RESIDENTIAL TENANCIES AMENDMENT BILL 2023

Consideration in Detail

Resumed from an earlier stage of the sitting.

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

Debate was interrupted after the clause had been partly considered.

The DEPUTY SPEAKER: While everybody is getting settled, I remind the house that we are dealing with the Residential Tenancies Amendment Bill 2023. There are 65 clauses and no schedules, and we are up to clause 33. I remind the minister and everyone that some amendments are on the notice paper as well.

Mr P.J. RUNDLE: I am up to proposed section 50E(3), which states —

> The Commissioner may make an order under subsection (2)(a) if satisfied that any of the following apply —
>
> …
>
> (b) keeping the pet at the premises would exceed a reasonable number of pets being kept at the premises;

Can the minister outline what is a reasonable number as predicted in the drafting of this legislation?

Mr J.N. CAREY: It will be on a case-by-case basis.

Mr P.J. RUNDLE: Minister, there is absolutely no guidance whatsoever for the people of Western Australia as to whether it will be one, two, three, four or five dogs or six cats.

Mr J.N. CAREY: The member's statement about having five dogs or whatever is false because local laws and strata laws are in place. The member appears to be suggesting that this bill will act in complete isolation. The member is making up hypotheticals.

Mr P.J. RUNDLE: I am asking for some guidance on what the commissioner would believe is a reasonable number of pets to have. The government has not provided the regulations, so we have no idea. We know that there are council by-laws and strata laws, but we do not have a clear idea of what this government and the people making the regulations think is a reasonable number. I do not think it is an unreasonable question.

Mr J.N. CAREY: The member just claimed that there would be lots of homes with five pets. That is just nonsense.

Ms M.J. Davies interjected.

Mr J.N. CAREY: The member for Central Wheatbelt has not been here for the majority of the debate. There have been some extraordinary questions. You have shown no interest in the bill.

Ms M.J. Davies: Why don't you answer the question instead of taking cheap shots?

Mr J.N. CAREY: You have not been here for most of the debate.

The DEPUTY SPEAKER: Members!

Ms M.J. Davies: There are six members of the opposition, and the Deputy Leader of the Opposition is doing a job on behalf of the opposition.

Mr J.N. CAREY: You are extraordinary.

Ms M.J. Davies: Keep your snide comments to yourself and answer the question.

Mr J.N. CAREY: You are the master of snipes.

The DEPUTY SPEAKER: Member and minister!

Mr T. Healy interjected.

The DEPUTY SPEAKER: Member for Southern River!

Mr J.N. CAREY: The bill clearly says at proposed section 50E(3)(b) —

> keeping the pet at the premises would exceed a reasonable number of pets being kept at the premises;

I have already stated that there are a number of local laws and strata laws. On top of that, as the decisions are made, those decisions will become public and the commissioner will develop the guidelines.

Mr P.J. RUNDLE: I will move on to proposed section 50E(3)(d), which states —

> keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person;

Can the minister give me an example of what an unacceptable risk to health and safety might include?

Mr J.N. CAREY: If the member looks at note 2, he will see that it clearly says —

> For the purposes of paragraph (d), a pet may pose an unacceptable risk to the health and safety of a person if the lessor has an allergy that is affected by the pet or the pet is venomous.

Mr P.J. RUNDLE: I have a further question. Given the provisions in that proposed section, could someone potentially keep as a pet an eastern brown snake that might be venomous?

Mr J.N. CAREY: This proposed section provides a reason to refuse. Of course, local by-laws or strata laws may also apply.

Mr P.J. RUNDLE: If I can, I might move on to proposed section 50G(1), which 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.

On what grounds would that apply, and can the minister provide some examples of that?

Mr J.N. CAREY: The lessor may say that the strata by-laws prohibit having a pet. The lessee may then go to the strata council and look at the laws and find that the law is silent. The tenant may then seek to go to the commissioner.

Mr P.J. RUNDLE: It is interesting to hear that. If strata laws are silent on the keeping of pets, a lessee could potentially go to the commissioner and ask for permission to have a pet.

Mr J.N. CAREY: Only on the basis that the landlord refuses, which the member did not mention.

