RESIDENTIAL PARKS (LONG-STAY TENANTS) AMENDMENT BILL 2018

Committee

Resumed from 23 June. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Progress was reported after new clause 5A had been agreed to.

Clauses 6 and 7 put and passed.

Clause 8: Section 8 amended —

Hon NICK GOIRAN: During the debate on clause 1, I asked the minister about the consultation that had been undertaken with the Caravan Industry Association of Western Australia, and, in particular, our dialogue included reference to a letter from the Caravan Industry Association of Western Australia dated 29 March 2019. For the purposes of not only this clause, but also further examination of other clauses, it would be handy for the minister to have a copy of that letter at her disposal—that is, the Caravan Industry Association of Western Australia letter to the minister dated 29 March 2019. In particular, I ask the minister to take a look at the third page of that document. Halfway through the items listed under the third heading, "Items not addressed in the Report", it refers to item 10, "Section 8(2)—Retirement Villages Act 1992 does not apply". Clause 8 of the bill, which we are debating at the moment, amends section 8 of the Residential Parks (Long-stay Tenants) Act 2006. In particular, the minister will note that there is an intention to delete section 8(2) of the act. That was a point of concern for the Caravan Industry Association. The question is: what is the government's response to that concern?

Hon ALANNAH MacTIERNAN: The definition of "residential park" that we discussed last night specifically excludes the application of this bill to the Retirement Villages Act. We believe that addresses the concern that has been noted here.

Hon NICK GOIRAN: Correct me if I am wrong, but did the definition not already state that? The definition of "residential park" is at clause 4 on page 7 of the bill, and it expressly does not include —

> (i) a place established as a retirement village under the *Retirement Villages Act 1992*;

That was already in the bill; all that has happened is that it has been moved from clause 4 to proposed section 5A. Nevertheless, the Caravan Industry Association felt the need to write to the minister and express concern about this section, so that concern existed irrespective of clause 4 and the definition of "residential park". The minister indicated that a meeting was to take place on 1 April 2019, more than a year ago. When we last considered this matter under clause 1, the minister indicated that that meeting occurred. I asked the minister what the outcome of that meeting was and she said that the government was working to resolve the issues. This is clearly one of the issues that have been identified by the Caravan Industry Association, and I think that before we pass this clause, it is appropriate to the stakeholder that we ensure that the matter has been considered and that we are clear what the response is from government.

Hon ALANNAH MacTIERNAN: The meeting in April that we discussed last time was to discuss the Caravan Parks and Camping Grounds Act. It was not to discuss this act specifically, although I presume that it was mooted in that discussion that we take the steps that we have taken to disconnect the Residential Parks (Long-stay Tenants) Amendment Bill from caravan and camping grounds. I presume that was part of that discussion. I am not sure what the member thinks should apply to retirement villages here; I am not sure what the issues are. Section 8(2) reads —

> The *Retirement Villages Act 1992* does not apply to a lifestyle village (as defined in this Act) established for retired persons or predominantly for retired persons.

An amendment was proposed. I am sorry about this, but I need to clarify the purpose of the proposed amendment.

The caravan industry wanted an amendment that went along the following lines: that the Retirement Villages Act does not apply to a lifestyle village as defined in this act established for retired persons or predominantly retired persons. That was not accepted. I am advised that our proposed amendment is basically to provide clarity on which act should apply to a particular facility. If a facility falls into the definition of a retirement village under the Retirement Villages Act, that act, with its greater regulatory oversight, should apply. The proposed amendment to the Residential Parks (Long-stay Tenants) Act 2006 clarifies that if a facility is regulated by the Retirement Villages Act, this act would not apply. I am advised that "a place established as a retirement village under the Retirement Villages Act" is not in the current legislation. I am advised that that is being introduced here, and that gives the point of clarification. We think that that is the important point to be made. I am advised that it is highly unlikely that there will be overlap between facilities.

The definition of a retirement village scheme requires the payment of a premium by the resident for admission to the scheme. This type of fee is not permitted under this act, so we do not believe that there is any lack of clarity about when the Retirement Villages Act will apply and when the residential parks act will apply. The member will note that we have deleted the definition of "lifestyle village". We will have the two regimes: one is the

Retirement Villages Act, which has very specific rules about what comes within that; and then, if it is not a retirement village, regardless of whether it is called a lifestyle village, it has the capacity to fall under this legislation.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Section 9A inserted —

Hon ALANNAH MacTIERNAN: I apologise to members, but I have a late amendment to clause 10. This amendment is a substitute for the amendment in supplementary notice paper 99, issue 7. I move —

Page 12, lines 13 to 19 — To delete the lines and substitute —

9A. Exemption from provision of Act by regulations

(1) Regulations may be made exempting any of the following from a provision of this Act —

(a) a long-stay agreement or class of long-stay agreement;

(b) a residential park or class of residential park.

(2) The regulations may provide for conditions and restrictions subject to which an exemption is to apply.

(3) However, regulations cannot be made under this section unless the Commissioner has consulted with, and invited submissions from, persons the Commissioner considers has an interest in —

(a) for regulations made in relation to a long-stay agreement or class of long-stay agreement — the agreement or class of agreement to be prescribed; or

(b) for regulations made in relation to a residential park or class of residential park — the residential park or class of residential park to be prescribed.

I will just give a general explanation of the context and why we are proposing this amendment rather than the amendment in issue 7 of the supplementary notice paper. The essence of clause 10 was that it was designed to give a regulatory head of power for the exemption of certain parts of the agreement for certain regimes. Someone with a particular accommodation type might want it to come broadly under the legislation, but certain provisions would not be appropriate for that arrangement; for example, the accommodation might not have any common facilities so they would not want the provisions on common facilities to apply. Clause 10 was designed to give some flexibility. The view of the Standing Committee on Legislation was that this was a Henry VIII clause. We are not sure whether that was a correct characterisation, but we note that the committee's recommendation was to delete the clause. The government's original response to this recommendation was an amendment that would put some further restriction around the head of power by requiring some engagement and consultation with the commissioner before any of these exemptions were made. On listening to the debate and the position that members took last night, we came to the conclusion that we were unlikely to satisfy the majority of the chamber that this amendment significantly circumscribed the power, so we have gone a step further with this new amendment. This amendment to the regulatory head of power will enable only the exemption of provisions. Any modification that might expand the reach of the bill will no longer be present, and it will only be by exemption. This is to cover things that we have not thought of that might come up. As Hon Rick Mazza said last night and as Hon Aaron Stonehouse has said in the past, there is enormous innovation and new things are constantly emerging, particularly in the accommodation area. We recognise that certain parts of this bill might not be relevant to all parties; they might want some protections to apply but not all. We have listened to the concerns, and the view was taken that if we put in place this regulatory head of power, we should limit it to exemptions. Amendment 51/10 in issue 8 of the supplementary notice paper does that. As I understand it, it retains consultation with the commissioner but limits the head of power so that it applies only to exemptions.

The CHAIR: Before I give the call to Hon Nick Goiran, I note that since I have been in the chair, I have received a further supplementary notice paper, issue 8, dated today, to which the minister has just referred. We can now put issue 7 of the supplementary notice paper to one side. The question is that the words proposed to be deleted be deleted.

Hon NICK GOIRAN: I will make a few comments at this time. Yesterday, at 11.06 am, I received an email from the office of John Quigley, MLA, who, amongst other things, has the title of Minister for Commerce. It is his bill that we are dealing with at the moment. The penultimate paragraph of that email, which I received yesterday at 11.06 am, states —

I can also confirm that currently the Government does not intend to introduce any further amendments.

The first I knew of the existence of the amendment that is now before us, which I understand to be 51/10, was literally seconds before the Committee of the Whole House resumed today. I just make that observation, because if the government wants to make swift progress through the remaining four bills to be passed this week, we need

better information than that. We cannot have government advisers telling members of the opposition or, indeed, any member of Parliament one thing and then, with a sleight of hand, we get something different. That is not acceptable. I certainly will not tolerate that for the rest of this week. Having said that, in the few micro minutes available to me, I have now had the opportunity to digest the amendment that has been put in front of my nose. On this occasion, this is an appropriate amendment, and I in fact congratulate the government for taking this initiative. We all know that the Standing Committee on Legislation had an unnecessarily rushed inquiry on this bill forced down its throat at the beginning of last year; it tabled its thirty-ninth report in a period less than the usual 40 days for an inquiry. However, the unanimous view of the committee was that the clause now under consideration, being clause 10, was a Henry VIII clause, and that it should be opposed. This report was tabled in March not of this year but last year. A few micro minutes ago we received an amendment by the government to address this point. I will conclude on this point: the opposition will support this amendment. I congratulate the government on putting it forward. It will expedite the process of the bill today, and I hope this type of approach will be taken for the remainder of the bill. However, it was not acceptable that I received the email I received at 11.06 am yesterday saying that the government did not intend to introduce any further amendments to only now get a new amendment before us, albeit a good amendment that is worthy of support and will address the Henry VIII clause that should not have been in the bill in the first place.

Hon ALANNAH MacTIERNAN: I apologise to the member for the limited notice of the amendment. When the Minister for Commerce wrote that email, there certainly was no intention to make further amendments. This amendment very much arose out of the debate last night. We listened to the critique in the chamber and it became obvious that the government's amendment to clause 10 was not going to go far enough to meet the sorts of concerns that were articulated in the chamber. We approached the Attorney General this morning and then we addressed it. To me, this is a complete demonstration of the importance of debate in this chamber, because members made us realise what we needed to do to address their concerns and we have responded to that.

Hon RICK MAZZA: I rise to also support the amendment. The original clause 10 was of concern because it stated that exemptions could apply in a modified way. We were not sure what that modification might entail, and that could have put further conditions on developments. The amendment we have before us at 51/10 on the supplementary notice paper goes a long way towards addressing that. I must say that I appreciate the government preparing this amendment, having listened to the debate last night. The only question I have—maybe the minister can clarify this for me—relates to proposed section 9A(2), which states —

> The regulations may provide for conditions and restrictions subject to which an exemption is to apply.

I want to know whether those conditions and restrictions have to be within the scope of this bill and not something outside the bill. I would not like to see a condition applied that is not part of this bill, if that makes sense.

