RESIDENTIAL TENANCIES AMENDMENT BILL 2023

Committee

Resumed from 14 March. The Deputy Chair of Committees (Hon Stephen Pratt) in the chair; Hon Sue Ellery (Minister for Commerce) in charge of the bill.

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

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR (Hon Stephen Pratt): Before I give the call to Hon Neil Thomson, I draw members' attention to issue 4 of supplementary notice paper 140.

Hon NEIL THOMSON: We are back on the Residential Tenancies Amendment Bill 2023 and we are looking at the provision that relates to the keeping of pets. It has been some time since we discussed the bill and we are back at it again. The opposition opposes this bill, and one of the reasons we oppose it relates to this provision. We believe there are a number of other unnecessary provisions that will impose a level of bureaucracy, or red tape if you like, and will limit the rights and privileges of an owner of a property. By way of a reminder for members in this place, in my second reading contribution I said that these are not large investors; in fact, the largest cohort of investors of residential properties are females on low incomes. There is a sort of evil landlord trope that gets thrown out in order to erode the rights and privileges of landlords in favour of the rights and privileges of tenants. It is our view that the vast majority of tenants do fairly well and have reasonable situations. As we have said, there are some things in this bill that we can support, but this is one thing that I think is unnecessary.

My understanding is that, under the current arrangements, it is up to the landlord to decide whether a pet is appropriate. This provision has necessitated the inclusion of certain other provisions in the bill to exempt strata titles when there is a management requirement to not have pets. We certainly know that pets can be challenging in apartment buildings. Some apartment buildings allow pets and some do not, and that depends on the strata body making the decision on the basis of the interests of the residents and unit owners, and I believe they are the right people to make that decision.

This provision will create quite a mess for the regulations. There are certain grounds for refusal, and they are outlined in new division 2A, "Standard terms related to keeping pets". Proposed section 50A refers to when pets can be permitted; for example, there are requirements relating to assistance animals. Because this provision is being introduced, there will be quite a lot of complexity. Proposed section 50B outlines the process by which a tenant will be able to request consent to keep a pet and the requirements that the lessor must meet when refusing the tenant's request. There will be quite a bit of subjectivity involved in this. The bill states that the lessor's response must be in writing. I would say that, to a large extent, that occurs now with requests to retain a pet, although there might be some situations in which the owner of a property would simply say that they will let the property on the grounds that there will be no pets. The bill also outlines the conditions for approval to keep a pet. We will have all this black-letter law and additional prescription to make good some of the challenges that arise when pets are kept at premises. Because of the push by the government to limit the rights of landlords, we now need a quite lengthy set of provisions that I believe will result in a considerable amount of conflict that will require arbitration by the commissioner. Proposed section 50E, "Lessor's application for approval to refuse consent to keep pet at premises", states —

> (1) A lessor may apply to the Commissioner for an order approving the lessor's refusal …

I would like some explanation of the process. Could the minister give some explanation of this for all the lessors who may have to apply to the commissioner for an order approving the lessor's refusal? My understanding is that the lessor will be able to refuse on the grounds outlined in proposed section 50C, which include the number of pets that can be kept and the prescribed manner in which they can be kept. Why will there be a requirement to apply to the commissioner for an order approving the lessor's refusal? Is that outside the scope of the other provisions that refer to the grounds for refusal?

Hon SUE ELLERY: We canvassed these provisions a bit when we last debated the matter. I referenced proposed section 50E in particular, which sets out the grounds for refusing consent to keep a pet. A lessor will be able to refuse consent to a tenant keeping a pet without the need to get the commissioner's approval if the keeping of a pet would contravene a local law, written law or scheme by-law for the premises—these matters are straightforward and will not require an assessment of the specific circumstances—or it can be refused with the commissioner's approval if the commissioner is satisfied that one of the matters set out in proposed section 50E, which we went over to a certain extent last time we debated this legislation, applies. These matters are more subjective and will be assessed on a case-by-case basis.

When we last debated this legislation, we talked at length about the difference between the new system and the old system, if you like. The difference is that the commissioner will issue a series of decisions and reasons for

decisions that will set a general guide for everybody going forward about the kinds of things that she will take into account when she is making a decision. It will provide guidance to everybody going forward. There will always be exceptions to that because particular circumstances might differ, but I think it will help everybody involved that she will issue reasons for decisions that will provide guidance for everyone. Essentially, a lessor can refuse consent to keep a pet, but they will need the commissioner's approval if the matters are not related to existing by-laws or the like, and there will need to be other reasons, including those that the member referred to under proposed section 50C, for example.

Hon NEIL THOMSON: I thank the minister for the recap on some of those matters. In all likelihood, will those examples be published and made available by way of a case study? Would that be correct?

Hon SUE ELLERY: "Case study" is the member's term. The policy intention is that the commissioner will publish the reasons for her decisions. We anticipate that in the first stages of using these provisions, she will probably make some decisions that will effectively form guidelines for everybody else. A lot of the issues will be the same for a whole range of lessors and lessees. We anticipate that she might issue a series of decisions and reasons for decisions early on that will provide general guidance to people. That is not to walk back from individual circumstances that might be completely different for the kind of decisions that she will make. In that case, the commissioner would consider an application on its merits.

Hon NEIL THOMSON: Proposed section 50E states —

> (3) The Commissioner may make an order under subsection (2)(a) if satisfied that any of the following apply —
>
> > (a) the premises are unsuitable for … the pet;

Would it be possible that an unsuitable situation might be, for example, when the pet is unable to be contained on the premises?

Hon SUE ELLERY: Yes, it is. I think we need to be careful here. I am not going to entertain a whole list of possible reasons why the commissioner may make a particular decision on a particular criterion. There will be some early decisions made on the general reasons, which we kind of know already, for what have been matters of dispute, and then there will be an opportunity for individuals who think their set of circumstances is different from that to put that point of view to the commissioner.

Hon NEIL THOMSON: The reason I asked that specific question is that it plays on the issue of whose obligation it will be to amend the property if the property meets all the requirements under the existing legislation, insofar as it is safe for persons, but does not meet the additional requirements that will be imposed through this amending bill for the pet to be contained safely. I note that is for both the safety of the pet and the person whose pet might, for example, do damage outside of the property. I ask this question because if it is not explicit that the containment of the pet is going to be a reason for the property to be deemed unsuitable, it might be that the onus will then come back on the owner to make good on the infrastructure required to contain the pet.

