RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Consideration in Detail

Resumed from 1 September.

Clause 32: Section 34A inserted —

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clauses 33 to 37 put and passed.

Clause 38: Section 39 amended —

Ms J.M. FREEMAN: Clause 38 is actually an amendment to section 39 of the current Residential Tenancies Act to —

> … delete "every agreement" and insert:
>
> every residential tenancy agreement

I note that section 39 of the act is about tenants' conduct on premises and states —

> It is a term of every agreement that the tenant —
>
> (a) shall not use the premises, or cause or permit the premises to be used, for any illegal purpose; and
>
> (b) shall not cause or permit a nuisance.

Given that this bill will also introduce a new proposed section 75A, "Termination social housing tenancy agreement due to objectionable behaviour", in part III, I am wondering what the interplay is between proposed section 75A and clause 38 and how they will relate to each other in terms of the powers. From the perspective of our previous speeches I want some background about why this clause is not sufficient enough and proposed section 75A is required, but more about how this clause 38 will then play out in its relationship, its interpretation and its application with proposed section 75A, and how that then applies to the Department of Housing.

Mr T.R. BUSWELL: The advice I have is that this clause deals with the cause, and later, with proposed section 75A and/or the existing provisions of the act, section 62 and possibly some of the others, we will deal with the mechanism by which we go about things. I think we will talk more about proposed section 75A later on and I am happy to articulate for the public record why I think we need proposed section 75A.

Ms J.M. Freeman: It is more about how it relates to —

Mr T.R. BUSWELL: I know; the member asked about the linkage. The member is right that clause 38 basically just takes out the words "every agreement" in section 39 and replaces them with "every residential tenancy agreement", which is consistent with how we have set up the legislation. There is a causal link between section 39 and subsequent action, in that section 39 is the cause, "shall not cause a nuisance", the subsequent action, whether it is section 62 or proposed section 75A, is the method we use through the court to take action in relation to "shall not cause or permit a nuisance". Therefore, there is a very clear link between cause and method of action and I am happy to talk about the method of action now or perhaps it is better when we deal with proposed section 75A.

Mr M. McGOWAN: Just for my clarification, why is it therefore necessary to have the later clauses if we already have this clause and the capacity to evict people based upon section 62 of the act? I wonder whether it is in some ways redundant. It seems to me that this clause becomes an automatic clause of any agreement and it looks as though it cannot be excluded by law. Therefore, with any agreement, whether or not it is expressing agreement, this is an implied or expressed clause of any particular tenancy agreement. Therefore what is the difference, and why is the capacity that currently exists different from that which is proposed later in the bill?

Mr T.R. BUSWELL: Effectively, we use section 39 of the act, which is to be amended by clause 38, as the trigger. Under that section, tenants shall not use the premises for an illegal purpose or cause a nuisance. We also use the other sections of the act and, hopefully in the future, the proposed sections in the bill. Generally, action will be taken under sections 62, 64 and, hopefully, proposed section 75A, as well as section 73, which deals with illegal activity. I do not see how we can have one without the other.

Clause put and passed.

Clause 39: Section 40 replaced —

Mr C.J. TALLENTIRE: This clause inserts new section 40, "Vacant possession". I am interested to hear from the minister how this would relate to bodies corporate. It may be that, technically, a part of a driveway is not a part of a property to which a tenant has exclusive occupation; nevertheless, people have an ongoing habit of leaving outdoor implements, such as a barbecue or a car, in the parking area, for example. How can we guarantee that those types of areas would also be left vacant by an outgoing tenant? There are public liability issues with the common areas too, but that might be dealt with in another clause. The minister is aware, following our discussions last week, of the release of the thirteenth report of the Standing Committee on Public Administration into bodies corporate, and especially the managers of bodies corporate. That report called for bodies corporate to be licensed. That sounds like a very sensible call to me, given that presently we do not license body corporate managers. I would like to hear from the minister how this clause relates to an area that technically may not be part of the area of exclusive occupation but forms part of the area that quite normally someone would use as an access to their new property.

Mr T.R. BUSWELL: I think the member has hit the nail on the head. I read some comments about the mooted changes to strata titles. The advice I have just received is that the issues the member refers to would, by and large, be picked up within the parameters of that strata title arrangement. The explanatory memorandum states that proposed section 40 —

> … provides a revised definition of the term "premises" for the purposes of vacant possession. In addition to any part of the premises to which the tenant does not have a right of exclusive occupation, under this amendment "premises" also includes any part of the premises that is not designed to be used for human habitation and to which the parties have agreed the tenant will not have vacant possession. An example of this might be a shed on the property that the lessor wishes to exclude from the residential tenancy agreement.

I acknowledge the interplay—we discussed this last week—between the Residential Tenancies Act and, occasionally, the legislation that deals with strata management. A lot of those types of issues are picked up in the strata management sphere, as opposed to the residential tenancies sphere.

Clause put and passed.

Clause 40 put and passed.

Clause 41: Sections 42 to 46 replaced —

Ms L.L. BAKER: This clause inserts proposed section 46(2)(f) and (g) into the act. "Reasonable time" is defined and the bill refers to the reasonable number of occasions an owner may enter the premises for the purpose of showing the premises to prospective tenants or purchasers. Although "reasonable time" is defined, there is no definition of what constitutes "reasonable notice" or "a reasonable number of occasions" regarding gaining access to the premises. I wondered why no decision was made to recommend and include at clause 41 that advance notice of less than seven days and no more than 14 days be given to tenants. Was that completely unintelligible? Would the minister like me to say it again?

Mr T.R. Buswell: Yes, please. Clause 41 deals with a number of proposed sections of the act. Which proposed section is the member referring to?

Ms L.L. BAKER: I am referring to proposed section 46(2)(f) and (g). It deals with the purpose of showing the premises to prospective tenants. Basically, it is about when the owner can get access to the property. On my understanding of this clause, I think it would be better if we had the capacity to say that advance notice be given of not less than seven days but not more than 14 days so that tenants could plan for when the owner can access the property. We could define those terms better in proposed section 46(2)(f) and (g).

Mr T.R. BUSWELL: I know what the member is saying and I understand the point she is making. We have a couple of amendments on the notice paper on this aspect of clause 41. I understand that the result of these changes will be that a property can be shown to prospective tenants within 21 days of the expiration of the lease. The owner is excluded from showing the property to prospective tenants until 21 days before the lease expires. Proposed section 46(2)(f) relates to prospective tenants and proposed section 46(2)(g) relates to prospective purchasers. We are saying that an owner cannot bring in prospective tenants until within 21 days of the end of the lease.

Ms J.M. Freeman interjected.

Mr T.R. BUSWELL: No; that is in the bill. If we said that between seven and 14 days' notice had to be given, it could become problematic to get people to look at the property and to re-let it. I think there is some comfort for tenants because a tenant cannot be asked to open the doors of the property for the new tenants until three weeks out from the expiration of the existing agreement. If we said that people had to give between seven and 14 days'

notice and I were a landlord, I would argue that that could make it problematic for me. I assume that most landlords want the tenant to leave within a day or two of the expiration of the agreement. As the Department of Housing has discovered, the turnaround may be longer before a new tenant moves in. The 21 days gives the tenant some cover. This is not a rolling ball of inspections. The inspections can be done only 21 days before the expiration of the agreement.

Mr C.J. TALLENTIRE: I note in the explanatory memorandum that the premises must be delivered in a reasonable state of cleanliness and repair and that the premises must be maintained in a reasonable state of repair, having regard to the age and character of the premises. I am trying to reconcile that recommendation and the actual content of the clauses with the recommendations contained in the review of the Residential Tenancies Act 1987, in particular, proposal 96 of the review that states —

> That the RT Act be amended to permit minimum standards of security to be maintained by the owner of a rental property to be prescribed by regulation.

I know we touched on this issue of standards last week when we considered this legislation, but I would like to know how those standards—whether they be in relation to security or energy efficiency—sit with clause 41, which would insert proposed new section 42 into the act.

Mr T.R. BUSWELL: My understanding is that issues around energy security are being dealt with through the prescribed agreement. We are just getting the exact clause, but the advice I have received, albeit preliminary, but soon to be confirmed, is that issues around security are dealt with later on—no; we may have already dealt with them in the bill. They come under proposed section 45, "Securing premises", which is under clause 41 of the bill, and those minimum standards will be prescribed in regulations. In relation to security—I will get this right—clause 41 of the bill, which relates to proposed section 45 of the act, will give us the capacity to prescribe minimum standards in and around issues to do with security by way of regulations. I think the member will find that has been dealt with there.

Mr C.J. TALLENTIRE: I thank the minister for that explanation, but I note that the review, which was a policy position paper of January 2008, has, I think, been widely accepted by the current government.

Mr T.R. Buswell: Which recommendation, member?

Mr C.J. TALLENTIRE: It is proposal 96, which states —

> That the RT Act be amended to permit minimum standards of security to be maintained by the owner of a rental property to be prescribed by regulation.

So, it is quite clear to me that the view of the reviewers was—it was a very extensive review—that the act should contain these recommendations. I think it is understandable that people are concerned about leaving these things to regulation. I think it is essential, in fact, that this important issue of security be included in the act and not left to regulations.

Mr T.R. BUSWELL: I thank the member for the question. I might just read, for the purpose of completion, from page 122 of the review the member is talking about. Proposal 96 states —

> That the RT Act be amended to permit minimum standards of security —

Which is what the member is talking about —

> to be maintained by the owner of a rental property to be prescribed by regulation.

Therefore, that particular component of clause 41 of the bill delivers on exactly what the review asked. Member, I am not trying to be smart about it; I am just reading from the review here, and the reason is this —

> The Review proposes to amend the RT Act to enable minimum standards of security for rental properties to be prescribed. The standards will be contained in the Regulations to the Act, so that they may be modified as community expectations and standards change.

I am highly confident that proposed section 45 of the act, when it comes in, will deliver exactly on what was requested by way of policy position through the review.

Mr C.J. TALLENTIRE: I thank the minister for that explanation, but could the minister please outline the time line for the introduction of those regulations; and will the amendments to the act not come into effect until those regulations are actually tabled and presented to Parliament?

Mr T.R. BUSWELL: The member is right; the regulations are important. The time line around the regulations, as I have been advised, is early next year.

Mr C.J. Tallentire: Will the amendments to the act —

Mr T.R. BUSWELL: The act will not come into effect until the regulations are prescribed, and that will happen early next year.

Ms J.M. FREEMAN: In terms of the application of clause 41—proposed replacement sections 42, 43, 44, 45 and 46 of the amended act—I note that proposed section 59D will apply the penalties. Does that apply to all of those areas of cleanliness and repairs, urgent repairs, quiet enjoyment, and securing premises in that regard, because I can see in proposed section 59D only the penalties of $10 000 for quiet enjoyment and $20 000 for security? The others, which are reasonable repairs, cleanliness and stuff like that, I gather, come under the tenant compensation bonds. I suppose I am asking the minister to give me greater clarification of how the tenant seeks relief when the lessor has not met those responsibilities. I also note that the application for relief and orders goes to proposed section 15(2)(b) of the act, so it is very circuitous. I suppose I want a bit of a mud map of how this is seen to actually apply so that relief is afforded under what are obviously responsibilities of the lessor, and, for want of a better word, rights, because I do not think they are rights there—they are expectations that a tenant can have, and how they can pursue those in terms of getting action and relief.

Mr T.R. BUSWELL: Thanks, member; that is a good question. It really cuts to the chase about how a tenant can seek relief when they feel they are being dealt with in an unfair manner, and it could apply across a whole range of things. The advice I have—I am just reflecting on the act now—is that proposed section 15 of the act provides the capacity for tenants to seek applications for relief, and, subsequent to that, orders thereon. I think last week we discussed the cost of that, which was around $26.10 through the Magistrates Court. I am comfortable that the bill and the act give the capacity for tenants, in a relatively low-cost and relatively uncomplicated environment, to seek relief in those circumstances.

Ms J.M. FREEMAN: I understand what the minister is saying, and I get that as well, and I get the interference of quiet enjoyment and offences relating to security of residential premises. Nevertheless, repairs and cleanliness is a big area. There appears to not be any penalty attached to that. Therefore, what is the relief for the tenant with respect to repairs and cleanliness in terms of a lessor's responsibility? I am asking about urgent repairs in particular, because urgent repairs tend to be one of the big things. What ends up happening, as the minister knows, is that a tenant often gets the urgent repairs done, so I suppose I want to know what will happen.

Mr T.R. BUSWELL: Member, urgent repairs are specifically dealt with under proposed section 43.

Ms J.M. Freeman: The other, then, is just repairs and cleanliness. I suppose my question is: how does proposed section 59D, and obviously proposed section 15(2), work? Is it the case that the tenant has to pay and then seek repayment because there is no penalty? The other two areas of interference of quiet enjoyment and offences in relation to the security of residential premises both have penalties that attach. There could be a situation of a serial offender lessor—we know that some out there do some pretty horrible things—and no penalty attaches to a lessor who does not keep a property in a manner outlined in proposed section 42 in particular, and in proposed section 43, I suppose, as an addition.

Mr T.R. BUSWELL: The advice I have is that that can be dealt with by the court with access to the tenant compensation bond. In other words, a serial offender—the landlord—could be ordered to pay a tenant compensation bond, which could then be accessed, as determined by the court, to deal with the sorts of matters that the member has raised.

Ms J.M. FREEMAN: By way of clarification, will that tenant compensation bond apply only to payments already made by the person or will it apply to future payments?

Mr T.R. Buswell: It will apply to future payments as well.