Hon ALANNAH MacTIERNAN: If we want to make some time conditions not apply to give an exemption to time periods—for example, when someone has a moveable house, some of the time periods might not be relevant—we might want to put a restriction on it so that the reduction in time will apply only if the tenant agrees. If there has to be a month's notice, in certain circumstances a lessor might want to provide that the time period could be reduced, if the place is fully transportable. But then, proposed subsection (2) provides that the reduction will only take place if the tenant agrees. It will not be something plucked out from the ether; it will very much relate to the parties that have rights under the existing provision and, if there is to be an exemption, ensuring that both parties agree to it. That is the type of restriction that we are talking about. If we restrict something that limits a person's right, in certain circumstances we could say that both parties must agree to that.

Hon RICK MAZZA: Just for clarity and to give an example of the mechanics, what I have got from that is if someone has a long-stay park and the regulations grant them an exemption from the legislation, these regulations could apply some conditions. They are exempt, but there may be some conditions that relate to notice periods that have to be given to the tenant. Am I right with that?

Hon ALANNAH MacTIERNAN: No, it is not about those conditions. The provisions we dealt with last night would allow a wholesale opting out of the legislation—an exemption from the legislation. These provisions are about legislating exemptions relating to specific provisions. The concept is that the lessor is still covered by the legislation, but because of the particular type of arrangement, certain provisions, such as notice periods, may have the exemption, but in some circumstances, someone may want to put a caveat on that; that is, in order for it to apply, the other party has to agree. They may not put it on, but they may. That is the type of thing we are talking about; we are not introducing something new, but saying that with respect to that sort of exemption, both parties may have to agree, or it can apply only if they have done X, Y or Z.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 11 and 12 put and passed.

Clause 13: Section 10 replaced —

Hon NICK GOIRAN: I would like to again refer to the letter from the Caravan Industry Association of Western Australia dated 29 March 2019, and on this occasion, I turn to page 3. There are two items of relevance. At page 3 under the third heading, "Items not addressed in the report", the industry association has drawn to our attention two matters relevant to this clause, specifically at item 8, where reference is made to proposed section 10B(4), "Particular terms in long-stay agreements", and also at item 11, which deals with proposed section 10A, "Prescribed standard-form agreement". What is the government's response to those two concerns?

Hon ALANNAH MacTIERNAN: In relation to the first of those items—the reference to proposed section 10B, "Particular terms in long-stay agreements"—the industry group proposed that regulations may prescribe non-standard terms that park operators are prohibited from including in a long-stay agreement. My advice is that this amendment was not supported. Proposed section 10B reflects the position currently provided for in section 10B of the act, which is that a long-stay agreement must include such clauses, if any, as are prescribed and any regulations made pursuant to this, or any other provision made in consultation with industry and subject to a regulatory impact assessment process. The proposed amendment suggested by the industry is covered in proposed section 10B(2)(b).

Hon NICK GOIRAN: Minister, there were two items. The other matter in the letter from the Caravan Industry Association is item 11, "Section 10A — Prescribed standard-form agreement". Might the minister be in a position to inform the chamber of the government's response to that concern?

Hon ALANNAH MacTIERNAN: Again, the industry proposed an amendment, which was not supported. My advice is that park operators will not be prevented from using their own standard-form agreements and will continue to have flexibility to include their own special conditions in those agreements. These will need to be specifically identified, and cannot be inconsistent with the terms of the standard-form agreement or the act. The standard-form agreements will be developed in consultation with park operators or long-stay tenants. They are saying they do not believe this provision is necessary, because they could introduce new clauses or provisions into their own agreements, provided they were not inconsistent with the standard-form agreement—they can be additional to, but not inconsistent with. In any event, further dialogue will be undertaken with the industry on precisely what the standard-form agreements will look like.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Sections 11 to 13 replaced —

Hon NICK GOIRAN: I refer again to the letter from the Caravan Industry Association dated 29 March 2019, in particular part 3 at page 3, entitled "Items not addressed in the Report". On this occasion, I draw the minister's attention to item 2, "Section 10C — Long-stay agreement binds park operator's successors in title". What is the government's response to that concern?

Hon ALANNAH MacTIERNAN: I thank the member for the question. It is important to note that all these issues were raised with the committee, and the committee determined not to propose any amendments in response to that, so I presume the committee was satisfied with the explanations that had been given about why the government was not proceeding with that. The proposed amendment in this regard is not supported. Proposed section 10C as currently drafted means that tenants will continue to be bound under the terms of the original agreement, in line with general contractual principles. The proposed industry amendments would preclude verbal agreements and terms under proposed subsection (1) from being pursued. Although it might be preferable that all terms of the agreement be in writing, that is not always the case, and verbal agreements, when appropriate, should be able to be relied upon, notwithstanding that the terms and conditions of any verbal agreement may be difficult to prove.

Hon NICK GOIRAN: I ask the minister that, for the remainder of this debate, we do not make any assumptions with regard to the Standing Committee on Legislation. By way of explanation, as the deputy chair of that committee, I served on the inquiry, and although, of course, I am precluded from revealing any deliberations of the committee, I can briefly recount the chronology. We had a 37-day inquiry. We were given the opportunity of a mere 37 days to undertake this inquiry. That is because the minister's leader, the Leader of the House, had decided that the committee needed to report by 31 March—not this year, but last year. That was after this particular bill had languished on the notice paper over the 2018 summer recess. The committee reported back in March last year, and we are now dealing with this matter in June 2020. This matter has had a long and protracted history. It has been gathering a lot of dust on the notice paper. Therefore, if there are matters about which industry has concerns, it is appropriate for government to respond to them now, because only a 37-day inquiry was provided by government to the committee. I think the people from industry who have raised these concerns are entitled to have their concerns addressed by either the Standing Committee on Legislation or the Committee of the Whole.

Having said that, I have a couple of other questions about clause 15. In particular, I draw the minister's attention to proposed new section 11(2), which provides —

> A park operator must give the required documents —

Those are the documents set out in proposed section 11(1) —

> to a person before entering into a long-stay agreement with the person —
>
> (a) for a site-only agreement — at least 5 working days before the agreement is signed; or
>
> (b) otherwise — before the agreement is entered into.

Why is it only in relation to site-only agreements that the five–working day provision is mandated?

Hon ALANNAH MacTIERNAN: The logic here was that with site-only agreements, the person is bringing their own home onto the site, and, obviously, considerable logistics are associated with physically getting that home to the site and, in some cases, linking it up to the services. It was felt that because this is a special circumstance, we want to make sure that people are given time to digest exactly what the arrangement and their exposure will be. If the agreement is for both the site and the home upon it, that is analogous with the situation of any tenant of residential property. If the person is not happy with the site and wants to move, there is far less logistical difficulty than if the person needs to find another location for their home and has to go to the expense of physically disconnecting and moving the home and reconnecting to the new facilities. For that reason, it was felt that we needed to provide greater opportunity for a person to get across the detail of the arrangement that they were entering into.

Hon NICK GOIRAN: I thank the minister for that explanation. I make one observation, before I move to my next question on clause 15. I note that the explanatory memorandum states that the five-day period is essential due to the logistics and costs involved in relocating a home. However, people who enter into a long-stay home agreement would also have logistics and costs when they arrange to move from where they live currently. Nevertheless, an explanation has been provided for the choice of five days and the differentiation, and I am happy to move on.

I foreshadow that I have three further lines of inquiry about clause 15. The first of those three areas goes back to the Caravan Industry Association letter. If the minister looks at the third heading on page 3, titled "Items not addressed in the report", she will see item 3, "Section 12(1)(e) — Restrictions on amounts park operators may charge". What is the government's response to that concern?

Hon ALANNAH MacTIERNAN: Sorry; I was just speaking with my adviser. Can the member quickly recap?

Hon NICK GOIRAN: Absolutely, minister. We were just talking about the Caravan Industry Association letter. I refer the minister to the third heading on page 3. This time we are looking at item 3.

Hon ALANNAH MacTIERNAN: I thank the honourable member for repeating that. The Caravan Industry Association's suggestion was considered but it was not supported because, generally, with long-stay agreements the rent is intended to cover most of the running costs of the park and would include a profit component. However, the Residential Parks (Long-stay Tenants) Act and regulations permit an operator to charge fees for additional services or facilities such as visitors' fees, the consumption of utilities if they are separately metered, gardening services, storage services, additional parking spaces, services for air conditioning, the cleaning of gutters and the screening of prospective tenants. The statutory review recommended that a cost-recovery principle be applied to these additional permitted fees. The cost-recovery principle is aimed at those costs that are separately passed on to tenants when little, if any, value is added by the operator. Proposed section 12 will implement the cost-recovery principle. It will allow a park owner to pass on the cost of those services, but not to do a plus, plus on top of them.

Hon RICK MAZZA: I have a couple of questions around clause 15, and in particular proposed sections 11(2) and (3). Proposed section 11(2)(a) states —

> for a site-only agreement — at least 5 working days before the agreement is signed …

A disclosure document is provided to the prospective tenant to fully understand the agreement, what it entails and what their obligations may be. Proposed section 11(3)(b) states —

> states in writing to the park operator —

That is if there is an exemption —

> that the person does not require the required documents to be given to the person at least 5 working days before the agreement is signed …

Predominantly, the demographic that we are talking about here is older Western Australians who take up this type of accommodation. What is to prevent a park operator from saying, "Sign here, here and here", which includes the person waiving their right to the five working days before they enter into the agreement? Under the Strata Titles Act, a section 28 disclosure must be provided before entering into the contract; otherwise the contract is void. In this case, what protections are there for people entering into this agreement that they actually will have five working days to contemplate the agreement?

Hon ALANNAH MacTIERNAN: The member will note that this particular provision applies only to a relocatable home that is a vehicle for which a vehicle licence has been granted; that is, a caravan, or possibly a motorhome, I suppose. We are talking here about only those things that are fully transportable, have their own motor and can be

moved. This really came about in response to representations from the industry and from consumers who said that often a person in a caravan wants to move in pretty quickly and does not want to wait the five days. In those circumstances, we are giving people the ability to waive the five-day period. We think that the risk, given that it is confined in that way, is pretty limited. A lot of these people are very smart and on the ball, too.

Hon NICK GOIRAN: I refer to proposed section 13(3) and note that unlike in proposed section 12(2), no provision has been included for an order by the State Administrative Tribunal, and I ask: is this an oversight?

Hon ALANNAH MacTIERNAN: As I understand it, the arrangements under proposed section 12 are basically arrangements between the park operator and the tenant, and they are justiciable by SAT. Proposed section 13 relates to real estate agents, and the advice that I have been given is that if there is a breach of this provision, it simply goes to the court under the normal provisions. There is not a SAT jurisdiction in relation to this.