Hon SUE ELLERY: That is not the policy intent, honourable member.

Hon NEIL THOMSON: Is the policy intent that there will be no requirement for the owner to make any modifications? An owner may say that the pet could escape from the premises due to the nature of the fencing. There will be situations in which properties cannot fully contain a pet, depending on the pet of course. I would have thought that would be a case of unsuitability. Is that a reasonable observation?

Hon SUE ELLERY: This is probably the third time I have said this now. The decision the commissioner needs to make, if that is the ground that is being relied upon, is whether the property is suitable for a pet or not. It is a yes or no question.

Hon NEIL THOMSON: I can only assume from the minister's response, without her explicitly saying it, that, for example, a unit holder in an apartment complex that allows pets to reside there may say that a balcony may be dangerous for a pet cat or dog, insofar that it may not be able to be contained, notwithstanding that all the building requirements to contain a pet are met. I can see how this situation could become a source of conflict because the landlord may say, "Well, actually, I don't want to take that risk", but is then forced into allowing a pet on the premises. I am not sure that we are going to get any more gain out of it, other than to see in due course what happens from the administration of this provision by the commissioner in those sorts of cases. All I can say is that it will create some additional challenges.

There is a last matter that I want to raise on pets. My colleague —

Hon Sue Ellery: Martin Aldridge.

Hon NEIL THOMSON: Martin Aldridge. Sorry, I was just having a little mental blockage for a moment. I believe Hon Martin Aldridge is going to move an amendment. Regarding the liabilities that might be imposed, will this

provision have any impact on the liability of a landlord when a pet does some harm? We have an amendment on the supplementary notice paper about dangerous dogs. In this case, a landlord may effectively feel like they do not have the right to say no. Has any advice been sought about the liabilities that might be imposed in the state in a case in which someone was harmed by a pet and a landlord had effectively allowed for that to occur on the premises?

Hon SUE ELLERY: Proposed section 50I sets out that the tenant will be responsible for the pet. Assuming, in the member's example, that a decision is made against the wishes of the lessor, the provisions of proposed section 50I will remain—that is, the tenant will be responsible for all nuisance and for repairing any damage, and damage caused by the pet to the premises will not be fair wear and tear.

Hon NEIL THOMSON: I have one last question on the issue of liability. In circumstances in which a landlord seeks to exclude a pet on certain grounds but the commissioner overturns that decision and the animal then causes harm, will the commissioner have any additional liability with respect to that? Has any advice been sought on this provision? What if a landlord can tender evidence that shows that the concerns the landlord had in refusing the pet, which were overturned on appeal by the commissioner, were reasonable grounds? Has any advice been sought about the additional exposure of the commissioner in overturning such a decision?

Hon SUE ELLERY: I will start by noting that the Commissioner for Consumer Protection makes decisions every day about all manner of matters that are in dispute—for example, between consumers and the providers of goods. There is a general provision in the bill before us—proposed new section 11, "Protection from liability". It is also important to place on the record that this commissioner, as all previous commissioners have done and I am sure all future commissioners will do, takes her responsibility very seriously; she does not make decisions lightly. It is also important to note that she is used to making decisions on all manner of matters involving disputing parties.

Hon MARTIN ALDRIDGE: It was good to listen to the interchange between the minister and Hon Neil Thomson as they blew out a few cobwebs, because it has been a few weeks since we last considered this bill. I have a couple of remaining questions. The way in which Hon Neil Thomson and I have been trying to approach this significant clause has been to deal with pets and to then move on to minor modifications. That will hopefully make it a bit cleaner for both the minister and me. A couple of questions around pets were unresolved from the last sitting. A lot of the examination so far has been within a rather suburban context, but residential tenancies exist in other contexts as well, such as in the semirural context—for example, the Perth hills—or peri-urban, fringe or even rural settings. Properties in those areas are not the traditional 500-square metre or 800-square metre blocks defined by a HardieFence. I assume that the pet provisions will still apply to residential tenancies when a semirural or rural context applies to a perhaps more generous landholding. For example, if a tenant wants to have 10 sheep to manage the fire risk associated with his or her property, I assume that the provisions that we have been canvassing for a little while in relation to cats and dogs will exist in that context. Is that correct?

Hon SUE ELLERY: Yes.

Hon MARTIN ALDRIDGE: The question that flows from that is whether the request will be specific or generic with respect to the animal, keeping in mind that we are broadening the bill from applying to not just dogs and cats but all animals. If I am a tenant and I seek approval to have 10 sheep, three goats and a pony, and if one of those sheep died or I ate it —

Hon Sue Ellery: It would have to die in order for you to eat it.

Hon MARTIN ALDRIDGE: Hopefully in that order! If I have approval for 10 sheep and I now have nine, could I simply go to the market and buy another sheep as long as it is within the 10 that I have agreed with my lessor?

Hon SUE ELLERY: I am loath to go into specifics because it will really depend on the circumstances, but the general principle that will apply in the circumstance the honourable member has just described is that, yes, the tenant will have approval. If a tenant goes into a lease saying he has 10 sheep and he temporarily has nine before going and getting another one, he will still be within the terms that the lessor knew they were entering into when they entered into that arrangement. Without knowing any other facts, it would not be any different.

Hon MARTIN ALDRIDGE: I guess I could have used 10 goldfish or another example, rather than 10 sheep. The question that follows from this is particularly about dogs. I have approval for a dog or three dogs and one of those dogs dies or I give it to my friend or it disappears or whatever the circumstances. If we were to apply the same principle—that I have approval to have three dogs at the rental property—and the dog that left was a chihuahua —

Hon Sue Ellery: Nicely pronounced!

Hon MARTIN ALDRIDGE: Bad example!

Hon Sue Ellery: I do hope that Hansard caught my interjection that that was very nicely pronounced!

