

STANDING COMMITTEE ON LEGISLATION

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2018



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 23 OCTOBER 2018**

SESSION ONE

Members

Hon Dr Sally Talbot (Chair)

Hon Nick Goiran

Hon Rick Mazza

Hon Simon O'Brien

Hon Pierre Yang

Hearing commenced at 1.33 pm

Mr DAMIAN COLLINS

President, Real Estate Institute of Western Australia, sworn and examined:

Mr NEVILLE POZZI

Chief Executive Officer, Real Estate Institute of Western Australia, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to this meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I am sure that you will not talk over each other, but if you could try to speak one at a time. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would either of you like to make an opening statement to the committee?

Mr Collins: Thank you, Madam Chair. I believe we are here today to talk about the Residential Tenancies Legislation Amendment (Family Violence) Bill. We have been working with the department for over nine months, I believe, Neville, in addressing the issues that we arrive at today in terms of the bill. We would say, generally, we would overall support the bill. There are obviously some benefits for the community, and we understand that while there are potentially some small downsides for landlords, in the overall context of the entire property market, we think it is a fair and reasonable bill.

The CHAIR: Thank you. We have some questions for you—it does not need to be an overly long session—but I will ask my colleagues to jump in whenever they have things that they would like to ask or follow up. I will work through the questions that we have already drafted for you and then we can take from there. Can you give us your views about the policy justification for the bill?

Mr Collins: There is obviously, as we see reported in the media, a lot of hidden, undercurrent domestic violence or family violence in the community, and the challenge at the moment for people who maybe are in that situation is that there is no easy way to break a lease. A lease is a contract; it is for a fixed term. So, if someone is in that situation—say they flee a domestic violence—they are still technically on a lease, they are still technically responsible for the rent, and they are technically responsible for any damage that is incurred by the remaining party. We deal with this already in the

industry. We find that often we are not told about it; we just find that one partner has left and there is a remaining party, and sometimes they abandon the premises as well. So in some respects it is a benefit for landlords, and while there is obviously the downside that they are losing a tenant, in a lot of cases they were anyway because people were abandoning the property. This makes it simpler and swifter to end a tenancy situation where there is genuine family violence in the household.

The CHAIR: Do you think it will actually promote a degree of openness and consultation between the parties?

Mr Collins: I would hope so, yes. Our concern has always been so long as the provisions of the process are not abused, so people are not taking this as a way out of a lease that they want to get out of. That has really ever been our main concern. We certainly support—we do not want to keep people in a situation where they are subject to family or domestic violence. This will make it simpler and swifter to end that lease, and then the landlord will have a vacancy but can move on and replace that tenant with somebody else.

Hon NICK GOIRAN: I do not know, Madam Chair, that that is right. You say that it is going to be swift and the landlord can then find somebody else, but under the legislation does the landlord not have to give the remaining perpetrator the right to continue under the lease, and it is the perpetrator who then can give a notice to the landlord, which has to be provided no sooner than, I think, seven days?

Mr Collins: Yes, that is correct. They can choose to stay on, but let us say it is a \$400 a week lease and one partner leaves—obviously it is the alleged perpetrator at this stage because there has been no criminal conviction—at that stage they can elect to stay on in the premises, but they are responsible for the full amount of the lease. They are now subject to a normal lease term and that would mean obviously any breaches for rent arrears and damage to the property as well. I guess if they choose not to stay on, then the whole lease is terminated at the end of that seven-day period.

Hon NICK GOIRAN: Yes, but the lessor is at the mercy of the perpetrator as to whether the lease is going to continue or not.

[1.40 pm]

Mr Collins: That is correct. But at the same time, they are still subject to all the other provisions of the Residential Tenancies Act in that they have to pay the rent on time and keep the property in good condition, and if there happens to be any damage then they can be evicted under normal processes.

Hon NICK GOIRAN: I am not sure how the landlord is better off under this legislation. I think you used the word that it is “simpler”.

Mr Collins: Yes.

Hon NICK GOIRAN: It would clearly be simpler for the survivor of the family violence, but I am not clear as to how the lessor is better off.

Mr Collins: When I say better off, it is that the process is easier. As it currently stands in a lot of these situations, which we are not always made aware of—we know that one partner has left and they have broken up but we do not know all the details—often when that does happen, there are situations where the rent starts getting behind. Under the normal process, we have to go to the Magistrates Court, and that is a whole other topic for another day, but that is substantially behind; it is very challenging to get evictions. Certainly, speaking to our industry, yes, the landlord is then in seven days potentially stuck with no tenant, but at the same time that is, I guess, a simpler process, rather than having to deal with the Magistrates Court to deal with the remaining person who may or may not be able to afford it. I guess property managers will have to navigate that. Again, we do

not know if that person is guilty or not—that is not our place to judge that—but certainly we want to assess their capacity to be able to continue in the lease. If we did not think they could afford it, we would probably encourage them to exercise their seven-day right to leave, but we cannot make them, of course. If they stay on in the lease, then we would be required to follow that normal process, and if they pay the rent and keep the property in good condition, they would be entitled to stay there.