Hon NICK GOIRAN: I thank the minister. Further to that, in both instances, whether that be, shall we say, the dispute under proposed section 12 or the dispute under proposed section 13, would costs be recoverable for the pursuit of the debt due?

Hon ALANNAH MacTIERNAN: I will need to get some advice on this. Under proposed section 13, when it is recoverable as a debt due, under general jurisprudence provisions, I would presume that the costs were recoverable. Proposed section 13 refers to matters that are going to the court of competent jurisdiction, so the general principles that apply to that jurisdiction would apply here. The bill does not in any way amend that. One would presume, as would happen in the normal course of the law that regulates those courts, that costs would be recoverable. Nothing in here alters what would apply generally in those courts.

Hon NICK GOIRAN: That is at the heart of my concern, minister. In both instances, the recovery will have to happen in a court of competent jurisdiction. If the amount that is sought to be recovered is less than $10 000, the Magistrates Court would not have jurisdiction to allow the costs to be recovered. Under proposed section 13, we are considering real estate agents being prohibited from charging fees, charges or rewards for particular services. The wrongful amount that is being sought to be recovered could well be below $10 000. The same might apply for a dispute under proposed section 12 and the restrictions on amounts that park operators may charge. Is the minister in a position to indicate what the government considers is the likely range of fees, charges and rewards that a real estate agent might charge that it is intended proposed section 13 would prohibit? Similarly, what is the range of charges that a park operator might charge under proposed section 12 that would be restricted? In particular, to try to narrow the scope of the question, does the government consider it likely that the amount of the fee or charge that is being wrongly charged would be less than $10 000?

Hon ALANNAH MacTIERNAN: Member, I point out that this provision is in the existing legislation. Although it is presented in this bill because of, I believe, an issue of restructuring the provisions, it is identical to the law as it stands currently. We do not appear to have specific advice on this provision because although it does appear in the bill, it is not a change to the substance of the legislation.

Hon NICK GOIRAN: I accept that, minister, but we had the opportunity to fix that. This problem has been around for about 14 years, whereby these types of matters ultimately are not pursued in courts of competent jurisdiction. I make the general remark, particularly to drafters of this type of legislation, not only for this bill, but also future legislation, that it is somewhat pointless, with the greatest of respect for the drafters of these bills, to put these types of provisions in the legislation. The general statements at proposed sections 12(2) and 13(3) that these types of matters can be recovered in a court of competent jurisdiction are ultimately pointless unless somebody addresses people's inability to recover costs. If the amount sought to be recovered is, let us say, $2 000, and a lawyer charges $2 000 to cover that amount, the person has no incentive to address this matter. I am disappointed that the opportunity has not been taken to remedy that issue at proposed sections 12(2) and 13(3). As the minister said, it is the state of the current law. I think the current law needs improvement, and there was an opportunity to address that. Obviously, it did not happen on this occasion, but there will be an opportunity for someone to pick up this issue on another occasion.

Having said that, I move to my final comments on clause 15. I refer the minister to proposed section 13A(2)(b) and the reference to providing an approved form in the prescribed manner. It is one thing for the executive to develop an approved form, but it is curious that it is deemed necessary to leave the manner of delivery to be prescribed. Can the minister indicate to the chamber why the manner of delivery intended to be prescribed cannot be stated in the bill? It is not clear to me why that needs to be left to regulation and prescription. Maybe there is some compelling reason that that needs to be done; perhaps the minister can explain that. In any event, could the minister explain what the prescribed manner of delivery is intended to be?

Hon ALANNAH MacTIERNAN: While my advisers are marshalling their resources, in relation to the member's first point, the main compliance mechanism for real estate agents will be that they can be fined and actions can be brought by the regulatory bodies to take them to court to get those fines. Proposed subsections (1) and (2) will be significant deterrents to real estate agents doing that as defined. That will be more significant than the provision at proposed subsection (3). It is not necessarily the case that a person would have to have a lawyer to go to court. Indeed,

many people represent themselves in the small disputes jurisdiction. I imagine that if the matter were dealt with by the real estate disciplinary body and fines were charged, it would be a fairly easy matter to represent oneself in a small disputes jurisdiction.

I will get some clarification about the prescribed manner. The full nature of this has not been determined, but a clear issue is whether it is sufficient that it can be forwarded electronically. What we are trying to get at with this provision is only that precise mechanism: will it have to be a paper document or in certain circumstances could a document be provided in electronic form?

Clause put and passed.

Clauses 16 to 18 put and passed.

Clause 19: Section 20 replaced —

Hon NICK GOIRAN: For clause 19 there is an amendment standing in the name of the committee on the supplementary notice paper. I would like to take the opportunity—notwithstanding that the chairman of the Standing Committee on Legislation is present in the chamber—as deputy chairman to move that amendment. In no way intending to usurp the committee chair, I move the amendment standing in the name of the committee —

> Page 24, line 26 — To insert after "that" —
>
> is reasonably likely to occur and

Briefly, by way of explanation, this amendment gives effect to the committee's recommendation 6 on page 21 of the report tabled in March last year, which reads —

> Clause 19, proposed section 20A(1) be amended as follows:
>
> Page 24, line 26 — To insert after "that":
>
> is reasonably likely to occur and

Given it was a unanimous finding of the committee, I recommend the amendment be supported by all members and hopefully the government, too.

Hon ALANNAH MacTIERNAN: The government will support this amendment.

Amendment put and passed.

Hon NICK GOIRAN: If we can just have a look at the Caravan Industry Association Western Australia letter dated 29 March 2019, on page 3 under the third heading, "Items not addressed in the Report", there is a concern set out and enumerated under item 9. Can the minister inform the house of the government's response to that concern? It reads —

> *Item 9: Section 20 — Age restricted residential parks;*

Hon ALANNAH MacTIERNAN: Yes, the industry suggested that the word "ordinarily" be added into the provision. The view of the drafters was that this was not necessary. The proposed section restates the current clause 9 of schedule 1. The clause permits an operator to include a clause in the agreement restricting the ability of children to reside at the park. A long-stay agreement may include the word "ordinarily"; however, this word is not necessary in the bill, and, if included, might have some unintended consequences of restricting the type of clauses that a park operator may include in a long-stay agreement. We thought it would provide more flexibility and would not prevent a long-stay agreement from including that, but would allow a greater number of circumstances to be taken into account.

Clause, as amended, put and passed.

Clause 20: Section 21 amended —

Hon NICK GOIRAN: Clause 20 intersects with finding 7 and recommendation 7 of the Standing Committee on Legislation's thirty-ninth report. Finding 7 states —

> The Department of Mines, Industry Regulation and Safety intends that the cost of replacement keys or security devices for residential parks will be a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the *Residential Parks (Long-stay Tenants) Bill 2018*.

The committee went on from that to make recommendation 7, which states —

> The Minister representing the Minister for Commerce confirm that the cost of replacement keys or security devices will be included as a prescribed fee under regulations pursuant to clause 15, proposed section 12(1)(e) of the Residential Parks (Long-stay Tenants) Bill 2018.

My question is: is the minister in a position to confirm that?

Hon ALANNAH MacTIERNAN: Indeed I am, and the minister has confirmed that this will be done.

Clause put and passed.

Clauses 21 to 28 put and passed.

Clause 29: Part 2 Division 4 replaced —

Hon ALANNAH MacTIERNAN: I move —

Page 38, after line 27 — To insert —

(4) When a charge of an offence under subsection (2) relates to a failure by the park operator to give the long-stay tenant a copy of a key to the premises, it is a defence to the charge to prove that —

(a) the copy of the key had been given to the park operator under section 32H(9)(b); and

(b) the tenant was a person to whom the park operator was instructed not to give the copy of the key under section 32H(9)(c)(ii).

This amendment and the subsequent amendment, 10/29, both provide an acknowledgement that since the time the legislation was drafted, we have had the passage of the Residential Tenancies Legislation Amendment (Family Violence) Act 2019, so these provisions are designed to ensure that the provisions of that legislation are taken into account and the relevant defences and rights that align with that legislation apply to this legislation. It is using this bill to incorporate the changes that were made in the Residential Tenancies Legislation Amendment (Family Violence) Act.

Hon NICK GOIRAN: The opposition will support this amendment moved by the government, and the following amendments, 10/29 and 11/29, on the basis of government advice that these amendments will address provisions impacted by the passage of the Residential Tenancies Legislation Amendment (Family Violence) Act 2019. I do not propose to repeat this when we get to the following two amendments, but I will close by saying that the government kindly provided a four-page document entitled "Residential Parks (Long-stay Tenants) Amendment Bill 2018: Supplementary Notice Paper 99/6 — Summary for LC Members — updated 13 May 2020". I can say that the provision of that document has been most helpful in navigating the significant number of amendments on the supplementary notice paper, as has the rationale provided by the government for those amendments. I thank and commend the drafters of that document for providing it. It will certainly facilitate the passage of this bill.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 40, after line 26 — To insert —

(h) for the purpose of inspecting the agreed premises and assessing any damage after the termination of a tenant's interest under —

(i) section 33(2A) or (2B); or

(ii) section 74B.

(4) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subsection (3)(h)(i) —

(a) not more than 7 days after receiving notice of termination under section 45A(1) or 45B(4); and

(b) not less than 3 days after giving notice to the long-stay tenant of the park operator's intention to enter the agreed premises.

(5) It is a term of every long-stay agreement that the park operator may enter the agreed premises under subsection (3)(h)(ii) —

(a) not more than 10 days before the hearing of the application under section 74B; and

(b) not less than 3 days after giving notice to each long-stay tenant of the park operator's intention to enter the agreed premises.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 42, line 14 — To delete "It" and substitute —

Except as provided in subsection (9), it

Amendment put and passed.

Hon ALANNAH MacTIERNAN: As I understand it, amendment 23/29 on the supplementary notice paper addresses a concern that was raised by the Standing Committee on Legislation and set out at finding 8 in its report. Recommendation 8 of the legislation committee was that the bill "be amended to provide a defence from prosecution where the locks to shared premises are changed for health and safety reasons." This amendment seeks to implement recommendation 8 of the legislation committee. I move —

> Page 43, after line 6 — To insert —
>
> (6A) A park operator who alters, removes or adds a lock or similar device to the shared premises other than in accordance with subsection (4) —
>
> (a) does not breach the term referred to in subsection (4) if the park operator alters, removes or adds the lock or device for the health and safety of persons who may use the shared premises; and
>
> (b) does not commit an offence under subsection (6) related to a breach of the term referred to in subsection (4) if the park operator alters, removes or adds the lock or device for the health and safety of persons who may use the shared premises.