Ms L.L. BAKER: I understand that there are some good provisions in the bill relating to domestic violence, which is often a consideration in this area. I wish to refer to one of the points that has been raised with me during consultations on this bill. I refer to proposed section 45, "Securing premises", on page 32. Proposed section 45 states —

> (b) that any lock or other means of securing the residential premises must not be altered, removed or added by a lessor or tenant without the consent of the other given at, or immediately before, the time that the alteration, …; and
>
> (c) that the lessor or the tenant must not unreasonably withhold the consent …

I understand that a section of the New South Wales Residential Tenancy Agreement 2011 specifically addresses security and lock changing, domestic violence and the threats that it might have—and probably a little more comprehensively than we do. Section 71(2) of the New South Wales act sets out what is a reasonable excuse for a tenant or landlord to change the locks on a premise. It states—

(d) after a tenant or occupant of residential premises was prohibited from having access to the residential premises by an apprehended violence order.

That constitutes a reasonable excuse for the tenant to change the locks on the premises. The suggestion that has been put to me is that we should use those kinds of words to constitute the reasonable circumstances in which a tenant might change locks on premises.

Mr T.R. BUSWELL: I think that is a reasonable point to raise for discussion. The technical advice I have is that we can use section 15 of the act to get the court to make a determination around one's capacity to change locks.

Ms L.L. Baker: Wouldn't that take a bit of time, minister?

Mr T.R. BUSWELL: I am just thinking through what the member said. Let us go back. We would like to think that in relation to proposed section 45(b), which basically says that a lock cannot be changed unless both the lessor and the tenant agree, that in the case of domestic violence, in which a violence restraining order has been taken out, both parties would agree. It may well be the case that that does not happen for some reason. Perhaps the violence restraining order is against one of the parties. Again, the advice I have is that one does have the avenue through section 15 to request the court to make a determination. It might be best to add that to the matters that I am happy to raise with the minister and we can have that considered as it passes through to the other place. There are a range of issues around domestic violence that we have to be sensitive to. It is an appalling circumstance that people unfortunately find themselves in. Again, I cannot really offer an answer other than to say that perhaps it is best to raise it for the minister's consideration. I am sure that the member will raise it with her colleagues so it will be re-visited once it goes to the other place.

Mr C.J. TALLENTIRE: Staying with page 32 of the bill, but looking at the issue of "quiet enjoyment", I refer to proposed section 44(2), especially paragraphs (b) and (c). Paragraph (b) states —

> that the lessor must not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant …

I notice that the penalties are around $10 000 for such interference of quiet enjoyment. Paragraph (c) states —

> that the lessor must take all reasonable steps to enforce the obligation of any other tenant of the lessor in occupation of adjacent premises not to cause or permit any interference …

Can we envisage a situation in which a lessor—it could be the Department of Housing—might be found culpable and face a penalty of $10 000 if it has not controlled the behaviour of tenants in adjacent properties?

Mr T.R. BUSWELL: The short answer is yes. If the department does not take adequate steps under the quiet enjoyment provisions —

Ms J.M. Freeman: You're just saying that.

Mr T.R. BUSWELL: I am not sure whether it has been tested. If I had a place at the front —

Ms J.M. Freeman: I think you are saying that to pursue a position.

Mr T.R. BUSWELL: No, I am not. The member asked me a question. He asked whether a person could take action against Homeswest under proposed section 44(2)(c). The advice I have is yes. It is a provision in the existing act at section 44(1)(c). It is already there.

Mr C.J. TALLENTIRE: I wonder whether the minister could explain to us—perhaps it is a policy position—how the Department of Housing would ensure, as the lessor, that people in adjacent properties will be compatible. Will the Department of Housing have a policy position to ensure that people of a similar age group are housed next to one another and that younger people are not housed next to seniors, which could cause upset? Are there policy positions that will avoid the sort of conflict that we are talking about that could then involve the agency in a $10 000 penalty?

Mr T.R. BUSWELL: The agency can do a lot of things other than allocate some tenancies to avoid the $10 000 penalty. Notwithstanding that, it would be fair to say that the agency is sensitive to the environs, and that best endeavours are always exercised when trying to locate tenants in an environment in which they will feel comfortable and the people around them will feel comfortable. Probably the classic example is the grouping of seniors. Ultimately, will that avoid the potential for a $10 000 penalty? That is for the courts to determine. I would like to think that the department, especially with the three-strikes policy, is exercising best endeavours and then some.

Leave granted for the following amendments to be considered together.

Mr T.R. BUSWELL: I move —

Page 34, lines 32 and 33 — To delete "subsection (2)(f) or (g)" and substitute —

subsection (2)

Page 35, line 6 — To delete "subsection (2)(f) or (g)," and substitute —

subsection (2)

These amendments effectively do the same thing—they substitute "subsection (2)(f) or (g)" with "subsection (2)". This relates to lessors' rights of entry. They are basically saying that just to restrict it to (f) or (g) is too limited. We are saying that the lessor in any circumstance under clause 46(2) needs to apply the provisions in subclauses (4) and (5).

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 42 to 55 put and passed.

Clause 56: Sections 59A to 59F inserted —

Dr A.D. BUTI: I move —

Page 46, after line 2 — To insert —

(5) A competent court may, on application from a person who —

(a) is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies; or

(b) is a co-tenant occupying residential premises to which a residential tenancy agreement applies;

and that person is a successful applicant of a violence restraining order against a tenant or co-tenant, order that —

(i) the applicant is recognised as a tenant under the residential tenancy agreement; or

(ii) the applicant is removed, without liability, from the residential tenancy agreement.

My amendment seeks to do one thing: protect victims of domestic violence from suffering any further hardship and victimisation. I know that the minister is sympathetic to the victims of domestic violence; he mentioned it when he responded to my contribution to the second reading debate and again today.

The amendment is taken from a combination of two sections in the New South Wales legislation, being sections 79 and 100 of the New South Wales Residential Tenancies Act. My amendment seeks to ensure that a victim of domestic violence is not thrown out of a house as a result of that domestic violence. The first part of the amendment seeks to say that someone who has been successful in applying for a restraining order from a competent court can make application to become the tenant under the tenancy agreement to which they were either a co-tenant or just an occupant of that residence. They should not be victimised and suffer further hardship because of the domestic violence situation that led to the termination of the tenancy agreement. The second part of my amendment seeks to insert proposed section 59C(5)(b)(ii) to allow a victim of domestic violence who is also a successful applicant to a restraining order to terminate a residential tenancy agreement without incurring liability—if they wish. All we are saying is that the victims of domestic violence who are successful in obtaining a restraining order should not suffer further hardship and punishment as a result of domestic violence, which they have not caused but which has led to the termination of that tenancy agreement.

Mr T.R. BUSWELL: I have taken some advice on this because I think it is a very important issue. I have to say that all the advice I have had from those who have been involved with the drafting of the legislation is that proposed section 59C, "Recognition of certain persons as tenants", provides the courts with the capacity to make the determinations that the member for Armadale has proposed. Granted, it does not specifically reference victims of domestic violence; however, the advice I have is that 59C provides the capacity for the court to recognise not only the victims of domestic violence—I will give the member another example—but also when a partner who happens to be the tenant for the purpose of the tenancy agreement is sentenced to prison, which I think is another important area. If it happens that the mum or dad who is the tenant for the purposes of the tenancy agreement is sent to prison, it would be logical for a determination to be made such that the partner can then become the tenant. I can imagine all sorts of circumstances in which that would be beneficial to not only the non-imprisoned partner, but also perhaps children and/or other people who may be under the care of that partnership. I do not dismiss what the member is saying lightly; it is a very important point and I have to say, of

all the elements of the three-strikes policy, these issues around domestic violence cause me the most angst in terms of how we work through that. However, I am confident in the advice I have been given that the outcomes the member is seeking will be delivered through new section 59C, with one exception. I refer to the second part of the member's amendment, which is to insert subparagraph (ii). This relates to the removal of people from the residential tenancy agreement, and we have concerns with that. I can imagine circumstance in which the person being removed from the agreement is the one with income-generating capacity, and we see a range of potential difficulties with that. I lay on the table the government's response and reiterate that issues around domestic violence are substantive; issues around someone going to prison and the partner losing their tenancy are substantive; and there are probably other issues that we can think of as well. I am comfortable with new section 59C as set out in the bill, and all the advice I have is that 59C will deliver what the member seeks. We have some concerns about proposed section 59C(5)(b)(ii) and cannot support that.

Dr A.D. BUTI: I hear what the minister is saying and I understand the minister's genuine sympathy for domestic violence situations. However, my drafting of that amendment was basically guided by correspondence I received from the Women's Law Centre and also the Domestic Violence Legal Workers' Network, which are at the forefront of domestic violence. While I understand the minister saying that proposed section 59C could be utilised by domestic violence victims, I do not understand why the minister would have an objection to my amendment, which will make it quite clear that victims of domestic violence will have this avenue of redress. It is within the New South Wales legislation. It is my understanding that it works well in New South Wales. It is not controversial and it provides a sense of security and relief for victims of domestic violence. If my amendment is inserted into new section 59C, it will send a message to society about how the Parliament and this government view domestic violence, which is a crime that we all must seek to stamp out of society; and, more importantly, it will assist the victims of domestic violence. I cannot see why the minister would have trouble with my amendment.

Mr M. McGOWAN: The member for Armadale's amendment is all about providing a specific ground for a court to ensure that someone who is the victim of domestic violence is not evicted because of that domestic violence.

Mr T.R. Buswell: It is not saying that.

Mr M. McGOWAN: It is inserting that person as a tenant in place of the perpetrator of the domestic violence and, therefore, giving that person protections under the existing act. We have had anecdotal advice brought to us that some people have been the victims of the government's public housing evictions policy because of the domestic violence committed by their partners. I think that might explain the minister's nervousness around the issue, because there might be a grain of truth to that. We have had advice—I do have the name of the person to hand—that some people in the northern suburbs may have been evicted because of the behaviour of their partner in committing an act of domestic violence against them. The minister's three-strikes policy should not be working in such a manner that when, undoubtedly, the partner has acted in a loud, aggressive, violent and nasty fashion, has interrupted and upset neighbours and perhaps has caused damage to the property, and—who knows—maybe even caused some havoc up and down the street, it is the victim of that, who undoubtedly will have suffered the most of anyone in the street, who is then thrown out onto the street, most probably with children. I think the minister's very loud protestations that he believes the issue of domestic violence should be taken into account need to be tested against whether his policy is working in that way. The best way of ensuring that people are protected against that may even be to further amend the amendment of the member for Armadale. The member for Armadale's amendment is designed to ensure that a victim of domestic violence is given all the rights of a tenant even if they are not the tenant. If they are given those protections directly and deliberately under law, they would be in a better position than they are in now. The minister's advice is that proposed section 59C in the amendment bill provides that protection. I do not see the words "domestic violence" written there. I do not see any grounds for, or guidance to, the court. The minister indicated earlier that perhaps section 56 provided that guidance. I have looked at both the amended section 56 and section 56 of the Residential Tenancies Act —

Mr T.R. Buswell: I might have said clause 56.

Mr M. McGOWAN: Either way, I do not think it deals with what the minister is suggesting. Section 56 of the Residential Tenancies Act, "Discrimination against tenants with children", is about whether a person can obtain a tenancy. In the case of the amendment bill, clause 56 deals with the capacity of a minor to enter into a tenancy and then it deals with the death of one or more tenants. There is no mention at all of domestic violence in what the minister is proposing. I think the member for Armadale's amendment might put beyond doubt some of these stories that we are hearing about what may be going on out there. I would be interested in the minister's answer as to whether, based upon his new policy, a victim of domestic violence has been evicted because that domestic

violence may well have caused damage to the property or some broader disruption in the street in which those people live. I do not like broader disruption in the street in which people live; I hate it. But I also think the greater evil would be to throw women and children onto the street because of violence for which they are not responsible. I think the minister needs to answer those questions.

Mr T.R. BUSWELL: I am not disputing the policy issues around domestic violence and nor is the government.

Mr M. McGowan: Has anyone been evicted?

Mr T.R. BUSWELL: As a result of?

Mr M. McGowan: Have any tenants been evicted under your new policy on the basis that they have been the victims of domestic violence and the perpetrator was the tenant?

Mr T.R. BUSWELL: I cannot answer that question.

Mr M. McGowan: You should know.

Mr T.R. BUSWELL: I do not have that information at hand. If the member asks me a question, I will get the information.

What I can tell the member for Armadale in relation to this clause is that there are other examples. Let us take as an example two people with kids who are living in a relationship. Let us say that the male partner gets a prison sentence and goes to prison for a period. Under the current arrangements, the female partner and the children would be evicted because they are not the tenant. Proposed section 59C will give the court the flexibility to have regard for those circumstances. In a similar way, if there is an issue around domestic violence, on the advice I have, proposed section 59C will give the court the capacity to have regard for that circumstance. I am comfortable that proposed section 59C will give the court the capacity to protect people who are subject to domestic violence from eviction. I am also comfortable that proposed section 59C will help provide protections in the other case that I outlined whereby a partner gets sent to prison. These are awkward circumstances. There are probably others outside domestic violence and outside someone going to prison that we have not thought of. I would like to think that proposed section 59C will give the court the capacity to have regard for those matters that we have not discussed here. The government's position is that it acknowledges the significant issues associated with domestic violence, but it is comfortable that proposed section 59C will provide the court with the capacity to deal with that.

Mr M. McGOWAN: The proposal by the member for Armadale is to provide a specific ground for the court to recognise certain people as tenants. Proposed section 59C is flexible, but it does not provide any grounds; it does not suggest anything. I am unaware of what grounds the court will use to substitute someone as a tenant. I assume that one of the most common situations would be a group of university students who rent a property together and one student's name is on the lease, but if that person gets a job and moves somewhere else, another person assumes the lease. That does not involve any malfeasance or misbehaviour on the part of anyone else. All I am suggesting to the minister, and I think what the member for Armadale is suggesting to the minister, is that it needs to be beyond doubt to a court that the domestic violence situation might be more significant and important than any of those other circumstances and should be an absolute and clear ground for a court to allow a person living in a property to be recognised as a tenant on the lease.