Hon MARTIN ALDRIDGE: I will stick with the chihuahua, but I do not want to stumble now! I had approval to have a chihuahua, but the chihuahua died—very sad. I then decide that I want a pit bull. In terms of the principle

that I just expressed with respect to sheep, what would stop me from going and buying or acquiring a pit bull to replace my precious little chihuahua?

Hon SUE ELLERY: That is why I said it will depend on the facts of the matter. There may well be a material difference in the circumstances that the honourable member described depending on the breed of the animal. If the breed of dog is potentially dangerous or potentially a risk, that may well change the circumstances. The general principle in respect to sheep is that we are not differentiating between what they are capable of doing, but there is a difference between some breeds of dog, so it will depend on the particulars of the case.

Hon MARTIN ALDRIDGE: I understand the minister's response, but I think it could create some confusion in the application of this bill and whether we will have a standing generic approval or a standing specific approval. Keep in mind that this regime will be such that the tenant will apply to the lessor and the lessor will have to respond, and, if it is a refusal, it will then have to be referred to the commissioner. If the tenant simply claims, "Well, you approved my chihuahua and now I have a pit bull—a dog is a dog", I wonder how that may end up. Obviously, it will end in a dispute, but how will that end up with the commissioner for her to consider whether there is a substantial or significant change in the animal and, therefore, an approval does not exist for the pit bull when it did exist for the chihuahua?

Hon SUE ELLERY: Again, this is why I did not want to get into specifics, because it is going to depend on the facts of the matter. The situation is that the commissioner will consider the facts of the matter. If the lessor believes there has been a breach because the chihuahua was replaced by a pit bull, the lessor may well say to the tenant, "You're in breach", and that dispute may end up in the Magistrates Court. It is going to depend on the specifics of the situation.

Hon MARTIN ALDRIDGE: I guess that is not something I had thought about. Will it end up in the Magistrates Court immediately or will it be subject to the alternative dispute resolution process that will be established by the bill?

Hon SUE ELLERY: It all depends. It will again depend on the circumstances. If, in the first instance, the landlord took the view "No way. You know I didn't approve you having 10 pit bulls" or whatever, the landlord could initiate action straight to the Magistrates Court. It will depend. The other point that is useful to note is the agency intends to prepare educational material and to work closely with the Real Estate Institute of Western Australia and other stakeholders to make sure that everybody understands how the new system will work.

Hon MARTIN ALDRIDGE: I think time will tell whether there will be an issue here. Unfortunately, I do not share the minister's confidence that this issue will not arise or that the commissioner will have an easy way to manage it. I can certainly envisage it becoming a problem, at least in some tenancies, when a tenant will assume something regarding the approval process that is not necessarily the case.

I now turn my attention to the issue of dangerous dogs, which is an issue we canvassed. Certainly, Hon Neil Thomson, the minister and I discussed this on 14 March. I think the interchange was a positive one, and the minister pointed out proposed section 50D, which states, "keeping the pet would contravene a written law", as a ground for refusing to keep a pet on a premises. The issue with the Dog Act is that it does not prevent the keeping of a dangerous dog; it simply provides quite significant conditions for how that dog is kept, what the dog can or cannot do and what the responsibilities of the owners of the dangerous dog are. I am not sure that simply keeping a dangerous dog in a rental property would contravene a written law, now or in the future. The minister then went on to also mention proposed subsection 50E(3), which states —

> The Commissioner may make an order under subsection (2)(a) if satisfied that any of the following apply —
>
> …
>
> (d) keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person;

That is obviously fairly open ended in its application, but the minister reassured me, and I quote from *Hansard* from 14 March, when the minister said —

> On the basis of the information that the member just relied on, and from what I have already said about proposed section 50E(3)(d), the lessor's application for approval to refuse consent would be a reasonable one because the case had been put to the commissioner that keeping the pet at the premises would pose an unacceptable risk to the health and safety of a person.

Arriving at that point on 14 March was pretty unequivocal. In response to the minister, I said that I would much prefer that to be in the written law rather than in the view of the commissioner because, as we know, commissioners can change and can have different perspectives and points of view. In fact, the minister has made the case on numerous occasions that it will always be based on the circumstances presented to the commissioner and has shown an

obvious reluctance to consider individual or specific examples because they may rise or fall on the circumstances of an individual case.

On 14 March, I established the position of the state, the Department of Communities' housing division and Government Regional Officers' Housing, for keeping dangerous dogs. Of course, the state has a zero-tolerance policy. People cannot keep dangerous dogs in housing owned by the largest public lessor in Western Australia, the state or the Crown. I think it is a wise approach to put this beyond doubt. I am foreshadowing the amendments that appear on the supplementary notice paper and will amend proposed section 50D, "Grounds for refusing pet being kept at a premises", which currently reads —

> The following are the only grounds on which a lessor may refuse a tenant's request for consent to keep a pet at the premises —
>
> (a) keeping the pet would contravene a written law, local law or scheme by-laws applying to the premises;
>
> (b) with the approval of the Commissioner;
>
> (c) a prescribed ground.

Substantially, my amendment will seek to insert a new ground, which is if a pet is a dangerous dog as defined in section 3(1) of the Dog Act 1976. We will not be introducing a new definition. We are simply adopting the definition that has been arrived at nationally. Keep in mind that a prohibition requires the commonwealth to act on the importation of those dogs, and states and territories are required to act to control and contain dangerous dogs. We have heard significant and regular stories of very serious dog attacks in our communities. Some have been very recent. If we consider the approach taken by the state of Western Australia's government and public housing, it is a complete prohibition of dangerous dogs. There are no other circumstances. There is no "in the commissioner's view". There is no wriggle room. There is a complete prohibition on keeping dangerous dogs in a home owned by the state of Western Australia. For those reasons, I think my amendments will be consistent with the policy of the bill and will add greater focus and control for lessors who are faced with the circumstances established by this bill's regime for dogs that are dangerous either by breed or by designation. Having said that, I will move my amendments.

By leave: I move —

> Page 32, line 4 — To delete "50D(a)" and insert —
>
> > 50D(a), (aa)
>
> Page 33, after line 7 — To insert —
>
> > (aa) the pet is a dangerous dog as defined in the *Dog Act 1976* section 3(1);
>
> Page 35, line 10 — To delete "50D(a)" and insert —
>
> > 50D(a), (aa)

Hon SUE ELLERY: I indicate that the government will not support the bloc of amendments, but I think the member raised an interesting issue.

