RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018

Second Reading

Resumed from an earlier stage of the sitting.

HON RICK MAZZA (Agricultural) [5.08 pm]: Before we broke for afternoon tea, I spoke about the impact of family violence on the community and the fact that it had become a very complex and big problem within our community. I also said that the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 is a very small bandaid on what is a very large problem.

The second reading speech clearly stated that this bill is unashamedly victim focused. That is actually right. During our briefing, we were informed that the legislation was drafted based on Canadian legislation. I fail to understand why we had to go to Canada for a template for Western Australia, when other jurisdictions within Australia would be more relevant to our state. The second reading speech also states that full procedural fairness is preserved for all parties, including landlords. I do not believe that is the case.

The report includes quite a lot of comment about unfair impacts on landlords that I will later cover.

A tenancy agreement is no different from any other contract. It is a legally binding agreement between two parties that includes conditions and terms. Generally, a contract can be broken only by mutual agreement or order of the court. We are here looking to circumvent that process by enabling a tenant to terminate a lease through other means. Termination before the end of a fixed-term lease for no lawful reason currently results in one party having to pay the other compensation. Quite often residential tenancy leases include a break-of-lease clause if for some reason a tenant's circumstances change—for example, a job transfer. If the tenant breaks their lease, the tenant will have to reimburse the landlord for the loss of rent while a new tenant is found, advertising costs and re-leasing fees for the real estate agent et cetera. The Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 intentionally favours persons who have been subjected to family violence. Paragraph 7.132 on page 32 of the report states —

> A minority of the Committee comprising Hon Rick Mazza MLC and Hon Nick Goiran MLC is of the view that regard ought to be had for FLP 7. The provisions in the Bill empower a tenant to unilaterally terminate an agreement without the consent of the lessor and without oversight from a judicial officer. This adversely affects the contractual rights of the lessor retrospectively. In addition it imposes new statutory obligations upon the lessor for the giving of notices to other co-tenants. The legislative safeguard is said to be the professionalism of prescribed individuals empowered to sign a family violence report. Accordingly any prescription of such individuals should be in the Bill and not delegated to the Executive to be made and amended from time to time by regulation. The same considerations apply to Part 3, clause 29 in respect of proposed section …

Landlords will be impacted financially and otherwise. The latest supplementary notice paper has some amendments, and I believe that the prescribed persons listed in the bill should not be added to at a later date by regulations.

Unintended consequences can possibly arise from a number of clauses of the bill. Paragraph 7.144 on page 35 of the report states —

> Proposed sections 71AD(2) and (4) state
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> **71AD. Rights of co-tenants after notice under s.71AB**
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> (2) A lessor must give a copy of a notice received by the lessor under section 71AB(1) to each co-tenant under the residential tenancy agreement within 7 days after receiving the notice.
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> (4) The co-tenant may, not less than 7 days after receiving the copy of the notice, give notice of termination of the co-tenant's interest in the residential tenancy agreement.

That will put the landlord into a predicament in that if one tenant provides a notice of termination within seven days, the lessor then has to give to the remaining tenants seven days' notice and ask whether they want to continue with the lease, in which case they give 21 days' notice if they want to vacate. During that time, of course, the landlord is unsure of the position with their rental property, and they of course could be financially disadvantaged by that.

Potential losses for property owners include being out of pocket for lost rent and potential loss of future earnings, being left with damage to the property and being forced to have security fixtures on their property that they do not want—including the trimming of bushes that cannot be made good, as mentioned by Hon Michael Mischin. They could be forced to use the court system to redeem money for damages caused by a perpetrator who may no longer be on the lease agreement.

Comments have been made that this bill will not affect mum-and-dad investors as they presumably make up only a small portion of the real estate market. The residential tenancy market is in fact dominated by people who, having

purchased their own home, buy an investment property. These investors account for 83 per cent of all investment properties in Australia. This bill will have a direct negative impact on landlords, many of whom are small investors who, in many cases, are highly geared on their investment and subject to financial risk, especially in an environment in which the cost of owning a rental property is becoming less appealing. According to the Real Estate Institute of Western Australia, investor housing loan interest rates have risen from 5.5 per cent in August 2016 to 5.8 per cent in June this year, with house and unit rental yields trending downwards. New data released by the leading property data information and analytical services provider in Australia and New Zealand, CoreLogic, shows that Perth, based on a median house price of $510 988—a very specific amount; I do not know where it got that from—fetches median weekly rents of $370, meaning a rental yield of only 4.1 per cent, compared with Hobart at 5.5 per cent. Similarly, Perth's median unit value is $409 421, fetching a median weekly rent of $325, meaning a yield of 4.4 per cent, compared with Hobart at 5.8 per cent. Western Australia has very low residential property yields, and this bill will only further drive down the incentive for people to buy an investment property that will add to the private rental market within the state. Interest rates are increasing, yields are decreasing, and this bill will have consequences on the residential property market that provides private rental accommodation to thousands of Western Australians. If that investment pool diminishes, it will fall to state housing to provide a roof over people's heads.

Canstar—Australia's biggest financial comparison site—compared insurance premiums for a $450 000 house replacement value with the median annual income. The premiums as a percentage of gross rental income are within the range of five to seven per cent across Australia. Canstar's 2017 landlords insurance star rating research concluded that landlord insurance premiums for building and contents cover have, on average, increased by 20 per cent year on year in almost every state, with Western Australia experiencing the highest rise, with an average premium increase of 25 per cent.