I still think there is a real policy issue in the other case I raised earlier about whether anyone who has been the victim of domestic violence has been evicted because of that domestic violence. Perhaps our amendments did not go far enough to recognise that situation and maybe we will attempt to amend the bill further to prevent that occurrence. We will move further amendments to the bill in relation to illegality, children, people who might suffer from a mental illness and so forth. I think we will have a robust debate about the protection of children and the courts taking account of that. But maybe we need to further examine this issue of domestic violence in the bill, and maybe the minister needs to get some advice so we can understand whether any public housing tenants have been evicted because they have been the victim of domestic violence.

Dr A.D. BUTI: The minister may get sick of me labouring this fact. In the explanatory memorandum, the first paragraph states —

> The purpose of the Bill is to amend the residential tenancy legislation in Western Australia in order to provide greater balance between the rights and obligations of tenants and lessors and enhance the clarity and effectiveness of the legislation.

My amendment seeks to create clarity and to provide better effectiveness in protecting the rights and ensuring the safety of victims of domestic violence. It is okay for the minister to say that there is a possibility that this proposed section as it now stands could be used by domestic violence victims to ensure that they are not thrown

onto the streets. Maybe it will; maybe it will not. But my amendment would ensure that they have that legislative protection. One of the purposes of introducing this legislation is to provide clarity and to strengthen the ability to get rid of people engaged in antisocial behaviour. My amendment seeks to provide clarity and greater protection for victims of domestic violence. Surely, as the reasonable person the minister is, he can see the necessity and the reasonable arguments we are presenting by this amendment.

Amendment put and a division taken with the following result —

Ayes (23)

Ms L.L. Baker	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Dr A.D. Buti	Mrs C.A. Martin	Mr E.S. Ripper	Mr P.B. Watson
Ms J.M. Freeman	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*
Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (28)

Mr P. Abetz	Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan
Mr C.J. Barnett	Dr E. Constable	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr J.E. McGrath	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Dr J.M. Woollard
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	Mr A.J. Simpson *(Teller)*

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter

Amendment thus negatived.

Clause put and passed.

Clauses 57 to 60 put and passed.

New clause 60A —

Mr M. McGOWAN: I move —

Page 49, after line 14 — To insert —

60A. Section 61A inserted

After section 60 insert:

61A. Termination of social housing or residential housing agreement decision affected by previous behaviour

In deciding whether to terminate a social housing or residential housing agreement, the court may have regard to the frequency and nature of any notices given to a tenant specifying a breach and requiring that it be remedied, as referred to in section 62(3) and (4).

My amendment relates to courts being able to take account of past breaches in determining whether to evict a tenant or not. I am not sure we will proceed further than having a discussion about this new clause, whilst I determine whether to withdraw it.

The briefing we had with the minister's numerous staff and officers from the agency basically advised us that the problem with the existing law was that courts could not take into account past breaches of tenancy requirements under the act. For example, there might be a breach, the tenant is taken to court and a magistrate hears the matter. The tenant then does not behave badly for a fortnight. The earlier breaches cannot be taken into account by a future court in determining whether to terminate the tenancy. The minister's advisers, or the people from the department, said "Look, sometimes we have tenants before the court on numerous occasions but because they are good for a two-week period prior to arriving, all previous breaches are wiped clean." Therefore, the argument went, we need to amend the law to provide for this automatic termination capacity to apply to public housing tenants. We said to the minister's advisers, "Why don't you just amend the law so the courts can take account of previous breaches?" Maybe that would be an easier way to deal with these matters so that there is not the unfairness of someone being evicted on a first occasion as opposed to the existing situation. That was the idea. I

think the minister's advisers were a little lost as to why the new provisions that the minister ordered be put in for public housing tenants were necessary, particularly in light of the easier change that could be made to take account of earlier breaches in determining whether or not to terminate a tenancy. That is all very convoluted, but essentially this is a much easier and, I think, fairer and simpler way for courts to take into account earlier past behaviour in determining whether to terminate a tenancy, rather than the harsh mechanism proposed later in the bill that would only apply to social housing tenants. For anyone who listened, I have explained it as clearly as I can, but I might add the Tenants Advice Service has written to me saying that section 61A may not be necessary. Other provisions of the bill might be able to provide for that, but that was certainly not the advice that the minister's departmental staff gave us at the briefing a few months ago.

Mr T.R. BUSWELL: The advice I have is that under section 62, to get a matter to court —

Mr M. McGowan: Existing section 62?

Mr T.R. BUSWELL: Yes, existing section 62. I note in that the member's gutting of proposed section 75A; however, we will leave that for a further discussion. Under section 62(3), a person will get to court only if —

> … a notice specifying the breach and requiring that it be remedied is given to the tenant not less than 14 days before the notice of termination is given.

In other words, we have a major issue getting to court in and around this 14-day period, so although I note the intent of the member's proposed section 61A, such that in deciding whether to terminate a court may have regard to a certain thing, our issue is that currently under section 62 we will not get to court. Notwithstanding the fact that —

Ms J.M. Freeman: So how do private tenants do it with private rentals?

Mr T.R. BUSWELL: Well, it is hard. They can use —

Ms J.M. Freeman: So why don't you change the 14 days?

Mr T.R. BUSWELL: They can use section 62, they can use section 64, or they can use section 73 in the event that there is a risk to safety or damage.

Ms J.M. Freeman interjected.

Mr T.R. BUSWELL: We can and do. However, as I said last week, section 64 is not without its challenges when used as a tool —

Ms J.M. Freeman: Section 62.

Mr T.R. BUSWELL: No; section 64 is not without its challenges when used as a tool to evict social housing tenants because there are 60 uncontrolled days. Section 62 is problematic because of the minimum of 14 days around the breaches. I suppose our answer is that it is good in practice, but the reality is that unless we make other changes—for example, proposed section 75A—the court cannot have regard for it because we cannot get to court. I understand the member's intent regarding previous behaviour, but the advice I have is that in the practical application of the act as it revolves around the majority of antisocial behaviour in section 62, it will have limited practical effect.

Ms J.M. FREEMAN: I seek the minister's clarification. Section 39 deals with the tenant's conduct on the premises, which inserts into the tenancy agreement the responsibility of the tenant to not use the premises, or cause or permit the premises to be used, for any illegal purpose, and shall not cause or permit a nuisance. When we talked about this before, we said that that was the standard that has been established. I understand that when that section of the act is breached, any lessor, public or private, has to give the tenant a section 62 notice, because that is a breach of a term of the agreement. The minister is saying, in effect, that section 62 has no —

Mr T.R. Buswell: Section 64?

Ms J.M. FREEMAN: No; section 62 has no capacity to be used and, in effect, is a moot provision because of the 14-day period, and the Department of Housing cannot use it; therefore, private landlords use section 64, or section 73, as the minister said, which is about the tenant causing serious damage or injury. So, in effect, instead of fixing the actual process that quite clearly sets out how these things should operate and has been put into action before, and law has been established around it and magistrates use it, because the Department of Housing cannot itself manage to use section 62—the minister says that section 62 is inoperative anyway as it cannot be used because of section 42—we are going to introduce a whole new clause. The amendment that the member for Rockingham has put before the house is a provision that addresses the issue, which, as we understood it, is why the minister needed proposed section 75A; that is, there could not be a consideration of previous complaints. Therefore, we are saying yes, a magistrate can be asked to consider that. However, the minister is saying that it

cannot be considered because of the 14-day period. Why is the minister not changing that instead of putting in a whole clause that takes away the social justice and the procedural justice afforded under the present act, which is the balance between lessor and tenants?

Mr T.R. BUSWELL: Before the member for Nollamara fires up into orbit, I will give her an example. A tenant does not pay the rent. So what the member is advocating is that we change the 14 days to maybe seven days, or maybe three or maybe two—I do not know; it is the member's call.

Ms J.M. Freeman: No; I understood you wanted a longer period than 14 days' notice.

Mr T.R. BUSWELL: A longer period would be a disaster because we would never get anywhere. But that is not what the member is saying; she is saying that if the 14 days are an issue, we should make it shorter.

Ms J.M. Freeman: No, that's not what I'm saying at all.

Mr T.R. BUSWELL: Okay. I must have misheard the member. I was not listening too intently. However, the member needs to know that we will not support the amendment because we do not think the amendment does what the member intends. We do not think the court will have the capacity to apply a consideration of previous behaviour because the matters just will not get to the court.

Mr M. McGOWAN: My understanding is that—certainly the minister's advisers told us at the briefing—these matters do get to court, but they said that the problem with them once they get to court is that past behaviour is not taken account if the person has behaved well for the past 14 days. That is the advice we were given—I wrote it down, in fact—at the briefing. Therefore, our idea was that in order to, as the minister put it, gut the later provisions, we had to provide an alternative for when tenants are behaving badly and give the court the capacity to take into account past behaviour. So this is an alternative mechanism to what I think is ultra harsh on public housing tenants, which is what the government's later provisions do, although, as I said in my commentary, perhaps not hard enough on some illegal behaviour when the property is used for an illegal purpose. I am interested in the minister's interpretation of section 62(3), which reads —

> Where notice of termination is given under this section upon the ground of a breach of the agreement other than the agreement to pay rent, the notice is ineffectual unless a notice specifying the breach and requiring that it be remedied is given to the tenant not less than 14 days before the notice of termination is given.

Is the minister's interpretation of that provision that the department is incapable of providing those notices —

Mr T.R. Buswell: Member, sorry for interrupting. I appreciate what you're saying about section 62(3), but it needs to be read in conjunction with section 62(1), which basically says that the lessor may give notice of the termination et cetera on the ground that the tenant has breached a term of the agreement and that the breach has not been remedied. I think that is where you'll find we run into a fair bit of strife in and around this.

Mr M. McGOWAN: Again, I do not understand why. If the requirement is that the lessor gives notice, and he gives the notice of termination within the 14-day period, I do not understand why that is so difficult.

Mr T.R. Buswell: To put it bluntly —

Mr M. McGOWAN: Is it because you cannot find the tenants?

Mr T.R. Buswell: No.

Mr M. McGOWAN: Maybe the minister can stand and explain it to us.

Mr T.R. Buswell: It is because if the tenant doesn't reoffend in 14 days, they have remedied the breach and the termination notice cannot be issued.

Mr M. McGOWAN: Surely it would have been easier to amend those two clauses than to have that discriminatory provision towards public housing tenants later in the bill. On the back of an envelope the Clerk and I have come up with the amendment that the opposition has put forward, which is designed to provide the minister with a fix. Surely, with the entire resources of government, the minister might have been able to come up with one. But it still poses the question —

Mr T.R. Buswell: We have, member; it is proposed section 75A.

Mr M. McGOWAN: The government has for public housing tenants, but it has not for the vast majority of landlords who have private tenants.

Ms J.M. Freeman: And you've made it unfair when you've got section 39!

The ACTING SPEAKER (Mr J.M. Francis): Members!

Mr M. McGOWAN: The minister has said that no-one ever uses this provision. I suspect that if I made a search, I would find that all sorts of landlords attempt to use this provision. The minister is fixing the situation for the government but he is not fixing it, in his view of a fix, for private housing landlords. That is why we think it is unfair to discriminate against private housing landlords and public housing tenants. We think there should have been an easier and fairer way of dealing with this clause, rather than the unusual mechanism the minister proposes to deal with it.

New clause put and a division taken with the following result —

Ayes (23)

Ms L.L. Baker	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Dr A.D. Buti	Mrs C.A. Martin	Mr E.S. Ripper	Mr P.B. Watson
Ms J.M. Freeman	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*
Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (27)

Mr P. Abetz	Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan
Mr C.J. Barnett	Dr E. Constable	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr J.E. McGrath	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter

New clause thus negatived.

Clause 61: Section 61 replaced —

Mr C.J. TALLENTIRE: This may seem a minor point but new section 61, "Form of notice of termination by lessor", states in paragraph (b) that the notice must "be signed by the lessor or a property manager of the residential premises". I am wondering why it was not possible to say "lessor and a property manager". We talked previously in discussion last week about the very low level of training that many property managers have, and I would be interested to hear the minister's views on how the situation would be improved if the owner and the property manager were to sign the termination. It might just mean that there would be a bit more rigour in the process; whereas at the moment if a matter is delegated to someone who has done a five-day training course with the Real Estate Institute of WA, all kinds of incompetency and unjust behaviour could be involved. Having the owner involved, I think, would improve that situation. I know from practical experience that owners of rental properties have been horrified by the sorts of conditions thrust upon them by their property managers, and that had they known about those conditions in time, they would have acted differently and would have ensured their property manager acted in a different way. I think there would be a lot of benefit in using this opportunity to amend proposed section 61(b). I understand the other amendment that relates to the language around "lessor" instead of "owner", but amending proposed section 61(b) to "lessor and a property manager" would make for a fairer system.

Mr T.R. BUSWELL: I want to raise a couple of points. Firstly, although I note the member's point about his perceived lack of training of property managers, about which we had a lengthy discussion last week —

Mr C.J. Tallentire: Five days; it's hardly adequate.

Mr T.R. BUSWELL: Owners do not get any.

Mr C.J. Tallentire: But it's a check.

Mr T.R. BUSWELL: I know that, but there could be a relationship between an owner and a lessee in which the owner is the lessor with no property manager and there is absolutely no training and no check or balance because owners do not have to register. I do not make that point to cast aspersions on owners, but we have to have a bit of balance here. In relation to the relationship between an owner and a property manager, at the end of the day there is a contract of appointment and it is incumbent on owners to understand the nature of the contract they sign with a property manager. The third point is that the member thinks proposed section 61(b) should say "the lessor and the property manager". I will give the member an example. A wealthy agriculturalist from the south is

off, this year hopefully, on a world cruise and they are not contactable in their yacht, the SS *Minnow*—I am not looking at the member for Rockingham as I reflect on Gilligan! They are off sailing around the world and something happens whereby an action needs to be taken to effect the termination of the agreement. It might be a clan lab that has blown up in the house. I am using only extremes, but often it is an extreme that makes the point. So, the wealthy agriculturalist or pastoral landowner is off sailing the world in their yacht. A clan lab blows up. What does the property manager do? The owner is uncontactable. Their satellite phone cannot be reached and the personal satellite that follows them shows that the helicopter on board the deck at the back of the *Minnow* cannot reach land. I know it is a ridiculous example but it could happen.