The CHAIR: In your opening statement I think you talked about having talks with the department for about nine months about this. What sort of consultation was undertaken with REIWA in preparing this bill?

Mr Collins: I might just get the CEO to answer—he was more involved in that. I have only become president in the last few weeks.

Mr Pozzi: Once the department became aware that there was a need to review this or look at the situation, we were deeply involved from the first process in relation to assisting, I suppose, and putting our views. We sought feedback from our membership—our property management network committee—and they had a lot of input in relation to how we thought it would assist the committee. From REIWA's perspective, the community is the total community—our stakeholders include government, business, landowners and consumers. We look at things from a total perspective, not just from the real estate agents' point of view.

There was a need, from our point of view, to ensure that there was some process in place to manage these things which previously were not managed in a process; agents did not really know how to manage these situations when they occurred. We had a number of meetings with the department. Unfortunately, at one point, due to sickness of one of our staff members, there was a loss of communication, but we were deeply engaged and the department took on board our suggestions in most cases.

Our first concern was that we recommended the Magistrates Court as the process, but we now realise that the 12-week delay on many occasions would be a great concern. I suppose our concern there was in relation to who could sign off on that—this is a domestic violence situation. Our concern, from an industry point of view, especially in the last couple of years there have been significant inquiries through our information line at REIWA concerning termination: “How do I terminate this lease?” That was our concern—to ensure that there were proper mechanisms to ensure that only those individuals who were subject to domestic violence were treated appropriately. I think the Canadian situation, where they use a particular form, has been adjusted and amended. I think we are quite happy with where that has landed now in relation to those people who can sign off, saying this person is subject to domestic violence. We have had a number of meetings and have sought feedback from our property management network, which deals with landlords and tenants all the time in this area. Generally, we have put a number of suggestions forward, but the department has come back and said, “We don't believe that particular proposal will work.” But we are now satisfied that we have landed in a place where we are comfortable. From REIWA's point of view, the important thing is to ensure that people in domestic violence situations have a mechanism that gives them confidentiality but also a means of extracting themselves from that position. I think the legislation as it now stands provides that mechanism.

The CHAIR: Thank you for that. Yes, that certainly is an issue that we wanted to drill down into, but I will hand to my colleague Hon Simon O'Brien.

Hon SIMON O'BRIEN: That is the issue I wanted to pursue. I think you were referring to clause 18 of the bill, Mr Pozzi, in your last remark, which prescribes certain forms and so on. You have just stated

again something that was raised earlier in another place—that you are now satisfied that there are relevant safeguards against misuse in the prescribed forms.

Mr Pozzi: Yes.

Hon SIMON O'BRIEN: We have not as yet seen the prescribed forms. Have they been shown to you by the department?

Mr Pozzi: We made recommendations in relation to suggested refinements. We have also provided feedback, I suppose. There was a suggestion that lawyers generally be given the power, but we said, “Well, lawyers cover a broad breadth of advice in relation to a whole range of things,” and we did not believe that that was appropriate. We have provided feedback in relation to the suggested people who can sign for these—social workers, doctors and other relevant people. We believe that they are professional and therefore have a code of conduct. We made some changes. There was a thought—we sought feedback—that the penalties in relation to abuse of the system should be designated on the form, but following advice from the police department we are now satisfied that it is mentioned on here, but not the quantum of penalty if there is some fraudulent act in relation to the completion of this form. Yes, we have had input. The department has taken most of our suggestions on board. In some areas they sought independent advice and we have taken that advice on board.

Mr Collins: At one stage we were suggesting a statutory declaration, but we were made aware of circumstances where someone maybe goes to a shelter, they are in a shelter and they would then have to leave and find an accountant or someone suitable. We are satisfied. I guess it is one of those things—until it is actually in play, we will not know 100 per cent, but taking into account that we did not want people to have to go and try to find someone to sign a statutory declaration if they have been a legitimate victim of domestic and family violence, there is a clause referencing that it is subject to penalties for fraudulent statements. The department did not want to put too many things in there; they were concerned, I guess, that it would scare people off using the form. We are satisfied, on balance, that the current form of the clause is satisfactory in terms of its use.

Hon NICK GOIRAN: What changes have been made as a result of the advocacy and the concerns raised by REIWA?

