

**RESIDENTIAL TENANCIES AMENDMENT BILL 2023**

*Consideration in Detail*

Resumed from 20 February.

Debate was adjourned after clause 16 had been agreed to.

**Clause 17: Part III Division 3 inserted —**

**Mr P.J. RUNDLE:** Proposed section 26A(a)(i) refers to retaliatory action and states —

gives the tenant a notice claiming the tenant has breached the residential tenancy agreement, other than by failing to pay rent, and requiring the tenant to remedy the breach;

How far behind does rent need to be for this retaliatory action clause to swing into action?

**Mr J.N. CAREY:** The member has asked a question, but the proposed section refers to anything other than failing to pay rent. Proposed section 26A(a)(i) states —

gives the tenant a notice claiming the tenant has breached the residential tenancy agreement, other than by failing to pay rent, and requiring the tenant to remedy the breach;

**Mr P.J. RUNDLE:** Apologies. Thanks for the clarification. Can the minister explain some examples that proposed section 26A(a)(i) might cover?

**Mr J.N. CAREY:** It could be a tenant causing damage or keeping a pet.

**Mr P.J. RUNDLE:** Will this make it near impossible for lessors to remove troublesome tenants?

**Mr J.N. CAREY:** No.

**Mr P.J. RUNDLE:** I would like some clarity on that scenario. Proposed section 26A(a)(ii) talks about a situation in which the lessor “increases the rent payable under the residential tenancy agreement”. I assume that this implies that the rent cannot be put up during the tenancy under a current agreement. What if the lessor wants to increase the rent at the end of the lease? Can he or she then be accused of taking retaliatory action because they are increasing it?

**Mr J.N. CAREY:** I have two things to say. It could be, for example, that a lessor or landlord makes an extraordinarily high rent increase, but it would ultimately be determined by the court.

**Mr P.J. RUNDLE:** Talking about extraordinarily high rent increases, is it a 10 per cent increase or is there some sort of guideline for that?

**Mr J.N. CAREY:** It is determined by the court on a case-by-case basis.

**Mr P.J. RUNDLE:** Under this proposed new division, the lessor may be ordered to pay compensation as well. Can the minister define the amount of compensation or is it once again the commissioner or the court that defines the amount?

**Mr J.N. CAREY:** It is at the discretion of the court.

**Mr P.J. RUNDLE:** This proposed new division is all about the lessor and retaliatory action. Can the inverse arrangement apply in which the lessor feels that the tenant has taken retaliatory action?

**Mr J.N. CAREY:** I am a bit perplexed. Can the member give an example in which a tenant has taken retaliatory action?

**Mr P.J. RUNDLE:** Certainly. For example, intentional damage to the property and that type of thing.

**Mr J.N. CAREY:** That is a breach of the tenancy agreement, member.

**Mr P.J. RUNDLE:** All right. Under new division 3, proposed section 26B(2) states —

This section applies if a tenant reasonably believes the lessor took retaliatory action against the tenant after any of the following matters arose ...

It refers to a “representative entity” and to the tenant’s right to ask for repairs and maintenance. Who can be a representative entity?

**Mr J.N. CAREY:** It is well known that there are tenancy advocacy groups. Scenarios can arise in which a tenant is particularly vulnerable and needs assistance or representation.

**Mr P.J. RUNDLE:** Proposed section 26B(2)(a)(iii) states —

requiring the lessor to reimburse the tenant for a reasonable expense properly incurred by the tenant for urgent repairs;

Is there a time limit by which the lessor needs to have paid the invoice?

**Mr J.N. CAREY:** Section 43(3)(b) of the Residential Tenancies Act, which relates to urgent repairs, states —

the lessor must, as soon as practicable after the repairs are carried out, reimburse the tenant for any reasonable expense incurred by the tenant in arranging for those repairs to be carried out and paying for those repairs.

**Mr P.J. RUNDLE:** Can the minister provide a list of those urgent repairs? For example, repair to the hot water system or to the heater in the middle of winter.

**Mr J.N. CAREY:** I seek guidance from the Acting Speaker. This is found in a section of that act that does not relate to this clause. We seem to be jumping forward.

**Mr P.J. RUNDLE:** I will move over the page to proposed section 26B(4), which states that if the court hearing the application is satisfied that the lessor's action was likely to have been retaliatory, it can make an order that sets aside the lessor's action. Can the minister explain how that scenario will work with a periodic or a fixed tenancy?

