CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

Committee

Resumed from 19 September. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 67: Section 47 amended —

Progress was reported after the clause had been amended.

The CHAIR: The Committee of the Whole would be aware of supplementary notice paper 96, issue 6, dated Thursday, 19 September. The question currently before us is that clause 67, as amended, be agreed to. However, there are some further proposed amendments to clause 67 standing in the name of Hon Rick Mazza. Member, are you proposing to move these or have they fallen away?

Hon RICK MAZZA: A few of the amendments standing in my name on supplementary notice paper 96, issue 6, have become redundant—that is, 7/67, 1/67 and 2/67—as they are included in the amendment we agreed to at the last sitting. However, I move —

> Page 40, line 14, to delete "has" and substitute —
>
> has, in writing,

The CHAIR: Is amendment 3/67 the only amendment the member has remaining on the supplementary notice paper; all the others have fallen away?

Hon RICK MAZZA: That is the only one, yes.

The CHAIR: Members, amendment 1/67, which starts on page 2 of supplementary notice paper 96 and finishes on page 3, will now not be moved. Some further amendments are on page 4 of the supplementary notice paper. The only one remaining that we will be dealing with is amendment 3/67, which has just been moved by Hon Rick Mazza.

Hon ALANNAH MacTIERNAN: The government supports this amendment. We have an identical one, but we are happy to have this one moved by Hon Rick Mazza.

Hon NICK GOIRAN: I am grateful that Hon Rick Mazza has moved this amendment, and I thank the minister for her indication that the government will be supporting it. When I considered clause 67 of this bill, I was concerned that it would result in a lessor's consent being presumed in circumstances in which a tenant alleged that they had verbally sought the consent of the lessor. This amendment, which has been moved by Hon Rick Mazza, appears to address that problem by mandating that the request for consent must be in writing, and I support that. My question is about the timing of the request for consent. At line 11 on page 40 of the bill, there is an intention to insert proposed section 47(2B) into the Residential Tenancies Act 1987. Once it has been amended, it would then say —

> The lessor is taken to have consented to affixing the furniture or thing to the wall of the premises under subsection (2A)(a) if —
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> (a) the tenant has, in writing, sought the lessor's consent to affix the item to the wall; and
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> (b) the lessor has not refused consent under subsection (2A)(b) within 7 days after the day the tenant sought the lessor's consent.

How will this proposed section, even if it is amended, protect the lessor if he or she does not receive the request for consent?

Hon ALANNAH MacTIERNAN: The onus would be on the tenant to establish that they had provided in writing the request for the approval. If that were contested, the tenant would have to show that they had indeed provided this document. In most cases, this would be via an email, or by taking a document or request form into the real estate agent, because most of these properties are managed by real estate agents. If there is a contest about this, it is very clear that the tenant has to show that they sought the consent in writing. Implicit in that concept of having sought the consent in writing is the fact that they sent it to an address. They cannot just provide a document and then post it off to the North Pole; they have to establish that they have sent this to the landlord. Entrenched in the tenancy agreement are points about how the landlord is to be contacted. If there is a dispute about this, it will be up to the tenant to show that they provided the notice in writing.

Hon NICK GOIRAN: If the request for the lessor's consent is in an email from the tenant to the lessor, it is fairly straightforward—I think the minister will agree—that the seven days begins to run from the time of that email because it will be instantaneous communication. Whether the lessor has opened the email and read it, I take it, will be irrelevant; time will begin to run from the time that the email was sent. Can the minister clarify that?

Hon ALANNAH MacTIERNAN: We will get some advice from the Parliamentary Counsel's Office on the interpretation of that. The question is: when does the clock begin to tick? We will just need a bit of time to get some advice on that. I am wondering whether we can deal with the amendment before us, because the member's

query does not affect this amendment. We can deal with the amendment while we are trying to find some more information about that.

Hon NICK GOIRAN: Thanks, minister. Obviously, I cannot speak for others, but I have no problem with that. I indicate that I am supportive of the amendment moved by Hon Rick Mazza, in any event, irrespective of the answer to the question that is being interrogated at the moment.

Amendment put and passed.

Hon MICHAEL MISCHIN: I have a few questions about the operation of clause 67. I started to explore some of the issues on the last occasion, before we moved on to the proposed amendments, and I referred to the letter from the Real Estate Institute of Western Australia dated 28 February 2018, which the minister kindly tabled last Tuesday. REIWA made a number of recommendations, and we have gone through recommendations 2 to 5. REIWA's first recommendation was that consent by the landlord can be withheld for heritage-listed homes, which is what we have here; asbestos walls, which is what we have here; stud walls; walls with a decorative finish such as wallpaper; and certain strata-titled properties. The strata-titled property issue has been accommodated, but not the other two. Subsequently, on 9 October 2018, REIWA wrote to me—I suspect that there was also like correspondence to other members—and pointed out that in those sorts of cases, when there is an ability for the lessor to refuse consent, albeit in limited circumstances, tenants will have to find an alternative way to ensure the safety of the child sought to be protected. I think that is implicit in what the government proposes. The government has chosen to take a blanket approach to this, because unless landlords fall within those three specific categories in proposed section 47(2A)(b)(i), (ii) and (iii), as outlined in clause 67(2), there is no protection or at least no mandated protection offered by the legislation. What sort of measures does the government consider tenants ought to be able to take when a lessor has refused consent because there is asbestos-bearing material in the walls, or it is a heritage-listed premises, or the premises is in a scheme under the Strata Titles Act and the by-laws prohibit affixing items to the walls?

Hon ALANNAH MacTIERNAN: The situation will be as it is now; that is, parents will have to either look at other ways to secure the furniture without affixing to the wall, if possible, or consider the furniture that they use. This is a balance. We have acted in accordance with the coroner's recommendation to provide a general right to have furniture affixed to the walls, but after working with the industry, we have recognised that there are certain circumstances that could potentially create difficulty for the landlord, and, in the case of asbestos, even a risk for the tenant. We have said that in those circumstances, this right will not apply. It is a question of getting a balance. We have not come in and said that in every single circumstance, a tenant shall have this right. We have listened to the sorts of things that the landlords thought would create a difficulty. There are programs such as Kidsafe and a federal government program, so there is other material and other information available about what furniture is likely to be more suitable.

I understand the member's logic. He is saying that if these things are available, and tenants can find other furniture and do other things, why do they not just do that and not impose this obligation on the landlord at all? We have to make a judgement here and get the balance right between the interests of people who are renting properties, who in most cases will probably be relatively low income families with young children, who are concerned about the safety of the furniture, and the concerns of the landlord. We know from the campaign that took place after Reef's death that this is not an isolated incident. There are many, many parents who say that they have found themselves in this situation. We can go on endlessly. I understand that the member supports the principle of this legislation, which is that we give parents that right, but in the interests of balancing that with the concerns of the landlord, and things that could present a real challenge to the landlord in giving effect to that right, we have clawed it back.