Mr Collins: In relation to the whole legislation?

Hon NICK GOIRAN: Well, anywhere—in the legislation, in the form. Has anything changed? Because the impression that comes across the table is that you raised a number of concerns, the department has made responses, and the concerns have been dropped.

[1.50 pm]

Mr Pozzi: One of the major concerns was in relation to the process in which notification of a family violence situation occurred. There was no form; there was just a doctor's letter as notification that this person was subject to family violence. As a result of the issue of the Magistrates Court not being the appropriate vehicle, this form was formulated as the process for ensuring that the person subject to the violence was, in fact, subject to that violence. The mechanisms that we now believe have been put in place —

The CHAIR: The original proposal did not have a form?

Mr Pozzi: No. This is Canadian—I think in Ottawa and a few other places in Canada where they use this particular method. My understanding from the department is that the feedback has been very positive. That was an additional process put in place once the Magistrates Court was deemed not to be appropriate in relation to hearing these cases.

Hon SIMON O'BRIEN: This is a form to be filled in by whom?

Mr Pozzi: A professional person, either a social worker, doctor and other qualified people who are designated.

Mr Collins: As specified in the bill.

Hon NICK GOIRAN: When would you have received the form?

Mr Pozzi: We, I think, made a request of the department that we would like to see the form before the legislation was finally approved, because we felt that was a very important component for our support of the legislation as put forward. We would have received it some three or four weeks ago. It was well before the final one.

Hon NICK GOIRAN: It was before the bill was presented in Parliament?

Mr Pozzi: To my knowledge, yes.

Hon NICK GOIRAN: Okay, because the bill first went to the Legislative Assembly in May of this year. It was introduced into the Legislative Assembly on 15 May this year. I received an email from REIWA on 21 June, which still had concerns about the legislation.

Mr Pozzi: This letter is dated 6 August.

Mr Collins: Also, I did not realise the legislation came in May. We received it in August.

Hon NICK GOIRAN: You were not aware that it was in the Legislative Assembly? It has passed through the Assembly; it is now in the Council.

Mr Pozzi: Yes, so 6 August is when we got that. I responded to that.

Hon NICK GOIRAN: This is the form? You received the form in August?

Mr Pozzi: Yes.

Hon NICK GOIRAN: And it is because of the form you received in August that your concerns that you had outlined in June were satisfied?

Mr Pozzi: Some, yes—in relation to that specific requirement that the matter be heard before the Magistrates Court. This was one process that alleviated our concerns when we felt—considering the issues with the Magistrates Court, then this was a mechanism that satisfied what we believed was appropriate.

The CHAIR: This is in the context of a nine-month period. Basically, this year you have been talking to the department about these measures.

Mr Pozzi: Yes.

Hon PIERRE YANG: Mr Pozzi, you talked about the Canadian model and you said it is receiving some quite positive feedback. How long have they been having their system?

Mr Pozzi: That might be a question you might ask of the department, because they have investigated that. I think it is a few states in Canada. From my discussion with them, it has been a very satisfactory process using a similar form. They have got details in relation to numbers, so that question might be best answered by them.

Hon PIERRE YANG: I shall. Thank you.

Hon RICK MAZZA: In your consultation with members of REIWA on the practical function of this bill, is there going to be any real change? When there is an issue raised with family violence and there is a request from the tenants that one party be removed from the lease, as I understand that happens on occasion, how many landlords actually go along with the change or agree to the change?

Mr Collins: It would be difficult to put a percentage on it. Most landlords would be concerned. I am a landlord myself; I would be concerned. If you are saying the alleged perpetrator has left the

premises, I think you would find commonsense would suggest that most landlords would say, “I’m probably glad that that particular person is no longer in my property.” Having said that, it is not always that common. It is a very private matter. When I speak to my team and say, “How often do people report that they want these changes?” We hear about break-ups—“I’m not with my partner anymore and I want them off the lease”—but we very rarely get told it is domestic violence. I think that is a very private matter that people would pretty reluctantly share with their property manager.

Hon RICK MAZZA: Just on that point about break-ups, domestic or family violence is described as being a number of things. If there is a family break-up and there would be a degree of aggression, I suppose, between the parties, and then suddenly they say that one party wants to leave the lease, they ask the landlord if they would agree to remove that person. The ability of the remaining tenant then comes into question as to whether they can service that lease. Do you think there are avenues where this bill or the changes to the act can be abused where forms may be filled out that are simply break-ups, not really family violence?