Hon NICK GOIRAN: The opposition supports this amendment moved by the government as a response to finding 8 and recommendation 8 of the Standing Committee on Legislation. Finding 8 states —

> The Department of Mines, Industry Regulation and Safety has undertaken that a park operator would not be prosecuted under clause 29, proposed section 32H of the *Residential Parks (Long-stay Tenants) Amendment Bill 2018* if they change locks to shared premises for health and safety reasons.

As the minister has flagged, recommendation 8 was —

> The Residential Parks (Long-stay Tenants) Amendment Bill 2018 be amended to provide a defence from prosecution where the locks to shared premises are changed for health and safety reasons.

I note that, in fact, the government is going above and beyond the committee's recommendation. The committee recommended that a defence be put in. In this amendment, which the opposition supports, the government is expressly excluding this scenario from being considered an offence, which in this instance is superior to providing a defence provision. For those reasons, we support the amendment.

Amendment put and passed.

Hon NICK GOIRAN: Before the minister moves the next amendment on the supplementary notice paper, I have a question on a part of the bill that comes immediately before it. I refer to proposed section 32H(7). Why does an agent have a greater right to alter, remove or add a lock or device than the operator? In particular, I ask the minister to compare and contrast proposed section 32H(7) with proposed section 32H(4).

Hon ALANNAH MacTIERNAN: Member, it is quite a complex question to determine to what extent these proposed sections might be getting at different things. I note that under proposed section 32H(4), the park operator is not to alter these devices without first notifying the long-stay tenant and providing the tenant with means of access to the shared premises. I would have thought that the agent is also subject to that, so I would have thought that proposed section 32H(7) was in addition to proposed section 32H(4), not in substitution of proposed section 32H(4).

I am not quite sure that we can clarify this. We have some advisers who are listening. I wonder whether it is possible to defer consideration of that, perhaps deal with the remaining amendments to this clause, and then come back to it. Hopefully, by then, someone from parliamentary counsel or whoever is listening in may be able to give us a reason. There seems to be a disparity between what the operator can do and what the agent of the operator can do.

Hon NICK GOIRAN: I am much obliged to the minister for that approach, which I certainly support. I think we can consider the rest of the amendments standing in the minister's name for clause 29 if the government is inclined to move a small amendment to ensure that the operator does not have a more onerous requirement than the agent. The agent should have to comply with at least the requirements of the operator. If a small amendment can be made—maybe it will require a short recommittal of the bill at the end—I would certainly be happy to facilitate that. With those remarks, I think it is wise for us to proceed to the next amendment.

The DEPUTY CHAIR (Hon Dr Steve Thomas): It will take us a while to get through clause 29, so there is a little bit of time in the pocket here. We are up to the minister's amendment 12/29 at the bottom of page 3 of supplementary notice paper 99.

Hon ALANNAH MacTIERNAN: I move —

> Page 43, after line 24 — To insert —

(9) It is a term of every on-site home agreement —

(a) that a long-stay tenant may alter or add any lock or similar device to the agreed premises —

(i) after the termination of an excluded tenant's interest in a long-stay agreement under section 74B; or

(ii) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against the tenant or a dependant of the tenant;

and

(b) that the tenant must give to the park operator a copy of the key to any lock or similar device altered or added under paragraph (a) as soon as practicable, and in any event within 7 days, after the lock or similar device has been altered or added; and

(c) that the park operator must not give a copy of a key referred to in paragraph (b) —

(i) to an excluded tenant whose interest in the long-stay agreement has been terminated under section 74B; or

(ii) in any event, to a person who the tenant has instructed the park operator in writing not to give the copy of the key.

(10) A long-stay tenant who breaches a term referred to in subsection (9)(b) without reasonable excuse, in addition to any civil liability that the tenant might incur, commits an offence.

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

(11) Subsection (9)(b) does not apply if the park operator is a person reasonably suspected of being likely to commit the family violence referred to in subsection (9)(a)(ii).

(12) A park operator who breaches a term referred to in subsection (9)(c) without reasonable excuse, in addition to any civil liability that the park operator might incur, commits an offence.

Penalty for this subsection: a fine of $20 000.

This amendment is similar to amendment 23/29 and is in response to recommendation 8 of the Standing Committee on Legislation, as we referred to previously. It will make it a term of every onsite agreement that long-stay tenants will be allowed, without having first obtained the permission of the park operator, to add or alter a lock or similar device if there are various family violence triggers.

Hon NICK GOIRAN: The opposition will support this amendment. However, I ask the minister to check her notes, because in her explanation she indicated that amendment 12/29 follows on from the previous amendment and, in particular, is in response to finding 8 and recommendation 8 of the Standing Committee on Legislation. My understanding, in accordance with the document that was provided to members by the government and to which I referred earlier, is that this amendment has been moved in response to the Residential Tenancies Legislation Amendment (Family Violence) Act 2019, and it was on that basis that the opposition was providing support for the amendment. Either way, we support the amendment, but can the minister clarify whether the government is moving the amendment because of the Residential Tenancies Legislation Amendment (Family Violence) Act 2019 or because of some work of the committee?

Hon ALANNAH MacTIERNAN: The member is correct and I do apologise—my notes have been set out in a way that leads one to believe that that is the case. As I indicated, the amendment incorporates changes that are necessary to give effect to the Residential Tenancies Legislation Amendment (Family Violence) Act 2019.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 43, after line 25 — To insert —

(1AA) 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.

This amendment inserts a definition of "disability" into the bill. This provision is necessary to bring the bill into line with what we might call the toppling furniture provisions that were introduced by way of the Consumer Protection Legislation Amendment Act 2019. This amendment will ensure that we have consistency with that legislation, which was passed by Parliament last year.

Hon NICK GOIRAN: The opposition will support this amendment as well as the following one, which has been foreshadowed at 30/29. It is our understanding that these two amendments are precursors to the government's amendment at 39/29, which is found on the following page of the supplementary notice paper. This package of three amendments has been offered by the government as an enhanced version of what my notes refer to as the "Mazza amendment", which is found on the supplementary notice paper at 32/29, and will also update these matters to be consistent with the recent amendments to the Residential Tenancies Act 1987. On the assumption that Hon Rick Mazza is satisfied, the opposition is certainly happy to support this package of amendments.

Hon ALANNAH MacTIERNAN: I just confirm that this amendment is part of a package to address that issue. The government believes that the package covers the territory that Hon Rick Mazza was attempting to cover.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 43, line 26 — To delete "A" and substitute —

Subject to subsection (1A) and except as provided in subsection (5), a

This is a drafting amendment so that the package of amendments concerning the removal of fixtures and altering of premises is properly sequenced. My understanding is that this drafting amendment is necessary because of the addition of the provisions concerning the removal of fixtures and altering of premises.

Amendment put and passed.

The CHAIR: Hon Rick Mazza might be able to indicate whether he wishes to proceed with his amendment as notified or to defer to the alternative amendment of the minister.

Hon RICK MAZZA: As previously discussed, the government has covered the matters I raised earlier. I put this amendment on the supplementary notice paper to make this consistent with the residential tenancies legislation that we debated earlier in the year, but I am very satisfied with the government's version, which has a couple of tweaks in it. I will not be moving that amendment.

The CHAIR: That dispenses with amendment 32/29 on the supplementary notice paper.

Hon ALANNAH MacTIERNAN: I move —

Page 44, after line 3 — To insert —

(1A) It is a term of an on-site home agreement that —

(a) a long-stay tenant may affix either or both of the following items to a wall of the on-site home the subject of the agreement for the purpose of ensuring the safety of a child or a person with a disability, but only with the park operator's consent —

(i) furniture;

(ii) a thing to affix the furniture to the wall;

and

(b) the park operator may only refuse consent —

(i) if affixing the item to the wall would disturb material containing asbestos; or

(ii) for a prescribed reason;

and

(c) unless the park operator agrees otherwise in writing, the tenant must remove the item from the wall when the tenant vacates the on-site home and either —

(i) restore the wall to its original condition; or

(ii) compensate the park operator for any reasonable expenses incurred by the park operator in doing that restoration;

and

(d) the cost of affixing the item to the wall, removing it and restoring the wall to its original condition must be borne by the tenant; and

(e) if the tenant causes damage to the on-site home when affixing or removing the item or restoring the wall to its original condition —

(i) the tenant must notify the park operator in writing that damage has been caused to the on-site home; and

(ii) the park operator may require the tenant to repair the damage and restore the on-site home to its original condition or compensate the park operator for the reasonable expenses incurred in doing the repair and restoration.

(1B) The park operator is taken to have consented to affixing the furniture or thing to the wall of the on-site home under subsection (1A)(a) if, and only if —

(a) the long-stay tenant has given the park operator a request, in the approved form, seeking the park operator's consent to affix the item to the wall; and

(b) the park operator has not refused consent under subsection (1A)(b) within 14 days after the day on which the park operator receives the request.

This is the next amendment in the series of amendments designed to deal with the removing fixtures and altering premises provision. We thank Hon Rick Mazza for the work that he has done to bring that to our attention.

Hon NICK GOIRAN: The opposition will support this amendment. I take the opportunity to congratulate Hon Rick Mazza for picking this matter up. We also congratulate the government and acknowledge its cooperative approach in this matter.

Amendment put and passed.

The CHAIR: I think we have another consequential amendment, minister. Is that the case?

Hon ALANNAH MacTIERNAN: This is another amendment, though not consequential to the toppling furniture provisions. This incorporates the family violence amendments to the Residential Tenancies Act. I move —

Page 44, line 4 — To delete "A" and substitute —

Except as provided in subsection (5), a

Hon NICK GOIRAN: I note at this time, midway through the moving of an amendment, that I have been provided with issue 9 of the supplementary notice paper, and I will get to the bottom of what has caused the need for that in a moment. For the time being, the matter that is currently before the Committee of the Whole House is amendment 14/29 in the name of the minister representing the Minister for Commerce. It is a government amendment and the opposition intends to support this amendment and, what until moments ago I understood would be the very next amendment, which is indeed the case, amendment 15/29, because these are a package of amendments that we understand the government has indicated are necessary to move to address the impact of the Residential Tenancies Legislation Amendment (Family Violence) Act 2019.

Amendment put and passed.