As the honourable member outlined, proposed paragraph 50E(3)(d) will allow the commissioner to make an order to allow for the refusal of consent to a pet if —

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

This would cover circumstances in which the proposed pet falls within the definition of a dangerous dog. It is worth noting that the Dog Act has three different categories of definition of dangerous dog. I also wish to note that none of the stakeholders raised this as an issue. However, the commissioner indicated to me that she would be prepared to consult with stakeholders on this issue to see whether we could capture it in the regulation-making power that exists in the provisions. We do not want to make a commitment to amend those provisions on the floor of the chamber now, but the commissioner is prepared to consult with stakeholders to see whether it is worthwhile making regulations to give effect to that issue. We will not be supporting the amendments.

Hon MARTIN ALDRIDGE: I am obviously disappointed that the government will not support my amendments, but I am surprised. It is welcome that the government will consider using the power, I suspect under proposed section 50D(c), "a prescribed ground". I think that is the regulation-making power that the minister referred to.

It probably comes as no surprise that this issue was not raised by stakeholders. Many stakeholders who were consulted were largely focused on how to improve the accessibility for tenants to have pets more commonly in a rental environment. There was obviously an exception with REIWA.

Hon Sue Ellery: REIWA was vigorous in its advocacy. I think you're making an assumption about the extent to which consideration of rural rentals was taken into account but, in any event, we will consult further.

Hon MARTIN ALDRIDGE: That is welcome. I would like to uphold the standard that has already been established by the largest lessor of public housing in Western Australia, that being the Crown, the state of Western Australia, and ensure there is no circumstance in which a lessor or a commissioner would have to contemplate providing approval or consent to have a dangerous dog, not as defined by me but by the statutes of Western Australia, in a residential property.

Amendments put and negatived.

Hon MARTIN ALDRIDGE: I think we have probably exhausted the subject of pets. The other significant section of clause 33 relates to standard terms related to modifications to premises. I and others have often referred to them as the minor modification provisions. When we last canvassed this at clause 1, the minister helpfully tabled some information on the questions on which she was consulting at the time. I think there were nine questions. The first question, importantly, related to the list of potential minor modifications being appropriate and whether any items should be added or removed. I think this consultation commenced in March. Has that consultation concluded or is it still ongoing? Can the minister provide any further clarity on the government's approach to modifications to premises?

Hon SUE ELLERY: I am advised that the external conversations have been completed. The department is doing the analysis. I have not yet been provided with that piece of work, but I imagine I will get it relatively soon. The work is not yet complete.

Hon NEIL THOMSON: I return to the issues relating to pets as I am yet to deal with this matter. My question relates to proposed section 50I, "Tenant responsible for pet". It is quite a specific matter. Proposed subsection (a) states —

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

One of the unintended consequences of enabling improved tenants' rights relating to pets and creating more red tape for landlords to exclude pets from rental premises is that it will make it harder for people to have pets in apartments. I say that because apartments have confined spaces in which occupants come together. There is an exemption in the bill that will enable strata bodies to have rules that excludes pets. Presently, strata bodies may take a more liberal approach to people having pets in a building, comprising a mix of owner–occupiers and tenants, so basically rental properties. This is quite normal; it exists in apartment blocks right throughout Western Australia. Under the current arrangements, if a pet persistently makes a noise, the strata body can take that matter to the landlord, in the case of a rental property in a building, and, by way of direction, the landlord can effectively direct the tenant to remove the pet. That will lift the hurdle for that landlord because they will have to be subject to these new provisions. I imagine this would cause conflict. I believe that the strata bodies will take a much more rigorous approach to the strata laws. I expect that when confronted by the situation, which I am certain will arise at some point in the future, many strata bodies will simply pass a resolution of the nuisance issues, which are harder to address, to exclude pets from the building. That will impact not only the rental property, but also the owner–occupiers. If those problems persist and owner–occupiers represent only a small portion of the strata body, it may be very difficult to resist that, given the situation. I think this will be problematic. We oppose that.

Will the commissioner and the government assess the efficacy of these provisions going forward, noting that they will probably have some ability to examine the change to those laws? I understand the intent of the government. Everyone loves pets and everyone wants to have them. I understand that. Will an assessment be made in the future as to the efficacy of these measures and whether there were any unintended consequences? As a result, will the government be prepared to consider modifications to these laws going forward insofar as strata bodies are concerned?

Hon SUE ELLERY: The honourable member's assumptions and the analysis he has done are incorrect. This provision will not override strata laws, which will continue to apply. If the strata laws go to, I do not know, three noise complaints and you are out, that is what will continue to apply. The provisions set out in proposed section 50(I) are to distinguish that the responsibility for the matters set out in the proposed section lie with the tenant and not the landlord.

Hon NEIL THOMSON: To clarify, is the minister saying that the strata body could create a law for a nuisance pet that could apply to one unit in that situation and direct the landlord to then direct the tenant? Is that how it would work? Would there be no grounds for that tenant to appeal against that direction?

Hon Sue Ellery: By way of interjection, that is correct.

Hon NEIL THOMSON: Okay. I am satisfied. Thank you.

Hon STEVE MARTIN: I refer to proposed section 50L, "Grounds for refusing tenant's request to make furniture safety modification". Subsection 1(a) refers to disturbing material containing asbestos. That is no surprise, as we know about asbestos. Would any liability fall back on the property owner if modifications created stone dust or were made to silica or any material other than asbestos, which might prove damaging?

Hon SUE ELLERY: We do not know the circumstances in which this would apply. This particular provision is about making furniture safe. It is about attaching a chest of drawers to a wall so that a two-year-old does not climb up to the top and pull it down onto themselves. I am not sure when it would apply to silica dust, which tends to come from countertops. In any event, it is not specified in the legislation, but there is, indeed, a catch-all around a prescribed ground that could capture it if it were deemed appropriate.

Hon STEVE MARTIN: That leads me to the planned list of prescribed grounds. Getting back to silica, I assume benchtops in bathrooms, for example, might be attached to silica, and there would also be things needed in kitchens to make furniture safe. I think it is a stretch to say that it is unlikely. Could I get a response on whether that would be captured under the prescribed grounds?