Mr P.J. RUNDLE: Proposed section 50H states —

> (1) A tenant may apply to the Commissioner for an order that a condition imposed by the lessor on the lessor's consent to keep a pet at the premises is unreasonable.
>
> (2) The Commissioner must —
>
> (a) if satisfied the condition is unreasonable …

Can the minister give an example of what will be considered unreasonable?

Mr J.N. CAREY: I refer to proposed section 50C, which outlines reasonable conditions on the number of animals that may be kept or the cleaning, maintenance or fumigation of premises in relation to keeping a pet. It may be a very strenuous condition that goes well beyond what is considered reasonable—for example, that carpets must be replaced at the end of a tenancy.

Mr P.J. RUNDLE: I thank the minister. I move on to proposed section 50I, "Tenant responsible for pet", which states —

> (a) the tenant is responsible for all nuisance caused by a pet kept at the premises, including, for example, noise caused by the pet;

For argument's sake, if the lessor lives 20 kilometres away in another suburb, will a neighbour be able to apply to the commissioner because the tenant's dog is creating a nuisance by barking?

Mr J.N. CAREY: That is already governed in two ways. The neighbour could make a complaint to the strata council or strata manager, which would be the most common course of action, or they could go to the local government because local government is responsible for noise monitoring and complaints.

Mr P.J. RUNDLE: If it is not a strata property but a single house or townhouse, will people be able to put pressure on the lessor, who will then have to apply to the commissioner to remove the dog?

Mr J.N. CAREY: This proposed section makes clear what a tenant's obligations will be. It clearly says that every residential agreement must say that the tenant is responsible for all nuisance caused by a pet kept at the premises, including, for example, noise caused by the pet. The tenant will be responsible for repairing any damage to the premises caused by the pet, and any such damage will not be considered to be fair wear and tear. The member is talking about noise. Noise is governed by local government. If it is not a strata situation, the neighbour could make a complaint about noise to the local government. That happens all the time. As I have seen on numerous occasions, local governments can install noise-monitoring equipment at a neighbour's property to measure the sound and then take action.

Mr P.J. RUNDLE: I thank the minister. I have one last question that might come under proposed section 50I(b), in terms of repairing any damage, or section 50E. If a tenant's dog knocks a hole through a fence or the fence is not strong enough to withstand the pet, could the tenant force the lessor to rebuild a better standard fence?

Mr J.N. CAREY: The legislation is clear: the tenant is responsible for their pet doing damage to the property.

Mr P.J. RUNDLE: I will ask a couple of questions on proposed section 50J, which pertains to modifications. As mentioned in the briefing, the list of modifications is yet to be finalised. When will that list be finalised?

Mr J.N. CAREY: This proposed section does not relate to what the remember is referring to; it relates specifically to modifications by a tenant to prevent furniture from falling. This has already been updated and exists in the current act.

Mr P.J. RUNDLE: Proposed section 50K provides that a tenant may ask the lessor for consent to make a furniture safety modification. The request must be in the approved form and describe the furniture safety modification that

the tenant proposes to make. Can the minister tell me what the approved form is? Does "furniture safety modification" refer to fixing furniture to a wall or actually modifying a piece of furniture?

Mr J.N. CAREY: There will be an approved form, and that will obviously be developed. This provision came about as a result of advice from the coroner following the death of a child. The reasons for refusal are outlined under proposed section 50L.

Mr P.J. RUNDLE: A lessor would not want to discriminate against a prospective tenant because of a disability, but if the cost of approving disability modifications is excessive, what rights would a lessor have in refusing a tenant, without being discriminatory?

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

Mr P.J. Rundle: I'm referring to, I guess, proposed section 50L, "Grounds for refusing tenant's request to make furniture safety modification", if there is a disability tenant, if you like.

Mr J.N. CAREY: Proposed section 50L(2) provides that a lessor must not refuse a tenant's request if refusing it would be unlawful under the Disability Discrimination Act 1992.

Mr P.J. RUNDLE: What is the scenario with children? Will the lessor have the ability, under the Equal Opportunity Act—that is the only one I can see here—to say, "I'm not going to pay for safety modifications"?