Ms J.M. Freeman: That is a ridiculous example.

Mr T.R. BUSWELL: Okay. I will give a different example. It could be a humble property investor who has gone to the outback of WA for three months to search for gold. That happens with retirees; they are out of range and cannot be contacted. I think we just have to take some comfort from the fact that there is a contractual relationship between the lessor and the property manager. I acknowledge that there are issues there and there probably always will be. There are some checks and balances around that, but I just do not think, from a practical point of view, that the member can tie the two together.

Clause put and passed.

Clause 62 put and passed.

Clause 63: Sections 63 and 64 replaced —

Mr C.J. TALLENTIRE: I note some information presented by the Tenants Advice Service. I am sure that the Minister for Housing would have received this advice. According to the Tenants Advice Service—I would be very interested to hear the minister's comments on this matter—proposed section 64 would be a breach of people's human rights. The service refers to article 11 of the International Covenant on Economic, Social and Cultural Rights and the fourth general comment of the United Nations Committee on Economic, Social and Cultural Rights. The Tenants Advice Service believes that owners and agents should not be able to terminate tenancies without providing sufficient reasons. I would be interested to hear the minister's comments on that and whether he is prepared to defend this legislation, possibly in front of various United Nations tribunals.

Mr T.R. BUSWELL: I am happy to front those United Nations tribunals on behalf of the government. The view the member put forward is the point of view of the Tenants Advice Service. All I can do is compare the act with what the bill does. Proposed section 64(3)(a) extends the period of notice by a further period of up to 60 days. At the moment it is 60 days, full stop. After this amendment, it will be 60 days with a possible extension of another 60 days. The Tenants Advice Service has a point of view on this; it is not the same as ours. Perhaps one day the government will have to defend its position in the UN; I am not sure. Perhaps the member for Gosnells will be in government when it has to go to the United Nations and the member for Armadale, who is well versed in matters of law, can defend us. This amendment, to a limited degree, is a modification of section 64 to the benefit of tenants.

Ms J.M. FREEMAN: I note that proposed section 64 includes the capacity for a tenant to, within seven days after receiving a notice of termination, apply to a competent court for an order. The Department of Housing is concerned that it has difficulties issuing section 64 notices because there have been determinations by magistrates that the department does not have the capacity to give notice to tenants without any grounds because of the court's belief that a public housing provider must give grounds for why a public housing tenancy is to be terminated. Given the inclusion of the capacity of a tenant to apply to a competent court for an order and for a magistrate to take in the merits of the matter, which this proposed section includes in a limited way, is it the department's view that its inability to use section 64 will change because of this amendment? Will that meet the concerns of the magistrates and allow the Department of Housing to issue section 64 notices, which would make the inclusion of proposed section 75A unnecessary? We have discussed section 39 and the provisions under the act that allow for a breach of an agreement. Proposed section 64 will allow a tenant to receive procedural justice. As I understand it, that was the primary concern of a magistrate in Fremantle. Given this inclusion, and given our previous arguments that sections 39 and 62 give the minister the capacity to evict a tenant, why is the government proposing to replace sections 63 and 64, and is proposed section75A required?

Mr T.R. BUSWELL: The short answer is that we hope that the introduction of proposed section 75A will mean that we will not have to use section 64 to pursue the eviction of tenants on the grounds of repeated antisocial behaviour. There are a number of issues for the department in using section 64. The member has highlighted perhaps the main ones.

Ms J.M. Freeman: What are some of the other issues?

Mr T.R. BUSWELL: One of the issues is the fact that occasionally the courts form the view that it is not affording appropriate natural justice to the tenant, particularly in relation to public housing. There are also other issues concerning the management of the tenant post the order. The amendments to section 64—the capacity to obtain another 60 days to the notice period—does not in any way, shape or form alter our view that we need proposed section 75A.

Ms J.M. Freeman: Are you saying that the department will still be able to use new section 64, or that because of the inclusion of proposed section 75A, the department will not be able to use new section 64?

Mr T.R. BUSWELL: A landlord can still use new section 64. The department's preference for evicting tenants for antisocial behaviour will be to use proposed section 75A. I understand the point the member raises. We do not like using section 64. As I pointed out, it has a range of issues. As the member is aware, some time ago the Equal Opportunity Commission made some observations about section 64. It is fair to say that the department needed some encouragement from a policy point of view regarding the use of section 64. That was not its preference, but in some cases it was the only tool available to it.

Ms J.M. Freeman: Direction!

Mr T.R. BUSWELL: From time to time I have full and frank discussions with the department, as I am sure all ministers do with their departments. I would rather use proposed section 75A. It is a mechanism that has been established to work off the back of our three-strikes policy. We will talk about this later. Over the coming months and years, the courts will work out how they should look. That is the role of the courts. We will deal with that later. My preference is to not have to use section 64. In some cases—not all—the courts do not hold the department's use of section 64 in high regard, and that is reflected in some of the courts' decisions about progressing with evictions. There are also some practical implications about what happens to a tenant who is caught up in section 64. As I said last time, a person who is evicted for antisocial behaviour under section 64 has 60 days, potentially, to exhibit extreme antisocial behaviour. It would be ignorant to group all tenants in that category, but we can conceive that situation happening for a range of reasons.

Ms J.M. FREEMAN: Does a notice of termination by a lessor without any grounds come within the scope of proposed section 63?

Mr T.R. Buswell: Yes.

The ACTING SPEAKER (Ms L.L. Baker) We need to get a copy of the legislation for clarification, and then you can jump up.

Mr T.R. BUSWELL: I am sure the member can make his introductory comments on his amendment; I just do not want the Clerk to break a fetlock as he reaches a level of speed that he may be uncomfortable with!

The ACTING SPEAKER: It is almost the speed of sound!

Mr T.R. BUSWELL: Well, he is still recovering from that broken leg he got out by the pool when he slipped on the moss that day.

The ACTING SPEAKER: Thank you; I think we are all now claused-up!

Dr A.D. BUTI: I move —

> Page 51, line 7 — To insert after "notice" —
>
> > unless the tenant or a person living with the tenant is, or has been immediately prior to the proposed notice of termination, the victim of domestic violence

The minister can see the intention of my amendment; the minister may feel that there is a better place for it to go, or a better form of words—we are prepared to listen to that.

As the minister knows, I have strong views on domestic violence, as should we all. One in three women in Western Australia becomes homeless as a result of domestic violence. The Women's Law Centre has stated, "As domestic family violence is a serious issue affecting one in three women and is the leading cause of homelessness in Western Australia, we hope that you will do all that you can to ensure that this matter is considered seriously within the Residential Tenancies Act." We sought to do that with my previous amendment; unfortunately, the government saw fit to defeat it. Minister, this is very important, and I know the minister is empathetic about this, so I am just hoping that that empathy with and understanding of the seriousness of domestic violence will allow the minister to see fit to accept this amendment. All this amendment seeks to do is ensure that if a lessor seeks to terminate a residential tenancy agreement, the lessor cannot do that if, immediately prior to the proposed notice of termination, the person has been a victim of domestic violence. The minister will realise, as I am sure every member of this house will, how bad it can be for a victim of domestic violence to be put out onto the streets, and they generally have children. We are just going to be creating a

greater social consequence of that situation. There are not enough shelters for victims of domestic violence in WA; everyone knows that. I am sure each member of this house has constituents in their electorates who are victims of domestic violence, and we are so undersupplied when it comes to shelters for people with domestic violence. I repeat, minister, that the statistics are alarming. One in three women is a victim of domestic and family violence, and it is the leading cause of homelessness in Western Australia. Surely, we as a Parliament of the people of Western Australia who seek to protect the vulnerable will see the need for a clause like this to be inserted in this act. The government decided to make significant changes to the RTA, and surely this provides a golden opportunity to provide the protection victims of domestic violence and their children need. I know that in my electorate there are a number of people who are victims of domestic violence, and it is terrible to think that they are going to be homeless, to be living in cars. Some of them can go to shelters, but if they have a 16-year-old son, often that son cannot go into the shelter because there is often an age limit for males in shelters for the victims of domestic violence. Often, the son has to be separated from the mother. The mother is the victim of one of the nastiest, most revolting crimes that we know in society, and surely we have that duty as a Parliament to ensure that we will do what we can to protect and care for victims of domestic violence. I implore the minister to please use his understanding and empathy for domestic violence victims to ensure that this amendment, either here or somewhere else in the act, is inserted.

Mr T.R. BUSWELL: Member, again, I am not disputing the intent of what the member is saying, but I think we need to understand why proposed section 64 sits within this act. Proposed section 64 gives a landlord the right, in circumstances of a periodic tenancy as opposed to a fixed-term tenancy, to, without cause, and with 60 days' notice, evict a tenant. A whole lot of circumstances may change in relation to a landlord that may give them cause to have to give a person 60 days' notice. Let me share a hypothetical one with the member. A young professional lady who has an investment property lives with a guy in a house; it turns out that she becomes a victim of domestic violence in that relationship and she has to move out. Where can she move to? She may use this provision to seek that the person who holds the periodic tenancy of her own property vacate the property so that she can move back in and protect herself. The member may say that, again, is an extreme example that may not occur, but it might. There may be people who live overseas, or elsewhere in Australia, who have an investment property in Perth that is leased on a periodic tenancy—not a fixed term, because the advice I have is that proposed section 64 does not apply in the case of a fixed-term tenancy—and the partner may get cancer or be involved in a traumatic car accident and have to shift back. That would probably not be their preferred option, but they would have to ask the person on that periodic lease—periodic is generally a week by week, or a period-by-period tenancy—to vacate the property.

Dr M.D. Nahan interjected.

Mr T.R. BUSWELL: Generally; yes. So they have to move out.

Again, I am not disputing the value of the argument the member is putting, but there is a problem with a change like this at such late notice to a section such as proposed section 64. Yes, the Department of Housing uses that section for evictions, but proposed section 64 is much broader than that, and it could have a whole lot of other applications that we cannot even think about. We will not be accepting the amendment, not because the protection of people who are in a circumstance in and around domestic violence is not important, but because I do not think we could even begin to scratch the surface of the unintended consequences of what the member has proposed in and around what proposed section 64 does. It gives people the flexibility to deal with changing circumstances in relation to—I stress this—a periodic tenancy.

Yes, the member has highlighted a very valid example; I think I have highlighted a valid example that deals with the same issue, but perhaps from a different perspective. I know, as the member does, that it does not happen just in the member's electorate; it happens in all our electorates. It is a horrible, horrible thing. In all good faith and good conscience I understand what the member is saying, but I cannot accept this amendment because the implications and ramifications of it are much more significant than we have been able to canvass here tonight; we just cannot do it. The issue could have been raised as part of the review. Let us not forget that this was not a short-term process; it was a significant, detailed review of the act that started in 2001. Everybody had a chance to participate. Some things came to this act a little later, like the disruptive behaviour stuff, behaviour—we will talk about that later—and perhaps the things in section 3 or section 4 that deal with databases came a little later on. For any action there are a whole lot of unforeseen circumstances, and I have just tried to highlight one example. I am in no way, shape or form saying the issue the member is raising is not of huge significance to the government, to everyone in this place, and more broadly to society, but we cannot accept the amendment in the form it was given because I do not think it reflects the potential applications, in all their manifestations, of proposed section 64.

Mr M. McGOWAN: The member for Armadale raised a very valid point. We consulted about the amendment before he put it on the notice paper. The intent of the amendment is to deal with those cases that we have heard

about in which women have been evicted from housing, in particular, public housing, because they were the victims of domestic violence. I assume that in those cases the perpetrator of the domestic violence was most probably the tenant and was also causing trouble for neighbours in the vicinity. Therefore, the easiest way for the landlord to deal with the problem, who I think was the department, was to remove that tenant, which, in effect, meant that the victim of the domestic violence was a victim. At my urging, the member for Armadale has come up with this amendment, which I think brings the issue to the attention of the house and shows that it needs to be dealt with. I listened to what the minister said; he made valid points about how this provision might not be the appropriate provision in which to place this amendment. The breadth of human experience is so broad that one cannot possibly examine every circumstance in which this might come into effect and the injustices that might be perpetrated as a consequence in these cases.

However, the intent of the amendment moved by the member for Armadale might be more appropriate at proposed section 75A, which applies the new test for public housing tenants to be evicted on a first occasion following some of those grounds that the minister enumerated are specified in that proposed section. As I said, the member for Armadale's amendment might be more appropriately suited to that section and that might be the occasion on which we should deal with those cases that we have anecdotally heard about in which women have been evicted by public housing providers merely for being the victims of domestic violence. My advice to the member for Armadale is that we do not proceed to a division on this clause but we have another go at it later. I commend him for raising a very valid and important issue.

The ACTING SPEAKER (Ms A.R. Mitchell): Member for Armadale, can I confirm that you are withdrawing that amendment?

Dr A.D. BUTI: Yes.

Amendment, by leave, withdrawn.

Mr C.J. TALLENTIRE: I have a further query on clause 63. It is in relation to the time recommended for people to be given notice of the termination of a tenancy. I would have thought it was very reasonable that someone who had been in a property for an extended period would receive a proportionately longer time of notice. This recommendation was made by the Tenants Advice Service as well. It seems like a very reasonable suggestion. Can the minister explain why there is not some recognition that if someone has been in a property for, say, five years, they would not get a longer period of notice?

Ms J.M. Freeman: Are you saying a graduated period?

Mr C.J. TALLENTIRE: Yes, a graduated period of notice.