The Standing Committee on Legislation contacted the Insurance Council of Australia, which indicated it is in the process of developing a new code of practice for insurers that will include a requirement for insurers to have a family violence insurance policy. The committee referred to that on pages 13 and 14 of the report. The report states —

> Some policies currently cover 'malicious damage' meaning damage caused by a tenant or a guest of the tenant.
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> 7.33 The Committee noted that on 26 June 2018, the ICA published its final report on developing a new Code of Practice for Insurers. The Chief Executive Officer said:
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> > This review was launched in 2017 at the request of the ICA Board. As it progressed, its focus widened to … address the growing awareness of complex social issues facing consumers experiencing vulnerability when dealing with insurance, including in the areas of mental health, financial hardship and family violence.
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> 7.34 It was explained that the matter of family violence and insurance is a live issue for the ICA and is being considered as part of the Code of Practice review. It is also being looked at separately with legal experts and other stakeholders to address the complex legal issues involved.

I raise insurance because a lot of landlords take out extra landlord protection insurance to cover for loss of rent and malicious damage to the property should a tenant default on their lease. Basically, the terms of those insurance policies will be around a breach of the lease if a tenant fails to pay rent, breaks the lease, damages the property and then leaves. It is then difficult for the landlord to try to recover their losses.

A concern I have is that the mechanisms within the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 will provide for a lawful termination of the contract and we are unclear at this point whether insurance companies will provide cover when a tenant who claims family violence as a reason to terminate their lease does so. Basically, by providing the certificate to the landlord and giving the required notice, a tenant has lawfully terminated their lease, so it is unclear whether the insurance underwriters will cover that loss for the time the landlord is out of pocket or for any malicious damage that may arise from the actions of a perpetrator. Considering a tenant who is subject to domestic violence will not have vicarious liability for somebody else who has damaged the property, it could leave landlords exposed. Until we find out from the Insurance Commission of WA what it intends to cover, we might find that some people get caught out.

From an investor's perspective, if owning a property in Western Australia is going to be unsustainable due to higher insurance premiums, higher bank interest rates and lower rental income, leading to a lower yield, the small investors who are currently investing within the private sector and providing a private rental market could very well decide to invest elsewhere. That would then put pressure on the available rental market. According to the Housing Authority, some 16 500 applicants are on the waiting list for subsidised housing. That includes 1 590 people with an identified priority need, with an average of 139 weeks waiting time for those people to be provided with accommodation—basically, it is years. The government should encourage the private sector to invest in the property market, not drive it away through proposed legislation that will have a negative impact on the affordability and availability of rental properties. If small investors are forced out of the rental property sector, the government

will have a big task in addressing the housing shortage and, more importantly, the taxpayer will have to pick up the cost of providing state housing. The government is failing to provide appropriate programs to prevent acts of family violence within our communities, so it is now trying to shift the burden of the problem to private landlords. I do not really think that the government should burden people who provide a roof over people's heads.

It was a shame that the report was rushed. We had only a month to prepare the report. As stated in the report, we did not really hear from stakeholders on the property side of things. I suppose they were not in a position to get their act together to provide us with evidence. Representatives from the Real Estate Institute of Western Australia provided evidence to the committee. Of course, REIWA, as an institute, represents real estate agents, not property owners and landlords. Its representatives rejected that premise when I asked them, but the reality is that they represent real estate agents, not so much landlords. We did not really hear from property owners how they thought this legislation might affect their investments.

The bill may have been drafted with victims of family violence in mind, but it has also created undesirable consequences for lessors. Paragraph 5.11.6 of the committee's report, titled "Financial loss for the lessor", states —

> (1) The lessor will experience a temporary financial disadvantage in the loss of half the bond until it is replaced by the remaining co-tenant.

I will cover some of that a bit later on. It continues —

> (2) Loss resulting from a potential change to insurance arrangements. Insurance is discussed at paragraphs 7.32 to 7.35.

I have covered that —

> (3) Lessor court costs. DMIRS conducted a cost analysis of three scenarios for terminating a tenancy arising out of family violence, estimating that under a seven-day termination notice, the lessor's loss would be $2 100 in a sole tenancy …

The report goes on to outline a few scenarios. I have a bit of an issue with that because, of course, they are hypothetical —

The ACTING PRESIDENT (Hon Adele Farina): Order, members! There are far too audible conversations happening around the room. If you are undertaking a private conversation, please leave the chamber so that Hansard can record the member on their feet.

Hon RICK MAZZA: Thank you, Madam Acting President. I thought that members were really enthralled with this speech, so I am surprised that there was audible noise in the background!

The scenarios in the report, which were provided by the department, are hypothetical. The department may have done some research on the figures that it produced, but the scenarios that were provided may not be realistic in the residential rental environment. For example, after 20-odd years as a real estate agent, I know that tenants abandoning a property is very rare. A tenant in a property might want to break their lease, but very rarely do they just disappear overnight. I think the possibility of an abandoned property in those scenarios is very remote.