Mr J.N. CAREY: They are paid for by the tenant.

Mr P.J. RUNDLE: What will the liability issues be if a tenant requests safety modifications but the lessor disagrees and there is an accident?

Mr J.N. CAREY: The point of proposed section 50L is that there will be very limited grounds to prohibit furniture safety modifications. That is on the basis of giving protection to not only the tenant but also the lessor.

Mr P.J. RUNDLE: Proposed section 50L(1)(d) refers again to "a prescribed ground". Can the minister explain that to me in relation to this section?

Mr J.N. CAREY: As previously described to the member, it would be if, in the future, it is evident that there needs to be a further prescribed ground, it could be done so via regulation.

Mr P.J. RUNDLE: I am moving to proposed section 50M. In New South Wales, a tenant can end their fixed-term or periodic tenancy immediately and without penalty if they or their dependent child is in a domestic violence situation. Why has Western Australia not considered this reform?

Mr J.N. CAREY: We have already made those reforms. They have been previously passed by Parliament.

Mr P.J. RUNDLE: Could the minister outline those briefly in relation to a tenancy?

Mr J.N. CAREY: Member, it does not relate to this act. These provisions, which were replicated from amendments made to the Residential Tenancies Legislation Amendment (Family Violence) Act 2019, enable the tenant to fix any prescribed furniture or make any prescribed renovation, alteration or addition to the premises to prevent the perpetrator's entry onto premises or to prevent the commission of family and domestic violence. The intent of these reforms is to empower victim–survivor tenants to do what is in their best interests to protect themselves from family violence.

The policy of these provisions has already been considered and approved by Parliament. These provisions are included in this bill for logical flow and drafting clarity.

Mr P.J. RUNDLE: Proposed section 50M(2) states —

> A tenant may, without the lessor's consent, make a prescribed modification necessary to prevent a person from entering the residential premises —

I assume we are talking about deadlocks. Is there any other explanation of what renovations or modifications may be made without the lessor's consent in this scenario?

Mr J.N. CAREY: It is already prescribed under the Residential Tenancies Regulations 1989, as set out in regulation 12BA, and includes —

(a) the renovation, alteration or addition of any of the following —
    (i) security alarms and cameras;
    (ii) locks, screens and shutters on windows;
    (iii) security screens on doors;
    (iv) exterior lights;
    (v) locks on gates;

(b) the pruning of shrubs and trees to improve visibility around the residential premises.

Mr P.J. RUNDLE: Proposed section 50N states that minor modifications may be made by the tenant but only with the consent of the lessor. If the lessor disagrees or wants to impose restrictions and intends to apply to the commissioner under section 50T for approval to impose conditions, will this put the onus totally back on the lessor?

Mr J.N. CAREY: This is the same process as with pets. If someone intends to make an extraordinary condition, they will have to make an application to the commissioner.

Mr P.J. RUNDLE: Will the lessor be responsible for paying for modifications for a tenant with disabilities, which can obviously be costly?

Mr J.N. CAREY: No.

Mr P.J. RUNDLE: I ask the same question about children. Are there any other examples in which the lessor will be responsible for paying for modifications?

Mr J.N. CAREY: No.

Mr P.J. RUNDLE: Proposed section 50W(1) refers to a "major modification". Can the minister give some examples of that and explain what that might look like?

Mr J.N. CAREY: It will be any modification that might not fall within the other category.

Mr P.J. RUNDLE: Could the minister give some examples of that?

Mr J.N. CAREY: It could be the installation of an air conditioner or a patio or the total revamp of a kitchen.

Mr P.J. RUNDLE: I refer to proposed section 50X, which states —

(1) It is a term of every residential tenancy agreement that —

(a) the lessor may make a modification to the premises, but only with the consent of the tenant;

I am very curious about an example in which a lessor cannot make changes or a modification to their own property.

Mr J.N. CAREY: We say it without exclusion because then proposed section 50X(1)(b) states —

the tenant must not unreasonably refuse the lessor's request for consent.

The point is that people cannot just wander into someone's home.

Mr P.J. RUNDLE: Is there some sort of notice provision in the new legislation whereby the lessor will need to give 14 days' notice or something similar?