**Mr J.N. CAREY:** It will be dependent on the circumstances of the lessor's action.

**Mr P.J. RUNDLE:** Could the court force the landlord to sign up for another fixed-term lease—a year, for example—or a periodic tenancy? Could it force the landlord to do that?

**Mr J.N. CAREY:** That is unlikely. It would be more likely that a court would determine compensation for the tenant, for example.

**Mr P.J. RUNDLE:** That is unlikely, but is it possible that a court could penalise a lessor under this clause for what it perceives to be a retaliatory action by forcing them to sign up to another lease?

**Mr J.N. CAREY:** I will come back to the member about that. I am happy to provide further advice.

**Clause put and passed.**

**Clause 18: Section 27A replaced —**

**Mr P.J. RUNDLE:** I have a brief question. Proposed section 27A states —

A lessor or property manager must ensure a written residential tenancy agreement entered into by the lessor is in the approved form.

My understanding is that newsagents provide periodic and fixed-tenancy forms. Will that continue? Where else will those forms be provided? I assume that the forms will change once this legislation passes.

**Mr J.N. CAREY:** As the member will be aware, a written residential tenancy agreement is already required. This is just putting it very clearly in the legislation.

**Mr P.J. RUNDLE:** Can I assume that there will be a total rewrite of the tenancy forms to include pets, minor modifications et cetera?

**Mr J.N. CAREY:** Yes. Standard agreements will be updated to reflect the changes in this bill.

**Clause put and passed.**

**Clauses 19 to 21 put and passed.**

**Clause 22: Section 27AA inserted —**

**Mr P.J. RUNDLE:** Proposed section 27AA(2) provides that a person does not commit an offence if they place a sign at or near the residential premises for rent and the sign does not state an amount of rent. If a sign advertising the rental place near the property does not have to display the price, will there be regulations about advertising on social media without a price?

**Mr J.N. CAREY:** The same rules that apply to any other advertising will apply to social media.

**Mr P.J. RUNDLE:** The rules will also apply to social media. If a person puts a notice on the pin board at the deli saying that they want to rent out premises for \$600, will they be prosecuted if someone says, "I'm prepared to pay \$650. Here's my mobile number; give me a ring" and that creates a rent-bidding process? Could that person be prosecuted for putting up that notice at the deli?

**Mr J.N. CAREY:** No.

**Mr P.J. RUNDLE:** Can the minister confirm that they will not be prosecuted if a rent-bidding scenario takes place because they have put that notice on the pin board at the deli?

**Mr J.N. CAREY:** I do not know whether the member has read the explanatory memorandum, but it is very clear on this matter. I am surprised by the member's question. The person who puts up the sign has one price and it is advertised. It is very clear in the bill.

**Mr P.J. RUNDLE:** It is very clear, but I am asking a further question.

**Mr J.N. CAREY:** Then why are you asking further questions?

**The DEPUTY SPEAKER:** No. I give the call to the Deputy Leader of the Opposition.

**Mr P.J. RUNDLE:** I am putting forward a scenario in which rent bidding could take place and it is no fault of the person who is advertising the property. I am just wondering whether they would be prosecuted in that scenario.

**Mr J.N. CAREY:** No.

**Clause put and passed.**

**Clause 23 put and passed.**

**Clause 24: Section 29 amended —**

**Mr P.J. RUNDLE:** Proposed section 29(1)(b)(ii) states —

if the tenant is permitted to keep a pet at the premises — a prescribed amount to meet the cost of any damage caused by the pet or fumigation of the premises that may be required on the termination of the tenancy.

Can the minister explain how that will take place, what the amount will be and who will prescribe the amount?

**Mr J.N. CAREY:** That amount will be prescribed in regulations, and we will obviously be consulting with industry on them.

**Mr P.J. RUNDLE:** I heard a figure of \$260 during the briefing. Will that be the set figure or is there something else that we are not aware of?

**Mr J.N. CAREY:** That is currently prescribed, and we will be reviewing it under the regulations.

**Mr P.J. RUNDLE:** Obviously, the scenario is the fumigation of the premises, so I may refer to that a bit later. Is this clause purely about fumigation and not about any other potential damage by a pet or the like?

**Mr J.N. CAREY:** Previously the pet bond could be only for fumigation. Now, it will be expanded to cover other damage.

**Mr P.J. RUNDLE:** Is the pet bond likely to stay within a range of a couple of hundred dollars of the \$260, or will it potentially be increased to an amount that might be in the thousands of dollars so damage to carpet, paint and the like could be taken into account?