I would like to touch on clause 5 of the bill. Clause 5 inserts proposed section 17B into the act, which requires the court to determine the rights and liabilities of the parties to the tenancy agreement when at least one of the tenant's interests in a tenancy agreement has been terminated. In circumstances in which the perpetrator is responsible for damage to the premises and is not named on the tenancy agreement, and they are therefore not a party to the agreement, the court is not able to assign liability for those damages to the perpetrator. By not having vicarious liability, the property may be damaged by a visitor or the departing tenant and the landlord would have great difficulty in trying to cover the losses that they have. The onus and financial burden will now be shifted from the tenant to the lessor for damage caused to the property based on whether it was carried out as a result of family violence. The lessor will be penalised and not compensated for damage that arises from the tenant renting the property. There will be no vicarious liability. How is the lessor supposed to provide evidence and prove that the damage was done by one tenant or the other, or by a person who is no longer or never was a party to the tenancy agreement? The lessor has the agreement with the tenant; therefore, the tenant must be legally liable for any damage done to the property while the property is in their care. If the victim tenant believes that the damage was done by someone other than them, they can and should take the matter up with the courts themselves through the civil proceedings process, as they are best placed to provide evidence of what damage occurred. This is not something that the lessor should be forced to do, with little or no evidence of wrongdoing by the alleged perpetrator. It will be virtually impossible for a landlord to recover losses. If the insurance policies do not respond— at this point we do not know whether the insurance policies will respond—it will be very difficult for landlords to recover those losses. I can see it becoming a loophole to be used by some tenants who will not want to take the responsibility for any damage done to a property during their tenancy. Again, with over 20-odd years

of managing hundreds and hundreds of properties, members would be amazed at the lengths to which some people will go to avoid responsibility for their tenancy.

The committee noted that the bill restricts applications to a tenant or former tenant, and not the lessor, under proposed section 17B(1), which I am a little curious about. I would like clarification of why the proposed section should not be amended to include the lessor being able to apply to a competent court for a determination of the rights and liabilities of the parties to the agreement. Proposed section 17B(3) allows the court to make an order to apportion the disposal of a security bond to the lessor and each tenant or former tenant as appropriate. The court will also be allowed to dispose of the victim tenant's share of the security bond to the victim tenant if the court were to find under proposed subsection (2) that the victim tenant was not required to pay any compensation to the lessor. The whole purpose of the bond is for the lessor to have some security that some damage will be covered. Should the court find that the victim tenant was not party to the damage done to the property, this bill will allow for the possibility of 50 per cent of the bond to disappear from the equation and not be available for a lessor to use for repairs. A lessor should be able to rely on the original bond if damage or loss of rent occurs, and the bond should go towards covering those losses, regardless of who was at fault.

I am also concerned about there being no provision within the bill that sets out the time frame in which a bond has to be topped up by the remaining tenant who decides to stay within the rental property. My understanding is that that will be left to the tenant and the lessor to determine between themselves—that is, the remaining tenant—which may prove to be problematic in some circumstances.

Clause 12 will amend section 47 to insert proposed subsection (4), which provides that it is a term of every residential tenancy agreement that a tenant is authorised to affix any prescribed fixture or make any prescribed renovation, alteration or addition to the premises after termination of a former tenant's interest in a tenancy agreement or, 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 the dependants.

As of 2015, all residential tenancy properties must comply with new provisions under the Residential Tenancies Act 1987 and the Residential Tenancies Regulations 1989, which raised the minimum level of security on residential properties. Lessors in this state already have to spend money installing deadlocks on front doors, deadlocks or patio bolts on every external door and locks on windows that prevent the window being opened from outside the premises, and installing an electrical light at the main entrance that is capable of being turned on from inside. This bill is not providing for a simple change of the front door lock. It provides for other means of securing the premises, which is to put in security fixtures that are also listed within the bill, with provision for the prescription of other things that may at some time be allowed to be put in.

I would like to point out a little hypocrisy in this bill. Those who live in heritage-listed properties will have no safeguards for family violence. Tenants in heritage-listed properties are not able to put in security arrangements because those properties have been exempted. During evidence given by the department, it was clarified that there were prescribed premises and that those prescribed premises were for the state housing commission. When questioned about the circumstances in which that might apply, to my memory the answer was something like in a house containing asbestos. Many private rentals containing asbestos will not be exempt, but if it is a state housing commission house that contains asbestos, if that is what the prescription is, a victim of family violence will be unable to have security fixtures attached. That goes against what the whole bill is about. People who live in state housing commission houses that have been exempted or in heritage-listed houses will be unable to provide the security measures outlined in the bill. I think we should remove that prescription so that any state government house where a victim of family violence lives who has filled out the form and wishes to alter the lease will be able to do that, as they would in a private rental. I do not see why —

Hon Alannah MacTiernan: No-one is saying it would only be in a state housing house. A provision about asbestos would apply to both.

Hon RICK MAZZA: That is not what the evidence said. The evidence said it was to do with state housing commission houses that contain asbestos. Further, the bill also provides for a qualified tradesman to undertake the work. I do not see any need for a prescription against homes that contain asbestos. Thousands are out there and a suitably qualified tradesperson would know how to handle asbestos houses when affixing things to them.

Hon Alannah MacTiernan: Do you want it to be stricter? Is the bill not strict enough?

Hon RICK MAZZA: I am saying that the bill does not allow private landlords to be exempted, but it does for the state housing commission. It is a hypocritical situation. It does not put individual safety first, if that is the bill's intention, if the property is heritage-listed or is a prescribed premises. The bill is clearly inconsistent in that application.

The other area of concern I have is that once the lessor has been given a copy of any new keys, they will have the onerous responsibility of not providing that key to any other person whose interest in the residential tenancy

agreement has been terminated or to a person who the tenant has instructed them not to give a copy of the key to. My worry is that that could put real estate agents and landlords at risk of violent behaviour when someone wants a key and they are unable to give them a copy of that key under the threat of a $20 000 fine should they do so. Under a tenancy agreement, both tenants have the legal right to enter the premises, but this bill will allow one tenant to lock the other tenant out of the property, which in some circumstances might inflame the situation. If someone has been locked out, I am sure that they could become violent over that in itself. It will be up to the lessor to ensure that the new key is not provided to a tenant who has been locked out of the premises based on no proof that family violence has taken place or is likely to take place. Maybe the minister can advise whether locks can be changed prior to the certified family violence form being signed.