Mr T.R. BUSWELL: Our view is that 60 days is adequate. Again, I stress that whilst I acknowledge that tenants have needs around security of tenure, in the instance of a periodic tenancy, landlords are also occasionally faced with changing circumstance. Our view is that new section 64(3)(a), which provides for the possibility of the period of notice being extended by another 60 days, provides the flexibility that all parties should need to come to a mutually satisfactory conclusion in the instance of periodic, as opposed to fixed term, tenancies.

Clause put and passed.

Clauses 64 to 73 put and passed.

Clause 74: Sections 76A and 76B, Part V Division 5 heading and section 76C inserted —

Mr M. McGOWAN: I move —

Page 58, after line 13 — To insert —

76BAA. Court to consider interests of children

A court shall not terminate a social housing or residential tenancy agreement under section 73, 74, 75A or 75 unless the court has taken into consideration:

(1) the interests of any child in the property and surrounding properties; and

(2) the effect that the termination may have on such children.

This amendment is based upon advice from the Tenants Advice Service, just to take members a step back. The government has decided to put in place some special provisions for public housing tenants so that there will be an easier process of eviction for them based upon a single event. That event is based around illegality, nuisance or interference with neighbours. The government will make it easier for the public housing landlord to evict those tenants. It is not doing it for private housing landlords. The existing rules will continue for private housing tenants but the government will have an easier provision for the eviction of government tenants. As I have said on numerous occasions, I disagree with that in principle.

Let us go back to this amendment. It is based around the interests of children. Some weeks ago I put an amendment on the notice paper which indicated that once a tenant has been evicted, the Department for Child Protection can be ordered to be involved by the court undertaking the eviction. At the point that the eviction was taking place, it was not particularly relevant whether children were in the tenancy. I realised, consequent to receiving advice from the Tenants Advice Service, that I had not gone far enough. The correspondence from the Tenants Advice Service indicated that it thought that a relevant consideration in evicting a public housing tenant on one of those grounds, be it nuisance, interference with a neighbour or illegality, would be whether children were involved. In principle, I cannot disagree with that. A court should look at the interests of the child when evicting a tenant.

Not all children have the advantages that my children have. Not all children live in a stable household with two parents, in which every day is filled with wonder and enjoyment, education, reading, fun, healthy foods and all of the advantages that my children have. A lot of kids do not have any of that. They have a roof over their heads. They might be in a public housing tenancy and they might not have much fun but they have a roof over their heads. To take that roof away from those children without even their interests forced to be considered by the court is not something that Western Australia should do. As a state, the interests of a child are something that the court should consider. The lives of those children who are in that circumstance in which their parents are, by definition, not wealthy, are probably not filled with as much opportunity as other children's lives, for instance, my own. At least we could insist that the court look at the interests of that child or children before throwing their parents onto the street. What is wrong with that? The court may well say that the behaviour of the parent or guardian was such that, irrespective of the children, it warrants an eviction. Surely we should say to the court that it must consider the interests of that child or those children. That is what I am suggesting. I am not coming up with something that is radical, revolutionary, socialist and hard left. Maybe it is hard left; I do not know. I am certainly coming up with something that says that the interests of a child should be paramount and should at least be taken into account by a court before the parents are thrown onto the street. If government members want to vote that down, it is up to them because they have the numbers, but we will make a case over a considerable period about the interests of children being taken account of by the court. It is fair and reasonable that the interests of a child should be taken into account by the court.

Dr A.D. BUTI: I would like to hear more from the member for Rockingham.

Mr M. McGOWAN: As I said, this amendment does not preclude the court from evicting the tenant if that tenant's behaviour warrants it. On occasion, tenants—perhaps even those with children—should be evicted. I have been here a lot longer than the minister and I am sure that he will stand up and say he has had legions of people come through his electorate office and there have been shocking examples of the misbehaviour of tenants causing problems.

Mr T.R. Buswell: I don't get a lot of people complaining about antisocial behaviour in my electorate office. I get a lot in my ministerial office.

Mr M. McGOWAN: I heard the minister the other day say that he is on the side of people who want to live in quiet harmony in their street.

Mr T.R. Buswell: I didn't say they came from my electorate.

Mr M. McGOWAN: That is a good point. I heard the minister say the other day that he is on the side of those who want to live in quiet harmony in their street, and to be honest with the minister, I am on their side as well. I am not the most radical of people. I live in suburbia with my wife and three children, and two of them go to the local public school.

Mr T.R. Buswell: You live in the place with the highest property appreciation in Western Australia.

Mr M. McGOWAN: Admittedly, I do live in the nicest part of Western Australia.

Mr T.R. Buswell: The second nicest!

Mr M. McGOWAN: The minister cannot hold my good fortune against me.

Mr J.J.M. Bowler: Do you live in Kalgoorlie?

Mr M. McGOWAN: We have had this debate in this place before; and we are all in agreement that if we go through the 59 electorates, we will be here for some considerable period.

Mr T.R. Buswell: Not if you do it in reverse alphabetical order.

Mr M. McGOWAN: Willagee?

Mr T.R. Buswell: Vasse!

Mr M. McGOWAN: I have lost my train of thought! In any event, I am sure that the minister will stand up and say these provisions are in the interests of the majority of people in Western Australia and he will not cop attempts to divert him from that purpose. All I am asking is that he looks closely at what I am proposing, and if he has an alternative form of words, I will be happy to see it. Surely, in the interests of justice and fairness, when considering an eviction from a property, the interests of a child should be taken into account by the court, particularly because those children generally do not come from advantaged backgrounds. As I said before, this amendment does not preclude eviction or the court from doing these things; it says that as a threshold question, the interests of that child should be taken into account.

I mentioned earlier that I heard the Premier say that sending unaccompanied minors to Malaysia was a betrayal of the interests of children and that it would be to the eternal shame of the Australian Labor Party that it allowed that to happen. Personally, I do not like, and I did not support, the sending of unaccompanied minors to a country such as Malaysia for overseas processing, and I note that a number of members on this side of the house went public on that issue before the Premier did. In any event, there seems to be some agreement on both sides of the house about that. Surely, if the Premier holds paramount the interests of asylum-seeker children being sent to Malaysia, he should hold paramount the interests of Western Australian children when they are going to be thrown onto the street. If members opposite want to be logically consistent and say they are standing up for the interests of children, the rights of children should be universal and they should not discriminate and say they have some higher regard for the interests of unaccompanied asylum-seeker children who, if they stay here, will have the right to a roof over their heads, versus Western Australian children who, if members opposite do not vote for this amendment, will not have consideration of that right by the court. All I am saying to members opposite is to treat Western Australian children as fairly as the Premier has proposed the Australian government should treat unaccompanied children who are asylum seekers.

Mr T.R. BUSWELL: I will make a couple of comments. I will start with the example relating to the most common cause—perhaps up until the introduction of antisocial behaviour provisions—of people being evicted from social housing, and I suspect it may be the same for private housing; that is, they do not pay their rent. Up until today, there has never been any move to force a court to have regard for the nature of the household. The court may have regard to that—I want to talk about proposed section 75A in a second—but if a person loses their house or rental property because they have not paid the rent, no-one has ever suggested in the past that that should be taken on board. That is one matter. The second matter is that proposed section 75A(4) specifically says that proposed subsection (3) does not limit the issues to which the court can have regard. I made the point repeatedly throughout this debate that the court will have regard to a range of matters. It will take some time for the practical application of those matters to which the court has regard to filter through into practice.

Ms J.M. Freeman: Do you think the court should have regard for the impact on the children of the family?

Mr T.R. BUSWELL: That is a matter for the courts to determine.

Ms J.M. Freeman: But you don't think it is a matter that you can put on record that the court can look at.

Mr T.R. BUSWELL: That is a matter for the court to determine, because there are so many varying circumstances. I am reluctant for us to impose a social obligation on private landlords for a matter which is effectively a contractual relationship. If I buy a house and finance it through a bank, then live there with my family and I have financial difficulties and am forced to sell that house because of my inability to repay my bank, I do not think that the bank would have regard to my family circumstance.

Ms J.M. Freeman: They do.

Mr T.R. BUSWELL: Some banks may, but I do not think they all would. I do not think that the court, in its application of that, would necessarily have regard to my family circumstance either. If I have a car on hire purchase and I am unable to make those payments —

Ms J.M. Freeman: That is a bit different.

Mr T.R. BUSWELL: I know that it is a bit different to shelter.

Ms J.M. Freeman interjected.

Mr T.R. BUSWELL: It depends. I may need my car to transport my child a long distance to —

Ms J.M. Freeman: That is not going to make them feel insecure and under threat of where they may live—or homeless!

Mr T.R. BUSWELL: As I said, I may need my car to transport my child to some form of medical care, perhaps from the country to Princess Margaret Hospital for Children three or four times a week. If I lose that car because I cannot make those payments in a contractual relationship, I am not sure that my finance provider or the court, in looking at that, would have regard to that. We are reluctant to accept clauses that impose a social obligation on what is effectively a contractual relationship between a landlord and a tenant. I accept that there is a social obligation on the state, and it is the very essence of the issue that the member for Rockingham has raised many times; that is, why do we have a different set of rules for social housing tenants? It is because we have different sets of obligations. I think social housing tenants have a different set of obligations and the state has a different set in providing that accommodation.

In relation to that aspect, my view is that proposed section 75A(4) provides the court with the opportunity to have consideration of other factors. I have not reviewed a lot of case history on court determinations around Department of Housing applications for evictions, but the advice I have is that courts do have regard to those matters. As I said, we see 75A as an important step in applying practically our three-strikes antisocial behaviour policy. It is ultimately up to the courts to determine the practical application of that. I expect that courts will come to have regard for a whole range of matters. Over time, practical experience will determine how that unfolds, but we are not going to apply a social obligation to private landlords. It is our view that proposed section 75A will provide the flexibility that is required for the courts to deal with these matters.

Ms J.M. FREEMAN: I rise to support this amendment. I would like to give some context for this. Anglicare recently completed a report that is to be released in the next couple of days. I was listening to the news on the radio and reference was made to the impact of homelessness on children. I sought to find that in this bill. A woman who had become homeless due to a violent relationship was being interviewed. She had moved from Queensland to New South Wales. She said that the difference between the emotional development and behaviour of her four or five-year-old and that of her much younger two-year-old was marked, and she put that down to the certainty of housing. Certainly, in 2009 a University of Melbourne report commissioned by the Salvation Army found that most of the children of people who experience homelessness live in accommodation for less than a year, have been to at least three schools by the age of 12 and long to live without strangers. The report recommended that there should be a policy—this is in Victoria—for social and public housing of no moves and no evictions for families and children, giving families priority to stay in their community and long-term support for families.

A school principal rang me to talk about the importance of maintaining housing for a particular child who had been going really well in dealing with some of the issues about security and emotional interaction with teachers. They had worked with this particular child for a long time. They felt that the prospect of homelessness for this child would set the child back markedly. What we are talking about is—it is a corny phrase—our future. We are talking about a cycle of homelessness. When I made my contribution to the second reading debate, I made it very clear that homelessness is not just about the people we see sleeping rough on the streets; the largest portion of the homeless in our community are people who have to constantly go from house to house and overcrowd other accommodation, who are exposed to substance abuse and a whole series of things, and who are put at risk because there are other people and strangers in the house that they have to stay in because of their homeless status. The impact on children is profound. If we in this place could consider everything that we do and the impacts on the zero to seven years age group and particularly on the zero to five years age group, we would have the better community that we are all trying to achieve. That is one of the fundamental things that we all refer to in this place. If we are establishing a social policy that is about providing social housing for those in our community who are in greatest need and who have the least capacity for housing, we should ensure that, in considering evictions, a court must take into account the interests of the child at the property and the effect that eviction has on such children. I say that because one of the things that is most important in this issue is that to stop that cycle of homelessness, we need to look at the impact on children from that frequency of homelessness.

Mr C.J. TALLENTIRE: I would like to hear more from the member.

Ms J.M. FREEMAN: The minister could put on record in this place that there is a policy position of the government that, even though it is not in the legislation, a court could and should consider the impacts on a child. I have spoken before in this place about my experience working with the Department of Housing when I worked for the Minister for Housing many years ago. I spoke about the incapacity to take a holistic approach across government. I get that the Department of Housing is the lessor of social housing; I get that it is effectively the landlord. A great deal of responsibility is placed upon Homeswest in dealing with these issues; I get that. But these sorts of considerations have to be taken into account, and that would introduce other departments into that. At present, when I have tried to ring the Department for Child Protection and other departments about the risk of children becoming homeless, I am told, "We don't get involved at that time. There is no violence against the child; the child is not at risk. Yes, they might become homeless, but we will deal with them once they become

homeless." That is no way for departments to act. It is important to put it clearly on the record and include it in the legislation that that is a priority and that that should be considered in the minister's new regime, under proposed section 75A, of not going through procedural justice. I urge the minister to reconsider his position.

Mr M. McGOWAN: I listened to the minister's response to my earlier remarks, and I want to discuss a few of the arguments he made. He said that a tenant can be evicted for the non-payment of rent and that there should not be any inhibition on the eviction process because of that. From my reading of my amendment, it would not inhibit that. Obviously, there are some areas into which we cannot go. People cannot live in houses without paying the rent or the mortgage. My amendment does not deal with that particular issue.

Mr T.R. Buswell: By way of clarification, the point I was trying to make is that if a person loses their job and cannot pay the rent, they can be evicted with no reflection of whether they have kids in the house. But if they get evicted for antisocial behaviour and ruining the neighbourhood, that is taken account of. That is the point I was trying to make.

Mr M. McGOWAN: That is a reasonable point to make, except I think that the minister indicated that there should not be any inhibition on —

Mr T.R. Buswell: No. I do not agree with what you are doing, but if you agree with that point, surely that would apply equally to whether a person loses their house for antisocial behaviour.

Mr M. McGOWAN: Obviously, we cannot have a society in which people do not pay for their homes or their rent.

Mr T.R. Buswell: But you can have one in which you can ruin a neighbourhood!