As I say, the whole legislation is always about getting this balance right and making some provision for the protection of children. It is not going to be perfect; we have acknowledged that there are going to be situations in which it will be very difficult for the landlord to do this. Indeed, once it becomes law, presumably, there will be a degree of literacy about this with tenants as they go into negotiating tenancy agreements, so they can check whether the premise contains asbestos or there are strata rules or heritage listings that will preclude affixing furniture to the wall. We have made an in-principle decision that parents should generally have the right to do this; however, we accept that there are situations when they will not be able to do it, because we have had to take into account the concerns of landlords. That is perfectly fair and reasonable. No legislation is the solution to absolutely everything. Obviously, in situations that a premises is precluded, parents are going to have to think again about the furniture they have, but I ask the member to remember that we are talking about people who often have very limited financial resources, and it would be very unlikely that they could just go out and buy a whole bunch of new furniture in these circumstances. This is the schema of the legislation. We believe it strikes a reasonable balance between protecting the children of people who are renting properties and protecting the interests of the landlord, and, as we understand, the industry has indicated that it supports this provision with those protections.

Hon MICHAEL MISCHIN: I will start at the beginning. The minister said that the government has simply followed the coroner's recommendation. Is that correct?

Hon Alannah MacTiernan: No, I did not say that at all. I did not say that.

Hon MICHAEL MISCHIN: What did the minister say?

Hon ALANNAH MacTIERNAN: I am not going to endlessly repeat myself, but what I said is that we took what the coroner said, which is that we provide that right for parents to affix furniture to their walls. We then worked with industry to identify its particular areas of concern, and we built those into the legislation as something that claws back on that general right. Again, there is a right. It could have been an absolute right, but we tried to work with industry to get a balance. We have a package that industry feels it can support. That means that any person who is renting a property that has asbestos walls, is heritage listed or has strata provisions that would preclude the proposed alteration to the walls, will not have the right. Again, we think this will work in the vast majority of cases. We have taken the coroner's recommendation, worked with industry and struck a balance.

Hon MICHAEL MISCHIN: I am not sure that that is correct. The government has taken the coroner's warnings and recommendations and chosen to go considerably further. The government consulted with industry, but allowed only some of its concerns to be accommodated in the general right that this legislation will provide to not only parents or those with children, but also any tenant with respect to children, notwithstanding that there might be quite a number of legitimate reasons that a lessor may be concerned about what a tenant may have in mind. The coroner was well aware of the statistics and risks that the minister has provided as a basis for this policy. I remind the minister that the coroner, having examined it, stated that the act should provide that for those specific features—to wit, anchoring a television or item of furniture to a wall for the purposes of child safety—such an item may be affixed with the lessor's consent and the lessor shall not unreasonably withhold such consent. The government has gone considerably further than that and imposed an obligation and responsibility, a derogation, on the lessor's rights to decide how their property is treated and managed. The government has said that it consulted with industry and industry is thrilled with the idea that there be the limited exceptions that the government has provided. That is a rather different way of looking at policy development from the one to which I am accustomed. Why has the government rejected the notion of providing within the scheme of the act an entitlement to seek consent, which consent shall not be unreasonably withheld? Among the reasons it may not be provided can be the very things that are accommodated under the bill already, plus the irremediable damage done to premises that will not be covered by the bond. Why was that approach not taken?

Hon ALANNAH MacTIERNAN: The member obviously has a short-term memory problem. We went into this at great length.

Hon Michael Mischin: You are not helping yourself, you know?

The CHAIR: Order!

Hon ALANNAH MacTIERNAN: I am sorry. We discussed this precise point at great length last week. We can go over it only so many times.

The coroner's concept was that the lessor should not unreasonably withhold such consent. In our consultations with industry, it was felt that there needed to be some clarity around what things would constitute a reasonable reason to withhold consent. One of the great concerns of landlords is having a range of grey areas that can lead to disputation. I am advised that it was the desire of industry to have clarity about that. That is why last week I set out that this desire to have some certainty helps both sides, because everyone will understand the reasons for which lessors can withhold consent. I cannot add much more to that. I think it is perfectly logical and makes sense. We do not want an open-ended concept that could be the subject of ongoing disputes. It is very important that this provision not create more conflict and litigation and that there be clear rules around it. That is what we negotiated with the industry. I think that is fair and reasonable.

Hon MICHAEL MISCHIN: All right. In the interests of certainty and clarity, why was there not included, as one of the exceptions, that consent could be withheld because the damage to the premises occasioned by the affixing of the furniture to the wall in the manner suggested by the tenant would not be able to be remedied or repaired within the cost that could be recovered through the tenancy bond?

Hon ALANNAH MacTIERNAN: In most instances, the four-week bond would cover any deficiency. As I said, members should bear in mind that the tenant will have an obligation to do this. The member has a view that tenants just do things and then walk away from their responsibilities. If members have been tenants, they would know that reputation and the ability to rent property is very important to young families. The suggestion that tenants will be cavalier and not discharge their obligations does not understand the power dynamic and the need for tenants to preserve their reputation. In most instances, it is fully expected that the tenancy bond of four weeks' rental equivalent would cover the shortfall, should that occur. That is the provision and the level of protection that has been agreed to, and, I understand, it was agreed to by the opposition.

Hon MICHAEL MISCHIN: I do not make the assumption that tenants as a class or category are any less prepared to satisfy their obligations than the majority of lessors. However, I think the minister is treating us as naive if she considers that there are not some tenants who do not pay their rent and abuse the premises in which they live and leave it to the landlord to find them to do something about it. It is my understanding that the number of disputes regarding tenants failing to meet their obligations has increased over time and that the bonds that lessors are left with may not cover the rent that has not been paid or the damage that has been done to their premises. Here we are adding to that risk in an open-ended way because landlords cannot withhold their consent for changes made to their premises that the tenant considers may be necessary. We are not providing for any increase in the bond; that is limited by the act. Is the minister able to tell us whether the sort of injury to premises that was identified as a potential concern by the Real Estate Institute of Western Australia—that is, stud walls, decorative finishes and the like—can be insured against in the standard landlord's insurance agreement?

Hon ALANNAH MacTIERNAN: I cannot imagine any reason that people could not insure against it. Nothing suggests that it would not be an insurable risk.

Hon MICHAEL MISCHIN: I am sure that property owners everywhere are reassured by the government's confidence that there is not a problem here—no potential problem—and that if a tenant abuses the right that they have been provided, they will not be out of pocket in the way that I have foreshadowed may be a possibility. I am sure that members will be able to help the minister responsible for this act. If they have complaints made to them about this sort of thing, they will be able to assist the Minister for Commerce in knowing about the problem and seek his assistance for the people whose property and finances are being affected by this approach. I want to explore it now because, after all, there is an obligation on tenants to restore the premises to the original condition and an entitlement for compensation if that is not done, albeit one that the lessors have to pursue at a cost to themselves. I want to go through the mechanics of proposed section 47(2A). Proposed section 47(2A)(a) states —

> a tenant may affix either or both of the following items to a wall … but only with the lessor's consent —

Proposed section 47(2B) states —

> The lessor is taken to have consented to affixing the furniture or thing to the wall of the premises under subsection (2A)(a) if —
>
> (a) the tenant has sought the lessor's consent to affix the item to the wall; and
>
> (b) the lessor has not refused consent under subsection (2A)(b) within 7 days after the day the tenant sought the lessor's consent.

Is "7 days after the day the tenant sought the lessor's consent" the date of the notice or letter or email, or the date on which the lessor has had the relevant notice or letter served or delivered to them? From when do we start counting?