The CHAIR: I have just received, as others will have received, issue 9 of the supplementary notice paper with today's date. We have already made progress through to what is now page 5 of that supplementary notice paper, I believe. We will resume with amendment 15/29, standing in the minister's name.

Hon ALANNAH MacTIERNAN: I was not proposing that we have issue 9 of the supplementary notice paper. The last amendment that was tabled affects clause 65. We were going to move it only with the agreement of Hon Nick Goiran. It was designed to address a legitimate concern he raised last night about the notion of reasonable grounds for assessing abandonment. We will proceed with that amendment only if he is in agreement. In the meantime, we are back on amendment 15/29 on the supplementary notice paper. I move —

Page 45, after line 10 — To insert —

(5) It is a term of every long-stay agreement that a long-stay tenant may affix any prescribed fixture, or make any prescribed renovation, alteration or addition to the agreed premises (the ***prescribed alterations***), necessary to prevent entry onto the agreed premises of a person —

(a) if the person is an excluded tenant whose interest in a long-stay agreement has been terminated under section 74B; or

(b) in any event, if it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed by the person against the tenant or a dependant of the tenant.

(6) For the purposes of subsection (5) —

(a) the cost of making the prescribed alterations must be borne by the long-stay tenant; and

(b) the long-stay tenant must give written notice to the park operator of the tenant's intention to make the prescribed alterations; and

(c) work on the prescribed alterations must be undertaken by a qualified tradesperson, a copy of whose invoice the long-stay tenant must provide to the park operator within 14 days of the alterations being completed; and

(d) the prescribed alterations must be effected having regard to the age and character of the property and any applicable strata company by-laws; and

(e) the long-stay tenant must restore the agreed premises to their original condition at the end of the long-stay agreement if the park operator requires the tenant to do so and, where restoration work has been undertaken by a tradesperson, must provide to the park operator a copy of that tradesperson's invoice within 14 days of that work being performed.

That is part of the family violence package.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

Page 49, line 6 — To delete "It" and substitute —

(1) It

This is a drafting amendment to ensure that the numbers are now correct.

Hon NICK GOIRAN: My understanding is that amendment 26/29 on the supplementary notice paper is part of a package of three amendments, the other ones being the following two that are listed on the supplementary notice paper at 16/29 and 27/29. Could the minister confirm that they are a package of amendments intended to be read together? While the minister is confirming that, is she also in a position to confirm whether this is a package being proposed by the government in response to recommendation 9 of the Standing Committee on Legislation? Recommendation 9, set out on page 24 of the thirty-ninth report, reads —

> The Minister representing the Minister for Commerce address the concerns raised in relation to the extent to which sections 29B and 29C of the *Rates and Charges (Rebates and Deferments) Act 1992* are utilised in the residential parks sector.

Hon ALANNAH MacTIERNAN: The member is correct in the sense that amendment 26/29 anticipates the passing of amendment 27/29, which deals with the concerns that have been raised by the Standing Committee on Legislation in recommendation 9 of its report.

Hon NICK GOIRAN: That being the case, I draw to the minister's attention pages 23 and 24 in the committee report and what appears to be a difference of opinion. Paragraph 7.52, found on page 23 of the report, references page 15 of the Caravan Industry Association of Western Australia's first submission, dated 20 February 2019. It states —

> The wording of this section may unintentionally prevent long-stay tenants from being eligible for rebates (which require as a condition of eligibility that long-stay tenants be directly or indirectly liable for the relevant charges).
>
> We think the section should provide that, while the park operator must pay these amounts, the longstay tenants may still be indirectly responsible for them where the cost of these is a component of the rent. This will not affect park operators' obligation to pay the relevant amounts, but will still allow long-stay tenants to remain eligible for rebates.

The committee report goes on in the following paragraph, paragraph 7.53, to provide the feedback from the department about the industry association's proposed amendments to proposed section 32N. That feedback is quoted by the committee at this point in the report, and is found in answer to question on notice 9 asked at the hearing held on 1 March 2019. It states —

> It is the Department's understanding that CIAWA seeks to have this amendment included so that eligible tenants can access rebates for certain rates and charges in line with the requirements of the Rates and Charges (Rebates and Deferments) Act 1992. Sections 29B and 29C of that Act provide that a person will be eligible for a rebate if the person has entered into a written agreement with the lessor of land in a caravan park or residential park to pay (either directly or indirectly) the relevant rates or charges. The tenant must also be eligible for rebates (for example as a senior) and have a lease for 5 years or more.
>
> The Department is currently seeking further information about the extent to which these provisions are utilised in the residential parks sector in order to assess any potential consequences of the proposed amendment in the Bill.

> The Department is of the view that the amendment proposed by CIAWA may be framed too broadly and could possibly undermine the intention of proposed section 32N—which is to ensure that park operators are responsible for these costs.

Those two paragraphs seem to indicate a difference of opinion. I seek the minister's confirmation about what consultation the government has undertaken on the package of amendments that we are considering here—namely, the amendment that is currently before us, plus the more substantive ones to follow. What consultation has the government undertaken on these amendments, in light of the difference of opinion that is evident in these two paragraphs of the committee report?

Hon ALANNAH MacTIERNAN: So that we are very clear, the substance of this issue is dealt with in amendment 27/29. Is the member clear about that?

Hon Nick Goiran: Yes.

Hon ALANNAH MacTIERNAN: We looked at the arguments, and parliamentary counsel believes that the mechanism that has been devised here is the best path forward. I think we all would want parties to a long-stay agreement to be given access to those rates and charges rebates. The provision will be, as outlined in amendment 27/29, that the agreement may specify that a component of the rent paid under the long-stay agreement is paid in respect of rates and charges, and that will trigger the capability of the tenant to seek reimbursement or subsidies under the Rates and Charges (Rebates and Deferments) Act. We looked at both sides of the argument, and parliamentary counsel came forward with what they believe is the best solution to that conundrum.

Hon NICK GOIRAN: I thank the minister for that explanation. My question remains: what consultation has the government undertaken on these amendments? I appreciate that the government has weighed up the competing arguments—one by the industry association and the other one by the department—and has worked with parliamentary counsel to provide the package of amendments that is currently before us, starting with the administrative amendment at 26/29, and continuing at 16/29, and then with the most substantial amendment at 27/29. I appreciate that the government has weighed up those arguments and worked with parliamentary counsel to provide this solution. However, I would like some confirmation that the industry association has been consulted about this amendment and perhaps is even supportive of the amendment, because that would give us confidence to support the amendment if that is the compromise solution.

Hon ALANNAH MacTIERNAN: On the general issue of needing to find a resolution, we have done that. We do not expect industry associations to be expert in the details of parliamentary drafting, but I think there was general agreement that we needed to structure these payments in a way that would maximise the opportunity for tenants to claim the rebates, and that is what we have done.

Hon NICK GOIRAN: On that basis, I do not think I am in a position, on behalf of the opposition, to provide full-throated support for this package of amendments, simply because I cannot get confirmation from the government that it has expressly consulted with the industry and the industry has confirmed its support for this package of amendments. That said, the position that the opposition will take in this instance is not to oppose the package of amendments before the chamber.

The CHAIR: Minister, we are looking at amendments 26/29, 16/29 and 27/29. They are a package.

Hon ALANNAH MacTIERNAN: I am not sure that amendment 16/29 is, but amendments 26/29 and 27/29 are definitely a package, because they both relate to the issue of rates and charges. My advice is that amendment 16/29 is related to strata titles and community titles, and that amendments 26/29 and 27/29 are related as a package. Is the Chair suggesting that those amendments be moved together?

The CHAIR: Does the minister seek leave to move 26/29 and 27/29 together?

Hon ALANNAH MacTIERNAN: Yes, if I could.

The CHAIR: There is an indication that those amendments are related. I am trying to expedite things. Is leave granted? Leave is not granted. Therefore, I will put the amendments in seriatim. That attempt to expedite proceedings is what the American military would call an incomplete success, I think. We return to the question. We are now dealing with amendment 26/29.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

> Page 49, lines 8 to 10 — To delete the lines and substitute —
>
> (a) if a contribution is levied under the *Strata Titles Act 1985* or the *Community Titles Act 2018* — the contribution; and

I am advised that the purpose of amendment 16/29 is to incorporate reference to the Strata Titles Act and the Community Titles Act.

Hon NICK GOIRAN: Just to clarify this small issue of whether or not it is part of the package that includes the preceding amendment and the next amendment, I refer to the helpful document that was provided to members and was updated on 13 May 2020. I note that reference is made at 16/29 and states —

> Amends section 32N (levies rates and taxes to be paid by operator) to include a reference to the *Community Titles Act 2018*.

The preceding amendment, 26/29, refers to —

> Drafting amendment to section 32N (levies rates and taxes) to be paid by operator.

For the following amendment at 27/29, the note reads —

> **Legislation Committee Recommendation 9**
>
> Amends section 32N (levies rates and taxes to be paid by operator) to provide that a long-stay agreement or another agreement or arrangement may provide that a tenant indirectly pays a prescribed charge within the meaning of the *Rates and Charges (Rebates and Deferments) Act 1992* as a component of rent under the long-stay agreement. This amendment will ensure that tenants who currently access rebates under the long-stay agreement.
>
> This amendment will ensure that tenants who currently access rebates under the *Rates and Charges (Rebates and Deferments) Act 1992* may continue to do so.

There are two scenarios here. The first option is that all three amendments are part of a package dealing with recommendation 9 of the Standing Committee on Legislation. The second option is that that is not the case and that the amendment before the chamber, 16/29, is a standalone amendment. If it is the first option, there is nothing further for us to discuss. If it is the second option, can I get confirmation of what the genesis was behind amendment 16/29 if it was not recommendation 9 of the standing committee?

Hon ALANNAH MacTIERNAN: I am advised that if we look at the issue on recommendation 9, we can see that it clearly concerns the availability for tenants in residential parks to have access to rates and charges. That is what it is about. There is no access to rates and charges, as far as I understand, coming out directly from community title levies that one might be prepared to pay. This is what I have been told. I am told that this particular provision has been made necessary because the Community Titles Bill was assented to on 19 November 2018 after, I understand, the legislation was introduced. The explanation that I have been given is that this does not relate to the ability of tenants to get rebates for municipal rates and charges; this relates to charges that are levied under the Community Titles Act.

Hon NICK GOIRAN: I thank the minister for that explanation. On that basis, the opposition will support the amendment currently before the chamber at 16/29.

Amendment put and passed.