Mr J.N. CAREY: Proposed section 50Y outlines those dates.

Mr P.J. RUNDLE: Proposed section 50Y(4) states —

The consenting party must respond to the request within 28 days …

If the tenant responds and says that they are not satisfied and they do not want their tenancy disrupted, what grounds will the lessor have to say that they want to do it as soon as possible?

Mr J.N. CAREY: It would be done through the usual dispute resolution, whether that is through mediation or the courts.

Mr P.J. RUNDLE: Is the age and character in relation to making modifications under proposed section 50ZC determined by the tenant? What will protect the lessor's property if the tenant has a subjective idea of taste? Proposed sections 50ZC and 50ZD refer to a tenant's modifications having regard for the age and character of premises. The question is about the ability to bring the premises back to its original form.

Mr J.N. CAREY: Proposed section 50ZD states that a tenant must rectify it and, if they do not, they must compensate the lessor for the reasonable costs incurred by the lessor to remove the thing or restore the premises. There is a clear obligation.

Mr P.J. RUNDLE: If the walls are painted pink and the carpet has been messed up by a dog and the combination of those things amount to more than the security bond and the pet bond, how can the lessor claim more money than what is covered by the pet bond and the security bond together?

Mr J.N. CAREY: This will not create a new system; the same system applies now. Ultimately, if there were greater costs, they would have to go to the Magistrates Court, as they do now.

Mr P.J. RUNDLE: Will the lessor be fully protected for modifications and for bringing the property back to its original state?

Mr J.N. CAREY: They have those rights now.

Division

Clause put and a division taken, the Acting Speaker (Ms A.E. Kent) casting her vote with the ayes, with the following result —

Ayes (46)

Mr S.N. Aubrey	Ms K.E. Giddens	Mrs M.R. Marshall	Ms R.S. Stephens
Mr G. Baker	Ms E.L. Hamilton	Ms S.F. McGurk	Mrs J.M.C. Stojkovski
Ms L.L. Baker	Ms M.J. Hammat	Mr D.R. Michael	Dr K. Stratton
Ms H.M. Beazley	Ms J.L. Hanns	Mr K.J.J. Michel	Mr C.J. Tallentire
Dr A.D. Buti	Mr T.J. Healy	Mr S.A. Millman	Mr D.A. Templeman
Mr J.N. Carey	Mr M. Hughes	Mr Y. Mubarakai	Mr P.C. Tinley
Mrs R.M.J. Clarke	Mr W.J. Johnston	Mrs L.M. O'Malley	Ms C.M. Tonkin
Ms C.M. Collins	Mr H.T. Jones	Mr D.T. Punch	Mr R.R. Whitby
Mr R.H. Cook	Mr D.J. Kelly	Mr J.R. Quigley	Ms S.E. Winton
Ms L. Dalton	Ms E.J. Kelsbie	Ms R. Saffioti	Ms C.M. Rowe *(Teller)*
Ms D.G. D'Anna	Ms A.E. Kent	Ms A. Sanderson	
Mr M.J. Folkard	Mr P. Lilburne	Ms J.J. Shaw	

Noes (5)

Ms M. Beard	Ms L. Mettam	Ms M.J. Davies *(Teller)*
Mr R.S. Love	Mr P.J. Rundle	

Pair

Ms M.M. Quirk	Dr D.J. Honey

Clause thus passed.

Clause 34: Section 64 amended —

Mr P.J. RUNDLE: If the minister could please explain the proposed section in the context of the overall legislation and the extension of the period of notice of up to 60 days, I would appreciate it.

Mr J.N. CAREY: It will amend section 64 by deleting subsections (3)(a) and (b), which provide that the tenant could make an application to the court on the grounds that their termination was motivated by the fact that the tenant had made a complaint or taken steps to enforce their rights. This right will now be addressed by proposed section 26B, which provides for the tenant to seek a remedy in relation to retaliatory action.

Clause put and passed.

Clauses 35 to 42 put and passed.

Clause 43: Part 5A inserted —

Mr P.J. RUNDLE: I refer to proposed section 81C(4)(a) that states the tenant or co-tenants "deliver up" vacant possession of the premises. "Deliver up" is unusual terminology. Does that just mean "provide vacancy"?