Hon ALANNAH MacTIERNAN: This question was asked by Hon Nick Goiran.

Hon Michael Mischin: I understood that that was in respect of emails; yes.

Hon ALANNAH MacTIERNAN: Hon Nick Goiran asked the broader question. Email is fairly uncontroversial. I am advised that section 85 of the Residential Tenancies Act has a general service provision. Subsection (1) states, in part —

> (1) Any notice or document required or authorised to be given under this Act to any person may —
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> (a) be given to that person personally; or
>
> (b) be sent by post addressed to that person at any place specified by the person as a place where the person's mail may be directed or, if the person has not so specified, at the person's last known place of residence, employment or business;
>
> (c) with the consent of that person or in other prescribed circumstances, be given or served by prescribed electronic means.

Section 85(2) states —

> If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

We are just double-checking that section 85 applies; if that is the case, the seven days should run from the day when a letter is deemed to have been received. That is calculated from Australia Post's documentation. It is important to note that in the standard form residential tenancy agreement, there are then the provisions for the electronic communications, so the electronic provision is taken into account in the standard form of the agreement, which forms part of the Residential Tenancies Regulations, so that is a statutory document. That is the provision, which would set out the communication via email, but if it is via letter, it is deemed to be effected from the time that the letter would have been delivered in the ordinary course of post.

Hon MICHAEL MISCHIN: There was a bit more information there about paper documents, rather than emails and the like. Also, what must the tenant seek the lessor's consent for? If a tenant were to write to the lessor to say that for the sake of the safety of a child who may frequent my place, I want to affix furniture to the walls, would that be sufficient for seeking a lessor's consent or will something more be required? Does the lessor have to be advised? Should the lessor be advised of the items of furniture, which walls we are talking about, the manner of affixing them or anything of that character?

Hon ALANNAH MacTIERNAN: The tenant is obviously required to detail the item that they propose to affix to the wall. Obviously, someone cannot just apply at large for the right. They have to nominate the particular item that they seek to attach to the wall.

Hon MICHAEL MISCHIN: The minister says "obviously". Where do I find that obvious thing?

Hon ALANNAH MacTIERNAN: Proposed section 47(2A)(a) states —

> a tenant may affix either or both … items to a wall of premises the subject of the agreement for the purpose of ensuring the safety of a child, but only with the lessor's consent —

It provides that a tenant may affix either or both of the following items —

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

Therefore, a tenant would have to get consent to affix the furniture or to install a bracket, presumably, on which the furniture will be attached. If a tenant wants to attach furniture directly, they will need to provide information on that. If they are proposing to use a bracket, they will need to provide information on that. The tenant, obviously, has the obligation to outline whether they will affix the furniture or a bracket. The tenant also has to specify that it is to ensure the safety of a child or, now because of our amendments, a disabled person. It is quite clearly implicit in that that they are required to detail either the furniture that is going to be affixed directly to the wall or the bracket upon which the furniture will reside.

Hon MICHAEL MISCHIN: When the minister says that it is "implicit in that", why is it implicit in that? All it says is that "a tenant may affix". This provides the blanket right, which the minister tells us strikes the right balance to achieve some certainly for landlords, which they very much want. However, if a tenant may affix "furniture" and "a thing to affix the furniture to the wall" for the purpose of ensuring the safety of a child and if they can do so only with the lessor's consent, the lessor cannot refuse consent except in the prescribed circumstances. Where does it provide that a tenant has to say, "I want to affix a bookcase to the living room wall, and I plan to use wall plugs and a bracket that has been supplied by IKEA for that purpose; and I want to affix a chest of drawers to the bedroom of a child and I intend to do that by my own handiwork by making a bracket for it and drilling into the wall, which is a plaster wall, so I am going to use certain materials to achieve that and make it stable"? Where does it say that in this clause? Where does it say what details need to be provided to the lessor before the lessor can legitimately say to the tenant, "You have not complied with the threshold requirements under the legislation"?

Hon ALANNAH MacTIERNAN: To me, it is implicit in this provision that the tenant would need to specify the item of furniture or the bracket—that would be implicit in the notion to seek consent. The tenant may affix subject to their obtaining consent; that is, they would need to either specify the furniture or the thing to affix the furniture to the wall.

Hon MICHAEL MISCHIN: Let us test that a little further. Let us say that the tenant writes to me as the lessor and says, "I have an unstable chest of drawers and I do not want it to fall on a child, so I am going to affix it to the wall." Am I, as the lessor, able to say, "No, I do not give consent to that"? Will time be running against me in proposed subsection (2B) if I say to the tenant, "No, I don't agree to that. Before I'm prepared to consent to the extent that I need to consent, I want some further information. I want to know which wall, and I hope it is not the one that has the decorative wallpaper on it or the stud wall, and because you haven't told me that, I want to know how you are going to affix it to the wall so it doesn't cause more damage than it should"? Am I able to say that they cannot do that until they provide that further information?

Hon ALANNAH MacTIERNAN: These sorts of provisions are framed in that general way within the Residential Tenancies Act. For example, section 47 of the Residential Tenancies Act provides for the right of a tenant to affix and remove fixtures, which exists independently of this. The schema in this clause is very similar; that is, the landlord cannot unreasonably withhold consent. It does not set out every single step of the way, but I imagine that the most reasonable interpretation of it is that the tenant is expected to nominate the furniture or the bracket, and to nominate the wall of the premises to which they are proposing to affix the item, and if there was not that degree of clarity in the matter, it would not be unreasonable for a landlord to seek clarity. Most of these things are subject to other things. It does not go down to the level of detail in which every single possible human interaction must be encoded, but it would not be unreasonable to expect that the furniture or the bracket and the

wall of the premises would need to be nominated. As I said, in the schema there are other provisions about tenants having the right to do things with the landlord's consent. This does not go into the minutiae that the member is talking about by absolutely specifying every provision. There would be no end to the number of permutations in what the member is requiring. Certainly, our view is that it is implicit that the item of furniture or the bracket needs to be specified, as does indeed the wall on which the item is to be affixed.

Hon MICHAEL MISCHIN: That does not answer the question in any satisfactory fashion, and I say this for obvious reasons. The current right that the minister refers to under section 47(1) of the Residential Tenancies Act says —

> … a residential tenancy agreement may provide that the tenant —
>
> (a) shall not affix any fixture or make any renovation, alteration or addition to the premises; or
>
> (b) may affix any fixture or make any renovation, alteration or addition to the premises, but only with the lessor's consent.

Section 47(2) goes on —

> Where a residential tenancy agreement makes the provision described in subsection (1)(b) —

That is, the one that entitles, under the agreement, that a tenant can make renovations or affix an item —

> it is a term of the agreement that —
>
> (a) the lessor shall not unreasonably withhold such consent;

The minister is telling us that "not unreasonably withhold such consent" is far too vague and that in order to get the balance right, we have to move the balance over to an extreme with limited exceptions. She is also telling us that the right that is going to be written into every tenancy agreement is that the tenant may affix certain things and the lessor can refuse only on limited grounds. There is nothing implicit in seeking consent under that right that the tenant has to tell the lessor much of anything. I would think that under section 47(2)(a), if a tenant says, "I want to affix something to the wall inside the place I am renting and I need your consent and you can't unreasonably withhold it", I could say, "I am withholding it and I don't think it's unreasonable that I withhold it until such time as you tell me what, where, by what means and how you are going to make good the damage." Where is any of that in proposed section 47(2A) and (2B)?