In the event that the lessor is forced to lock out a tenant and they provide them with a copy of the key, clause 15 provides for a fine of up to $20 000. This will put a huge amount of pressure on the lessor and the threat to their own occupational wellbeing and safety, which could be compromised by the locked out person displaying violent behaviour. It is interesting to note that under proposed section 45(4) the bill provides for the tenant to lock the lessor out of the property by not providing the new key when the lessor is reasonably expected of being a perpetrator. I would appreciate the minister providing some detail on the operation of this clause and the consequences for vexatious allegations. The lessor in this instance may be innocent, but because the tenant believes that the lessor may be a threat, under this bill they will be able to make alterations to the property and not provide a key to the lessor, which could create some significant private property rights issues.

I also fail to see any provisions in the bill that would address a situation whereby the alleged perpetrator is innocent and has been vexatiously accused. Clause 13 will insert proposed section 56A, which prohibits discrimination against a tenant or prospective tenant on the grounds that the person has or may have experienced family violence or on the grounds that the tenant has been convicted of the charge of family violence. If a tenancy agreement was terminated due to family violence, this information should be recorded on the tenancy database. The lessor should have the information and the right to refuse an application. This bill will prohibit refusal on family violence grounds. Tenants with a family violence background pose a higher risk to the property, especially when the person has been convicted of an act of family violence. This changes the private property rights situation substantially and affects the protection of people's assets. Real estate agents communicate with each other. They phone each other to get referrals and references on tenant applications. I think landlords will become far more discerning when making decisions about which tenants they let into their properties. This will make it harder for some tenants. A couple could end their interest in a tenancy agreement on one property only to have the freedom to apply for another property without any tenancy history. As I said, the bill prohibits real estate agents from doing this, but real estate agents will probably cover themselves by phoning each other about particular tenants. However, private landlords who do not use a real estate agent could be quite easily caught out.

Clause 18 inserts proposed division 2A, which contains provisions about the terminating tenant's interests on the grounds of family violence. Proposed section 71AB provides a tenant the right to give to the lessor a notice of termination of the tenant's interest in the residential tenancy agreement based on the grounds that the tenant or a dependant of the tenant is, during the tenancy period, likely to be subjected or exposed to family violence. The bill allows any person who is in a tenancy agreement to terminate their interest by providing a notice and one document to the lessor. According to the explanatory memorandum, a tenant cannot simply claim on their word to have been a victim of family violence in order to end a tenancy agreement; they would need to provide some form of independent evidence of family violence. Apparently, this evidence would be a report in the form approved by the commissioner and completed by a person who has worked with the tenant and is a prescribed professional. I would like to know what "worked with the tenant" actually means. Is it one visit to a medical practitioner or three visits? Does a person see a counsellor for an hour and get the form signed? The police have made submissions, which can be found in the report, about officers who have actually worked with the victim before they will sign off on the form, but some of the other persons listed in the bill might sign the form after a half-hour visit.

Hon Michael Mischin: Why half an hour?

Hon RICK MAZZA: Yes, why? At what point can a tenant ask a prescribed professional to provide that report? Is it on the first visit? It sounds like they can ask for it then. The committee report contains a draft certified family violence report that a prescribed professional will need to fill out as a declaration. It states —

> I declare I have assessed the information provided by the Tenant and have determined that he/she, or their dependant(s), has been or is likely to be subjected or exposed to family violence during the tenancy period.

We all know that no evidence needs to be provided to the professional. The determination is based upon the accepted standards of the profession and relevant knowledge and professional judgement. There would not be many counsellors or medical practitioners who would refuse to sign that form. If the tenant sees someone and claims that they are a victim of family violence, not many counsellors or doctors would refuse to sign that form for fear of what may occur if they get it wrong. Most people would be able to get that form signed fairly easily.

Hon Samantha Rowe: Where did the member get that evidence from?

Hon RICK MAZZA: Which evidence is that?

Hon Samantha Rowe: That the doctors would sign the form.

Hon RICK MAZZA: That is just an assumption that I have made. I do not think one would have to be looking for evidence to determine that that would be the case most times. Certainly, if I were a counsellor or a doctor, I would not be easily persuaded not to sign the form. The decision is very subjective and will be made based on little or no evidence of family violence. Although we all know that a tenant asking for such a document might be liable for a penalty if found guilty of the offence of making a fraudulent declaration, I doubt a court would prosecute a person when the statement is made under a belief that they are or may be subject to family violence. The doctor, without having to see any evidence of family violence, would have no choice other than to provide the report to the alleged victim. Once the report has been signed, the bill provides that only seven days' notice need be provided by the tenant to the lessor that the terms of the agreement are being altered. No financial penalties will be associated with the termination of their interest within the lease. The tenant will not be liable for any future unpaid rent, as they will no longer be a party to that agreement.