Mr J.N. CAREY: It is standard terminology reflected in existing provisions.

Mr P.J. RUNDLE: I move on to proposed section 81E(1)(a), which talks about reasonable cost of repairs to the premises, and proposed subsection (1)(b), which is about chattels. Once again, what if the damage is more than the pet bond and the normal security bond of four weeks' rent?

Mr J.N. CAREY: As I have already said publicly to the member, under existing processes and procedures they would need to go to the Magistrates Court to seek those extra costs.

Mr P.J. RUNDLE: Further to that, can they go to the commissioner in the first instance before they go to the Magistrates Court?

Mr J.N. CAREY: If they go to the commissioner, they would say that this exceeds the security bond and the matter should go to the Magistrates Court.

Mr P.J. RUNDLE: I refer to proposed section 81E(2)(b). If the lessor considers it is necessary for the premises to be fumigated because the tenant had a pet, the purported figure of $260 may not cover fumigation in this day and age. Will there be an ability for the lessor to recover that larger figure in any way?

Mr J.N. CAREY: Yes, from the rest of the security bond.

Mr P.J. RUNDLE: Would they then need to go to the commissioner to extract an amount from the security bond to cover fumigation?

Mr J.N. CAREY: Not necessarily. The parties may agree.

Mr P.J. RUNDLE: I refer to proposed section 81F, "Notice of security bond release application to other parties". Can the minister give an example of other parties to whom a security bond might be released?

Mr J.N. CAREY: It is every party that might be involved in that agreement, so it might be the cotenant.

Mr P.J. RUNDLE: Is there an example of a bank, someone who is owed or a creditor who may be able to ask for that?

Mr J.N. CAREY: No.

Mr P.J. RUNDLE: I have a further question on proposed sections 81H, "Disputing security bond release application", and 81I. Will it always be the commissioner who makes the decision, or is there an example of the bond administrator making a decision?

Mr J.N. CAREY: It will always be the commissioner.

Mr P.J. RUNDLE: I refer to proposed section 81M and the definition of a "bond assistance loan", which is a loan from the Housing Authority. Can the minister tell me what the Housing Authority is? Is that Homeswest or some other body?

Mr J.N. CAREY: Yes. We do not call it Homeswest anymore.

Mr P.J. RUNDLE: Are there other entities or is the Housing Authority just one entity?

Mr J.N. CAREY: It is defined in section 71A of the act. Does the member want me to read that out for him?

Mr P.J. Rundle: Yes, please.

Mr J.N. CAREY: Section 71A says —

> ***Housing Authority*** means the Housing Authority referred to in the *Housing Act 1980* section 6(4);

Mr P.J. RUNDLE: Thanks, minister. I move on to proposed section 81T, "Unclaimed security bonds", which states —

> (1) This section applies if —
>
> (a) the bond administrator believes on reasonable grounds that a residential tenancy agreement has been terminated; and
>
> (b) 6 months have passed since the agreement was terminated …

It is basically saying that it will be an unclaimed scenario. Who will it actually go to?

Mr J.N. CAREY: I am happy to provide that to the member. This is already prescribed in existing regulations. I am happy to get the member that section; that is a commitment.

Mr P.J. Rundle: I am happy with that.

Mr J.N. CAREY: I will make sure to follow-up with the minister's office.

Clause put and passed.

Clauses 44 to 54 put and passed.

Clause 55: Part 7 Division 3 inserted —

Mr J.N. CAREY: I move —

> Page 71, lines 14 to 18 — to delete the lines and substitute —
>
> (a) the agreement was entered into, or last renewed or extended, before the commencement; and
>
> (b) the original, renewed or extended term of the agreement (the ***current term***), disregarding any further renewal or extension of the agreement, ends after the commencement.

An amendment to clause 55 of the Residential Tenancies Amendment Bill 2023 is required to correct an unintended consequence regarding the application of the new laws relating to rent increases to fixed-term tenancy agreements. Clause 25 of the bill will amend section 30 of the Western Australian Residential Tenancies Act 1987 to increase the minimum interval between rent increases from six to 12 months.