Hon ALANNAH MacTIERNAN: If there had not been a problem, we could have just relied on the existing provision, which the member has read out, under which persons can make an application to a landlord to affix furniture and the landlord cannot unreasonably withhold consent. But we decided to do something more—I think it was the expectation that we do something more—because child safety is so important. The provisions that the member read out were general provisions. We are talking about those provisions that relate to this issue of securing furniture to a wall for the purpose of child safety. Quite clearly, we are putting in place a different regime; otherwise, this provision would not have been necessary at all. We would have relied on the existing right to ask a landlord whether something can be affixed to a wall. We recognised that this is an important issue. Many incidents were being recorded of children being under threat, so we needed a specific and different provision that related to this issue of child safety. That is why we have a different set of rules. We have changed the balance to give a right to parents except in certain circumstances, but the parent will still have the obligation to make an application to the landlord setting out what they want to do. The member might say that we should specify a whole heap more material. That is not what is being asked for by the industry. We have negotiated this outcome with the industry, and the industry is satisfied with this. This is not a submission that has come from the industry—that it wants further protections in this regard—rather, it wants clarity around what constitutes reasonable consent. We make it very clear that this is a different regime from that which exists under the more general provisions in the legislation. We have made a policy decision, which I understood was supported by the member's party, that we need to protect children in these premises.

Hon MICHAEL MISCHIN: I will try again. I thank the minister for repeating the same justification for the decision that has been made, but I am not sure that she has taken my point. I entirely accept that this is a wholly different regime, so we cannot rely on the broad-based principles in section 47(1) and (2). In order to persuade me, as a lessor, that I ought to permit a tenant to do something under the tenancy agreement, I can withhold my consent, not unreasonably, on the basis that I do not have enough information. The government is removing that requirement to provide me with information. I can say to the tenant, "No, I'm not going to do it because you haven't told me enough", and that is my entitlement at the moment. The minister is saying that under this bill, I will not be able to refuse on any basis other than the nature of the premises as outlined in proposed section 47(2A)(b). She keeps telling me that it is implicit that we draw on the other principles, it is a totally different regime, and it is obvious and the like. I put it to the minister that if I were the lessor and a tenant wrote to me saying that they wanted to affix a chest of drawers to the wall of their rented premises for child safety reasons, am I, as the lessor, able to say, "No, you may not until you provide me with some further information"? If I say that, will time run against me under proposed subsection (2B)?

Hon ALANNAH MacTIERNAN: As I said, we could continue to go into further and further levels of specificity.

Hon Michael Mischin: Just answer the question—yes or no.

The DEPUTY CHAIR: Members!

Hon ALANNAH MacTIERNAN: I am answering the question. They would obviously have to cross the threshold of having sought consent and they would clearly have to nominate the items of furniture or the brackets that they were seeking to affix. It is most reasonable to believe that they would have to specify the walls of the premises to which they would be affixed. That would be inherent in writing and seeking consent. The tenant has the obligation to seek consent, and seeking consent cannot just be by letter saying that they want to do something. They will have to write a letter or send an email that specifies the item of furniture and the wall to which it is to be affixed.

I go back to this point: this is not a concern that has been raised with us by the industry. This is not something that the people who deal practically with this issue on a day-to-day basis are seeing as a problem. They think this is absolutely something that can be dealt with. If it emerges that, in practice, everyone has got this wrong and this could potentially create a problem, there is always the ability, under proposed section 47(2A)(b)(iv), for there to be a prescribed reason. We could nominate that the tenant has failed to give sufficient information if that becomes a practical problem. At the moment, no-one in the industry is raising this degree of uncertainty. As I said, the obligation on the tenant is to seek consent. Inherent in that concept is that there has to be sufficient detail for the matter to be determined, and that would require the nomination of the furniture, the brackets and the wall. If this turns out to be a nightmare that no-one has predicted, there is always the capacity for us, by way of regulation, to add a provision that might set out more detail of a prescribed reason. I get back to the practicality of this. This is not an issue that has been raised by people in the industry who deal with these agreements on a day-to-day basis.

Hon RICK MAZZA: As someone who has actually dealt with this on a day-to-day basis for some 25 years, I can tell the minister that there is a natural tension between landlords and tenants. Fortunately, the vast majority are reasonable and can come to a compromise if there is some contentious issue, but there are always on the edges landlords and tenants who are very unreasonable. Listening to the debate that has taken place so far, I have some concern about the specifics of attaching furniture and the request for consent that is given. Is it sufficient for a tenant to simply write to the landlord within the time period for service and simply say that they wish to affix furniture to the wall, or are they required to detail every fixing for every piece of furniture they wish to affix to the wall? That is my first question. I will wait for an answer before I ask the second question.

Hon ALANNAH MacTIERNAN: I understand the point, but that is what we have been addressing. When one considers the schema of the legislation, a tenant seeking consent would be required to specify the furniture involved and anything used to affix the furniture to the wall. Clause 67(2), proposed section 47(2A)(a), states —

> a tenant may affix either or both of the following items to a wall of premises …

This is not necessarily set out in detail, but the tenant has to apply for consent to affix an item of furniture to a wall of the premise. It is inherent in the concept of writing for consent that the tenant specifies the furniture, the thing used to affix the furniture to the wall, and the wall. When a tenant applies for consent, they have to provide the basis of the things for which they are getting consent. If they just wrote a letter saying that they wanted to affix furniture, that would not satisfy the way in which this legislation is structured. This provision refers to the items fixing furniture to the wall of the premise; it is not an entitlement at large. There is not much more we can add to that, and there are no further amendments on this matter. As I said, we have the power to regulate and to add prescribed reasons, but one thing that we would be happy to give an undertaking to do is to prescribe the form that is to be completed by the tenant. That would give it some format and it might make it easier for everyone involved. However, we would have to draft an amendment. If members were in agreeance, perhaps we could put this clause to one side and move on to the others while we draft an amendment to that affect, which would solve the problem and provide greater clarity and certainty to everyone involved.

Hon RICK MAZZA: Thank you for that, minister. I would appreciate it if we could tailor something to accommodate that concern. My experience is that some cases will end up in arguments: a tenant will write to a landlord telling them that they are going to affix furniture to the wall, the owner says no and it ends up with a fight. We do not want disputes that then go to the Magistrates Court under section 12 and take weeks if not months to resolve. I imagine that until such time as that dispute has been resolved, the tenant would be unable to affix things to the wall pending the outcome of that dispute. I do not want to see a delay in safety measures being put in place. If we are able to specify it more clearly so that it reduces the scope for a dispute to arise between tenants and landlords, that would be appreciated.

Hon MICHAEL MISCHIN: Given that there seems to be no controversy about the information that ought to be provided as material to an application for consent, I was working my way around to asking the minister whether at least the broad features of what ought to be provided should be included in the legislation. The idea of prescribing either as part of the standard tenancy agreement or as a separate form under regulations in the Residential Tenancies Act, setting out the detail that ought to be provided to a lessor and which a lessor can be entitled to expect, is a worthy one, but I do not think that that had been thought of frankly until just now. The idea

of waiting to see if there is a problem down the track does not help those who have suffered from that problem in the meantime. I invite the minister to prepare an amendment regarding the written request for consent and that it require information about the item of the furniture concerned, the wall to which it is proposed to be affixed and the means by which that furniture is proposed to be affixed, and then the regulations can then be framed around that. It would also be an advantage for the tenant who does not have access to the form and who, in the spirit of doing the right thing, might at least know then what they have to provide and write a letter that provides more information than is sought in the usual way that these things are done nowadays with a lessor.