Hon SUE ELLERY: There are no prescribed grounds currently. The point of that provision is for it to be a regulation-making power to give power to the agency and the government to determine whether we should add something specifically as a prescribed ground, which may or may not be silica dust.

Hon STEVE MARTIN: Out of interest, proposed section 50L includes subsections (1) and (2). Does one override the other? Proposed section 50L(2) states the lessor must not et cetera. Does that include when there is asbestos present, for example?

Hon SUE ELLERY: The honourable member has to read them together. Subsection (1) states these are the only grounds on which it may be refused, and subsection (2) refers to how a lessor cannot refuse the request if it is reasonably required and if the consent would be unlawful under those two acts. It will still be the case that a person with a disability, or someone captured under one of those acts, is the same as the rest of us, and exposure to asbestos is not good for us. I cannot see how an argument could be sustained in any court that that would be a reasonable thing to do. The whole clause has to be read together and then we need to apply a degree of common sense.

Hon Dr BRAD PETTITT: I have a question about the minor modifications and improvements that tenants will be allowed to do versus health and safety issues that the landlord is expected to cover. How will it be differentiated whose responsibility it is?

Hon SUE ELLERY: The health and safety provisions are captured by the broad health and safety regime that exists in WA under which landlords have certain obligations. These provisions are about tenants doing minor modifications for whatever reason. If the point of the member's question is that a minor modification would somehow remove the obligation of a landlord to follow health and safety provisions, no, absolutely not. It will not.

Hon Dr BRAD PETTITT: Stakeholders we have been talking to have asked about where that crossover might happen. An example given was in relation to, say, a flyscreen. The context for these questions is tranche 2, which might look at some of these issues around what might become a minimum standard. For example, would a flyscreen in a window be considered a minor modification that a tenant would want to do? What would happen if that became a minimum standard under tranche 2? How are those two going to interface? Following on from that, maybe just for the sake of time, is it possible to provide a list of what minor modifications will be captured by this provision?

Hon SUE ELLERY: We will take the last question first. No. That is the whole point of the consultation. When we were last discussing this provision, I tabled a paper on the things that went out to the sector for consultation. That piece of work is still underway. The list of questions the stakeholders were asked is available; I tabled it last time.

Going back to the member's first set of questions about tranche 2, he needs to put tranche 2 out of his mind. This bill is not considering matters that are up for discussion in tranche 2. There is no way that I can answer questions about that because it is not where we are at right now. The member's question is, I think, anticipating tranche 2, which might have some things in it around minimum standards and whether this will include the provision of flyscreens and how that will interact with minor modifications. Tranche 2 does not exist yet. Any extension of minimum standards has not occurred yet. Let us deal with the here and now. The here and now under this bill would be that tenants seeking to put in place flyscreens may well be captured by the minor modification provisions.

Hon MARTIN ALDRIDGE: The minor modification provision is one aspect of the bill that troubles me. I think it troubles me because we are relying on a lot of information that is not known.

Hon Sue Ellery: Information that is not —

Hon MARTIN ALDRIDGE: Information that is not known and that is subject to consultation and will ultimately be subject to regulation. Looking at the available proposed list of minor modifications tabled by the minister, it is what has been consulted on. When envisaging the types of things on the list, I consider a number of them to be quite minor and some of them less so. Particularly, I would also consider that ordinarily some of them are required to be done or made good by a registered trade. I know that that is part of the government's consideration and, of course, it will be subject to regulation—to what extent that might be. I think this list falls within the commerce portfolio, which is the same portfolio that registers the trades—such as electricians and plumbers, and I think the

security contractors are registered—that would likely be involved in some of these things. I am not sure whether those trades are registered by commerce or police.

Hon Sue Ellery: If you'll take the interjection, consumer protection and building and energy. They are separate units within the department.

Hon MARTIN ALDRIDGE: Okay. I think I said within the portfolio. I think painting is still a registered trade in Western Australia. I bemoan the fact that I may have just had my house professionally painted, yet it appears we are on a trajectory here that if my tenant—perhaps the one with the lovable chihuahua—has a real fondness for a pale purple colour, that may well fall under the minor modification provision, which would allow them to paint a room or indeed the whole house purple. It would concern me greatly if the government did not require some of these things to at least be done by people in registered and professional trades.

My other concern is about picture hooks. Somebody might think that this is a rather minor thing. Everyone likes to hang a picture on a big wall. I just helped my brother-in-law move house. He has moved from a rented property to an owned property, and he is the kind of person who likes many pictures on the walls. In fact, I reckon there were probably about 45 photo frames hanging on the wall, so I hope that these things will be contemplated. What might appear to be a minor modification with one picture hook on one wall is different from what 50 picture hooks on one wall might look like. Indeed, in some circumstances, there could be questions of structural integrity, particularly if one is hanging heavy things on a wall. Recently, I built a home and to hang a TV on the wall these days, one must reinforce the wall. I had to put a double brick wall inside an internal wall of my house, where one would normally find double brick wall, to meet the structural integrity requirements of my builder with respect to that wall.

Hon Matthew Swinbourn: How big is your TV?

Hon MARTIN ALDRIDGE: It is very modest—I can assure Hon Matthew Swinbourn. But these are the things that I think whilst members might flippantly consider them to be minor matters may not always be so, and so I was hoping to achieve some clarity through the course of this bill, but I do not think we will. At least we have a little bit of clarity around the list and where the government might be heading and certainly with respect to the make-good provisions. We can all paint to some extent, but not many people can do it well. Certainly, if we are heading down a path that says that a tenant can paint the house whatever colour they like and, by the way, the tenant can just repaint it back afterwards, that would be a landing position that I would not support and could not support. However, at this point, we do not know where the government will land on some of these issues.

Can I ask the minister with respect—I think this was touched on earlier by either Hon Dr Brad Pettitt or Hon Neil Thomson—what are the current limitations? Obviously, we know where we are going with respect to modifications, but what are the current arrangements? We have passed bills on family and domestic violence and security, and I thought we had passed bills on safety of furniture, but what are the current arrangements? I know where we are going, but what do we have at the moment?