Mr M. McGOWAN: No. My amendment does not deal with that situation, even though I recognise that there might be an injustice for a child in that situation. I am trying to deal with the situation that we can deal with. The minister indicated that under proposed section 75A(3) —

Mr T.R. Buswell: I think it was proposed subsection (4).

Mr M. McGOWAN: Sorry; I will quote proposed subsection (4). Proposed section 75A(3) does not limit the issues to which the court may have regard. The minister indicated that that would probably mean that the circumstances of a child could be taken out. In a way I suppose, in the minister's roundabout way, he is agreeing with what I had to say about the interests of children. However, that particular proposed section does not specify the interests of a child; in fact, it does not really give any guidance whatsoever as to what issues the court may have regard to in deciding whether to evict a public housing tenant for any of the grounds—illegal purpose, nuisance or interference. It provides no guidance whatsoever.

Returning to the central point: there are some things we can deal with and some we cannot. Legislation can only go so far; it cannot create a utopia. We can deal with what we can deal with. We suggest that in the case of an eviction of a family, when that eviction is for a reason other than the non-payment of rent, and it is one of those grounds contained within the legislation that a family can be evicted for some sort of misbehaviour, of varying degrees of seriousness, the court should look at the interests of any children involved before doing so. That is what we are suggesting. We cannot deal with every circumstance, but we are suggesting that that is a fair and reasonable way for a just and compassionate society to go, particularly in light of the Premier's very, very loud protestations on behalf of foreign children, who are here as unaccompanied minors, being sent to Malaysia for so-called processing. We suggest if the minister has that concern about that behaviour, he probably should have a concern about his own behaviour in relation to evicting children who, in some sense, are under the minister's care as a landlord, even though they are not under his guardianship—that is, living in government property. He should have some care and concern for those children for whom he has some responsibility in that sort of indirect —

Dr A.D. Buti: I seek an extension on behalf of the member for Rockingham.

Mr M. McGOWAN: If the Premier has that level of concern for children being sent to Malaysia as unaccompanied minors, he should have at least some concern in legislation for children who are living in properties for whom he is the landlord. There is a point at which the Premier will have to decide which way he votes: does he vote in favour of the courts having a level of concern for Western Australian children or does he not? This is the test for him. I have a feeling I know how he will vote, but, again, he needs to be held accountable to that standard. He has a concern, which he has expressed loudly, that children from overseas should have accommodation here and not be sent back overseas; or he has a view that if a child is living in a property for

which he is the ultimate landlord, he or she can be evicted onto the street without express direction from the Parliament that the courts should examine the circumstances of that child before the eviction.

Amendment put and a division taken with the following result —

Ayes (23)

Ms L.L. Baker	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Dr A.D. Buti	Mrs C.A. Martin	Mr E.S. Ripper	Mr P.B. Watson
Ms J.M. Freeman	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*
Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (27)

Mr P. Abetz	Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan
Mr C.J. Barnett	Dr E. Constable	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr J.E. McGrath	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter

Amendment thus negatived.

Mr M. McGOWAN: I move —

Page 58, after line 13 — To insert —

76BA. Termination of agreement affecting a child or person who has a mental illness

(1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department for Child Protection to determine if the child is in need of protection.

(2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

This amendment is designed to ensure that when a court is evicting a tenant under one of those sections—73, 74, 75A or 75—and there is a child at the property, the court may order the Department for Child Protection to be involved. It also requires that when a tenant is being evicted, and there is a person with a mental health illness residing at the property, the court again may order the Commissioner for Mental Health to arrange an assessment for their care, treatment and protection needs. We are not dealing with the threshold question of the eviction; we are dealing with the subsequent question of what should happen to the victims of the eviction. The victims of the eviction may well be a child who is living at the premises or a person with a mental health illness who is living at the premises or is the tenant. This amendment is saying to the court that is ordering the eviction that, in undertaking that eviction, it will have the capacity to order the involvement of state government agencies that have the responsibility for people in that predicament—that is, a child or a person with a metal illness. The government is going tougher on people who are tenants. A lot of those people who are tenants and who get themselves into these situations will have a mental illness. We are suggesting to the government that it should provide an express power to the court to involve the Mental Health Commissioner to deal with those people so that we can, as far as humanly possible, avert an injustice to them.

We are also suggesting, and probably even more significantly, that when a child is the victim of an eviction—that child has no say in the eviction, has no involvement in the eviction and has done nothing to cause the eviction—if the government will not agree to the earlier provision that the court can at least take into account the interests of that child, it should at least provide the court with the capacity to order the involvement of the Department for Child Protection. I think that is reasonable, and it is an express power given to the court to order those agencies to involve themselves. It would probably provide an indication to the agencies that the court has a

serious interest in these matters. I do not know, but I doubt whether under existing law the courts can order those agencies to involve themselves. I suspect that a judge or a magistrate might in their commentary suggest it, but if the officers of the agencies are not present and no-one passes the information back to them, how is there any capacity for those agencies to involve themselves? People might slip through the cracks, one might say. All I am saying to the house is that if a child is the victim of an eviction, or if a person with a mental illness is the victim of an eviction, it is entirely fair and reasonable to give the court an express power to deal with that matter. Again, we are not going as far as the earlier amendment. The earlier amendment, of course, would have meant that the interests of a child could be considered as the threshold question in an eviction, and the government elected to vote that down. This amendment is more moderate, and all I am suggesting to the house is that giving the court that express power is something that any fair and just society should do.

Mr J.E. McGRATH: I rise to comment on this subject that the member for Rockingham has raised. I have had a bit of experience with some evictions that have happened in and around my electorate. I believe that whenever there is an eviction, other agencies are involved; the Department of Housing involves other agencies. I recall having a meeting with someone from the department fairly recently. They said that whenever it happens, people are not just thrown out on the street without support; the child protection agencies and other such agencies are called in and involved to make sure that vulnerable children are not adversely affected. Therefore, I ask the minister whether that is the case.

Mr M. McGowan: What about in the case of a private tenancy?

Mr J.E. McGRATH: No, we are talking about Homeswest.

Mr M. McGowan: Not entirely.

Mr J.E. McGRATH: The member is talking mainly about Homeswest, and I think he is talking about two completely different categories. With Homeswest, there is the possibility that vulnerable children could be thrown out on the street. From what I can gather—I am asking whether the minister can clarify this—proper support mechanisms are put in place. When we are dealing with private rentals, we are dealing with families who can afford to pay the going commercial rates, which in many cases are not cheap. When we are dealing with Homeswest, we are dealing with families who are reliant on state support for housing and accommodation.

Mr T.R. BUSWELL: I will answer in two parts. First, a protocol exists between the Department of Housing and the Department for Child Protection. My understanding is that when an eviction is pending or on the horizon, for want of a better term, the protocol is that DCP is engaged by the Department of Housing. We are currently renegotiating that protocol so that DCP will be engaged on the instance of issuing the first strike. My view is that it is much better to get DCP involved earlier than post eviction. Mental health is a very complicated issue. This year the government approved in the budget a significant number—I cannot recall the exact number, but it was in the hundreds; over 200 but less than 300, or maybe just under 200—of houses to be built by the Department of Housing that were specifically managed for the Mental Health Commission and clients thereof.

Ms J.M. Freeman: Are they single accommodation?

Mr T.R. BUSWELL: It is a whole range of stuff. With those houses, support services will be wrapped around tenancies. I think that is very, very important, because, clearly, there are cases in which people with quite substantial mental health challenges will potentially be evicted. The member for South Perth is right; that protocol means that DCP is engaged. We are working out how to have it engaged earlier.

Secondly, I want to reflect on some comments by the Tenants Advice Service about these amendments in a letter that it wrote to the Leader of the Opposition on 18 August. I will quote from that very quickly. First, in relation to proposed section 76BA(1), it says —

> We are of the opinion that this amendment will not provide any greater protection to these families and may even have a **greater detriment** to them who not only face **homelessness** —

Is the member for Girrawheen right? She is all sparked up tonight. Has she been watching the re-runs of *Prisoner*? The letter continues —

> but also the **possibility of loss of their child**. There is also a potential that this amendment will overlap with the current child protection legislations/policies. It is also inappropriate to include reference to the DCP in the Residential Tenancies Act … as it is a legislation which deals principally with the relationship between a lessor and a tenant.

I think that is pretty sound advice. In relation to —

Ms J.M. Freeman: You like it when you want to.

Mr M. McGowan: You'll accept its advice when you want to.

Ms J.M. Freeman: Yes, that's right.

Mr T.R. BUSWELL: I do not have to agree with everybody all the time, member for Rockingham. I recall one instance a long time ago when I agreed with something that the member said. I cannot remember when it was.

Mr P. Papalia: And vice versa.

Mr T.R. BUSWELL: No doubt. With regard to proposed section 76BA(2), the Tenants Advice Service says —

> As for the reasons stated above, —

With reference to proposed section 76BA(1) —

> TAS considers it is inappropriate to include reference to the Commissioner for Mental Health in the RTA. This amendment has the potential to assist tenants who has a mental illness to ensure that they are referred to the Commissioner … for further assistance after their tenancy agreement is terminated. However, this does not stop termination or ensure that the Magistrates Court take **into consideration of the tenant's mental illness** …

It goes on. I am just making the point that I am not necessarily disagreeing with the intent of what the member is saying, but we would like the DCP and, where appropriate, the Mental Health Commission to be engaged a lot earlier in the process. Certainly, from the point of view of the practice regarding how we operate, we are endeavouring to deliver those outcomes.

Mr M. McGOWAN: I have the letter from the Tenants Advice Service with me. I will properly explain its concern to the house. It is that the interests of a child and the interests of a person with a mental health issue would not be considered at the time of an eviction. The service is concerned that the relevance of the interests of a child and the relevance of the interests of a tenant or resident with a mental health illness would not be taken account of by the court in deciding whether or not to order an eviction. I therefore heeded that advice, and that is why we moved the amendment about the interests of a child earlier, which the government voted down. However, the service's subsequent concern about the Department for Child Protection and the Mental Health Commissioner is more based on its view—which I think is wrong—that if that provision remains in the bill, it might make it easier for a court to evict if the court knows that those agencies can be wrapped around the individual or the person affected by the eviction. The service takes the view that it is better not to wrap those agencies in by right in law because it may then make it easier for a magistrate to order an eviction if the magistrate knows that those agencies will be involved. I think the Tenants Advice Service is wrong in that regard. We tried to protect those interests with the earlier amendment. Considering that we failed on that amendment, it is fair and reasonable that we try, with the other amendment, to protect the interests of children and the interests of people with a mental health illness consequent upon an eviction. The member for South Perth is wrong in that this amendment does apply more broadly than just to a Homeswest tenancy. Most tenancies are not public.

Mr J.E. McGrath: That's a matter of opinion.

Mr M. McGOWAN: I have the amendment here. It is not a matter of opinion. It is in black and white and the member can have a look at the act and see it, although I defer to the member for South Perth's superior knowledge of these matters, considering he does not have the bill in front of him and he did not draft the amendment! With that computer-like mind of his, the member for South Perth has section 73 of the Residential Tenancies Act in the middle of his frontal lobe! Although I know that the member for South Perth is a knowledgeable world expert on these matters, I have to tell him that on this occasion he is wrong! The amendment I have moved deals with the circumstance of any tenancy, not just a public tenancy. The member for South Perth has talked about Homeswest; that is one form of public housing tenancy. There is a range of others. Not-for-profit organisations have tenancies, which are the equivalent of public housing tenancies. The category of private tenancies has a larger number than public tenancies. All we are seeking is a provision to cover someone evicted from a private tenancy on one of these grounds. For instance, when a tenant causes serious damage or injury and the termination of the agreement with the owner would otherwise cause undue hardship and matters of that nature—a lot of those cases would be private housing tenancies—the court should have the capacity to order the involvement of the Department for Child Protection or the Mental Health Commissioner, whether it be a public tenancy or a private tenancy. I think that is a fair thing to ask for in all those cases. I also think that the Tenants Advice Service was trying to deal with the more serious matter of the threshold of eviction, and it thought that my initial amendments on the notice paper did not deal with that matter and, therefore, tired to rebut those amendments. Consequently I tried to deal with the more serious matter, which was not backed by the minister a few moments ago. In light of that knockback, the service would probably acknowledge that these new amendments are designed to deal with those cases.

Protocols are protocols and they apply only to public housing providers and public housing tenants; they do not apply to the vast majority of tenancies. I am suggesting that the protocol for public housing tenants and landlords should also, as a matter of course by this provision, apply to those kids who live in private housing tenancies.

Amendment put and a division taken with the following result —

Ayes (22)

Ms L.L. Baker	Mr M. McGowan	Ms M.M. Quirk	Mr A.J. Waddell
Dr A.D. Buti	Mrs C.A. Martin	Mr E.S. Ripper	Mr M.P. Whitely
Ms J.M. Freeman	Mr M.P. Murray	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	
Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (26)

Mr P. Abetz	Mr G.M. Castrilli	Dr K.D. Hames	Dr M.D. Nahan
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Mr D.T. Redman
Mr C.J. Barnett	Dr E. Constable	Mr R.F. Johnson	Mr M.W. Sutherland
Mr I.C. Blayney	Mr M.J. Cowper	Mr A. Krsticevic	Mr T.K. Waldron
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*
Mr I.M. Britza	Mr J.M. Francis	Mr P.T. Miles	
Mr T.R. Buswell	Mr B.J. Grylls	Ms A.R. Mitchell	

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter
Mr P.B. Watson	Mr J.E. McGrath

Amendment thus negatived.

Clause put and passed.

Clauses 75 to 88 put and passed.

Clause 89: Various references to "owner" amended —

Mr T.R. BUSWELL: I move —

Page 95, in the table the 1st row, the 2nd column — To delete "s. 71(3)(a)(i)," and substitute —

s. 71(3)(a),

This amendment fixes up a typo. The member for Nollamara picked up on this when we first started out on this journey. A table in the bill references the deletion of "owner" and the insertion of "lessor" in those areas in which it can be done by using this method, acknowledging that we cannot do it in all areas. Apparently the reference in the table to section 71(3)(a)(i) should read "71(3)(a)". This amendment tidies that up.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 90 to 94 put and passed.