Mr Collins: Look, that is always a risk. Anytime you self-certify something in front of a professional, albeit who is meant to testify that as far as they are aware it seems legitimate, there is always going to be that risk. That has been our number one concern all along. We certainly do not want to keep people in the situation of domestic violence, but we want to make sure that people are not manipulating the system. The feedback we received from the department was that in the Canadian states where they are being used, they are talking about, on a per capita basis, probably 100 to 200 a year out of 120 000 rental properties. On that basis, it would appear not to be being abused over there. One of the things that we are certainly glad about is that there is a review mechanism in this bill—in five years. We will certainly be monitoring our members. Do we expect that someone is going to do it? I am certain there are. Somebody is going to do it. We just want to make sure it is limited and rare. I would hope that that would be the case. We will be certainly monitoring it and giving regular feedback to the department and also to the government as well.

Hon RICK MAZZA: As part of your consultation—obviously the real estate institute represents real estate agents, not necessarily landlords as such. Would that be a fair comment?

Mr Collins: We are paid—the membership base is real estate agencies and that is who pays our membership fees. But certainly in our vision, we are there to see everyone win in real estate in WA. That means it is a healthy real estate market, it means that governments get their stamp duty, it means that there is affordable accommodation for people, that investors can invest and make money and people can easily and smoothly move properties. Our membership base is that, but we know that people look at us—I am sure people think we are actually the regulator. We wear that as a sense of duty that when we are dealing in real estate, it cannot just be about real estate agents; it needs to be about the wider community as well.

Hon RICK MAZZA: Were you in any dialogue with property owner groups as part of your consultation process on this?

Mr Collins: Our agencies manage somewhere in the vicinity of 125 000 properties in WA. I am in this building upstairs; we have got a big department. We are on the frontline and we get regular feedback. Did we consult with any particular individual property group? Not that I am aware of.

Mr Pozzi: Just in relation to legislation, good legislation means good outcomes for the whole community. When we look at legislation, there must be balance. There is no use having legislation which is in the favour of the landlord or in favour of the agent, and could have implications for the community. That is not good legislation. When we look at legislation, it must be balanced to ensure that all individuals, no matter who—government, business and the community—benefit from it. That is the way we look at legislation.

Hon NICK GOIRAN: You did not consult with any property groups in particular. Did you consult with any social service providers during this nine-month period?

Mr Pozzi: Tenancy WA and those organisations, we had a number of discussions with them in relation to the legislation. They had different views on certain aspects, but we did reach a compromise in relation to those.

Mr Collins: Particularly in relation to that form.

Mr Pozzi: Shelter WA and Tenancy WA.

Hon NICK GOIRAN: This committee will not have the luxury of only doing selective balancing; we will have to consult with property groups and property owners. Would there be any property owner groups that you would recommend that the committee should consult with?

Mr Collins: To be honest, I am not particularly familiar with any groups out there. Hon Rick Mazza mentioned some that you might be aware of, but no, I do not know if there is any large group that represents a large number of landlords. As I said, our agents manage over 120 000 rental properties. That is a fair cross-section, but you would have to check wider, other than us.

Hon RICK MAZZA: Just talking about that balance, this is going to put more of a burden onto landlords, without a doubt. Do you envisage that this may discourage people from investing in residential real estate as an investment property?

Mr Collins: Yes, the landlord is going to wear some of the re-leasing costs, although it could have happened anyway with abandonment. We do not know that. Look, there are plenty of other things on the landlords' horizon that will potentially impact them, like capital gains changes, negative gearing and so forth. They will have a far bigger impact than something like this. Obviously, there is the Residential Tenancies Act in and of itself. A lot of individual owners would argue that it is certainly far in favour of the tenant, and that is a view that some of our members hold as well. But in itself, considering it is going to affect only a small number of properties each year, I cannot see how this will have any individual significant impact, but the overall regulatory burden on landlords continues.

[2.00 pm]

Hon RICK MAZZA: It all adds up.

Mr Collins: It all adds up, yes.

Hon RICK MAZZA: I have just one last question. In relation to the landlords' extra protection insurance, has REIWA looked at how that may be affected by these changes?

Mr Collins: It is a legitimate lease break, so as far as we are aware, we are obviously going to be liaising with the insurance companies, considering it is a legitimate break. Some intelligent insurer might come along and do the maths and go, "If it's 120 possible payouts a year and if I've got 120 000 landlords I could make a song and dance about, they might be smart and take cover on it." But we have not got that far yet.

Mr Pozzi: I think the only condition is that if there is a break in the lease, the two parties—if it is a lease of \$400—then the condition on the insurance is that the full bond is paid. That is the condition, so they would have to top up the bond for the other party. I think that is the only precondition of the insurance—that it must be a fully paid bond.

Hon RICK MAZZA: So a landlord could be left out of pocket for half the bond if half the bond had to be paid out to, say, the perpetrator or the victim—tenant?