Hon SUE ELLERY: I am just getting the officers to check whether there is anything more specific and to take me to the specific bit in the blue bill. The current provisions are that the tenant must make good any modifications that they may make. Bear with me. Existing section 47(2B)(5)(e), "Right of tenant to affix and remove fixtures etc", states —

> the tenant must restore the premises to their original condition at the end of the residential tenancy agreement if the lessor requires the tenant to do so and, where restoration work has been undertaken by a tradesperson, must provide to the lessor a copy of that tradesperson's invoice within 14 days of that work having been performed.

Hon NEIL THOMSON: I would like to discuss proposed section 50R, "Refusal of consent to make modification needed for disability access prohibited". This will be a clear-cut prohibition. It states —

> The lessor must not refuse a tenant's request for consent to make a minor modification to premises that is reasonably required to enable a person with disability to access and use the premises if refusing consent would be unlawful under —

It then lists the Equal Opportunity Act 1984 and the Disability Discrimination Act 1992.

We know that there are many tenancies out there that are quite aged. In fact, I would say that the more recently constructed tenancies would still not meet the requirements for disability access. I go back to the list that has been tabled on what minor modifications might constitute. I do not see a relationship between the issues related to disability access. There is nothing in the list that I would put in the category of providing additional access.

What sort of minor modifications might a disabled person seek to implement that might improve access? I am trying to understand how this would relate to an older tenancy or a tenancy in which significant cost might be involved

or significant structural change required that is not a minor modification. I am trying to think of what that might be so that we can get some clarity on this list of the sorts of minor modifications that a lessor could not refuse.

Hon SUE ELLERY: I think the honourable member is assuming that this is a new provision. It is not. These provisions exist in the Disability Discrimination Act and the Equal Opportunity Act, so all we have done is mirror those provisions into the residential tenancies legislation; therefore, there is nothing new in the prohibition, if you like. It exists now. It has always existed under those previous acts. It is not new. We have just put it into this piece of legislation so that people can see the totality when they are looking at their obligations under residential tenancies.

Hon NEIL THOMSON: Just so I can get a better understanding, if someone requires the use of a wheelchair, for example, and seeks to go into a tenancy where that is inappropriate because the design of the toilet facility is very difficult to get into, is the minister saying that currently the lessor would be required to make modifications for the prospective tenant to go into the premises?

Hon SUE ELLERY: The sort of thing the member has just described would not be a minor modification. Under the existing law in the Equal Opportunity Act and the Disability Discrimination Act, a tenant with a disability has a right to ask for minor modifications. The sorts of things we are looking at capturing in minor modifications are the sorts of things listed in the paper that was circulated when we were last sitting, which is out for consultation now. The legal protection, if you like, already exists in those two other acts.

Hon NEIL THOMSON: In the paper that was circulated, there is really only one thing that I can find that might be considered a minor modification. I seek whether there would be capacity to provide more information to landlords on this. There are about 15 potential minor modifications. One is a handheld showerhead or a lever-style tap for elderly and disabled occupants. I think most landlords would be more than happy to do that, but under this provision, it sounds like that might be something that a tenant would implement, and rightly so, because a landlord should not refuse that given it is such a minor matter. There are no other matters on this document that I can see that would fit within that capacity. Could the minister envisage any other types of modifications that might be applied other than that particular modification under proposed section 50R?

Hon SUE ELLERY: No. Our intention with respect to minor modifications is to generally capture the things that are on this list. I have not seen the analysis of the feedback that has come back from stakeholders—I said that about an hour ago, I think—so I cannot add anything more to that. But the policy intention is that we have asked for feedback on those things on the paper I have already circulated.

Hon NEIL THOMSON: To give some comfort to the industry, especially those landlords who might have hard-earned properties, perhaps very humble properties they are renting out in good faith, can the minister confirm that these things will not include major structural changes that might be to a standard ordinarily expected under the building code, I think it is, for commercial buildings, for example, that are outside the normal residential circumstance? To give some comfort to the industry and landlords out there, can the minister confirm that minor modifications will not require any structural changes such as the widening of doors or refurbishment of bathrooms et cetera?

Hon Sue Ellery: I have already answered.

Hon Dr BRAD PETTITT — by leave: I move —

New Clause 33A

Page 51, after line 31 — To insert —

33A. Section 60 amended

In section 60(1) —

(a) in paragraph (b) delete “lessor or”; and

(b) in paragraph (c) delete “75A” and insert:

75A, 75B

Page 52, after line 1 — To insert:

(1) Delete section 64(1) and (2) and insert:

(1) A lessor may give a tenant notice of termination of a residential tenancy agreement that creates a periodic tenancy on the grounds that the lessor genuinely intends —

(a) to live in the premises; or

(b) the lessor’s immediate relative to live in the premises; or

(c) another person who has a close family or personal relationship with the lessor to live in the premises; or

(d) to sell the premises; or

(e) to reconstruct, renovate or make major repairs to the premises, which cannot reasonably be carried out with the tenant living in the premises; or

(f) to use the premises for another lawful use other than as a home.

(1A) The notice of termination must be accompanied by written evidence supporting the lessor's ground for the notice.

Examples for this subsection:

A statutory declaration, a development application and a quote from a tradesperson for renovations.

(2) The notice of termination must give at least the following period of notice before the day on which the tenant is required to give the lessor possession of the premises —

(a) for a ground mentioned in subsection (1)(e) — 3 months;

(b) for a ground mentioned in subsection (1)(f) — 6 months;

(c) in any other case — 60 days.

Note: The heading to amended 64 is to read:

Notice of termination of periodic tenancy by lessor on particular grounds

New Clause 34A

Page 52, after line 16 — To insert —

(1) In section 70A(1) in the definition of possession day delete "tenant and has the meaning affected by subsection (6)." and insert:

tenant.

(2) In section 70A(2) delete "the lessor or tenant has given a notice of termination of the agreement to the other party" and insert:

the tenant gives a notice of termination of the agreement to the lessor

(3) Delete section 70A(6) and (7).

Note: The heading to amended section 70A is to read:

Notice of termination by tenant at end of fixed term tenancy

New Clause 36A

Page 52, after line 30 — To insert —

36A. Section 72 amended

In section 72(1) delete "a lessor or".