We can now apply proposed section 71AD to the story. Under the legislation, the remaining tenant would now become the co-tenant. If they want to leave the tenancy because they cannot afford to pay it and stay there, they could do so under proposed section 71AD(4), which outlines that the co-tenant could, in not less than seven days after receiving the copy of the notice from the lessor stating that the terminating tenant is removing their interest from the tenancy agreement, give their own notice of termination, which cannot be less than 21 days from the termination date. A landlord or small investor who is highly geared might have a 12-month or a two-year lease and borrowed money on the basis that they have a secured lease. If they then find out a few months into the tenancy that they no longer have those tenants, it may be sometime before they can find another tenant. The property could also be left in a damaged state, which would certainly impact them financially. A terminating tenant could remove themselves from a tenancy agreement on the basis of family violence and then the remaining tenant could give notice, leaving the landlord with a vacant property. The reason we have periodic and fixed-term lease agreements is to give both parties flexibility and certainty for a particular amount of time. This bill will undermine the basic principle of a lease and it will depreciate the integrity of a legal contract between the parties. At this stage, the government might turn around and say that the lessor, if they are not happy with the decision of a tenant to terminate their interest in a tenancy, can use proposed section 71AC to allow a review of the termination application by the court. I do not see many landlords pursuing that avenue. It would take a fair bit of time and the losses would be almost impossible to recover from people who have perhaps dishonestly had one of those forms signed and left the tenancy.

Notwithstanding that, I am sympathetic to the policy of the bill. As I said in the beginning, it is a very small bandaid on a very big problem. There has not been much balance between the impact on landlords and private landholders who are affected by this bill. I have some amendments on the supplementary notice paper, which we will flesh out in the Committee of the Whole along with a number of questions. I look forward to the contributions of other members.

HON ALISON XAMON (North Metropolitan) [5.46 pm]: I rise as the lead speaker on behalf of the Greens and indicate our wholehearted support for the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. Currently in Western Australia, if a domestic violence victim terminates her lease early, she remains liable to pay compensation to the lessor and may be listed on tenancy databases as an unsuitable tenant. This is something that happens in the real world. Unfortunately, it also means that she is not permitted to take the necessary measures to protect herself such as urgently changing the locks, unless approval is first given to do so. Members, this situation is clearly not okay. It does not help to ensure that women at times of deep crisis are able to be safe. It makes it harder for a woman to urgently leave a potentially dangerous situation and it risks doubly punishing her if she does. The bill before us amends the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006 to address these flaws—and flaws are exactly what they are—to ensure that victims of family violence have more choice about their housing arrangements.

The bill is a really important step forward in protecting the victims of family violence. I note that this change has been advocated for a very long time and the Greens wholeheartedly welcome it. I do not think the importance of why we are making this change in the first place can be overstated; I do not want it to be overlooked. We need to remember that in Australia, more than one-third of women who have had an intimate partner have experienced at least one act of violence. In 2016 alone, more than one million women experienced stalking, emotional abuse and violence—one million, members! We know that domestic and family violence is costing Australia $22 billion annually, if that is the thing that members are concerned about. My concern is that domestic and family violence is the highest cause of homelessness in Australia with 40 per cent of people who sought homelessness services in 2016–17 experiencing family violence. Nearly half of those people were single parents who had children and nearly all of them were female.

We need to acknowledge that family violence is gendered, with the vast majority perpetrated against women, usually by a man. In 2016, it was reported that Australian police deal with 5 000 family violence matters on average every week. That is an average of one matter every two minutes. It is estimated that in 2018, on average, eight women a day were hospitalised after being assaulted by a spouse or partner. One woman a week was killed by a current or former partner in the two years from 2012 to 2014. In 2016, family violence was the highest preventable health risk factor for women aged 25 to 44 years, and that leads to a range of negative health outcomes, including poor mental health, problems during pregnancy and birth—we know that pregnancy is a huge risk factor for women experiencing domestic violence—alcohol and illicit drug use, suicide, injuries, and yes, it also leads to murder. Aboriginal people are at greater risk of family violence than other Australians, as are women with a disability or a long-term mental health condition, and elderly women.

Western Australia has the second highest rate of reported physical and sexual violence perpetrated against women in Australia; second only to women who live in the Northern Territory. As I have noted on a number of occasions in very recent times in this place, 2018 has been a particularly devastating year for Western Australia on this front: 28 people have been killed in suspected family-related murders in WA so far, or more than two a month, compared with 12 for the whole of last year. I remind members that that 28 people includes 13 women and nine children. Many thousands of others are living in fear and suffering physical harm; financial, sexual and emotional abuse; stalking; or cyber abuse from an intimate partner or an extended family member, and many of these victims will not have reported. Individual experiences vary enormously, and as such they need to have the option of different, flexible and tailored responses to deal with this. That might mean, for example, that some people need to have accommodation support. It might be health care, parenting support, legal assistance, financial support, urgent police response, access to male perpetrator substances, substance abuse programs, mental health services or paid leave, or it may be the provisions that will be made available to them within this act, hopefully, if it gets passed.

Domestic violence is not acceptable in any form nor for any reason. It is preventable and we must work to prevent it whenever possible. The figures make it abundantly clear that we still have so much work to do in this space. We know that housing uncertainty is a key factor in a person's decision about whether they are going to leave an abusive relationship. This means that safe, accessible, affordable accommodation is a critical factor for women to enable them to leave those violent relationships, and a critical element in making sure that women and children are safe. I am pleased that the bill looks to improve the stability of housing for victims of domestic violence. It is long overdue. The bill will relieve victim tenants from legal consequences they would otherwise incur as a result of their perpetrator's behaviour. I would like members to remember this: these are not people who have sought this out; these are people who have been placed in an absolutely invidious situation. This bill will allow them to take steps to increase their home security in the future and will give them badly needed accommodation choices that they do not currently have.