I will move on to another element of this that was raised by Hon Rick Mazza. He seemed to think that time would not run against the lessor, but proposed subsection (2B) outlines that the lessor is taken to have consented unless consent is refused within seven days, and only within those specific circumstances. If consent does not fall within the specific circumstances, the lessor is taken to have consented even if there may be deficiencies in the information provided by the tenant in the request. That needs to be looked at as well. If we are going to require at least certain threshold information to enable a tenant to exercise this entitlement, that needs to be provided at the outset as much as possible. It ought not to be a case of the lessor having taken to have consented and then getting the court to overturn that.

In the interests of assisting the passage of this legislation, I am prepared to move on from the amendments to clause 67, which amends section 47 of the act, but I ask that in the meanwhile those issues be looked at so that perhaps some agreement can be reached on the essential elements that will need to be satisfied for a proper application for consent, and that unless those elements are met, this entitlement under the act cannot protect the tenant. I think that is important as part of the balance, because I am not satisfied that anything is implicit in this legislation in the manner that the minister has outlined. In fact, I do not think the problems were even thought about until now.

Hon ALANNAH MacTIERNAN: Once we introduce this notion, which we have agreed to, to introduce a prescribed form, obviously, the person will be required to fill out that form. If they have not completed that form and provided the requisite information, it does not trigger the seven days. I think we have been very flexible, we have made numerous amendments and we are happy to accommodate this notion, but this cannot go on forever. We cannot make this such a complicated and convoluted process that we fail to protect children. We are happy to put in the legislation the provision that there will be a prescribed form. It will take a little time to do that, but hopefully we can get that up in the next half hour. We could perhaps postpone the final consideration of this clause and go on to the remaining clauses, so we can move forward while we are looking at the text of an amendment.

Hon NICK GOIRAN: Before clause 67 is postponed, which I have no problem supporting, I wonder whether I could take the minister back to the questions that, in essence, she had taken on notice when we started this afternoon—that is, my questions around the service of the notice under clause 67 as amended by Hon Rick Mazza's amendment. I refer specifically to the use of email. The minister took some advice—I thank her for that—drew to the attention of the house and set out some of the provisions in section 85 of the Residential Tenancies Act 1987. Under section 85, there appear to be three ways the notice can be served. Quite rightly, the minister identified, which is the heart of my concern, when time begins to run on the service of the notice. The minister identified that section 85(1) of the Residential Tenancies Act states that the notice can be given to the person personally. Subsection (5) states —

> A notice or document required or authorised to be given under this Act to a lessor under a residential tenancy agreement shall be deemed to have been duly given to the lessor if it has been given to the property manager of the residential premises, to any person apparently over the age of 16 years apparently residing at the place of residence of the lessor, or to the person who ordinarily receives the rent under the agreement.

I take it that there are four ways in which the notice can be personally served on the lessor, either by giving it to them in person, giving it to the property manager, giving it to somebody over the age of 16 living at the residence or giving it to the person who ordinarily receives the rent on the behalf of the lessor. Those are the four ways in which the tenant can personally serve the lessor with the notice or the request for written consent as outlined in the provision we are considering. I think that the service of the notice or request is noncontroversial, but I want to take the minister to the issue of email and postal communication. Section 85(1)(c) of the Residential Tenancies Act states that one way in which a notice can be provided to any person is "with the consent of that person". That is uncontroversial. The section goes on to state —

> or in other prescribed circumstances, be given or served by prescribed electronic means.

Can the minister indicate to the house whether any circumstances or electronic means have been prescribed?

Hon ALANNAH MacTIERNAN: As I set out earlier today when this issue was raised, if one looks at the Residential Tenancies Regulations 1989, schedule 4, they will see a standard residential tenancy agreement form that has a provision where parties can indicate —

> … for each of the following persons whether the person agrees to notices and information being given by email or facsimile under the *Electronic Transactions Act 2011*.

A provision within the regulations deals with this issue and references the Electronic Transactions Act to determine when an item is perceived to have been sent and received.

Hon NICK GOIRAN: I heard the minister say that earlier but it is not apparent to me that that is one of the prescribed electronic means or circumstances. It strikes me that that is merely a schedule to the regulations and indicates a way in which parties can consent to service. As I understand the provision the minister referred to in the schedule, it says that people can agree that, effectively, email can be a mechanism. That seems to be covered under section 85(1)(c), which states that any notice or document required or authorised to be given under this act to any person may be "with the consent of that person". That is an example of how the parties might consent that one of the ways in which it could be done is by way of email. I do not dispute that; my question is about the other limbs in section 85(1)(c) that refer to other prescribed circumstances. I am keen to know whether circumstances have been prescribed. The section also refers to notice being given by "prescribed electronic means". Have electronic means been prescribed?

Hon ALANNAH MacTIERNAN: The electronic provisions are captured, as we have said, in that schedule and it requires the parties to consent that they are prepared to have notices served in electronic form and they are required to provide an email or facsimile address. As I understand it, there are no circumstances other than those referred to in schedule 4 of the Residential Tenancies Regulations.

Apparently, not that this is at all relevant, there is a provision in regulation 12 of the Residential Tenancies Regulations that states —

> For the purposes of section 85(3)(c) of the Act, a notice required to be given by a competent court under section 18(2) of the Act is made publicly available in the prescribed manner if an electronic version of it is published on a website maintained for that purpose by the competent court.

That is clearly not directly relevant to the issues at hand.

Hon NICK GOIRAN: I think I could assist; if I could just ask the minister and her assistants to have a copy of section 85(1)(c) of the Residential Tenancies Act in front of them, this might help to speed this up. If people have a look at section 85(1)(c), they will see that it refers to "with the consent of that person", which is the first limb. I am not asking about that; I am asking about the second limb, which says, "or in other prescribed circumstances". The third limb says, "be given or served by prescribed electronic means." My question is: have any circumstances been prescribed, which I am describing as the second limb in section 85(1)(c)?

Hon ALANNAH MacTIERNAN: My advice is no.

Hon NICK GOIRAN: Thanks, minister. Given the information that has been provided to the chamber, I take it that it will not be possible for a tenant to request the consent of the lessor by email, unless the lessor has previously consented that email will be a permissible form of communication between the lessor and the tenant.

Hon ALANNAH MacTIERNAN: That is correct, although my understanding is that most lessors would, obviously, want to give their email address. But, technically, if it has not been agreed to, then, no. Presumably, some people out there still do not have email and they may not agree to that.

Hon NICK GOIRAN: Minister, that is helpful. That has dealt with the email issue—the minister might be pleased to know—so we will move off that now. I want to conclude with the issue of those matters that are sent out by post. The minister previously referred to section 85(2), which says —

> If a letter is sent in accordance with subsection (1)(b) the giving of the notice or document so sent is deemed to be effected at the time when the letter would have been delivered in the ordinary course of post.