**Mr J.N. CAREY:** We will be consulting, but bear in mind that the other bond, which is four weeks' rent, may also be drawn on for potential damage.

**Mr P.J. RUNDLE:** What if the lessor is unreasonable and, potentially, sets the bond too high to limit tenants who have pets, as a way of keeping people with pets out of the property?

**Mr J.N. CAREY:** They cannot go higher than the prescribed amount.

**Clause put and passed.**

**Clauses 25 and 26 put and passed.**

**Clause 27: Section 31B replaced —**

**Mr P.J. RUNDLE:** What flexibility will there be if there is a change of ownership during the lease term and the tenant wishes to remain at the residence?

**Mr J.N. CAREY:** The same provisions apply right now for terminations, for example.

**Mr P.J. RUNDLE:** Can the minister give me an example? He is saying that the same thing applies. Can he give me an example of how this may evolve? Obviously, we could have scenarios in which a new buyer would prefer to have another tenant in the house. Are there rights of the current tenancy? Let us say that the tenant has nine months left on their tenancy and the owner ups and sells the house. Does the tenant have the right to say that they want to stay in the property with the new owner?

**Mr J.N. CAREY:** This section does not relate to what the member is asking; it relates to rent review provisions.

**Clause put and passed.**

**Clause 28: Section 31 amended —**

**Mr P.J. RUNDLE:** This question relates to proposed section 31(1A), paragraphs (a) and (b). What limitations are there on the lessor increasing the security bond?

**Mr J.N. CAREY:** As per the current provisions, it is a maximum of four weeks' rent.

**Clause put and passed.**

**Clauses 29 to 32 put and passed.**

**Clause 33: Part IV Divisions 2A and 2B inserted —**

**Mr P.J. RUNDLE:** My first question is what options does the tenant have if the lessor imposes unrealistic or unreasonable conditions on keeping pets?

**Mr J.N. CAREY:** What clause is the member referring to?

**Mr P.J. RUNDLE:** I am referring to proposed new section 50A(2).

**Mr J.N. CAREY:** The member is referring to the wrong section. He needs to relate it to proposed new section 50C.

**Mr P.J. RUNDLE:** Okay. I will come back to that. I refer to proposed new section 50A(3). I will go back to what I spoke about in the definitions about how a tenant may keep an assistance animal at the premises without the lessor's consent, and ask for some clarity on the size and type of pets that are considered a mental health companion. Is there flexibility in this scenario in which someone can plead that their large dog is a mental health companion, or will it only cover assistance animals?

**Mr J.N. CAREY:** As per the definition we gave yesterday, it relates to both assistance dogs and other assistance animals. A key element of that definition is that an assistance animal must be accredited or trained.

**Mr P.J. RUNDLE:** Is the minister saying that under no circumstances would a commissioner or the like grant that someone might not have an assistance-trained animal, but a mental-health-stability companion animal? Will there be any circumstances in which a commissioner might look at that and say, "No, that particular animal has to be allowed"?

**Mr J.N. CAREY:** No disrespect to the member, but I am still trying to clarify what sort of animal this is. He is not clarifying what type of animal or mental condition. He is being very broad and it is very difficult to provide advice.

**Mr P.J. RUNDLE:** I come back to proposed new section 50A(3), which states —

However, the tenant may keep an assistance animal at the premises without the lessor's consent.

The minister has defined what the assistance animal is. I am saying that I can see many circumstances requiring assistance animals. A review of the Residential Tenancies Act 1997 stated that in 2018, 42 per cent surveyed said having a pet limited the availability of rental properties. I know many people, including older people, younger people and kids, who have small companion animals and say that they help them with their mental health. Is there no capacity whatsoever to have a pet unless it is a trained assistance animal?

**The ACTING SPEAKER (Mr D.A.E. Scaife):** Before I give the minister the call, as I understand it, the Deputy Leader of the Opposition is asking about the definition of the phrase "assistance animal". Is that right?

**Mr P.J. Rundle:** I am branching out.

**The ACTING SPEAKER:** The member is interrogating the meaning of that term. Is that right?

**Mr P.J. Rundle:** That's right.

**The ACTING SPEAKER:** My only concern is that that probably should have been asked at clause 4 because that clause sets out the definition of "assistance animal".