Mr Collins: No. What will happen is if the perpetrator is the one who stays on in the property, they then have to top up the bond that the victim gets paid out. They still have to top up the four weeks.

The CHAIR: And not topping it up would be a breach of the tenancy?

Mr Collins: Correct, yes.

The CHAIR: I think we are nearly through, so thank you for that. Thanks for talking about clause 18. Were there any other objections for property owners, and do you have any remaining concerns about the bill?

Mr Collins: In relation to clause 18 in particular, sorry, could you just —

The CHAIR: No. I said thanks for going into clause 18 —

Mr Collins: Okay, sorry.

The CHAIR: Were there any other objections raised by property owners—by your stakeholders—and do you have any other concerns about the bill?

Mr Pozzi: There were some issues raised concerning changing keys and maintenance issues, but we believe they have been adequately addressed. Especially with keys and locks to premises where you have a perpetrator and somebody needs to change them quickly, I think the requirement is that the keys must be made available to the property manager or the landlord as soon as possible or practical once those changes have been made. I understand that damage and changes to the premises to make them secure will be subject to regulations. It is not in the actual bill but it will be subject to regulations as to the processes required where a tenant makes changes to secure the premises.

The CHAIR: Will you continue to talk to the department about the framing of those regulations?

Mr Pozzi: Most definitely. We have a good relationship and an open relationship, and we will definitely be putting our views and hopefully consensus will be reached.

Hon PIERRE YANG: I have just a quick question. Under the current legislative regime, say in a domestic violence situation, the perpetrator has left the property and the victim is staying at the property right now, but if they cannot afford it, clearly the landlord would not want them to be there?

Mr Collins: Correct.

Hon PIERRE YANG: As you mentioned, the eviction process can take a little while. If they want to stay in the property and they can afford it, obviously there is no issue. But looking at the situation, if the victim wants to stay in the property but may not be able to financially support him or herself to the fullest extent, what is the general approach of landlords, from your experience?

Mr Collins: On the current basis, as I said, we do not know that it is domestic violence; we just know that there is a break-up.

Hon PIERRE YANG: In the known cases.

Mr Collins: In the known cases, that would come down to the individual property manager. Again, if it was unknown and someone said, “We’re breaking up and I can’t afford this property”, then the property manager would generally go back to the landlord and say, “This is the situation. They’re not going to be able to afford it. They’re going to go into arrears. It’s going to take us 12 weeks through the Magistrates Court to evict them. Maybe we ask them to give two weeks’ notice, which gives us time to get it ready for rental and promote it again.” So often these things are done by negotiation. That would be the normal case, but again, we are acting on behalf of landlords and while 98 per cent are pretty reasonable, sometimes some are not. We are acting in accordance with the law, but we also have to act in accordance—as long as it is within the law—with our landlords’ instructions.

Hon NICK GOIRAN: I want to take you to the concerns that you had in June. I will read to you from the email that I received—a part of it, anyway. In that email you say, “It is the industry’s belief that

a GP letter will provide the opportunity for people to abuse the system and create a sick note mentality for those looking to terminate a lease. As GP's face increasing patient numbers, there is a real risk that people could simply say the right things to tick the boxes in order to gain the required documentation. It is greatly disappointing that property owners will now be vulnerable to people looking to thwart the system aimed at protecting society's most vulnerable." Since that time, you have indicated that you have had the opportunity to sight and contribute to a form which will be based on the Canadian model. Can you just explain to me the difference between the GP signing that form and the GP signing a letter, which you were concerned about in June?

Mr Pozzi: A sick note. I think there are clear obligations pointing out the responsibility of a person signing that particular form in their professional capacity. There are fines that follow, which are in accordance with the law. I think previously it was just a sick note or some note from the practitioner or a doctor suggesting that a person may be subject to family violence. I think there is now a greater obligation on whoever is signing that to ensure that they comply with the legislation and understand fully who can and who cannot be subject to that particular form.

Hon NICK GOIRAN: You will have to bear with me because I have not seen the form. No doubt in the fullness of time the committee will try to get access to this form, but, as I understand it, the form sets out the obligations of the person signing it. If it was a general practitioner, does that specify to them that they have certain obligations that they need to meet?

Mr Collins: I have the form; my apologies. There is a declaration by the tenant, and they have to provide the "certified person below". It states "The certified person below is true and accurate to the best of my knowledge and was provided in good faith." There is a section that says they will be subject to a penalty for a fraudulently or falsely signed declaration. We did go back and forward with the department. As I said, we originally wanted a statutory declaration. We understand why that is not practical in a number of those situations. So, for us, it was about that it looks like a real form, not a doctor's scribbled sick note, and that it is clear that there are penalties for false and incorrect statements. You would imagine, even though it is not a statutory declaration, that the vast majority of people would be hesitant to sign that without being in the knowledge that the professional has been told the story of what has happened and that the person signing it has actually felt they are a victim of family and domestic violence.

