of this debate? The context in which I ask is that the letter that was tabled earlier this afternoon set out five recommendations from REIWA, and I was going to ask the minister what the status of those recommendations was, in terms of the government's response. If that has already been addressed, or the concerns of REIWA have already been satisfied, I would be keen to make progress. If that subsequent letter that states that REIWA is generally satisfied has already been tabled, I will access it that way.

Hon ALANNAH MacTIERNAN: Yes, I think I tabled it, but I am happy to table it again to accommodate members who were not here at that time. REIWA has made some very public statements about this legislation, and it has been a matter of some public concern.

Hon MICHAEL MISCHIN: Just to clarify, there are a number of features in the letter of 28 February. Can the minister confirm whether these issues have been satisfied by the legislation, or whether they were otherwise non-issues? I will start at the bottom with the Real Estate Institute of Western Australia's fifth recommendation, which states —

> The landlord has no liability for the suitability of any affixing device installed in the property by the tenant.

Is that going to be the case?

Hon ALANNAH MacTIERNAN: Absolutely. There is nothing in here that gives the landlord any responsibility for that at all.

Hon MICHAEL MISCHIN: The fourth recommendation states —

> The tenant has an obligation to make good the walls and if necessary repaint an entire wall;

Will that be the case?

Hon ALANNAH MacTIERNAN: It is set out in the legislation that the tenant has the obligation to restore the wall to the original condition. Sorry—that was the amendment.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Minister, I think that is the further amendment on the supplementary notice paper standing in your name.

Hon MICHAEL MISCHIN: Perhaps if I can put it this way: is it the government's intention that that concern be addressed?

Hon ALANNAH MacTIERNAN: As I have said over and over again, it is the tenant's cost and responsibility to do the tethering, and it is the tenant's cost and responsibility to restore the property to its original condition.

Hon MICHAEL MISCHIN: The third recommendation states —

> The tenant is required to engage a suitably experienced person to install appropriate affixing devices;

I take it that there is no requirement of suitable experience. As far as the government is concerned, it is being left to the tenant to decide who does the job and how it is done, and they can do it themselves if they see fit.

Hon ALANNAH MacTIERNAN: The very strong recommendation of Kidsafe WA—I think we have dealt with this in other legislation—is that we do not require that because for many low-income people it would be a very significant barrier to them undertaking this work. The very clear principle of this legislation, which is understood by REIWA, is that we are not going down that particular path.

Hon MICHAEL MISCHIN: The second recommendation states —

> Consideration be given to an opportunity for the landlord to require that the tenant's security bond be increased by an amount per affixing device;

In light of what the minister has told us, and a landlord's concern about decorative or stud walls that are pulled to pieces and cannot be repaired because an affixing device has been removed or has caused damage because the furniture has collapsed, is there any opportunity to increase the amount of the security bond to cover those eventualities or will the landlord be obliged, especially in the case of low-income tenants, to decide whether it is commercially viable to take them to court and sue them because they end up having to replace a stud wall or a wall with decorative finishes?

Hon ALANNAH MacTIERNAN: There is no provision in here at this point to increase the bond, but as we have said before, a more general review is being undertaken to deal with the Residential Tenancies Act. The issue of the adequacy of the bond in general will be taken into account in that review.

Hon ALISON XAMON: I rise to make some comments about the discussion that is occurring. I have been listening to debate but I would like to indicate from the outset that I would be very concerned at any suggestion that we might be looking at a requirement to increase the bond, remembering that the purpose of the amendment in front of us is to basically protect the lives of children. From a policy perspective, a requirement that would increase the bond—noting that the legislation does not enable it anyway—would effectively discriminate against families with young children. This policy has been well canvassed within the community. For good reason there are already protections against the discrimination of families with children who are seeking a tenancy. I put on the record that requiring an increased bond for that purpose would constitute a discrimination of sorts.

Hon MICHAEL MISCHIN: I agree entirely that it would be unfortunate were people to be priced out of the market. Yes, the lives of others are of paramount importance, but that cost ought not to be borne by people who are not primarily responsible for children's safety. However, the philosophy here seems to be that if property is damaged, well so be it—lives are more important and the landlord will just have to suck it up and pay for the safety

of others; take on the responsibility. Rather than a parent choosing furniture that is stable, the parent is loading that responsibility onto someone else, and I find that disturbing. There are pet bonds, for example, and there does not seem to be a problem requiring some additional sum of money to make good premises to allow people to have companion animals. However, if any additional damage is caused to stud walls, decorative finishes and all the rest, well, the landlord will just have to suck that up. If the bond is not enough, too bad; it is at their cost. I find that wrong.

In any event, when will the review of the act take place; when is it expected? Is it going to be one of those things that takes several years? Will an ill thought out law put people at a disadvantage and out of pocket? Meanwhile the cost will have to be borne by at least one section of the community indefinitely, because none of the landlords, between the passage of this act and any legislation passed as a result of the review, will have the benefit of that review.

Hon ALANNAH MacTIERNAN: The review is due at the end of the year. I note the comments of Hon Alison Xamon. Obviously, that will be taken into account.

I want to quote the REIWA website —

> REIWA is delighted to announce that the Department of Mines, Industry Safety and Regulation has confirmed that these exemptions have been included in the later drafts of the legislation.

REIWA was asking for provisions specifically for asbestos and strata schemes, and it is delighted that we have put this in place and that we have agreed that the tenant will be required to restore the premises to its original condition.

Hon MICHAEL MISCHIN: Thank you, minister. I am sure REIWA must have been delighted especially when the position was far more restricted than it originally thought it would be and it managed to get some kind of concession. However, that still does not answer the question about whether landlords—never mind REIWA; but their clients—will have to bear the cost of substantial damage that is not covered by a bond, because the government has deemed consent cannot be refused, rather than cannot be reasonably withheld, without regard to the fragility of the internal walls of the premises being rented out, and that there is a cap on the bond that a landlord can demand. It seems to me that this is very open-ended. I think that it would not be unreasonable for a landlord to say, "No, you cannot affix that to that wall because you won't be able to repair it and there is not enough in the bond for me to repaper the entire room, so, no, you cannot affix it. Do not use that furniture. Do not bring that furniture in or find another way of protecting children from unstable furniture. You cannot drill a hole in that wall because it is a stud wall." That would not seem unreasonable to me, and it throws the onus back onto the carers of the children to work out another way. That is not an unreasonable lack of consent. But this is excluding that possibility and allowing only certain possibilities.

Hon ALANNAH MacTIERNAN: Yes; and, as I said quite clearly—I will say it one more time—REIWA believed it was better to have a very defined scope of reasons for withholding consent. We are unashamedly giving primacy here to the protection of children. A four-week bond, which is the equivalent of four week's rent, is held by a landlord, and that in most cases will be adequate to fix this. There will still be a liability on the part of the tenant, bearing in mind that the tenant will have to get references and access additional accommodation. The member is presenting this as though it is just a lay down misère for tenants, that they can cause damage and walk away without consequences. We know in the real world that that is not the case.

Committee interrupted, pursuant to standing orders.

[Continued on page 7107.]

Sitting suspended from 4.15 to 4.30 pm