Hon SUE ELLERY: This is a set of amendments that go to what I will broadly describe as "the no-grounds provisions". Speaking broadly to them, the guts of the amendments, if you like, is in amendment 13/34. I will give the government's position on that and indicate that we will oppose each amendment and therefore oppose the bloc.

The substantive amendment is at 13/34, and it proposes to delete without-grounds termination in relation to periodic agreements and replace them with a set of specified grounds. We do not support the removal of without-grounds termination. Extensive consultation was undertaken with key stakeholders throughout the development of these reforms, and the government made the judgement that without-grounds provisions may result in investors deciding not to invest in the WA rental market. It is the government's view that the state of the rental market at the moment is such that the government should not take action that would make any more precarious decisions by investors to put their investment properties on the long-term rental market. For example, in the bill next before the chamber, we will try to encourage one of the policy positions that sits alongside that bill. We will try to encourage short-term rental accommodation owners to make their properties available on the long-term market. The government has decided to act cautiously in this matter. I know it is a matter of some contention.

We debated it at large in clause 1, so I do not intend to go over all that debate again, but the government will not support this bloc of amendments.

Hon Dr BRAD PETTITT: I thank the Leader of the House for restating that position. This is perhaps one of the key opportunities that this bill should be addressing, and hence the amendments before us. There are 700 000-odd renters in Western Australia right now and today under the current system any one of those could be given an

eviction notice without reason, which is known as a no-fault or a no-grounds eviction. It is worth remembering that we are now the only state with no-grounds evictions. These amendments would bring WA in line with the rest of the country. Five jurisdictions in Australia have already banned no-grounds evictions and the others are in the process of doing so. We will not get another bill on rental tenancies for many years ahead, so now is the time to get it right. There are good reasons for this. I will give a few quick statistics. First, 63 per cent of tenants have reported that one of the reasons they are too scared to ask for necessary maintenance or repairs to their property in case it leads to eviction is that, under the current system, there can be evictions without grounds. Similarly, 41 per cent of renters feel powerless to negotiate rent increases for fear that they will lose their lease because of no-grounds evictions. On the other side of the equation, extraordinarily, 74 per cent of Western Australians, including the majority of landlords surveyed, support removing no-grounds evictions.

I appreciate that we had this debate on clause 1, but I think it was really important to restate that. I remind members that Western Australia is being left behind in making renting fair and making renting a viable alternative for the many Western Australians who have now been priced out of the housing market and will be renting for the rest of their lives. We need to make sure that renting gives people a safe, long-term option in which the balance is properly corrected for no-fault evictions. There are still plenty of good reasons to evict people, but it is no longer reasonable or tenable in a modern Residential Tenancies Act for a no-fault eviction to be done with just 60 days' notice, and that is why I have moved the bloc of amendments before us.

Hon WILSON TUCKER: I will save my substantive comments on no-grounds evictions as I have some amendments on the supplementary notice paper. I would like to take this opportunity to ask a few questions about genuine-grounds evictions. This is building on the removal of no-grounds evictions and adding in genuine grounds and reasons why someone can be evicted. The consultation regulatory impact statement indicates that, for the period February 2018 to March 2019, the bond administrator conducted a survey of lessors and tenants at the time of the disposal of the security bond. The purpose of the survey was to get an understanding of which party was terminating the tenancy agreement and which provisions of the RTA were being used. A total of 23 445 responses were received during that period. The responses showed that there were only 418 terminations under the no-grounds provision, which I believe equates to around two per cent. It is a very small number. What I would like to understand for the purpose of this debate is whether the government has any more up-to-date data. I expect that that number would not have changed all that much between 2018 and 2024. A survey conducted by the Make Renting Fair Alliance found that a minority of people are being evicted through no-grounds evictions. It was also determined that a lot of landlords were not aware of no-grounds evictions; it is used only in a very small number of cases. It does not play highly in the judgement or the decision-making of most landlords, certainly not for those who are renting out their property. I am trying to determine whether the government has any more up-to-date data or a more relevant dataset on the number of no-grounds evictions beyond 2018.

Hon SUE ELLERY: No.

Hon WILSON TUCKER: Why? This survey was conducted by the bond administrator, but I imagine that this data is recorded. Can the minister please elaborate on whether it is or is not recorded?

Hon SUE ELLERY: No, it is not collected on a regular basis. There is no obligation for lessors to tell the bond administrator the reason for the termination or the reason they are requesting that the bond be returned, other than that the lease has ended. They do not need to provide reasons.

Hon WILSON TUCKER: That is disappointing. I think we can determine from that two per cent rate and the survey that was conducted recently that a small number of people are still being evicted on no grounds. I am confused about why the government is not entertaining removing that provision. Be that as it may, I would like to point out that an impact analysis was conducted and the possible options around retaining and removing no-grounds evictions were reviewed. There was also another option to replace no-grounds terminations with prescribed grounds for a lessor to terminate a tenancy agreement. During the consultation process, the potential benefits and disadvantages were outlined. The crux of that survey was that there would be no discernible disadvantages to the government. Removing no-grounds terminations and replacing them with genuine-grounds terminations did not seem to be an issue and the result was that it would not affect the government at all. What are the disadvantages and why did the government not adopt that option and replace no-grounds terminations with genuine-grounds terminations?

Hon SUE ELLERY: I have answered that question. We had an extensive debate on clause 1. I am not repeating the arguments. The only additional point I will make is that the CRIS was done pre-COVID. The investment market has changed, the residential market has changed and the world has changed post-COVID.

Division

Amendments put and a division taken, the Deputy Chair (Hon Dr Brian Walker) casting his vote with the ayes, with the following result —

Ayes (3)

Hon Wilson Tucker	Hon Dr Brian Walker	Hon Dr Brad Pettitt *(Teller)*

Noes (27)

Hon Martin Aldridge	Hon Sue Ellery	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Klara Andric	Hon Donna Faragher	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Nick Goiran	Hon Stephen Pratt	Hon Neil Thomson
Hon Sandra Carr	Hon Lorna Harper	Hon Martin Pritchard	Hon Darren West
Hon Peter Collier	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Colin de Grussa	Hon Steve Martin	Hon Tjorn Sibma	

Amendments thus negatived.