[2.10 pm]

Hon NICK GOIRAN: Those penalties that you referred to in the form, is that in relation to the tenant giving the information or is it in relation to the doctor?

Mr Pozzi: No, the person subject to the family violence.

Hon NICK GOIRAN: So it is not the doctor who would be subject to the penalty or who has the obligations to provide the accurate information; it is the tenant, is it?

Mr Collins: Not as I understand, because at the end of the day, this is a person saying to a medical professional or social worker, "I have been subject to this and this has happened to me." The concern would be if it was on the medical professional to certify that it is true, or whoever that was, that they have to do further investigation. All they are certifying, which sounds reasonable to us, is that this person has told them that they are a victim, and that is what they are certifying. They are not certifying whether it is true; they are just certifying that this person has informed them that they are a victim.

Hon NICK GOIRAN: But just back to my question. I understood that you were satisfied because the form is going to set out the obligations to the professional, and it also had some fines, I think you said —

Mr Collins: No; sorry —

Hon NICK GOIRAN: I want to be clear that those obligations —

Mr Collins: No, the obligation, with the form that we have been involved with, is that the tenant is signing that, “I understand it’s an offence to make a fraudulent declaration. I may be liable for a penalty if found guilty of this offence.”

Hon NICK GOIRAN: Right. So the professional is not being told they have obligations; it is the tenant who is being told?

Mr Collins: No, there is a section there that says the certified professional should sign the declaration only after assessing the tenant and the tenant’s circumstances, and should make the determination based on the accepted standards of their profession and relevant knowledge and professional judgement.

Hon NICK GOIRAN: Okay. So that would satisfy you because it sets out to the professional a reminder that you have professional standards and obligations.

Mr Collins: Yes.

Hon NICK GOIRAN: Those professional standards and obligations, are you familiar with the standards for a person in charge of a women’s refuge?

Mr Collins: No, I would not be. We certainly did have some concerns originally about the wide variety of people who could sign. Again, in these particular circumstances I can understand if someone is in a refuge, I do not even know if they have professional obligations, to be honest, but the challenge is to send them back out. In the balance of fairness and everything else, we thought that is probably reasonable, and again we certainly hope that no-one would abuse it but I would find it unlikely that someone trying to get out of a tenancy is going to turn up to a women’s shelter. I just think that is pretty highly unlikely.

Hon NICK GOIRAN: Just explain to me why it is necessary that a doctor, who has professional standards, needs to have their obligations flashing in front of them in the form, but a person in charge of a women’s refuge does not require that same standard. If you were concerned about the sick note for the doctor, which I would like to think GPs are not just handing out like lollies, would you not want at least the same standard to apply to the women’s refuge person?

Mr Pozzi: My understanding in relation to a women’s refuge is that suitably qualified people attend those facilities regularly. It might be one day, but I understand that doctors and persons who would be eligible to sign the form visit those institutions on a regular basis, so I do not know if that would be an issue.

Hon NICK GOIRAN: The legislation specifically provides that one of the persons who can sign is someone in charge of a women’s refuge.

Mr Collins: Yes, and all the others are professionals as defined under act, other than the women’s refuge. Again, looking at the likelihood of that being abused, again, is pretty unlikely. I just do not imagine someone turning up to a women’s refuge to get out of a lease. I think that if they were going to do that, they would go to one of those other professionals such as a medical professional.

The CHAIR: I think that is a point you have made very clear. Bear in mind also, honourable member, that somebody in a refuge may not be in the area where they have access to their own GP.

Hon NICK GOIRAN: Yes. It can be any GP, can’t it?

The CHAIR: It can, yes, but I think that is —

Hon NICK GOIRAN: It is interesting that we are concerned about the doctors and sick notes —

The CHAIR: I think it is crucial to have that particular designation as one of the prescribed people.

Mr Pozzi: I suppose we have all experienced through our employment situations with sick notes. I suppose that is where that cynicism comes from. I am not saying it is still a continued practice, but it is just a —

Hon NICK GOIRAN: You said that the form, which you have placed a lot of weight on, is based on the Canadian model. Have you had an opportunity to look at the Canadian form to compare and contrast it with this form?

Mr Pozzi: Yes, briefly. That was some time ago, but I know that we did look at it. I think most of the contents of this form have been taken and based on the Canadian form.

Hon NICK GOIRAN: Okay.

Mr Pozzi: But DMIRS would be the best people to speak to in respect of that.