The minister would probably appreciate that over the last few years the ordinary course of post has changed somewhat. Once upon a time, if I recall my time in legal practice some 12 years ago, it was deemed that the next business day was when the letter would have been delivered, and that would be deemed to be the case, irrespective of whether the letter was delivered at that time. The wording here says, "when the letter would have been delivered in the ordinary course of post." What does that now mean in 2019?

Hon ALANNAH MacTIERNAN: I recognise that, as the member has said, these things have changed, with Australia Post changing its business model. In metropolitan capital areas, or within the same city or town, the estimated delivery day is two to three days. Between metropolitan areas of capital cities and country locations, the estimation is three to four days, and between country locations it is three to four days. Between country locations in interstate areas, the estimation is four to five days. Therefore, the standard delivery time frames are generally referenced to that material that is on the Australia Post website.

Hon NICK GOIRAN: I will just use one example, which is the metropolitan one in which the minister said the estimated delivery was two to three days. When will time began to run? If the tenant posts their request for consent to the lessor—this is a lessor who does not have an email address—I take it that in accordance with section 85(2), time could begin to run at either two or three days after it was posted. But that does not sound very satisfactory, given that the lessor will have deemed to not have refused consent if they have not said anything within seven days. Effectively, what I am trying to work out is the period, at least in the metropolitan area, for postal matters. Is it nine days or 10 days?

Hon ALANNAH MacTIERNAN: Member, there is not a straightforward answer to that. We are going to have a look to see whether we can deal with that when we draft that amendment.

Hon NICK GOIRAN: Madam Deputy Chair, I think, therefore, that the understanding of members participating is that this clause will be deferred.

The DEPUTY CHAIR (Hon Adele Farina): I need someone to give me that instruction.

Hon NICK GOIRAN: Perhaps if I leave it to the minister to indicate that that is what is to happen.

Hon ALANNAH MacTIERNAN: Yes. We are trying to find a satisfactory way of dealing with it.

The DEPUTY CHAIR: No. You need to give me a direction, minister, to postpone consideration of clause 67 until after clause 94.

Further consideration of the clause postponed until after clause 94, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

Clause 68: Section 49A amended —

Hon NICK GOIRAN: What is the mischief that this amendment to section 49A seeks to address?

Hon ALANNAH MacTIERNAN: This is not a change in policy; this is to clarify what the obligations are in the payment of utility charges. The section clarifies the obligation of the tenant to contribute to the payment for public utility services when the contract of provision of the service is between the utility provider and the lessor or the strata company. Generally speaking, in most cases, such as detached housing, we would normally expect that a tenant will directly contact the provider of the utility service, so, clearly, they have that responsibility. But there are other instances, such as when the owner of the property contracts with the provider, such as old-style strata properties which have a single delivery to multiple units, or when the property owner utilises a roof-top solar installation to generate a return from the supply of electricity to the grid. Section 49 provides that a tenant will be responsible for only the charge calculated with reference to the consumption at the premises. However, there has been a difference of opinion about whether consumption in that context includes a daily supply charge levied by the provider, so the bill replaces the current section 49A with a new provision that has been redrafted to remove that ambiguity. It also addresses concerns that tenants are not being advised of their liability for charges within a reasonable time, resulting in financial hardship in some instances. This redrafted section provides that a tenant must receive notice of a charge within 30 days, unless the tenant has moved out of the property, in which case reasonable time will be allowed for the calculation of financial liability. It has been suggested that tenants should also be responsible for administrative charges incurred such as additional meter readings, but the legislation governing the onselling of gas and electricity in Western Australia does not permit such charges to be passed on by the onseller, so we cannot provide for that in this legislation.

Hon NICK GOIRAN: Does the restriction on the ability to pass on the administration cost apply to only the supply of gas, or does it also apply to the supply of electricity and water?

Hon Alannah MacTiernan: It is all utilities.

Hon NICK GOIRAN: To be clear, it is not possible to pass on the administration costs of any utility charge.

Hon ALANNAH MacTIERNAN: Sorry, the member is talking about the last provision that I was talking about—the administrative charges.

Hon Nick Goiran: Yes.

Hon ALANNAH MacTIERNAN: That applies to gas and electricity. The legislation governing the onselling of gas and electricity does not provide or permit such charges to be passed on.

Hon NICK GOIRAN: If there is an administration charge associated with the supply of water, can that be passed on?

Hon ALANNAH MacTIERNAN: Neither the existing nor the new provision deals with the question of administration charges, and it probably should not have been mentioned here. The administration charges were discussed in dispatches. They are not in the entitlement, the existing legislation or the proposed changes. I think that there was some discussion about that, but it was decided not to proceed with it.

Hon NICK GOIRAN: I thank the minister for that clarification. I understand that there is a statutory prohibition against a lessor trying to pass on any administration fee to a tenant.

Hon ALANNAH MacTIERNAN: I do not think it specifies lessors and tenants. I probably should not have raised that, I do apologise. It has been put under this section, but it is not really relevant to it, because whilst the theoretical issue was raised, it is neither in the existing legislation nor in the amendment. It was not in the previous legislation and it has not been included. The provisions in relation to the onselling of electricity and gas tend to preclude that from happening; however, in any event, as I understand it, there is no power in these sections for any of those administrative charges to be levied against the tenant if the electricity bill is not in their name.

Hon NICK GOIRAN: I am keen to get to the bottom of this: if there was an administration charge associated with a water bill that was in the name of the lessor, not in the name of the tenant, and the lessor wanted to pass that on to the tenant, is there any prohibition against that happening? I realise that there is not an express power; there is not, perhaps, a regulation or a mechanism to regulate that. But in the absence of anything, if the statutes of Western Australia are silent on this issue, could it simply be an agreed term in the residential tenancy agreement between the tenant and the landlord?

Hon ALANNAH MacTIERNAN: That is not what is proposed here. I acknowledge that there may not be the same overarching prohibition that would confine us from doing it; however, in any event, the schema of the existing and the new legislation is that the ability to charge for all utilities is restricted and limited to only consumption. I think part of the problem would be that if we started adding administrative charges, where would that end? We would have many discussions. Although there possibly is not some overarching prohibition in the water legislation that stops us from doing that, nevertheless, the policies of the existing legislation and the bill remains unchanged—that only consumption can be charged.

Hon NICK GOIRAN: I just want to clarify that, because that is not apparent from clause 68, which is before us at the moment, which seeks to insert into every residential tenancy agreement a requirement that a tenant must pay a charge for the provision of what I am going to call the consumption levy or consumption charge. They do not have a choice; they must pay. That is under clause 68(3), the insertion of new section 49A(3), which states —

> The tenant must pay a charge for the provision of the service only if —
>
> (a) the charge is for the tenant's consumption of the utility at the premises …

They must do that. That is a term of the residential tenancy agreement. My question is: what would prohibit a residential tenancy agreement from including an agreed term between the landlord and the tenant that said, "Well, I will also pay the cost of any administration charge for water"?