Hon ALANNAH MacTIERNAN: I move —

> Page 49, after line 18 — To insert —
>
> (2) Despite subsection (1), a term of a long-stay agreement or another written contract, agreement, scheme, deed or other written arrangement between a long-stay tenant and the park operator may provide that the long-stay tenant indirectly pays, as a component of rent paid under the long-stay agreement, a prescribed charge as defined in the *Rates and Charges (Rebates and Deferments) Act 1992* section 3(1).

The department confirms that it had general consultation with the industry about the need for a provision that addresses that issue raised by the committee in recommendation 9. As I said, this is the response to that. The general principle has been the matter of discussion with the industry, and we believe that this is the appropriate response to address the issue of allowing those tenants access to the rebates and deferments.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 30: Sections 32Q and 32R inserted —

Hon NICK GOIRAN: I flag in advance that I have questions at clauses 30 and 31 before we move to the next amendment on the supplementary notice paper at clause 35.

With regard to clause 30 currently before the Committee of the Whole House, I refer to proposed section 32R(3), which provides that a park operator must give the long-stay tenant written notice as to whether or not the agreement will be extended or renewed within the prescribed time frame. It is not self-evident why this matter has been left to be prescribed at a later time. What are the factors yet to be considered by government that will enable a time frame to be determined?

Hon ALANNAH MacTIERNAN: I am advised that the tenant representatives and the industry park owner representatives were of the view that a matrix is needed because different written notices may be required for different circumstances. Therefore, it is proposed that consideration be given to what will be the appropriate notice for the different sets of circumstances and particular conditions that might apply to a tenancy. I understand that is why the tenant and industry park owner representatives want to put that into a regulation.

Clause put and passed.

Clause 31: Section 33 amended —

Hon NICK GOIRAN: I refer to the committee's analysis of proposed section 33(3). This is conveniently set out at page 24 of the committee's report. I refer to the three paragraphs 7.55 through to 7.57. Does the government concur with the conclusion reached at paragraph 7.57 of the report?

Hon ALANNAH MacTIERNAN: The comment on the provision is that a long-stay agreement can be terminated if a mortgagee under a mortgage entered into before the commencement of the legislation enters into possession of the agreed premises. It is the government's view that that accurately reflects the situation.

Clause put and passed.

Clauses 32 to 34 put and passed.

Clause 35: Section 38 amended —

Hon ALANNAH MacTIERNAN: I move the amendment standing in my name on the supplementary notice paper at 17/35 —

> Page 54, line 14 — To delete "section 38:" and substitute —
>
> section 38(1):

It is a simple drafting amendment.

Hon NICK GOIRAN: It is not so simple, minister, because the government is asking us to agree to an amendment to delete proposed section 38(1) instead of proposed section 38. I do not know whether the minister has a copy of the blue bill handy, but it makes no reference to proposed section 38(1). It is not readily clear, at least to me, why this amendment is necessary. I ask the minister to consider that and report back why it is necessary.

Hon ALANNAH MacTIERNAN: The advisers believe that the amendment is related to a family violence legislation amendment that causes a consequential drafting amendment to be necessary. I propose that we leave clause 35 until later. I ask parliamentary counsel staff who might be listening to provide us with some advice. Okay; we now have the advice. Proposed section 38(1) is necessary because the amendment was made between the introduction of the bill and its passage. The advice does not specify which bill. I suggest that we postpone this clause until the end of the bill to give the officers time to get a comprehensive answer on this.

Further consideration of the clause postponed, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

[See page 4164.]

Clauses 36 to 40 put and passed.

The DEPUTY CHAIR (Hon Adele Farina): The question now is that clause 42 stand as printed.

Hon Nick Goiran: It's clause 41.

The DEPUTY CHAIR: Sorry; it is clause 41.

Clause 41: Section 42 amended —

Hon NICK GOIRAN: Thanks, Madam Deputy Chair; my heartbeat is returning to normal!

I refer the minister to the Caravan Industry Association Western Australia's letter dated 29 March 2019 and the remarks made on page 2.

Hon Alannah MacTiernan: Which item is it?

Hon NICK GOIRAN: Of interest to me is item 15 on page 2. The letter states —

> **2.** **<u>Items addressed in Report which CIAWA believes require further consideration</u>**
>
> …
>
> CIAWA considers section 42 should be reinstated so that 'without grounds' termination applies to all long-stay agreements (and not just on-site agreements). As previously indicated, we support the inclusion of sections 41A to 41D in the Act as they provide additional means for

> park operators to terminate long-stay agreements and provide certainty for long-stay tenants. However, we believe park operators should not be restricted to termination on these specific grounds as many situations will arise which justify termination by a park operator, and tenants are protected by way of the lengthy notice period and the fact that the right does not arise before the end of a fixed term tenancy.
>
> In its Report, the Committee confirmed that without grounds termination for site-only agreements will no longer be possible after the commencement of the Bill. We consider the Report deals more with the issue of the retrospective application of the prohibition on termination without grounds, rather than the justifications put forward by CIAWA. We request further consideration be given to CIAWA's rationale about why section 42 should be reinstated.

What is the rationale for only applying this reform to site-only tenants?

Hon ALANNAH MacTIERNAN: The current ability to terminate without grounds is already restricted by section 68(4) of the act, which provides that in determining an application for vacant possession, the State Administrative Tribunal must be satisfied that terminating the agreement is justified in all the circumstances. The proposed amendments will provide clarity by outlining those circumstances in which termination is justified and setting clear processes, including the requirements for the provision of evidence. This is a key amendment proposed by the bill and it provides greater certainty and fairness to tenants. The proposed new sections provide adequate grounds for termination for park operators, including that the park is to be closed or redeveloped, the site is required to undertake works, the long-stay site is to be used for a different purpose and the tenant has repeatedly interfered with the quiet enjoyment of the park by other tenants. The right of the tenant to terminate without grounds will be terminated. This gives a tenant flexibility to respond to any changes in their life circumstances and to make decisions about where they wish to live.

Clause put and passed.

Clauses 42 to 51 put and passed.

Clause 52: Part 4 Division 1A inserted —

Hon ALANNAH MacTIERNAN: I move —

> Page 73, after line 15 — To insert —
>
> **54E. Modification of provision of Division by regulations**
>
> The regulations may prescribe that a provision of this Division does not apply to, or applies in a modified way to, a residential park subdivided under the *Strata Titles Act 1985* or the *Community Titles Act 2018*.

This amendment has been moved as a result of recommendation 5 of the thirty-ninth report of the Standing Committee on Legislation, which asked the Minister for Commerce to address the issue of the modification of the act to keep it congruent with the strata parks. This provision has been added to address that recommendation of the committee.

Hon NICK GOIRAN: The opposition will oppose this amendment. The government says that this amendment is in response to recommendation 5, which states —

> The Minister representing the Minister for Commerce advise the Legislative Council of amendments to the Residential Parks (Long-stay Tenants) Amendment Bill 2018 to address the matters set out in paragraph 7.29 of this report.

Paragraph 7.29 of the report states —

> In Attachment B to its written answers to questions, DMIRS provided the following preliminary assessment of what modifications to the Act will be made by regulations under this proposed section:
>
> > Modifications for strata parks. Regulations will need to vary the application of the RPLT Act to deal with:
> >
> > - matters dealt with by strata titles legislation;
> > - community aspects of park living that assume one owner such as:
> >   - park liaison committees; and
> >   - park rules.

I draw to members' attention the very next paragraph in the committee's report, paragraph 7.30, "Committee comment", which states —

> The Committee regards clause 10, proposed section 9A as a Henry VIII clause on the basis it provides for the application of primary legislation to be modified by subsidiary legislation, infringing FLP 14.

The committee then states at finding 6 —

> Clause 10, proposed section 9A is a Henry VIII clause.

The opposition will oppose this amendment because, as much as the government says that it is in response to recommendation 5, it is mirrored by clause 10 of the bill, which the committee expressly said was a Henry VIII clause. The committee asked the government to address a particular situation. The government said, "No problem, we'll address it by bringing in a Henry VIII clause". Then, at a different point in the report the committee said, "No, you can't support a Henry VIII clause; it actually needs to be opposed." For those reasons, we will oppose this amendment.

Hon ALANNAH MacTIERNAN: I think this amendment is really quite important for the operation of the legislation, and I do not think it is very wise to reject it on that basis. Strata title parks have more than one owner or operator; we have strata title parks that have a multiplicity of owners. This modification is required to allow for provisions relating to the community aspects of park living, such as park rules and park liaison committees, to be tailored for strata title parks. They have a very limited scope, and I honestly think it would be quite reckless to reject this and then leave us with no ability to deal with the situation of strata title parks. This amendment is very, very necessary to enable us to deal with this important reality. There are some parks that are not subdivided under the Strata Titles Act, and we need some mechanisms to enable us to deal with the provision of park rules in those circumstances.

Hon NICK GOIRAN: No, sorry, minister; that is not acceptable. I draw the minister's attention to supplementary notice paper 99, issue 8, and the clause we dealt with earlier today, clause 10, which the Standing Committee on Legislation recommended be opposed. It was a Henry VIII clause that was essentially identical, word for word, with the amendment before us at the moment. The committee said, "No, we oppose the clause". The minister might remember that earlier, microseconds before the house sat today, she alerted us to the fact that the government was going to provide an alternative to that clause, and it did so, to its credit, and I congratulated the government for that at the time. That was amendment 51/10. Earlier today, when we dealt with an identical Henry VIII clause, clause 10, the government conceded that it was unacceptable. It withdrew the Henry VIII clause and provided an alternative. That is not what is happening here. The government is trying to bring in a Henry VIII clause in exactly the same form and manner as the earlier clause, which the government conceded was not appropriate and which the committee unanimously said was not appropriate.

I am not going to fall for this; I note that a lot of work has been done on the run, and amendments have been done here, there and everywhere. The simple reality is this: someone earlier recognised that there needed to be a variation to clause 10 so that we did not have a Henry VIII clause. Whoever did that excellent work earlier has not picked up that that creates a problem here, at amendment 46/52. I also foreshadow that exactly the same problem will arise at the next amendment, 47/58. We simply cannot support the amendment before the chamber. If the government wants to defer this and look at an alternative, I will be happy to support that, but there is no way in the world that I am going to sit here and support the introduction of a Henry VIII clause that the committee unanimously said it could not support, to which the government earlier, at clause 10, conceded and moved an amendment.