Hon NICK GOIRAN: Sure. Do you happen to know if the Canadians allow police to sign their form?

Mr Collins: Are we aware if Canadians allow police to sign their form? No, I would not be aware of that.

Hon NICK GOIRAN: Okay. You are not too sure which other professions can sign off on the Canadian form?

Mr Pozzi: No.

Hon NICK GOIRAN: Okay. We will ask the department about that; that is okay.

Hon RICK MAZZA: With the form, as Hon Nick Goiran said, we have not seen that form yet, but there is a statement there that there are penalties for falsely filling that form in. Would it be fair to say in practice that most landlords would not take to task the tenant over the validity of that form? They would just move on, would they not?

Mr Collins: Yes. Obviously under the legislation the form is the end of the lease, or certainly for the victim. Once they have filled that in and provided that, that is the end of the lease. So no landlord is going to question it? No, I would not have thought so.

Hon RICK MAZZA: I would not have thought so either. So really the penalty et cetera, the word will get out eventually that landlords will just move on—“We want to get out of a lease because we have an argument.” The system is open to abuse; it pretty much is a sick note.

Mr Collins: Well, not quite, because the professional who is signing that is a medical professional, police officer or obviously someone in a refuge, which we have discussed before. Again, you cannot guarantee it, but you would imagine that someone going into a medical professional would not just say, “I’ve been a victim of domestic violence”, “Okay, there you go. Where’s my next bulk billing client?” They might go, “Well, I’m concerned about your welfare. What are you doing? How are you getting away from it?” So it would be uncomfortable to go through that process, you would think, to lie and utilise that form to get out of the lease, but it could happen.

Hon NICK GOIRAN: In June, when you had listed your concerns to members of Parliament, one of them was in respect to alterations that can be made by a tenant, and that is covered by clause 12 of the bill that looks to insert section 47. Now, at the time, in June—I will just quote from the email; it says “REIWA has not been consulted on the prescribed alteration that a tenant could make to the premises under section 47(4). The tenant should at least have to make a written request that perhaps the lessor could not unreasonably decline.” What has been the outcome of your concerns there in your consultation with the department?

Mr Collins: The challenge with that is that sometimes property managers are not always easily able to get in touch with their owners, and so our thought was to then reverse it so that if the tenant needed to make emergency changes to protect themselves and feel comfortable that then they

have to pay their own expenses, but also the tenant, as is in the bill, must restore the property to its original condition at the end of the lease. So that satisfied us, rather than going through getting the landlord—again, sometimes these people are overseas—and property managers generally cannot just go and do it; they need to get permission from the owner. That could take three, four or five days, and we were satisfied that as long as the tenant has to make good at the end, which they do, we are okay with that.

Mr Pozzi: Because that situation —

Hon NICK GOIRAN: Sorry to interrupt there. This is the thing that throws me a little bit about the communication in June. As I said earlier, the bill was introduced into the Legislative Assembly in May, and in this email that you sent in June you do say, and I will quote, “Now that the bill is available for viewing, REIWA members continue to raise the following concerns.” And then you listed out a number of quite reasonable concerns, I might add. One of them was one that I am just dealing with now about alterations. There has been no change in the bill, as I understand it, since that time.

Mr Pozzi: The reason is that the prescribed alterations that a tenant will be allowed to make to the premises to address their safety will be developed through regulations; okay?

Hon NICK GOIRAN: Yes.

Mr Pozzi: Consumer Protection will liaise with REIWA and relevant stakeholders in relation to the development of those regulation. So until the bill passes then the regulations would be developed, and in that particular aspect it will be the department that will consult with us in relation to the preparation.

Hon NICK GOIRAN: Yes, I understand that, and I can understand that it gives confidence to REIWA, but as a lawmaker I am not about to subcontract that task out to REIWA. I would want to know what is going to be in those regulations before the chamber agrees to it. So you have not been provided with a draft list or anything like that?

Mr Pozzi: No.

Hon NICK GOIRAN: Okay.

Mr Collins: We would expect they would be around matters of safety, not additional carports or something. We would expect that they would be matters around —

The CHAIR: Which was the New South Wales example, I think, of trying to pull a bookcase over it or something.

[2.20 pm]

Mr Pozzi: That is separate legislation which I think has just been passed, yes.

The CHAIR: Okay.

Hon RICK MAZZA: Just a couple of questions. With those alterations, as I understand it, the alterations cannot be made if the property is heritage listed. So to make it good, obviously heritage-listed properties do not trust the tenant to make good for repairs on a heritage property as opposed to a non-heritage property. So if you are a tenant, a victim of family violence in a heritage-listed property, you do not have the same protection.