Hon ALANNAH MacTIERNAN: I am just checking this, but I think that is inconsistent with the schema of the legislation. The member is asking whether there can be separate contracting out of these provisions. That is not how the legislation is generally interpreted. The whole purpose of this is to try to provide some clarity and certainty around this, and certainly not to have provisions in which there is a great inequality of bargaining power between the landlord and tenant in negotiating the terms. There would be no capacity for the landlord of a residential tenancy to seek to impose an additional cost by way of private treaty. It is quite clear that the tenant must pay a charge for the provision of service only if it is for consumption. We interpret that as prohibiting any additional charges being added by way of variations to the tenancy agreement.

Hon NICK GOIRAN: I understand that is the government's intent, but I am not convinced that the drafting achieves that. I think the drafting achieves an obligation on the part of the tenant to pay a charge and if the charge meets that criteria, they have no option and must pay the charge. I think that is —

Hon Alannah MacTiernan: If the member reads it, he will see that it states —

> The tenant must pay a charge for the provision of service only if —

It is structured to indicate that tenants are required to pay only if it is a consumption charge.

Hon NICK GOIRAN: Yes. I agree with that. It does not state that a landlord must not pass on a charge in other circumstances. There is a difference between an obligation on the part of the tenant to pay something and a prohibition on the landlord passing on a charge to somebody else. If we were to interpret it in the way that has just been suggested, that would mean that the only thing a tenant must pay for is consumption charges. We know from previous discussions that there are other circumstances in which the tenant must pay certain things. I will leave it at that, but I am not convinced that —

Hon Alannah MacTiernan: I suggest you look at section 27 of the Residential Tenancies Act. I think the schema is quite clear and limits what the landlord can charge for in that area. Section 27(1) states —

> … a person shall not require or receive from a tenant any monetary amount for or in relation to a residential tenancy agreement other than rent and a security bond.

It goes on to indicate some exceptions to that. They are things that are authorised by other provisions of the act. Nothing in the act authorises administrative charges for utilities.

Hon NICK GOIRAN: On what basis was 30 days chosen as the notice period for proposed section 49A(3)(c)?

Hon ALANNAH MacTIERNAN: It was judged to be in all circumstances a reasonable period, which would give the lessor time to do the documentation and to give notice to the tenant. We can add nothing further. It seemed to be a reasonable time.

Hon NICK GOIRAN: That provision indicates that the lessor has to give the tenant a written notice within 30 days after the lessor receives an invoice for the public utility service. When will the operation of this proposed section be proclaimed?

Hon ALANNAH MacTIERNAN: It does not appear that any regulations will be required for this provision, so we expect it will probably be proclaimed within the next couple of months.

Hon NICK GOIRAN: Is there any reason it would not simply be proclaimed the day after assent?

Hon ALANNAH MacTIERNAN: We expect there will be time to give people notice that the legislation has passed so that people have time to acquaint themselves with it. This bill will need to go back to the lower house and once it has passed, a proclamation will be scheduled. There is no reason to delay it. Lots of dialogue has been had with the industry about this and there is no policy change. This is really just a clarification of interpretation. It is to remove an ambiguity that was creating difficulty for everyone in the industry.

Hon NICK GOIRAN: I am not sure that I agree with the minister on that point. What is the maximum time a lessor has to give notice for any accounts received prior to this section coming into effect? This will provide a statutory limitation of 30 days. The lessor will no longer be able to provide the account to the tenant if more than 30 days has passed since the lessor received the invoice. I would imagine that would be materially different from the current situation, but I am happy to be corrected if I am wrong. What is the maximum period a lessor has to give notice for any accounts received prior to this proposed section coming into operation?

Hon ALANNAH MacTIERNAN: That provision is new. Currently there is not a time limit. Once the legislation has passed and before it is proclaimed, we will make sure that the industry is made aware that this is the case so there is adequate time for people to act upon it. The member's concern is that this is a change in obligation and obviously people will need time. I will raise that with the Attorney General and make sure that the proclamation date of this proposed section will give time for people to be notified and take action.

Hon NICK GOIRAN: This is my last question about this issue. What are the proposed mechanisms to educate lessors, strata companies and tenants of this new statutory term of residential tenancy agreements?

Hon ALANNAH MacTIERNAN: It has been drawn to my attention that a transitional provision will provide protection. It states —

> If, before commencement day, a lessor or strata company received a notice of account in relation to a public utility service and the lessor or strata company has not given the tenant full details of the account for the charge, the 30 day requirement … does not apply.

Any bill issued prior to the commencement will not fall within this. The member's concern is dealt with by that provision.

Hon NICK GOIRAN: With respect, minister, that does not address my concern. I am familiar with that provision and we will get to that in due course. All that clause 71 of the bill tells us is that until such time as this provision is proclaimed, lessors will continue to have unlimited time within which to send the invoice to the tenant and the tenant must still pay. That is taken as read. My question is: what does the government propose to do to ensure that lessors, strata companies and tenants are educated about this new term that states that under no circumstances can lessors send the invoice to the tenant if it is more than 30 days? Lessors might be used to giving an invoice after 60 days but from now on, they will not be able to do that. If they do that, the tenant must not pay that charge. That is quite a substantial change. I think the minister described it as a new change, and I agree with the minister. What mechanisms are planned to ensure that lessors, tenants and agents educated about this change?

Hon ALANNAH MacTIERNAN: The department has within it the Property Industry Advisory Committee, which is ministerial advisory group that is very engaged in the development of the legislation. There is robust consultation through that body. When this legislation is finalised, it will certainly go back to the advisory council and it will be communicated through e-bulletin, social media, website and contact with stakeholders. No-one here wants to create disputes. The consumer protection portfolio is very focused on keeping all stakeholders involved and informed. No doubt, apropos one of our earlier clauses, professional development points will be accumulated to undertake courses to go through all changes that are occurring in this legislation, but the member can be assured that the department will take every step to notify landlords of the change in their obligations as a result of this legislation.

Hon NICK GOIRAN: I have no doubt that the Property Industry Advisory Committee will make every good effort to try to educate lessors of this change to the term of residential tenancy agreements, but how will the advisory group or the government do that if they do not know who the lessor is? The minister made the point that one way in which the government proposes this to be done is by professional development points. I am sure that there is active communication between the advisory group and real estate agents and managers and the like, but a lot of private landlords in Western Australia may not be on the radar, shall I say, of the advisory group and will not receive the e-bulletin because the ministerial advisory group simply does not have the email addresses of those private lessors. The minister talked about the website. I think that the minister will readily agree with me that private landlords are unlikely to scour the departmental website on a regular basis, and they are not professional agents so they will not be subject to the professional development points incentive to be educated on this matter. My concern is really about private landlords and ensuring that they are aware of these changes and, for that matter, tenants, because I think that tenants will have the right to know that their residential tenancy agreement has been changed as of a particular date and they no longer need to pay any invoices that are provided to them by the landlord for public utility services consumption, if it has been provided to them more than 30 days later. What mechanism will be available to ensure that those private landlords are notified? Is there a plan in that respect? Has there been some kind of discussion already with the advisory group to determine how this will be done?