I turn to some of the specifics in the bill. The bill will make family and domestic violence a new ground for early termination of the victim's interest in a particular lease. If there are multiple tenants, a co-tenant who is notified that the victim is terminating the victim's interest in the lease may then terminate their own interest in the lease upon a minimum of 21 days' notice. The co-tenant may or may not be the perpetrator. The aim is to prevent an arrears problem developing if the remaining co-tenant cannot afford the rent on their own. If the co-tenant does not terminate their own interest, the lease will continue. When first reading this provision I noticed that the co-tenant must give notice not less than seven days after being notified of the victim tenant's early termination, and that would mean the co-tenant can give notice any time from seven days until the end of the lease. I note that the minister has moved an amendment to change the wording, which I understand was simply a drafting error. Of course if all tenants with an interest in the lease terminate early, there are consequences for the landlord, including the costs of readvertising, the property being vacant until a new tenant is found, checks on prospective tenants, the managing agent's re-letting fee, and the loss of half the bond until replaced by the remaining co-tenant, as well as loss from potential changes to insurance arrangements. I note, however, that according to the Standing Committee on Legislation report, the Insurance Council of Australia will be developing a new code of practice for insurers and the complex issues associated with family violence are being considered as part of that view, because the world is catching up, members. People recognise that these are the sorts of things that we need to do to protect victims of domestic violence. The new rental rate may be lower or higher than the previous rental rate, depending on whether the rental market at the time is sluggish or high. I recognise that that is a risk for a landlord, and according to the cost analysis undertaken by the department and provided to the committee, the lessor may incur the following court costs: a seven-day termination notice loss of $2 100 in a sole tenancy and $1 400 in a joint tenancy when the co-tenants elect not to remain. The anticipated cost is greater if the premises are abandoned—$4 200 if the premises are abandoned—and $8 550 if the termination is by court order. The notice that the co-tenant will have to give provides a couple of weeks during which the landlord is still receiving rent but can start looking for a new tenant. Can the minister confirm for me, please, whether the information that was provided to me at the briefing, which indicates that the current average Perth vacancy period is seven weeks, is accurate and is the case? Any loss incurred by the landlord because of early termination cannot be recovered. Though the bill will enable

a court to determine the party's rights and liabilities following a termination on the ground of family violence, proposed section 17B(6) specifically states —

> Nothing in subsection (2) is to be read as enabling the court to order compensation for early termination of a residential tenancy agreement.

It is fair that it is not against the victim, since the termination—I remind people—is not her fault, nor is it the fault of the perpetrator. The government's reason for not giving the landlord a remedy against the perpetrator is to avoid endangering the victim if the perpetrator blames her, albeit unreasonably, because it would arise as a result of the consequences of their own behaviour. If this were to happen, it could be a disincentive to victims using the protection that the bill provides. We need to be encouraging people to use these provisions, if that is what will be required in order to keep them safe.

I note the issue of damage to property. Currently, the lessor can pursue any and all tenants named on the lease for compensation for any damage to the property. If the lease is terminated on the ground of family violence, the bill enables a court to determine the party's rights and liabilities, which effectively will remove a victim tenant's liability for damage caused by the perpetrator and not by her. This is fair and just. Any loss the landlord makes because of damage caused by the perpetrator may be recovered. If the perpetrator is named on the lease, the court can assign liability to the perpetrator alone. If the perpetrator is not named on the lease, the court cannot assign liability to the perpetrator, but the lessor may bring civil proceedings against that perpetrator. If the lessor is insured, then of course the policy is likely to cover damage.

I refer to the issue of refusal of tenancy. The bill has new provisions that forbid refusal of a tenancy to a person who has been or who might be subjected or exposed to family violence or has been convicted of a charge relating to family violence. I have some concerns that this purports to deny the lessor the opportunity to reduce their risk of future loss by property damage or early termination of the lease. However, I note that, in practice, the information is unlikely to be on a tenancy database and a lessor who has the information is unlikely to say that that is why the tenancy was refused. If a lease is entered into, the lessor can still terminate for breach of agreement, if applicable, or for no ground, provided that the necessary notice is given.

I also understand from the briefing—I ask the minister to confirm this—that to date, interstate and national landlord insurance providers have not made policy exclusions or increased premiums as a result of this kind of law.

Hon Alannah MacTiernan: As we understand it, there has been no evidence of any insurance company in Canada or in Australia making this an exclusion.

Hon ALISON XAMON: I thank the minister. The bill before us amends the Residential Tenancies Act and the Residential Parks (Long-stay Tenants) Act so that victims of family violence who are tenants are allowed to terminate their interest in the lease if they want to leave the property, and if they want to stay at the property, a court or the State Administrative Tribunal, as applicable, is able to terminate any interest a perpetrator has in a lease. In those proceedings, if the victim lives at the property but is not named as a tenant on the lease—which is often the case, by the way—they can also apply, under existing section 59C of the Residential Tenancies Act, to be recognised as a tenant.

During my consultation on this bill, a question was raised with me about whether it is legally possible for the interests of one joint lessee to be terminated without having to terminate the whole lease and create a new one with the remaining joint lessee, which is a point of law. I was assured during the briefing that it is indeed possible, according to Parliamentary Counsel, via a legal fiction, whereby for the purposes of the lease agreement and the act, termination of the whole lease and creation of a new one with the remaining joint lessee is taken to have happened. Section 59C, which recognises certain people as tenants even though they are not on the lease, seems to use a very similar mechanism. To make clear the intended interpretation for the courts and the State Administrative Tribunal, I ask the minister to please confirm for the record how early termination via severing the lease interests of a joint tenant is legally possible. I am happy to take that in the second reading reply. I am aware that it is a particular point of law, but I am concerned about future interpretation by the courts. I am satisfied that it has been addressed, but I would like to get that on the parliamentary record, please.