Mr Collins: That would be correct, based on what you said. However, the number of heritage homes that would be rented to residential tenants would be—I think on the total state register there are 400 heritage properties, and that is not all just residential, so we are talking about a very small number of properties. Again, how many of them would be actually residential tenants, I would not

know—you might want to ask the Heritage Council—but I would imagine it would be very, very small.

Hon RICK MAZZA: The Heritage Council is obviously concerned about the make-good provisions on their properties, so it makes you wonder about others. Just with the change of locks, which I think is appropriate—if there is an issue, that there is a change of locks. I could imagine, though, that a perpetrator that then finds they are locked out of their property would be somewhat angry. Has the institute consulted with their members regarding the situation with workplace safety as far as their property managers are concerned, that people do come in aggressive, not being able to get into a property which they are a party to the lease but they have been locked out?

Mr Collins: Certainly that is already a—you mean coming into the agency's property?

Hon RICK MAZZA: Yes, absolutely.

Mr Collins: Yes, we sometimes get angry tenants, regardless, and sometimes, on rare occasions, someone else in the office has to go out and ask people politely to leave the building. So, yes, I am sure the perpetrator would be not particularly thrilled, but whether or not that would result in their coming into an office—the feedback we have from the department is that a lot of these people are bullies to the victim of domestic violence and pretty cowardly to everyone else. That is the feedback. Again, we are not experts in that field—you probably want to ask someone who is—but the feedback we get is that they are generally not aggressive to other people.

Mr Pozzi: As part of an agent's responsibilities, where there is a possibility of issues occurring at a tenancy, then there are mechanisms put in place where there is more than one person attending, say, or notification to the police that there could be an issue. That does not apply to domestic violence but just generally in relation to tenancies.

Hon RICK MAZZA: Just with the database and the ability for a perpetrator or a victim to be removed from that database, if the perpetrator has damaged the property and has not paid the rent, they go onto the tenancy database.

Mr Pozzi: Not necessarily so. That National Tenancy Database legislation has significantly changed. It is only if there is a court order, they have gone to the courts, where they are registered, and then they can be put on the tenancy database. You just cannot put somebody on a tenancy database because of default of rent unless they have gone through the processes and the courts. They must be removed within three years. So those tenancy databases have significantly changed from the days when you used to put people on there for defaulting in relation to rent or some other purpose. There must be a court order.

Hon NICK GOIRAN: One last thing on the locks. In your email from June—it was quite a handy email in June. I would hate for you to walk away from today thinking that the June email was troublesome. It has been most helpful. You mentioned that changing the locks could impact on the fire-rating of the doors, rendering insurance policies void, and there would need to be legislation to ensure any locks were replaced with identical products and fitted by a registered professional. I am not sure I have been able to find anything in the legislation that does that. Have you had your concerns satisfied on that front?

Mr Pozzi: I think it was more in relation to strata properties.

Hon NICK GOIRAN: Yes, you also mentioned that in the earlier paragraph about the front door. We can deal with that in a minute. But how about the insurance policies being voided?

Mr Pozzi: Well, that was a question, I suppose, rather than knowing the answer. That was just a concern that we had.

Hon NICK GOIRAN: And the department was silent in its response to your concern on that?

Mr Pozzi: I do not think they responded specifically to that particular question.

Mr Collins: It was a question, but, I mean, every property, when it is your own home, if you change the locks, the reality is an insurance company does not void your policy because you have got some other different lock. Practically, the department had told us that they will be putting out fact sheets for tenants in strata properties, and that will help. But I guess the challenge with all these things is, as legislators, how far do you legislate and how much do you leave to common sense? That is the challenge for you.

Hon NICK GOIRAN: Okay. So the issue then with the strata companies and the front door, did the department respond on that?

Mr Pozzi: Yes, they will be issuing, I think, fact sheets, because sometimes that is not the responsibility of the owner; that is the strata company, which is a different ownership. You cannot just replace locks to the front of the premises when you do not have authority.

Hon NICK GOIRAN: Yes, so if you are in an apartment, you can change the lock to your apartment door, but not to the premises' front door?

Mr Pozzi: Yes.

Mr Collins: Yes.

Hon NICK GOIRAN: There is no need to change the legislation; it is just a case of educating people what they can and cannot do?

Mr Collins: Yes.

The CHAIR: Same as with Parliament—no tailgating. Okay. Mr Pozzi and Mr Collins, thank you very much for coming in today. I just have a closing statement to end formally.

Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. You did not take any questions on notice, I think. Finally, if you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence.

Thank you very much for coming in.

Mr Pozzi: Thank you very much.

Mr Collins: Thank you.

Hearing concluded at 2.26 pm