Clause 95: Section 75A inserted —

Mr M. McGOWAN: I move —

Page 108, lines 4 to 19 — To delete the lines and substitute —

75A. Termination of social housing and residential tenancy agreement due to illegal behaviour

(1) A competent court may, upon application by the lessor under a social housing or residential tenancy agreement, terminate the agreement where there is evidence that the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

This clause is the principal clause of the amending bill and puts in place, through the insertion of proposed section 75A, the changes to social housing tenancies. It changes the law so that a social housing tenant will now be subject to easier methods of eviction in some respects than was formally the case and than is the case for a private housing tenancy. In the second reading debate I raised these issues at length in a non-repetitive fashion. I

also said that proposed section 75A allows for a public housing tenant to be evicted on grounds, and in a way, that a private housing tenant cannot. I told the house that we could not accept that differential between a public housing tenant and a private housing tenant. Standing up for public housing tenants having the same rights as private housing tenants is one half of the coin. We are also standing up for the private landlords and asking why they should have fewer rights than a government landlord. That is the other side of the coin. Under these rules, a private landlord will have fewer rights to evict a tenant than does a public landlord. A Homeswest tenant can be evicted more easily than a private tenant. The tens of thousands, if not hundreds of thousands, of people with an investment property will have fewer rights than the government to evict a tenant.

Our amendment also incorporates a toughening of the section that deals with using social housing premises for an illegal purpose. We are saying that in those cases, particularly in which either a social housing premises or a private housing premises that is subject to a lease is used for an illegal purpose—it could be used as one of the 114 drug laboratories that have been discovered in the last year or so, a number of which have exploded—it should be easier to evict the tenants than under the government's proposal. Our amendment toughens up on the use of a premises for illegal purposes but keeps a level playing field for public and private tenants, and it removes some of the harsher aspects of dealing with all tenants. Our approach is based on a fair approach for public tenants and private landlords and it deals more harshly with illegality and perhaps not as harshly with single incidences of a tenant being a nuisance, or what is termed an "interference", which I do not believe is particularly well defined. The opposition's approach is different from the government's approach.

Turning to the area in which we are harsher than the government on illegality, I believe that a court's reading of the government's provision under proposed section 75A might determine that a conviction is required to evict the tenant. As we know, it could be a considerable time between the alleged illegal activity and the eviction of the tenant.

Mr D.A. TEMPLEMAN: I am very interested in the thrust of the member for Rockingham's argument and I ask him to continue his remarks.

Mr M. McGOWAN: I will speak to my amendment again.

Mr R.F. Johnson: Not a tedious repetition!

Mr M. McGOWAN: It will not be. I am never repetitive in this place. Everything I say is completely original—on every single occasion I say it!

I was about to make a point about using the premises for an illegal purpose. Under proposed section 75A(1)(a), a court might rule that a conviction is required before a tenant can be evicted for an illegal purpose. Some purists might argue that that is fair and proper. However, as I have said before, the behaviour that is subject to a charge and consequent eviction may well require months, if not years, of consideration by a court before that happens. We have seen in the case of some tenancies that a property has exploded because there was a drug laboratory in the premises. We believe that a landlord would want to, and should be able to, move more quickly than that. That is why we have drafted an amendment that deals with whether there is "significant evidence" of the premises being used for an illegal purpose. That is different from the wording of the government's amendment and would give the court greater discretion to look at the circumstances of the case, and whether a person has committed an offence or undertaken an activity that should warrant an eviction based upon the evidence and without requiring a conviction. However, as I said, we have deleted some other parts of the government's amendment and we are trying to even the playing field so that public housing landlords and private landlords, and public housing tenants and private tenants, are all in the same position.

Mr T.R. BUSWELL: We do not support the opposition's amendment. I am advised that if a clan lab is found in a house, the Department of Housing, even following the passage and introduction of proposed section 75A, will continue to use section 73 to pursue an eviction. The reason for that is that it enables us to access the courts more urgently and for the court to make an order forthwith. Clan labs will be dealt with as they currently are—under section 73. That provision is available to public landlords and private landlords. The other reason we do not support the amendment is that it deletes paragraphs (b) and (c) of proposed section 75A(1). Proposed section 75A(1)(b) and (c) are the critical components that will enable us to give force to our antisocial behaviour provisions. They give the court the power to terminate an agreement when the tenant has —

> (b) caused or permitted a nuisance by the use of the social housing premises; or
>
> (c) interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises …

If we do not have those two paragraphs added through proposed section 75A, then effectively the three-strikes policy will not be able to be implemented to its full extent; in fact, it will significantly hamstring our ability to

implement the three-strikes policy. We do not support the amendment, as I said, for two reasons: firstly, because in extreme cases of illegality —

Ms J.M. Freeman: By way of interjection, in extreme cases of illegality such as clan labs, section 73, "Termination of agreement where tenant causing serious damage or injury", would only be used once there has been an explosion. That would not be for a clan lab that has been found without there having been an injury; the Department of Housing would still have to revert to proposed section 75A, would it not?

Mr M. McGowan: That is right.

Mr T.R. BUSWELL: For the member's information, section 73(1) states —

> A competent court may, upon application by the owner under an agreement, terminate … if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly

Ms J.M. Freeman: But just because they're making it, it doesn't mean that they are intending for it to blow up recklessly.

Mr T.R. BUSWELL: I am obviously not as au fait with these things as the member is —

Ms J.M. Freeman: No, no; I'm just asking the question.

Mr T.R. BUSWELL: — but I reckon if someone is baking methamphetamine, there is a likelihood that they will blow the roof off their house, because it does happen; and it is reckless. We are very comfortable that we can use—in fact we have used—section 73.

Ms J.M. Freeman: Prior to an explosion?

Mr T.R. BUSWELL: Yes, prior to an explosion. We actually do find clan labs, occasionally, prior to them blowing up; not very often, but it has happened. I do not think that is a bad thing. My understanding is that the department's officers have been getting some additional briefings from police to assist them in identifying some of the elements that may be brought together for the purposes of a clandestine drug lab, should they happen to notice those while they are conducting normal residential inspections. I am very comfortable that in relation to clan labs we have that covered; in fact, all the advice I have is that even when proposed section 75A is in place, we will still use section 73 for those.

Ms J.M. Freeman: By way of interjection, is the minister saying that section 73, therefore, is available to any private landlord to use?

Mr T.R. BUSWELL: Correct.

Ms J.M. Freeman: They can use section 73 for the purposes of that.

Mr T.R. BUSWELL: Correct; correct.

Ms J.M. Freeman: Is the minister aware of any private landlord who has used section 73 for the purposes of that?

Mr T.R. BUSWELL: I have no idea; I have absolutely no idea.

In relation to proposed section 75A, we do not support the proposed removal of proposed section 75A(1)(b) and (c).

Ms J.M. Freeman: By way of interjection, can the minister give us some indication of what is meant by "interference" and "objectionable"?

Mr T.R. BUSWELL: Interference with the reasonable peace might be assaulting someone, it might be continual loud noise, it might be big groups of people getting drunk outside and smashing people's windows; it could be that sort of stuff.

Mr M. McGOWAN: I think section 73, as the minister has indicated, can be read in a number of different ways. The minister has quoted the provision that the Department of Housing will use to evict people who might operate a drug laboratory in a property. It is obvious that if there is damage—serious damage, I think, is the term—the Department of Housing can evict, but then it states —

> … or is likely intentionally or recklessly to cause or permit, serious …

To me, that reads as the serious damage is still required to have occurred; it is just a matter of whether it was —

Mr T.R. Buswell: Member, can I just say, though, that we have used that section to evict people in cases when we have found clan labs that have not exploded.

Mr M. McGOWAN: That is an interesting construction of that form of words, if that is what has been done. It also begs the question of why proposed section 75A(1) is necessary to deal with those cases, because I think they are the examples that were used before.

Mr T.R. Buswell: We also have a strong view, member, about the use of public housing for drug dealing.

Mr M. McGOWAN: Oh yes; of course. Again, that still does not deal with the argument that I put to the minister before, which is: when there is significant evidence, does this require an actual conviction? Because some magistrates might read that the government's wording under this provision requires an actual conviction before such a provision can be invoked against a tenant who is dealing in drugs. My wording would remove any doubt about that. So, if the minister wants to adopt wording that would ensure that someone who is a drug dealer in a rental premises was able to be evicted without the requirement for a conviction, well then my wording has more efficacy than the minister's in achieving that outcome.

In relation to the other provisions, we have moved to delete those. We think that there is already sufficient capacity in the existing legislation to deal with those situations. The minister has not answered all the arguments I put to him about why a private landlord should not have the same rights as a public landlord, and why some special attention is being given to public tenants as opposed to private tenants, and why a public tenant is put in a less advantageous position than a private tenant. As I said during the second reading debate, it would have been easy for us to let this go through to the keeper and go along with these matters, but there is a very important principle in Western Australia that everyone should be treated equally, irrespective of their circumstances. Whether people sign a tenancy agreement with the landlord on the top of page 1 as the government, or whether they sign a tenancy agreement with the landlord at the top of page 1 as someone living down the street from them, they should have the same rights in respect of that property. I think most Western Australians would think that is a fair and reasonable position, because Western Australia is a very egalitarian place and we like people to have the same opportunities whether they live in a public housing property or in a private tenancy.

Ms J.M. FREEMAN: This is a very important amendment that we are putting before the house. It needs the minister to give full and proper accountability to it. He needs to be able to tell us what, how and why he sees that these amendments should not go ahead. It is a very, very important aspect of our system that we ensure that there is fairness. We have gone through the act and shown that it has the capacity to do what the government wants to do in proposed section 75A(1)(b) and (c) of the bill, and that given the issues with the 14-day notices, the government could have amended that, and that way it would have been fair for both public and private tenants. But in this case it is shown as being a situation of the government having taken a policy position that then needs to be managed within the fairness of a piece of legislation that will cover all tenancies and landlords. The Department of Housing has decided that because it is a landlord that makes the legislation, it can just have a section of the bill that pertains to it and it alone. People need to be treated with procedural fairness, however that occurs. Proposed section 75A(1)(b) and (c) were raised in the second reading debate as unfair. They lack the procedural justice available throughout the rest of the bill, and it is unfair that they should be included. We have sought to make those clauses fairer by introducing amendments that consider children and people with mental health problems, but the minister has sought to deny those provisions.

With respect to the use of section 73 as it relates to clan labs, if there is other illegal behaviour, we could almost argue that there is the same capacity for damage because often when illegal behaviour occurs, because of the culture associated with that, there is a likelihood of persons intentionally or recklessly causing or committing serious damage, especially in drug dealing with people coming and going and the violence that is attached to that. That is an interesting argument. I would be interested to see the decisions that have applied to such cases. I would welcome the minister giving me those case references so I could look at the Magistrates Court decisions that determined that argument. I cannot see how that would pertain.

Mr T.R. Buswell: Have you ever seen a Magistrates Court provide a written decision?

Ms J.M. FREEMAN: Yes, I have.

Mr T.R. Buswell: Was that in relation to these sorts of matters?

Ms J.M. FREEMAN: I have not done these sorts of matters. Magistrates Courts consider cases involving underpayment of wages, and they always provide written decisions in those cases. It is even more of a concern if they do not give written decisions and the minister is saying to us that the courts cannot take into consideration children and people with mental health issues, yet proposed section 75A contains provisions in which the courts have to take into account recurrent behaviour and its frequency. They are not written decisions. That is a considerable concern for us and gives me even more conviction in saying that I do not believe this is necessary, fair or reasonable, especially if the minister is telling me that there are no written decisions for tenancies and issues relating to the termination of tenancies. These are very serious issues which the minister needs to address.

Mr M. McGOWAN: I want to raise the issue again. I want a simple explanation of why there is a different rule for public housing tenants as opposed to private housing tenants and why there is a stronger provision for public housing landlords as opposed to private landlords. It is a simple question. I think the minister's reasoning is that public housing tenants are in a privileged position vis-a-vis private housing tenants because they have access to public property and the rent is generally cheaper. I think that is the one advantage. As the rent is cheaper, the tenant is in a privileged position and therefore special laws need to be put in place for that person to be evicted, if necessary. That does not apply to a private housing tenant. Most public housing tenants would have cheaper rent than private housing tenants but it would not always be thus. There are all sorts of tenancies in which a private tenant, for whatever reason, is paying cheaper rent. Sometimes it will be based on family reasons, sometimes it will be based on friendship and sometimes it will be based on the landlord wanting someone they know looking after their property while they are overseas. Sometimes it is because the tenant is living in a caravan. Sometimes the myriad circumstances might be broad and the reasoning might be amazing. I met a fellow the other day who was a senior executive in a company. He was telling me about the tenant he has in his property. He cannot put the rent up because the guy cannot afford it, so he charges very low rent for compassionate reasons. It is not always the case that a public housing tenant will have cheaper rent than a private housing tenant, although I admit that on most occasions they possibly do. If the minister is applying a blanket rule for public housing tenants and that is the reason, the reason is false and not based upon the situation, as the minister claimed, in which public housing tenants are always in an advantageous position versus private housing tenants. As I outlined, there are all sorts of cases where private housing tenants might have cheaper rent than a public housing tenant. As I said, a lot of people just want someone they know and trust. They might sign a lease, but they pay some sort of nominal rent in order to look after the property whilst the owner of the property is away, but there is still a tenant. They might still have an agreement. They might pay a lot less than the public housing tenant next door. Why is that private housing tenant in a less advantageous position than the public housing tenant living next door to them? I do not think that argument is justifiable. I do not think they can justify it. I do not think Liberal Party backbenchers listen at all to these issues when they go into the party room, or take any notice whatsoever. I think they are basically treated like mushrooms back there. I think they go into the Liberal Party room —

Mr R.F. Johnson: That is very rude to say about members of Parliament.