The Standing Committee on Legislation found that tenants face an inequity in application fees to the Magistrates Court and the State Administrative Tribunal. SAT is the appeal mechanism within the Residential Parks (Long-stay Tenants) Act and unresolved disputes under the Residential Tenancies Act go to the Magistrates Court. The committee therefore recommended that the Minister for Commerce and Industrial Relations and the Attorney General consult and develop a plan to address the inequity in fees because they are quite different. The committee also recommended that the implementation of this plan be included in the proposed review of division 2A in the Residential Tenancies Act and divisions 4A and 3A in the Residential Parks (Long-stay Tenants) Act. I am interested to know whether the government supports this recommendation.

The bill will also make some changes to the way we can deal with the issue of needing to change locks. Effectively, it allows a family violence victim who wants to stay to change their locks and their security fixtures at the property. I think

this is a really important provision. I note that the Standing Committee on Legislation was divided on whether security upgrades should be prescribed in the bill or in the regulations, noting that regulations more easily allow for changes in technology and new products to be incorporated, although I note the majority were happy to leave the bill as drafted.

I note that the Women's Council for Family and Domestic Violence Services' opinion that victim tenants are unlikely to change locks without good reason due to the sheer expense of the exercise, and I agree with that. That view is likely to be correct. I note also that clause 10 will forbid the lessor to give a copy of the key to a changed lock to anyone whom the tenant has instructed may not be given a copy. That is an essential provision. Even if somebody is still on the lease, if a victim of family violence is in the process of getting them removed, it will not suddenly give them the right to get back onto the property when the victim has had to go to the effort to try to keep themselves safe. Breach of this without reasonable excuse—I imagine reasonable excuse would be things such as ignorance—will be an offence, and I am pleased about that. I think the advantages of requiring written instructions include a decreased chance of mistake through miscommunication and it is easier then to prove if there has been a breach and to defend if the lessor is charged with interference with a co-tenant perpetrator's quiet enjoyment. It is important that we change the legislation to ensure that the tenant's instruction to the lessor to not provide a copy of the key should be in writing.

Clause 10 will also provide that if the lessor is the alleged perpetrator, a copy of the key will not need to be handed over. I recognise that this will pose challenges with inspections and the parties would need to negotiate a way for this to happen, such as via an agent or a subcontractor engaged by the lessor. If the lessor is the perpetrator, such negotiations could pose challenges, especially if a restraining order that prohibits communication is in place. If the situation could not be resolved and the lease needed to be terminated, the legislation will provide means for early termination by the lessor and by the victim tenant.

If a victim of family violence is listed on a tenancy database because of their subjection or exposure to family violence, the amendments in this bill will allow them to apply to the court for their information to be wholly or partly removed or amended or not listed. If a person's interest in a lease is terminated, this bill will allow a court or SAT to decide the rights and liabilities of all tenants, including outstanding rent or debts, damages to premises and the bond, but there is to be no compensation to the lessor for early termination of that lease.

I note that there are no transitional provisions. Therefore, the reforms will apply to current leases. Lessors do not have the opportunity to consider whether to let their property in light of the changes made in this bill. If a lessor is so unhappy with the reforms that they no longer want to let their property, I ask the minister to confirm that the legislation will not change the lessor's right to terminate the lease under section 62 for the breach of a lease agreement, if applicable, or section 64, without grounds with a minimum of 60 days' notice. If people are really that unhappy and they think this will be that much of a catastrophe, I ask the minister to confirm that under the current act, they are still able to terminate the lease and get out of the industry. Maybe they could look at investment elsewhere.

Disclosure of the contents of a document proving family violence has been an issue. Should the victim's interests be terminated early on a ground of family violence, clause 18 will prohibit the lessor from disclosing the contents of the document proving the violence to anyone, except as required by written law. I ask the minister to explain for the record how, if the lessor considers that due diligence was not exercised by the professional who signed the document, they make a formal complaint to the professional's relevant ethical standards body without disclosing the contents of the document proving violence?

I also ask the minister to confirm for the record whether the lessor has a defence if their managing agent discloses the contents of the document without the lessor's instruction or consent.

When the rental property is a strata property, some or all external doors, windows and security grilles may belong to the strata company, not the landlord. When this is the case, the strata company's permission needs to be sought for any changes, and, even when permission is granted, it may be conditional. The Real Estate Institute of Western Australia, which has already had quite a lot to say about this bill, pointed out that some changes to egress may affect the property's fire rating and risk voiding the strata company's fire insurance policy for the entire building, including but not limited to the leased premises. I understand that the bill only applies to private rental areas and, therefore, has no effect on common property areas owned by the strata company. I ask the minister to please confirm this for the record.

The strata company might also have by-laws specifying the changes that can and cannot be made to individual lots, particularly those strata companies that require individual lots to conform to the appearance of other strata lots. Clause 12 of the bill, which will amend section 47 of the act, addresses this and will require any alterations or fixtures to have regard to any applicable strata by-laws. It will still happen, but, importantly, people can still make urgent moves to keep themselves safe.