**Mr P.J. Rundle:** I did ask that.

**The ACTING SPEAKER:** That was probably the appropriate place to have asked it. I am happy to indulge the member if the minister is, but for future reference, if the member is asking a definitional question about a phrase, it probably needed to be dealt with at clause 4. I will allow the minister to answer.

**Mr J.N. CAREY:** I have to admit that the member is jumping all over the place. We discussed the definitions in detail yesterday. Of course, there is the assistance provision, but other provisions in the bill set out the process enabling tenants to seek consent to keep a pet at the premises. There is a clear process.

**Ms L. METTAM:** Further to the Deputy Leader of the Opposition's question, how much scope is there under this legislation to have a pet at a property that is not an assistance animal?

**Mr J.N. CAREY:** Proposed section 50B outlines very clearly —

**Request for consent to keep pet at premises**

- (1) The tenant may ask the lessor for consent to keep a pet at the premises.
- (2) The request must be in the approved form.
- (3) The lessor must respond to the tenant's request within 14 days after the day on which the lessor receives the request.

That whole proposed section outlines the process. Also, proposed section 50B(4)(d) states —

if the lessor refuses the tenant's request on grounds permitted under section 50D ...

- (i) the grounds for the refusal; and
- (ii) the reasons the lessor believes the grounds for the refusal apply ...

In addition, there are conditions for approvals to keep a pet at the premises under proposed sections 50C, 50D, 50E and so forth. Also, proposed section 50G(1) states —

A tenant may apply to the Commissioner for an order that the lessor's refusal of the tenant's request for consent to keep a pet at the premises is not permitted.

Therefore, there is a process to appeal to the commissioner.

**Mr P.J. RUNDLE:** Further to that explanation, if a tenant applies for consent and the lessor refuses, the tenant could potentially take the lessor to the commissioner and the lessor would have to go through a convoluted process to justify why the lessor has rejected consent to keep the pet.

**Mr J.N. CAREY:** No, it is the opposite. The lessor must go to the commissioner to enable the refusal.

**Mr P.J. RUNDLE:** Is the minister comfortable that the lessor has to be put through the mill and make an extra amount of effort to refuse someone from keeping a pet?

**Mr J.N. CAREY:** We disagree fundamentally. It is not putting them through the mill. From the member's speech yesterday on this debate, it was very clear where he stood on these matters. It is not putting people through the mill. This is one of the commitments we gave on pets, and we think it is a fair and streamlined process.

**Mr P.J. RUNDLE:** I move to proposed section 50A(4)(b), which states —

a written law or local law relating to keeping animals at the premises ...

I want to explore how this will combine with the likes of council by-laws on the number of dogs, cats or whatever it might be that will be allowed. Can the minister outline how this legislation will interact with council by-laws and how it will work?

**Mr J.N. CAREY:** It will be subject to local laws. For example, if a local law says that residents cannot keep ferrets, Mr Templeman would not be able to keep his ferrets, or if it says that people can have two ferrets, he could keep his two ferrets, which I think are named Cyril and something else. It will be subject to that. Proposed section 50A(4) states —

It is a term of every residential tenancy agreement that the keeping of a pet or assistance animal at the premises is subject to —

...

(b) a written law or local law relating to keeping animals at the premises ...

**Mr P.J. RUNDLE:** If the Mt Lawley council states that residents are able to have three large dogs, will that be fine under this legislation?

**Mr J.N. CAREY:** I really think the member is oversimplifying this. A local law or, obviously, a strata by-law might apply. I think the member for Roe has really simplified it. Those things will need to be considered before someone makes an application.

**Mr P.J. RUNDLE:** I want some final clarification of this. I understand that if a strata company says that no dogs or animals are allowed, that will override this legislation. However, if council by-laws on the number of dogs, cats or whatever it might be differ between councils, there will be some variation for tenants and landlords.

**Mr J.N. CAREY:** Variation already occurs. A great example in my own electorate is roosters.

**Mr R.S. LOVE:** In regard to the keeping of animals or pets, will this legislation also apply to the government's housing stock; and, if not, will the minister undertake to apply the same provisions that will apply to private landlords?

**Mr J.N. CAREY:** To be clear, we already allow pets in the public housing system. These laws will apply.

**Mr P.J. RUNDLE:** Flowing on from that, does the minister foresee that this legislation will make any changes whatsoever for Homeswest tenants or, because the government is the lessor, will it automatically roll in?

**Mr J.N. CAREY:** My understanding, although I am not the lead minister for this bill, is that there has been significant engagement with the Department of Communities, and it has indicated that it is very comfortable with these reforms and these amendments. As I have said, we are already seeing that pets, for example, are enabled for public housing.