Mr M. McGOWAN: What's very rude?

The ACTING SPEAKER: Members!

Mr M. McGOWAN: Anyway, I think they just let these things sorts of things go through without questioning them, and this is something they should have questioned.

Mr T.R. BUSWELL: I am just going to answer very quickly. I have a pretty firm view about this. It is reflected in the government's three-strikes policy—that is, that the difference between a public housing tenant and private housing tenant is that the taxpayer subsidises the accommodation of the social housing tenant. I think that there is an obligation on tenants in receipt of subsidised accommodation in terms of how they need to behave in and around the neighbourhoods in which they live. Secondly, it is the case that courts often view the Department of Housing differently to private landlords. The information I have had is that it relates in particular to the application, for example, of section 64. The courts tend to form a view that we have a social obligation over and above that of a private landlord. It has historically been more difficult for the Department of Housing to progress an eviction than for a private landlord, all else being equal.

Thirdly, if a Department of Housing tenant is causing a nuisance and issues in their neighbourhood, the entity to which those complaints are directed is the Department of Housing. There is a more broadly understood nexus—chain of responsibility is probably a better term—between the tenant and the landlord in the case of the Department of Housing than there is with a private tenant. Generally, if there is an issue in a private tenancy, the complaint would go to the police. That is not saying complaints in relation to public housing do not go to police. My preference is that they go to both. In fact, we are working again on memorandums of understanding between the police and the Department of Housing so that there are better flows of information around things like suspicious activity and/or antisocial behaviour. For those reasons I would argue quite strongly that we do need to have some provisions that specifically apply to social housing tenants, and that is what these do.

Amendment put and a division taken with the following result —

Ayes (21)

Ms L.L. Baker	Mr M. McGowan	Ms M.M. Quirk	Mr M.P. Whitely
Dr A.D. Buti	Mrs C.A. Martin	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr C.J. Tallentire	
Mr J.C. Kobelke	Mr P. Papalia	Mr P.C. Tinley	
Mr F.M. Logan	Mr J.R. Quigley	Mr A.J. Waddell	

Noes (25)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Mr D.T. Redman
Mr F.A. Alban	Mr V.A. Catania	Mr R.F. Johnson	Mr M.W. Sutherland
Mr C.J. Barnett	Dr E. Constable	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.C. Blayney	Mr M.J. Cowper	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr P.T. Miles	
Mr I.M. Britza	Mr J.M. Francis	Ms A.R. Mitchell	
Mr T.R. Buswell	Mr B.J. Grylls	Dr M.D. Nahan	

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter
Mr E.S. Ripper	Dr K.D. Hames
Mr P.B. Watson	Mr J.E. McGrath

Amendment thus negatived.

Ms J.M. FREEMAN: I move —

Page 108, line 19 — To insert after "agreement" —

and the court is satisfied that the tenant or a person living with the tenant is not, or has not been immediately prior to the application, the victim of domestic violence

This matter has been raised a number of times this evening—in particular, very eloquently by the member for Armadale, giving statistics and the issues involved. Previously, the member for Armadale moved to insert this in another part of the bill. The court needs to consider this matter to avoid evicting someone who is in this situation through no fault of their own. The minister mentioned that magistrates tend not to give written decisions in this jurisdiction, which I found somewhat disturbing as my experience of dealing with the Magistrates Courts was that they always gave quite detailed written decisions in cases of employee underpayments and unfair dismissals; and certainly when Magistrates Courts deal with workers' compensation cases they give written decisions. It seems to me that this is a very necessary consideration for the government to ensure that victims of domestic violence are not found homeless through no fault of their own. I commend the amendment to the house.

Mr T.R. BUSWELL: I appreciate the member raising this. We have had a number of discussions about this issue. Again, of course, the government's view is that this is a very, very serious issue. However, it is still our view that the technicalities of the section are such that proposed section 75A(4) will give the court more than adequate capacity to take into account issues to which the court may choose to have regard. It is not for me to predetermine how the courts use that power, but I suspect that will include issues such as domestic violence and mental illness, and the situation with children. Over time, as we apply our antisocial behaviour policy, and that is then worked through the courts, some patterns will emerge to guide the department and inform tenants. I am very comfortable that the important issue of domestic violence, as raised by the member and as we have discussed a number of times throughout the debate on this bill, is picked up within the provisions of proposed section 75A —

Ms J.M. Freeman: Can the minister repeat that, please; sorry, it is getting late.

Mr T.R. BUSWELL: Proposed section 75A(4) does not limit the issues to which the court may have regard. That leaves it open for people to make representations to the court on a whole variety of issues, including domestic violence.

Dr A.D. BUTI: I also rise to talk about the amendment. With the wording of the bill, I think it probably is more appropriate for this proposed section to be amended rather than what I previously intended. The minister is right that the court could consider domestic violence. However, this government has made it a practice over the last couple of years that when it considers certain crimes to be very serious, it has mandated courts to come up with a certain sentence. For example, the three-strikes policy. If someone assaults a police officer, the court does not have discretion; the government has determined that once someone assaults a police officer, a custodial sentence

will be imposed. The government has decided that it wants to send a message to society. We disagreed with not allowing discretion in those matters, but the government decided it wanted to send a message.

To simply say that we will leave it up to the court to use this nebulous proposed subsection to maybe consider domestic violence, when it is not even mentioned in the act, will not send the message that the government and we, as a Parliament, consider domestic violence a serious offence. The bill is quite comprehensive and we have been here a long time to discuss many clauses, but not once in the bill is "domestic violence" mentioned. As the minister was au fait with citing one of the legal centres' letters to the Leader of the Opposition, tonight I have repeatedly cited correspondence from the Women's Law Centre and Domestic Violence for Legal Workers' Network, which are at the forefront of representing victims of domestic violence. Those organisations are urging us, as a Parliament, to protect victims of domestic violence. We should not only protect victims of domestic violence, but also send a message to society that domestic violence is not acceptable. I cannot see how this amendment compromises the integrity and rationale of this amendment bill. I urge the minister to let us, as a Parliament, send a message to society that domestic violence is not acceptable and that we, as a Parliament, will do what we can to protect victims of domestic violence.

Amendment put and a division taken with the following result —

Ayes (20)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr P.C. Tinley
Dr A.D. Buti	Mr M. McGowan	Mr J.R. Quigley	Mr A.J. Waddell
Ms J.M. Freeman	Mrs C.A. Martin	Ms M.M. Quirk	Mr M.P. Whitely
Mr J.N. Hyde	Mr M.P. Murray	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*

Noes (24)

Mr P. Abetz	Mr G.M. Castrilli	Mr B.J. Grylls	Ms A.R. Mitchell
Mr F.A. Alban	Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan
Mr I.C. Blayney	Dr E. Constable	Mr R.F. Johnson	Mr D.T. Redman
Mr J.J.M. Bowler	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr I.M. Britza	Mr J.H.D. Day	Mr W.R. Marmion	Mr T.K. Waldron
Mr T.R. Buswell	Mr J.M. Francis	Mr P.T. Miles	Mr A.J. Simpson *(Teller)*

Pairs

Ms R. Saffioti	Mrs L.M. Harvey
Mr R.H. Cook	Dr G.G. Jacobs
Mr W.J. Johnston	Mr C.C. Porter
Mr P.B. Watson	Mr J.E. McGrath
Mr E.S. Ripper	Dr K.D. Hames
Mr T.G. Stephens	Mr C.J. Barnett

Amendment thus negatived.

Mr T.R. BUSWELL: I move —

Page 108, lines 29 to page 109, line 1 — To delete the lines and substitute —

> to whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences.

Effectively, this amendment will make a modification to proposed section 75A(3). When the proposed subsection was originally drafted, it had two components: paragraph (a) dealt with the recurrence of the behaviour and the frequency of the recurrences, and paragraph (b) dealt with the seriousness of the behaviour. Subsequent to the drafting of this legislation, the government's antisocial behaviour policy was adopted, in particular the three-strikes policy. It is our view that under the three-strikes policy, if a person has three strikes issued in one month for what is effectively minor disruptive behaviour, steps may be taken to evict the person; therefore, proposed subsection (3)(b) is not consistent with those changes to our disruptive behaviour policy.

Ms J.M. Freeman: Is this taking away the "and"?

Mr T.R. BUSWELL: No; it is taking away paragraphs (a) and (b). It really deals with frequency. Under the three-strikes policy, there are three categories of disruptive behaviour; there is minor, which is three strikes in 12 months; there is serious, which is effectively two strikes for one serious action; and there is dangerous, which generally goes to section 73 of the act.

Mr M. McGOWAN: This provision is saying to the court that it does not matter whether the behaviour was serious; the court just needs to take account of whether there was behaviour. Therefore, if the behaviour occurs, the court does not need to take account of the nature of the behaviour; it just needs to take account of whether it

meets the threshold test of being an interference. My concern about what the minister is proposing, and my concern about the three-strikes policy, is that the behaviour that is an interference could be loud music; it could be operating a whipper snipper on a Sunday morning, a bit too early for a neighbour's liking; or it could be a neighbour doing the gardening with his shirt off. It could be any of those things.

Mr T.R. Buswell: Not with a body like yours, member for Rockingham! That would hardly be an interference!

Mr M. McGOWAN: That is actually true! At last the minister has said something sensible!

Mr T.R. Buswell: That would be a stimulant!

Mr M. McGOWAN: Any number of those things could be termed an interference. I am not joking. An interference could be music; it could be a whipper snipper; or it could be that someone did not like what they saw when they looked out their window at what was going on in their neighbour's backyard. It could be as minor as the examples I have given. Each of those could be an interference. The definition of "interference" is anything that interferes with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises. It seems unusual to me that we would not say to a court that it might not want to examine how serious the behaviour is. Some behaviours are incredibly minor. I would hate to think that people would be evicted because of matters that are so minor that we might almost term a person who objected to that behaviour as vexatious. I would hate to think somebody would be evicted for that type of behaviour. Although I do not think we will vote against this amendment, what the minister is proposing here, I think, on balance, subject to the minister's explanation of the situations I have just outlined, might not be as fair as it could be. I would not like to think that we would be encouraging vexatiousness on the part of neighbours who simply do not like some of the very minor behaviours that a public housing tenant living next door might engage in.

Ms J.M. FREEMAN: I also rise to contribute to this debate and support the comments of the member for Rockingham. The minister is oft to create scenarios to explain how our amendments may have an impact that is negative and unjust to a particular lessor. I want to tell the minister about the real situation of two people who were from the former Yugoslavia—one is Macedonian, and one is Croatian—who were residing in Homeswest premises. One of those people continuously complained about the actions and behaviour of the other. They probably were loud or a little bit effusive in some way, but it was minor behaviour. It was to the point, in this case, that it may lead to this person's eviction. The behaviour was not serious; it was inconvenient to the other party. It would have been great if the Department of Housing could have done some community work or some sort of mediation work. It was borne out of long and historical grievances, which I do not understand having had such a long family history in Australia. It is something this amendment can cause. Frivolous, vexatious and harassing behaviour could lead to someone losing their tenancy in a procedurally unfair and unjust manner, as outlined in proposed section 75A. The department does not want to have to establish the seriousness of the behaviour. I think that that is unconscionable and will cause some very serious ramifications. I support the comments that the member for Rockingham made.

Mr T.R. BUSWELL: I will make a point in relation to proposed section 75A. Proposed section 75A(1) ends with the following words —

> and that the behaviour justifies terminating the agreement.

The court has to be satisfied, notwithstanding the issuing of three strikes in 12 months—which would lead us to court—that the behaviour justifies terminating the agreement. That will mean that the strikes issued by the department that led it to court, seeking termination, will have to be something that it can substantiate in court. Again, how that is practically applied I think will unfold as courts make decisions around this. I will share an example. I was recently in Wongan Hills. The department had issued a third strike —

Mr M. McGowan: Were you driving the bus?

Mr T.R. BUSWELL: I was not driving the bus. I was using all of my best endeavours to get behind the wheel of the bus whilst the engine was on, but unfortunately there were a number of people on the bus whose sole purpose for being on the bus was to stop me from driving the bus! I did not get to drive the bus, although I did get to play pool with my friend the member for South Perth at the Dalwallinu Hotel. He is a pool shark of some capacity!

Dr A.D. Buti: He was dressed like one last week!

Mr T.R. BUSWELL: He was. He was dressed like he was going for an audition for a bit part in *The Sopranos*! He went up to the pool table—I know it is late at night, but I will quickly —

Ms J.M. Freeman: This is a really serious issue.

Mr T.R. BUSWELL: I will deal with it; I am just responding to the member.

He waddled up like an old croc. He could barely get over the table —

Ms J.M. Freeman: We are about to take away serious behaviour and you are treating it with disregard and disrespect.

Mr T.R. BUSWELL: I will get back to it. I was going to tell members how the member for South Perth waddled up to the table. He propped himself over the cue and missed a few balls. We lost the first game, but by the time the second game came around he was poetry in motion, like Minnesota Fats! He sunk nearly every ball on the table without a blink. We took on all-comers.

In Wongan Hills, member for Nollamara, there was a very serious circumstance. The department had issued the third strike to some tenants but then it went back and reviewed the strikes that had been issued, because it knew it would have to go to court to justify them. As part of that review, it withdrew one of the strikes because the officers formed the view that it was not a reasonable circumstance to present to the court. As I said, these things will evolve, but the great protection is that the court must determine, under proposed section 75A(1), "and that the behaviour justifies terminating the agreement". Therefore, the fact that two neighbours do not like each other, in my view, would not qualify for behaviour justifying the termination of the agreement. I think that the courts have enough maturity to apply themselves in relation to that matter and I am very comfortable with the protections that this provides against vexatious claims. I am also confident that it gives us the tools we need to apply our three-strikes policy and to follow that three-strikes policy through to legal termination.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 96 to 108 put and passed.

Title put and passed.