Clause 55 of the bill will insert proposed section 99, which is a transitional provision. I think the member asked about that before. It outlines how the amendments to section 30 will apply to fixed-term tenancy agreements on foot at the time the amendments commence. It is intended that the amendments to section 30 will apply to fixed-term tenancy agreements as follows; if a fixed-term tenancy agreement is on foot when amended section 30 commences, the change will not apply until the fixed term ends. That will be the case, irrespective of whether on commencement of section 30 the fixed-term tenancy agreement is in its original term or has been renewed or extended for a further fixed term prior to the commencement of the amended section 30.

For fixed-term agreements entered into or renewed after the commencement of the amended section 30, the 12-month minimal interval will apply so that the lessors cannot avoid the application of the 12-month minimal interval by continually extending or renewing a fixed-term agreement. I think that makes sense. The reason for this approach

is that the act provides that the rent for a fixed-term tenancy agreement may be increased only if the amount or method for calculating the increase is set out in the agreement. See section 32(2)(a)(ii) of the act.

The transitional provision recognises that fixed-term agreements on foot at the commencement of the amendments may include rent-increase provisions that were agreed to by the parties when they entered into the agreement. It is therefore reasonable for these agreed rent-increase lease provisions to continue to apply for the period of the fixed term. However, it would be unfair and unreasonable if lessors—I did not say lepers, my apologies—could indefinitely renew the fixed-term agreement after commencement in order to avoid being subject to the new laws.

The current wording of proposed section 99 does not achieve the intention outlined above for fixed-term tenancy agreements renewed or extended prior to the amended section 30 commencing. The amendment provides clarity and certainty by amending clause 55 to make it clear that the transitional arrangements provided for in proposed section 99 will apply to the current term of a fixed-term tenancy agreement, regardless of whether it is the original fixed term or a subsequent fixed term.

Mr P.J. RUNDLE: I think the amendment is pretty self-explanatory. Can the minister clarify the timing of when that particular transition will take place? Will it be when the bill is gazetted or some other time?

Mr J.N. CAREY: The advice is that once the act is proclaimed, certain provisions will be enacted when they are needed. Does that make sense?

Mr P.J. RUNDLE: So, it is the proclamation date —

Mr J.N. CAREY: As soon as the act is proclaimed, the transitional arrangement will come into place. That is a better way to say it.

Mr P.J. RUNDLE: Thank you, minister. The other question is about the periodic tenancies. Obviously, the minister is talking about fixed-term tenancies. Will this provision have any effect on a periodic tenancy and when will it come into play?

Mr J.N. CAREY: For periodic tenancies, the twelfth month will apply immediately.

Mr P.J. Rundle: Thank you, minister.

Amendment put and passed.

Mr J.N. CAREY: I move —

Page 71, line 21 — to delete “original” and substitute —

current

Amendment put and passed.

Mr P.J. RUNDLE: I am coming to the end, Madam Acting Speaker. Proposed section 103(1) defines the term “validation period”. Can the minister explain that term for me, please, and how it relates to processes?

Mr J.N. CAREY: My advice is that it validates a drafting anomaly.

Mr P.J. RUNDLE: Was there a drafting anomaly in the Residential Tenancies Act in the period commencing on 15 April 2019?

Mr J.N. CAREY: The regulations were gazetted on that date but did not come into effect due to a drafting anomaly. This amendment will validate them from the date of 15 April 2019.

Clause, as amended, put and passed.

Clauses 56 to 65 put and passed.

Title —

Mr J.N. CAREY: Can I make one comment?

The ACTING SPEAKER (Ms A.E. Kent): You can, minister.

Mr J.N. CAREY: Yesterday I committed to the member that I would get back to him—I am talking about the long title of the bill, in a big stretch. Yesterday, the member asked about the ability of the court to impose orders on leasing. He asked whether the court could “force” as part of an order. The advice is that under section 15 of the Residential Tenancies Act 1987, courts can already make orders of that nature. This amendment simply clarifies what would be considered retaliatory action and provides relief in those circumstances. On this advice, the court can already make those orders.

Title put and passed.