Hon ALANNAH MacTIERNAN: It is not simply the advisory group. It is not a new issue, but many landlords join a particular representative body to get advice. We will do the normal interaction that we can. There will be radio interviews and social media and e-bulletins put out to all the formalised stakeholder groups. We do not have, and we do not demand, the name and address of every lessor or landlord in the state; nor do we have that of every tenant. Representative groups, basically, are the key stakeholders, and we have that direct range of communication through traditional media and social media to get out the stories. This always has been the case with changes to this legislation. We try to get out the information as broadly as possible to engage on it. Will absolutely every landlord and tenant know about it? Probably not—not in the first instance. That is always the case with this sort of legislation. The department does its best to go out and actively engage with industry and with tenants, but we do not have the capacity, we do not have the details and we are not required to have the contact details of every landlord and every tenant, because they are not required to submit their contact details to the department. It is an unrealistic expectation that we would be able to do that, but certainly all the mechanisms of the publicity of these changes will be available and certainly the industry groups will be actively engaged.

Hon NICK GOIRAN: I am comforted that it is clear that the minister understands the difficulty and she will communicate that difficulty to the Minister for Commerce and make every endeavour to ensure that the proclamation date is not so soon that it prevents reasonable measures to educate everyone on this legislation.

I conclude on this point for the minister's consideration. It is a shame that Hon Rick Mazza is away on urgent parliamentary business because I very much respect his experience in this area. As I understand it, it is quite common and perhaps even mandatory for tenants to provide some form of bond. I do not know whether it is called a security bond or whatever the terminology is, but it is a bond of some sort. To the best of my recollection—we are going back some time now in my case—a bond gets registered, if you like, with a bond administrator or some form of government agency or department that looks after it. It strikes me that that bond administrator, if that is the right name of this individual, most probably knows the contact details of the tenant and the landlord. Might that be a mechanism for that bond administrator to send out some kind of publication or notice?

Hon ALANNAH MacTIERNAN: It is a good idea. I will take it up.

Hon NICK GOIRAN: I encourage the government to give it some consideration. Is there a prohibition on the government accessing that information from the bond administrator or whatever it is called?

Hon ALANNAH MacTIERNAN: It is an interesting point and we will look at it. I know that we cannot use information in our department under our biosecurity legislation to contact people for other purposes. I would not think we necessarily would have that level of difference here, but it is an interesting idea and I will certainly ensure that is taken up with the Minister for Commerce.

Hon MARTIN ALDRIDGE: Minister, the definition of "public utility service" has the meaning given in section 3(1) of the Land Administration Act 1997. Does the minister have that definition available and can the minister advise the chamber what it is?

Hon ALANNAH MacTIERNAN: The definition of "public utility services" in the Land Administration Act is —

> ***public utility services*** means drainage, electricity, gas, sewerage, telephone or water services or such other services as are prescribed for the purposes of this definition;

Hon MARTIN ALDRIDGE: Can the minister tell me whether any other utilities are prescribed for the purposes of this definition?

Hon ALANNAH MacTIERNAN: I need to get some advice; that is not known immediately.

Regulation 3 of the Land Administration Regulations 1998 makes reference to regulations for a "marine navigational aid", which clearly is not relevant here; a "survey mark", which is not relevant here; and a "telecommunications network", which is already included in the legislation. The only things that are added by the regulation are —

(a) services provided by a telecommunications network;

(b) services provided by a marine navigational aid;

(c) geocentric datum services provided by a survey mark.

Hon MARTIN ALDRIDGE: I draw to the minister's attention a letter that was tabled during the course of the debate—by, I think, Hon Rick Mazza, or perhaps it was even the minister—from the chief executive officer of the Real Estate Institute of WA, Mr Neville Pozzi, dated 1 November 2018, to Mr D. Hillyard, Commissioner for Consumer Protection. A paragraph in that letter states —

> **Residential Tenancies Act—Utilities Charges**
>
> REIWA members do not support changes that places the tenants' obligation to pay for the usage only and not the utility connection fees, when the invoice is issued from the supplier to the property owner. As this is a significant policy shift, REIWA members would like an opportunity for adequate consultation on this matter, and therefore REIWA recommends this issue be deferred until the upcoming review of the Residential Tenancies Act.

I think the minister said in response to Hon Nick Goiran, and indeed in her second reading reply, that there was no change in policy. How is it then that the peak body for real estate managers and property managers in Western Australia argues in this letter dated 1 November 2018 that it is indeed a policy issue and one that it cannot support?

Hon ALANNAH MacTIERNAN: The member may have been away on urgent parliamentary business when we went through the detail of that letter. REIWA was wrongly of the view that that was a change in policy. It was not a change in policy; it was simply to deal with an ambiguity that had arisen. All those matters were addressed. We received a subsequent letter from REIWA dated 2 November 2018, and then another letter dated 7 November 2018, which I think I have already tabled, which states —

> REIWA has received additional information and clarification around many of the proposed changes … and is now largely satisfied …

It then goes on with what is proposed. REIWA had that concern. It got it wrong; it was not a change in policy. Then in its letter dated 7 November, REIWA outlined, as we have said, one concern. It thought that an agent could be imprisoned for acts of defalcation on its trust account by its staff. At the time, the minister made it very clear that that would not be possible under the legislation, so that last remaining item was dealt with. REIWA was mistaken that this was a change in policy; it was not a change in policy.

Hon MARTIN ALDRIDGE: Thank you for that clarification, and maybe in the break, before the taking of parliamentary questions, I will obtain that letter. I beg the minister's forgiveness for not being present when that matter was discussed, but she would appreciate that debate on this bill has now carried on over many different days, weeks and months, so it is a little difficult to track all the progress.

In her second reading reply on 3 September 2019, the minister said —

> The broader policy question of who should pay for utilities will be canvassed as part of the review of the Residential Tenancies Act. A consultation paper will be released in the second part of the year.

What is the status of the review of the Residential Tenancies Act and has that consultation paper been released yet?

Hon ALANNAH MacTIERNAN: It has not been released yet, but it is still on track to be completed by the end of the year.

Hon MARTIN ALDRIDGE: The consultation letter has not been released but the review is on track for the end of the year. Can the minister clarify whether the review will be completed by the end of the year?

Hon Alannah MacTiernan: No. Work is being done to distil the issues into a consultation paper. That is on track to be completed and released by the end of the year.

Hon MARTIN ALDRIDGE: Thank you, minister, for that interjection.

I want to raise a matter that I raised in my second reading contribution, and that is the mischief that Hon Nick Goiran described and that the government is trying to address—that is, solar panels on the roofs of investment properties. Although the government argues that the clause will result in no change, there will be a potential unintended consequence for properties with a single connection to multiple residences. We often see this in regional Western Australia. The Minister for Regional Development would know that the cost of a power connection in regional Western Australia is quite significant—sometimes in the tens of thousands of dollars, particularly for supply to rural properties. Often one connection, because of the pure economics of the cost of that connection, will feed a number of properties. The government argues that although this clause clarifies the current law, landlords will continue to not be able to charge

for a portion of the fixed cost, despite the fact that a number of farmhouses will feed off the line supplied to one farm. The same issue occurs in the case of granny flats that sit behind primary residences in metropolitan Perth. Particularly given that this government has increased the fixed costs for electricity at a much faster rate than consumption costs, this is something that the government really needs to consider as part of the review. It is unfortunate that the consultation paper has not been released yet for us to see that it is something that the government will pursue. I just want the minister to confirm that she understands the issue that I am attempting to describe to her and the potential impact that this could have on a number of properties, particularly regional properties that have quite unique circumstances.

Committee interrupted, pursuant to standing orders.

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