**Mr P.J. RUNDLE:** I am going on to proposed section 50B, under which a lessor must apply to the commissioner to impose restrictions. What will the tenant do with the pet during the application process? It may take up to 14 days for the lessor to respond to a tenant's request to keep a pet. How long will applications to the commissioner take? If the lessor disputes the pet, how long will that process take? That is the first part of my question.

**Mr J.N. CAREY:** There are a couple of things to say. First of all, in many scenarios the person would not yet have the property, so this application would be done at the same time as the property application. But it is ultimately also about responsible pet ownership. They would have to be a responsible pet owner. It might be with a family member; it could be somewhere else. They might not yet have the pet. This is a hypothetical situation, so to speak.

**Mr P.J. RUNDLE:** It is hypothetical, but this process could run for an indeterminate time. The bill will provide for it to take 14 days, but then it could go back and forward with appeals et cetera. That could be a challenge if the person with a pet does not have somewhere else for the pet to go. They could potentially be roaming around the house for several weeks while the commissioner or the court makes a decision.

**Mr J.N. CAREY:** Currently there is no process in place. This actually creates a process that we believe is procedurally fair and will provide some clarity.

**Mr P.J. RUNDLE:** We are talking about requests for consent to keep a pet at a premises. What happens when the tenant has signed up but has not indicated that there is a pet in the mix, and a few weeks or months later the lessor finds out that the tenant has a pet? It may be just a small dog, but they thought it would not matter. Can the minister explain to me the flow-on effects in that situation?

**Mr J.N. CAREY:** That would be a breach of the Residential Tenancies Act. They could then apply, or the landlord or lessor could go through the breach process.

**Mr P.J. RUNDLE:** So the minister is saying that in that scenario—and a couple of others, from what I can see—the liability, if you like, for taking the action falls back on the lessor. It is up to the lessor to put the processes in place that will potentially enable them to remove the pet or the tenant, but all the liability falls back on the lessor.

**Mr J.N. CAREY:** Member, that is the current system. When there is a breach of the tenancy agreement, who takes action?

**Mr P.J. RUNDLE:** Under proposed section 50C, “Conditions for approval to keep pet at premises”, there is reference to a “reasonable condition”. Who actually identifies and presides over what is “reasonable”?

**Mr J.N. CAREY:** The word “reasonable” is used in many acts and stands as is. I think the intention is clear—for example, a reasonable condition about the cleaning, maintenance or fumigation of the premises in relation to keeping a pet. We may say that a balcony must be regularly kept clean because of a dog’s ongoing urination in the balcony area.

**Mr P.J. RUNDLE:** It refers to cleaning, maintenance or fumigation of the premises in relation to keeping a pet. Once again, if we have a scenario in which the lessor thinks the condition is not good enough and the lessee thinks it is fine, would that sort of discrepancy go to the commissioner every time?

**Mr J.N. CAREY:** If it is, first of all, a reasonable condition, it stays as is—the number of animals that may be kept at the premises and the cleaning, maintenance or fumigation of the premises et cetera. However, a lessee could appeal one of those conditions and go to the commissioner if it is considered unreasonable.

**Mr P.J. RUNDLE:** Moving to proposed section 50D and the grounds for refusing a pet being kept at a premises, could the minister explain to me what paragraph (c), “a prescribed ground” means?

**Mr J.N. CAREY:** A “prescribed ground” is something that could be written in regulations in the future. It may be the case that as the commissioner works through these issues, it is identified with stakeholders et cetera that there may be other prescribed grounds that should be included in regulations.

**Mr P.J. RUNDLE:** Proposed section 50D, “Grounds for refusing pet being kept at premises” gives three examples —

- (a) keeping the pet would contravene a written law, local law or scheme by-laws ...

As we have discussed, these are council by-laws or strata laws.

- (b) with the approval of the Commissioner;
- (c) a prescribed ground.

Is this really saying that, under normal circumstances, the lessor does not have the right to refuse a pet unless very defined areas of the strata laws apply, or he or she gets the approval of the commissioner or there is a prescribed ground, as the minister just described?

**Mr J.N. CAREY:** Part of the aspiration for renters was to provide them the ability to have a sense of home and that could include a pet. We believe it is a fair process and that those factors are fair in consideration of refusal.

Debate interrupted, pursuant to standing orders.

[Continued on page 264.]