I understand why this is an urgent issue and that this legislation needs to get through Parliament. I know that a significant communication strategy has been proposed to make sure that all those who work with landlords, tenants and victims of family violence are aware of the reforms. People will need time to start developing those information campaigns to make sure that people know exactly where they stand. I note that recommendations 117 and 118 of the Victorian Royal Commission into Family Violence confirmed the need for victims to be notified of their tenancy rights by family violence support workers, police, other relevant support staff, and magistrates hearing family violence intervention order applications. I understand from what I have been told that the communication strategy will also include Consumer Protection working with the Building Commission to develop fact sheets for tenants in strata properties. The mandatory professional development done by real estate agents this year already included a session about the reforms, and will include a further session next year explaining the nuts and bolts, if the legislation is passed. A session will also be included in the continuing professional development done by principals of real estate firms. I know that the department has spoken at a Shelter WA homelessness forum, there is an online video and e-bulletin, Legal Aid WA has put out information about the changes, and radio in the north of our state has put out information. Importantly, funding has been provided to Tenancy WA to deliver training to tenant advocates, refuge workers and general practitioners. I understand that this training has already started.

As this bill will implement some very big changes, that means of course there will need to be a review clause. The bill currently does not have one. We need to make sure that the bill has the desired effect of assisting victims. I suspect it will, but it will be good to quantify that. We need to monitor the legislation's impact on landlords and strata companies, and we need to know whether there are any unexpected outcomes. I note that there are duelling amendments in relation to a statutory review and that the Standing Committee on Legislation also indicated that it supported a review of the legislation. The legislation committee also noted concerns about the potential for the family violence report form accompanying a notice of termination to be misused. I see a review as an opportunity to monitor this and to consider whether it is, indeed, a genuine concern or whether people are just getting het-up about nothing.

I note that the Standing Committee on Legislation also supported the proposed review clause and recommended that the review be broadened to include the impact upon the ordinary right of lessors to recover debts owed by tenants. As I noted earlier, the interaction between the insurance industry and family violence is a complex area. The committee also recommended that the review include consideration of family violence provisions in lessor protection insurance policies and compliance with the Insurance Council of Australia's code of practice. The committee considered the impact of the contractual right to certainty and the imposition of proposed contractual obligations upon non-perpetrator lessors and co-tenants. As I said, the Greens welcome a proposed review clause. We would also welcome a more comprehensive review of the impact of all the new provisions and we support the committee's recommendations to broaden the review.

In conclusion, I want to remind members that we all have a role to play; indeed, I believe we have a responsibility in this place to respond to the issue of family violence. I think it is really fitting that we are considering this bill so soon after White Ribbon Day and the Silent Memorial March, and during the 16 Days in WA to Stop Violence Against Women campaign. I think the bill before us seeks to rebalance a structural bias against victims of family violence that is inherent in the Residential Tenancies Act 1987 and the Residential Parks (Long-stay Tenants) Act 2006. We are addressing a great imbalance against people who find themselves in absolutely invidious situations. I am really pleased that this bill is broadly supported. I welcome it as a sign that as a community we are increasingly supportive of efforts to address domestic violence and to support victims of domestic violence, including children who are also victims of domestic violence. I note that the amendments are strongly supported by Tenancy WA, Shelter WA, the Southern Communities Advocacy Legal Education Service, the Women's Council for Domestic and Family Violence Services (WA) and the Commissioner for Children and Young People, among others. I am also pleased that REIWA supports the bill. I acknowledge that these amendments will have a potential impact on property owners. I understand that REIWA predicted that few landlords would begrudge early termination of a lease in order to escape domestic violence and noted that landlords have landlord protection insurance to shield themselves from the issues of unpaid rent and damage to their property. We believe any impact on insurance should be, and I suspect will be, closely monitored.

Currently in WA, a domestic violence victim who terminates her lease early remains liable to pay compensation to the lessors and may be listed on tenancy databases as an unsuitable tenant, and this is blatantly unfair! It has the potential to increase the risks faced by women who are already living in harmful situations and it means that they, and any children, can be forced to suffer ongoing negative financial impacts from a violent relationship. I am very pleased to support the legislation before us that aims to finally remove tenancy-related barriers to people leaving a violent relationship. In doing so, I hope that this legislation is one small part of the very big

picture that we have to address to reduce the horrific toll of women and children in our state who are dying as a direct result of family violence.

HON NICK GOIRAN (South Metropolitan) [6.18 pm]: I rise as the shadow Minister for Prevention of Family and Domestic Violence to support the passage of the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018. I support the bill, as had already been indicated by my learned friend the shadow Attorney General, who is our lead speaker on this bill. I also note that Hon Martin Aldridge, who is away on urgent parliamentary business, wanted to contribute to the consideration of this bill, but unfortunately has been detained. Nevertheless, it gives me an opportunity to put on the record, in an unequivocal fashion, my support for the bill.

Members may be aware that I was also a member of the Standing Committee on Legislation, which looked into this bill. The committee unanimously supported the policy of the bill. A number of important aspects of this legislation need to be considered. I know that all members from all parties are keen to see the bill pass through the house at the first available opportunity. I suspect that I will shortly have a bit more to say on the management of the house and how we have been left in a situation in which we will now have only one day—tomorrow—when both houses are sitting to address the supplementary notice paper, which has amendments from the government. There are no fewer than 41 amendments on the supplementary notice paper, but we will have ample opportunity to look at that, I suspect not only shortly but also certainly tomorrow. I unequivocally indicate my support for the bill. I look forward to us going through each of the clauses in committee tomorrow.

Debate interrupted, pursuant to standing orders.