Hon ALANNAH MacTIERNAN: I think the member is completely overstating the case. There is a critical difference here. This is confined to a very limited sector of parks. It is not going to be possible to draft this in any other way. We are talking about a very limited number of parks in which there are strata titles or community titles, so there is a multiplicity of owners. For example, if we were to prescribe that a provision in this division does not apply, or applies in a modified way, we would lose some of our ability to really make this legislation work as a practical matter. I do not believe that there was a recommendation of the committee that this provision be deleted or that there be —

Hon Nick Goiran: That's because it's an amendment.

Hon ALANNAH MacTIERNAN: But in relation to the provision, the underlying clause states that it wants amendments to address the modification of the act for strata properties. We can argue endlessly about this. I do not believe that we can modify this one in this particular way. I am happy to put this clause to one side and leave it until the end of the committee stage so that we can get some advice from parliamentary counsel, but I believe that it is different from the previous case at clause 10. It is confined to this very small class, so it is not a power at large.

Hon RICK MAZZA: I have to say that I agree with Hon Nick Goiran on this proposed amendment. At clause 10, we changed the way that those regulations were worded because of the word "modified". Now, we are discussing proposed amendments 46/52 and 47/58, and we have pretty much the same form of words that we had at clause 10. The concerns that were raised with the wording in clause 10 apply here as well. At the very least, for consistency, we should be looking at changing the wording. I am also quite open to deferring the debate on this clause to give the government some time to maybe reconsider the wording. As it stands, I would not support this proposed amendment.

Hon AARON STONEHOUSE: I would like to echo the sentiments that have been expressed so far. On my examination of proposed new section 54E, it does seem a little too broad. I am not concerned so much about the exemption of parts of the act applying to certain types of agreements or certain classes; it is more that they may be modified in what seems to be any way. That seems far too broad. That basically says that what is written in statute can be changed at the government's discretion merely through regulation. I feel that is far too broad. Even if it applies to only a specific class of agreement, it still seems too broad to provide the government with the power to modify in any way that it likes what would otherwise be a law written in statute. I would be much more comfortable if this was narrowed further and the circumstances under which exemptions or modifications could be made were spelled out a bit clearer in the act. If that means we need to defer this to consider it a bit further and come back to it at the end of the process or at a later time, I would much rather we proceed that way.

Hon ALANNAH MacTIERNAN: Can I suggest that clauses 52 and 58 be considered at the end of this bill.

Further consideration of the clause postponed, and clause 58 postponed, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

[See page 4164.]

Clause 53 put and passed.

Clause 54: Sections 56 to 58 replaced —

Hon NICK GOIRAN: On clause 54, I would like to take the minister to the letter from the Caravan Industry Association Western Australia of 29 March 2019, in particular page 3, under the heading "3. Items not addressed in the Report". On this occasion we are looking at item 13, which is titled "Section 57B—park operator not required to be licensed to act as selling agent". What is the government's response to this concern?

Hon ALANNAH MacTIERNAN: In the government's view, this proposed section replicates current section 58(1). The purpose of the exclusion from licensing is to allow a park operator who acts as a selling agent as a small component of their overall business to do so without a licence. However, if a separate entity operates as a selling agent, it is not appropriate for the exclusion to apply. It is not necessary to specifically refer to employees as they are covered by this exclusion by virtue of the nature of their employment. If a park owner employs a person to act on behalf of the park operator as an employee, they are covered by that exemption.

Clause put and passed.

Clauses 55 to 57 put and passed.

Clause 59: Sections 62 to 64 replaced —

Hon NICK GOIRAN: Minister, this clause was expressly considered by the Standing Committee on Legislation in its unnecessarily rushed 37-day inquiry. I want to draw the minister's attention to page 24, which reads —

> 7.58 Clause 59 includes proposed sections 62A, 62C and 63.
>
> 7.59 Proposed sections 62A and 62C set out the circumstances in which a party to a long-stay agreement may apply to the SAT for relief (62A) and the directions and orders that SAT may make on hearing applications under the Act (62C). These proposed sections replicate current section 62 of the Act.
>
> 7.60 Under proposed section 63, which is in similar terms to section 63 of the Act, a long-stay tenant may apply to the SAT for an order for the reduction of rent on various grounds.
>
> 7.61 In its submission, PHOAWA —

That is, the Park Home Owners Association of Western Australia —

> expressed concerns about the Bill not applying to periodic leases as well as the amount of rent paid by tenants in residential parks. It stated that 'homeowners need the same opportunity to go to SAT where consistent rent increases don't meet current conditions'.
>
> 7.62 The Committee notes the Bill does, in fact, contain a mechanism to ensure tenants on periodic agreements have the capacity to apply to SAT for an order about the amount of rent payable under an agreement.
>
> 7.63 The Committee notes that this addresses the concern raised by PHOAWA and makes the following finding:
>
> **FINDING 9**
>
> Tenants on periodic agreements will be able to seek an order from the State Administrative Tribunal about the amount of rent payable under an agreement.

The committee went on to state in the report —

> 7.64 Clause 59 proposes section 63C, which provides that a person who is occupying premises but is not named as a long-stay tenant under the long-stay agreement, may apply to the SAT to be recognised as a tenant in respect of the agreed premises. This is in circumstances where the resident has asked to be named as a tenant and the park operator has refused.
>
> 7.65 The Committee sought clarification from DMIRS whether this capacity to apply to the SAT applies to all existing long-stay agreements or only new agreements entered into after the commencement of the Bill.
>
> 7.66 DMIRS advised that proposed section 63C will apply from the commencement day to all long-stay agreements
>
> 7.67 Accordingly, the Committee makes the following finding:
>
> **FINDING 10**
>
> The ability for a person who is occupying premises to apply to the State Administrative Tribunal to be recognised as a long-stay tenant in respect of agreed premises under clause 59, proposed section 63C of the Residential Parks (Long-stay Tenants) Amendment Bill 2018 will apply from the commencement day to all existing as well as new long-stay agreements.

I want to compare and contrast that with the letter that we have been discussing from time to time from the Caravan Industry Association Western Australia, dated 29 March 2019, because it appears that the association remains concerned about this. I draw the minister's attention in particular to page 3 of the letter. Under part 3, "Items not addressed in the Report", item 14 states —

> *Section 62D — Orders in relation to park operator's representations.*

What is the government's response to item 14? So that we can perhaps expedite proceedings, can the minister also provide the government's response to the other concerns outlined on page 2 of the letter in part 2, "Items addressed in Report which CIAWA believes require further consideration" and, in particular, item 7, "Section 63C— Recognising persons as long-stay tenants"? What is the government's response to these ongoing concerns of the industry association?

Hon ALANNAH MacTIERNAN: In relation to proposed section 62D, we understand that the view of industry was that compensation was the appropriate mechanism and that it wanted to limit the power of specific performance. The government does not share that view. Our view is that proposed section 62D is intended to give SAT broad powers to make orders that are considered appropriate to the circumstances of the case. We did not think it was fair to fetter the discretion of SAT to choose between specific performance and compensation or that it would add to the quantum of fairness in the adjudication of these matters. SAT may well determine that compensation is the preferred option, but we could not agree to a provision in which specific performance would be available only should compensation be deemed not to be an adequate representation. This is on the question of people's homes.

In relation to item 7 and the recognition of long-stay tenants, this is a question about whether it is appropriate to add people as recognised persons. We think that the regime in the bill will allow a proper examination of all the interests of the parties. The industry proposed that we should permit only people who were living there in the first instance with the approval of the park operator to be able to make an application to be added. Under the amendment that we are proposing, SAT will have broader discretion, so it will be able to consider both people who had express approval and any other person. Under this provision, SAT will have an obligation to consider whether the resident is a suitable person to be recognised as a tenant. Of course, that will include consideration of whether the person meets the park's usual criteria for tenancy.

Clause put and passed.

Clause 60: Section 65 amended —

Hon NICK GOIRAN: I refer to the proposed amendment to section 65 pertaining to the determination of compensation payable to long-stay tenants for termination under section 46. I note that section 65(3)(b) will be amended to —

> any other financial loss incurred as a result of the termination of the agreement;

The explanatory memorandum does not refer to this amendment. In that context, why will this amendment be made?

Hon ALANNAH MacTIERNAN: We are not sure that the member is accurate in his reflections on the explanatory memorandum. The explanatory memorandum states that clause 60 —

> Amends section 65 to include the following additional matters that may be taken into account by the State Administrative Tribunal …

- for site-only agreements
    - the cost of transporting a tenant's possessions; and
    - any other financial loss incurred as a result of the termination.
- for on-site agreements:
    - the cost of disconnecting and reconnecting utilities.

These amendments are made to ensure that a consistent approach is taken in relation to both site-only and on-site agreements.

Drafting amendments have also been made to terminology used in the provision by replacing 'may' with 'must' and correcting gender specific terminology.

Hon NICK GOIRAN: Have claims for non-financial loss been made to the State Administrative Tribunal by tenants that will now be restricted by this amendment?

Hon Alannah MacTiernan: Sorry, can the member repeat that?

Hon NICK GOIRAN: Have claims for non-financial loss, which will now be restricted by this amendment, been made to the State Administrative Tribunal by tenants? The minister will see that the clause proposes to amend section 65(3)(b) so that it will state —

any other financial loss incurred as a result of the termination of the agreement;

Hon ALANNAH MacTIERNAN: This clause is designed to clarify that the sorts of losses that are sought to be licensed are financial losses. Other emotional losses perhaps cannot properly be dealt with by this mechanism. My advice is that this seeks to make it clear that when we look at the provisions generally, it is clearly about cost. That catch-all is to make it clear that we are talking about financial loss only.

Hon NICK GOIRAN: Perhaps it will help if the minister looks at the blue bill. Page 98 of the blue bill sets out what section 65 will look like if the clause currently before us is agreed to. The minister will see that the bill intends to change the title of section 65 to read —

Determination of compensation payable to long-stay tenant for termination under s. 46

That is a different title from what exists in the act. That is found on page 97 of the blue bill. Section 65(3) on page 98 of the blue bill sets out some parameters for the determination of compensation when matters are before the State Administrative Tribunal, in particular, section 65(3)(b). Under the current law of Western Australia, section 65(3)(b) simply reads —

any other loss incurred as a result of the termination of the agreement.

The government is asking us to agree to specifically insert the word "financial". That is not there at the moment, and that is why I am asking whether tenants have been making any applications for non-financial loss before the State Administrative Tribunal and that somehow this has been seen as mischievous and is why we need to have this amendment.

Hon ALANNAH MacTIERNAN: We have no evidence that that is happening, but we want to make it very clear that we are talking about financial loss. We used the opportunity of this amendment bill to make that clarification. Of course, as the member can see, all items of loss that will be remunerated relate to cost, and this provision is to make it absolutely clear that this is about financial costs.

Clause put and passed.

Clauses 61 to 64 put and passed.

Clause 65: Part 5 Division 2A inserted —

Hon ALANNAH MacTIERNAN: I move —

Page 102, lines 3 to 5 — To delete the lines and substitute —

(2) If the State Administrative Tribunal is satisfied that the long-stay tenant has abandoned the agreed premises, the tribunal —

This arose in a debate last night. Hon Nick Goiran expressed some concerns, which we had some sympathy with, about the wording of the legislation and its very broad criteria, which constituted reasonable grounds for a person to take action to start the process of finding that a premises was abandoned and therefore retaking the premises. The member expressed some concern about the way reasonable grounds was dealt with in that provision. We said that it is not such a severe issue because it will apply only at the very beginning of the procedure and, ultimately, when the matter goes to SAT, there would be a broader range of considerations and weighting to these various

things and whether there was one piece of mail or 500 pieces of mail would be taken into account. When we looked at this clause, when we said that we would look into this and talk with the Attorney General about it, we recognised that when the matter went to SAT, the terms "reasonable grounds" were inserted and we were concerned that that would reference back to things that were the reasonable grounds that triggered the very beginning of the process. We were not sure that that was fair in light of the discussions.

To address the commentary of the member, and because we think it improves the bill, we now propose to change that provision to remove the reference to reasonable grounds, which might refer back to that earlier provision, so that proposed section 70B(2) will state —

> If the State Administrative Tribunal is satisfied that the long-stay tenant has abandoned the agreed premises, the tribunal —

This does not lock the tribunal into looking at those particular provisions, and it allows it to give proper weight to all those competing items.

Hon NICK GOIRAN: This is the first time that I have had the opportunity to consider amendment 52/65 on the supplementary notice paper, which varies clause 65 of the bill, which, in turn, amends proposed section 70B in the Residential Parks (Long-Stay Tenants) Act. Having had only a few moments to consider this matter, I think that the solution and the amendment that has been provided by the government is a good one. In the absence of any other member taking a contrary view or providing some other persuasive reason, I think this is an improvement to the existing regime for exactly the reasons that have been enunciated by the minister. It has my support.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 66: Section 71A inserted —

The DEPUTY CHAIR (Hon Matthew Swinbourn): I note that there is a committee recommendation for an amendment on the supplementary notice paper.

Hon NICK GOIRAN: The committee chair is away from the chamber on urgent parliamentary business. In light of that, as the deputy chair I will be pleased to move the committee's recommendation. I move —

> Page 102, line 23 to page 103, line 28 — To delete the lines and substitute —

> **71A. Orders to terminate agreement for repeated interference with quiet enjoyment or threats or abuse**
>
> (1) In this section, a long-stay tenant, or the tenant's guest, engages in ***serious misconduct*** when the tenant or the tenant's guest —
>
> (a) repeatedly interferes, or has repeatedly interfered, with another tenant's quiet enjoyment of the residential park; or
>
> (b) seriously or persistently threatens or abuses, or has seriously or persistently threatened or abused, the park operator or the park operator's employee.
>
> (2) A park operator may apply to the State Administrative Tribunal to terminate a long-stay agreement because the long-stay tenant, or the tenant's guest, has engaged in serious misconduct.
>
> (3) The State Administrative Tribunal may make an order terminating the long-stay agreement if the tribunal is satisfied of all of the following —
>
> (a) the long-stay tenant, or the tenant's guest, has engaged in serious misconduct;
>
> (b) the park operator has given a notice to the long-stay tenant in an approved form that asks the tenant, or the tenant's guest, to stop engaging in the serious misconduct;
>
> (c) despite being asked to stop engaging in the serious misconduct, the long-stay tenant or the tenant's guest has not stopped engaging in the serious misconduct;
>
> (d) terminating the agreement is justified in all the circumstances.
>
> (4) However, the State Administrative Tribunal may refuse to make an order if satisfied that the park operator was wholly or partly motivated to give the notice by the fact that the long-stay tenant had complained to a public authority about the park operator's conduct in relation to the long-stay agreement, or taken steps to secure or enforce the tenant's rights under the agreement.

(5) If the State Administrative Tribunal makes the order, it must also order the long-stay tenant to give vacant possession of the agreed premises to the park operator when the tribunal orders.

Hon ALANNAH MacTIERNAN: The government supports this amendment.

The DEPUTY CHAIR: Peter Katsambanis will leave the chamber now. Thank you. I give the call to Hon Nick Goiran.

Hon NICK GOIRAN: By way of explanation to members, the amendment standing in the name of the committee at 4/66 seeks to give effect to recommendation 10, which is found at page 27 of the committee report. Recommendation 10 comprises, in essence, the entire content of the amendment that is currently before the chamber. Therefore, there is no need for me to read out recommendation 10. However, I draw members' attention to two paragraphs at page 27 of the report, which explain why the committee made this recommendation in the report that was tabled in March last year. They state —

> 7.74 The Committee agrees with CIAWA that proposed section 71A should be amended to cover circumstances where park operators and their staff are threatened or abused by tenants. They have the right to a workplace that is free from intimidation and harassment.
>
> 7.75 The Committee also agrees with DMIRS that the ability of a park operator to terminate an agreement should only arise where serious or persistent threats or abuse have been made, not minor incidents and makes the following recommendation:

That is followed by recommendation 10. Amendment 4/66 seeks to give effect to that recommendation. I thank the government for its indication of support for this amendment.

Amendment put and passed.

Hon NICK GOIRAN: Clause 66 also deals with the issue of quiet enjoyment. How is quiet enjoyment enforced under the existing regime?

Hon ALANNAH MacTIERNAN: I understand that there has always been an implied ability under the general provisions for park owners to terminate a tenancy because of the behaviour of a tenant. However, park owners thought it important that a specific regime be included in this legislation. The current legislation provides a definition of "quiet enjoyment". Tenants and landowners have a general right to quiet enjoyment. This amendment will provide a specific power for a park owner to apply, one might say on behalf of other tenants, to terminate the tenancy of a tenant who is interfering with the right of other tenants to quiet enjoyment.

Clause, as amended, put and passed.

Clauses 67 to 78 put and passed.

Clause 79: Section 96 replaced —

Hon NICK GOIRAN: I indicate to members that the amendment standing in my name at 36/79 is part of a package of two amendments, the other being the amendment that immediately follows at 37/79. The purpose of those two amendments is to enhance the statutory review clause to mirror the review clause found at clause 134 of the Family Violence Legislation Reform Bill 2019. In particular, this will lift the reform clause to include the out-of-session tabling provisions, and ensure that the statutory review is done within 12 months of the relevant period. I note that in an email that I received from the minister's office at 11.06 am yesterday, I was told in the third last paragraph that the government will not oppose my proposed amendments to clause 79. Particular reference was made to two amendments, being 36/79 and 37/79. I thank the government for that advanced expression of non-opposition to the package of two amendments standing in my name under clause 79, and I seek the support of all members for those amendments. On that note, I move —

Page 110, line 6 — To delete "prepared." and substitute —

prepared, but not later than 12 months after the 5th anniversary.

Amendment put and passed.

Hon NICK GOIRAN: I move —

Page 110, after line 6 — To insert —

(3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —

(a) the report has been prepared; and

(b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.

(4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.

(5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 80 put and passed.

New Clause 80A —

Hon ALANNAH MacTIERNAN: I move —

Page 110, after line 14 — To insert —

80A. Section 98 deleted

Delete section 98.

I am advised that this is a drafting provision and will delete section 98.

Hon NICK GOIRAN: This is somewhat of an amusing amendment that is before the chamber. Rest assured, minister, that the opposition is providing its full support for this amendment. But it might interest members to know that this amendment seeks to delete section 98. If we look at the blue bill, we can see that section 98 was omitted by the Reprints Act 1984 under section 7(4)(e). We are deleting a ghost section. If that is a matter of importance to the government, it can rest assured that it has the support of the opposition.

New clause put and passed.

New clause 80B —

Hon ALANNAH MacTIERNAN: I move —

Page 110, after line 14 — To insert —

80B. Part 7 Division 1A inserted

After section 97 insert:

Division 1A — Transitional provisions about residential parks — *Residential Parks (Long-stay Tenants) Amendment Act 2018*

98. Places before commencement day taken to be residential parks and lifestyle villages

(1) In this section —

application period means the period beginning on 3 August 2007 and ending on the day before commencement day;

caravan has the meaning given in *Caravan Parks and Camping Grounds Act 1995* section 5(1);

commencement day means the day on which the *Residential Parks (Long-stay Tenants) Amendment Act 2018* section 80B comes into operation.

(2) For the purposes of an act or omission under this Act before, on or after commencement day —

(a) a place is taken to have been a residential park on each day during the application period that the place —

(i) had long-stay sites; and

(ii) did not have caravans situated for habitation; and

(iii) had relocatable homes other than caravans situated for habitation; and

(iv) was held out as a residential park or a place that had long-stay sites;

and

(b) a place, or a part of a place, is taken to have been a lifestyle village on each day that —

(i) the place is taken to have been a residential park under paragraph (a); and

(ii) the place, or part of the place, included long-stay sites that were occupied, or intended to be occupied, solely or principally by individuals having a particular interest or quality in common.

(3) However, a place is not taken to have been a residential park if the regulations provide that the place is not a residential park.

Hon ALANNAH MacTIERNAN: This is a transitional provision that aims to clarify the application of the act in line with the new broader definition of "residential park". It will apply if a facility has long-stay sites on which a relocatable home is placed and holds itself out as a residential park or place of long-stay sites, notwithstanding that there are no caravans on those sites within the scope of the definition as interpreted by the State Administrative Tribunal.

Hon NICK GOIRAN: Is this amendment before the chamber in response to the Henville decision?

Hon ALANNAH MacTIERNAN: The amendment is two-pronged. In part it is in response to that decision, but it is also because since the bill was first drafted, we have seen the emergence of a new style of park that does not have caravans on it, so this is partly to catch up with what is happening out in the industry.

Hon NICK GOIRAN: If that is the case, can the minister indicate what consultation has been undertaken by the government on this issue?

Committee interrupted, pursuant to standing orders.

[Continued on page 4159.]

Sitting suspended from 4.16 to 4.30 pm