Clause put and passed.

Clause 34: Section 64 amended —

Hon WILSON TUCKER: I have an amendment related to clause 34 on the supplementary notice paper. I am not planning on moving the amendment; I am just putting on record my opposition to the clause. The amendment speaks to proposed section 64, which relates to no-grounds evictions. I will deal with no-grounds evictions concurrently in later clauses, but for the purposes of this clause, it is really around the court appeal process and extending the length, which is around 60 days. It is a technicality. It will clean up the bill and relates to my general opposition to no-grounds evictions. I will not move the amendment; I will just put on the record that I oppose this clause.

Hon Dr BRAD PETTITT — by leave: I move —

Page 52, after line 16 — To insert —

(2) After section 64(5) insert:

(6) Also, this section does not apply in relation to a social housing tenancy agreement as defined in section 71A

Page 52, after line 16 — To insert —

34A. Section 70A amended

After section 70A(2) insert:

(2A) However, a lessor under a social housing tenancy agreement (as defined in section 71A) may not give a notice of termination of the agreement under this section unless a ground for terminating the agreement stated in section 71BA(2) exists.

Note for this subsection:

Section 71BA(2) provides for the only grounds on which a lessor under a social housing tenancy agreement may terminate the agreement.

Page 52, after line 22 — To insert —

35A. Section 71BA inserted

At the end of Part V Division 3 Subdivision 1 insert:

71BA. Termination of social housing tenancy agreement by lessor

(1) This section provides for the grounds on which a lessor may —

(a) terminate a social housing tenancy agreement that creates a periodic tenancy; or

(b) terminate, under section 70A, a social housing tenancy agreement that creates a tenancy for a fixed term.

(1) The lessor may give the tenant notice of termination of the social housing tenancy agreement on the ground that the lessor genuinely intends —

(a) to sell the premises; or

(b) to reconstruct, renovate or make major repairs to the premises, which cannot reasonably be carried out with the tenant living in the premises; or

(c) to use the premises for another lawful use other than as social housing premises.

(3) The notice of termination must give at least 90 days before the day on which the tenant is required to give the lessor possession of the premises.

(4) The tenant may, within 7 days after receiving the notice of termination, apply to a competent court for an order that the period of notice be extended by a further period of up to 60 days.

(5) On an application under subsection (4) the court may, as it thinks fit having regard to the justice and merits of the case —

(a) extend the period of notice for a further period of up to 60 days; or

(b) make an order that the notice does not terminate the social housing tenancy agreement; or

(c) make an order terminating the agreement and for possession of the premises and specify the day on which the order for possession takes effect, being the later of —

(i) a day not less than 60 days after the day on which the notice of termination was received; or

(ii) a day within 7 days after the day on which the order was made.

This is a different amendment taking on the feedback that we received from the Leader of the House and others and from the government position on why it does not support no-grounds evictions. We heard the minister say just a few minutes ago that they did not want to do anything that may lead to less investment in the WA rental market. Hon Sue Ellery made a comment when we were last talking about this, stating —

> We made deliberate decisions to improve things that tenants are entitled to but also a very deliberate decision to not interfere in the decision-making of those investors.

Although I do not agree with that, I can understand where the government has been coming from. We have a tight rental market and I understand the rationale at least, even though we highlighted in the clause 1 debate that there is not much evidence for this. However, I at least understand that the government wants to do everything it can to encourage investment in the private rental market.

This does not apply to social housing. It might surprise some members, and I think it will surprise many members of the public, that people in social housing can also be evicted, often into homelessness, on no grounds. The government uses no-grounds evictions in social housing. If this government will not do what the rest of the country is doing in terms of the broader housing market and the private sector, then at the very least, when it comes to public housing and social housing, it should ban no-cause, no-fault evictions.

The people in this housing are often the most vulnerable people in our society. As the largest landlord in the state, the WA government should not, without the many good reasons available to it, be evicting people with no cause, often into homelessness. There are good procedural reasons for this. When the Department of Communities uses a without-grounds termination process, tenants are deprived of any independent process to test the department's non-reasons for termination or to be provided with explanations. The current Residential Tenancies Act provides a range of for-cause eviction processes that the Housing Authority could use, including provisions for urgent terminations in the case of serious damage or injury.

This is quite a modest amendment—one that I do not actually think goes far enough, but one that certainly should be a modest and sensible step to at least end no-grounds evictions for social housing. In the spirit of compromise, I commend this amendment to the chamber.

Hon SUE ELLERY: I indicate that we will be opposing the bloc. The government does not support amendment 23/34, which is about the removal of without-grounds termination, including in relation to social housing tenancy agreements. An amendment of this nature would create a two-tiered system, with tenants in social housing tenancies having different rights from tenants in private tenancies. It is the same reason for amendment 24/NC34A. That one would amend proposed section 70A such that a social housing landlord could not terminate a tenancy without giving notice unless specified for particular grounds. Amendment 25/NC35A is the same regarding social housing tenancy agreements. It would create a two-tiered system, with social housing tenancies having different rights. The inclusion of a list of specified grounds would run the risk of not all circumstances in which it would be appropriate to terminate a tenancy being covered. A change of this nature would require extensive consultation to ensure that all reasonable grounds for termination of a tenancy are included. It is not appropriate to include those amendments in this bill. The government will be opposing the bloc.

Hon Dr BRAD PETTITT: I have some questions to follow up on that. One of the key reasons given was about having different rights from private tenancies. I am trying to understand why that is significant, given that we already know the way that public housing works. In fact, the very nature of public housing is that those tenants experience different rights, one of those being reduced rent that is subsidised by the state. It is right that they do not have to pay market rates. Why is this not an opportunity for the government to actually show leadership and demonstrate how

no-cause evictions could work? I am truly trying to understand. On what basis is the government saying that there must be the same rights or conditions, as it has been framed, over social and public housing, given that the nature of that is already quite fundamentally different?

Hon SUE ELLERY: With the greatest respect, honourable member, I reject the assertion that our government is not showing leadership in terms of its expectations of the tenants of social housing. I think we are showing leadership in terms of what we expect from tenants of social housing. As the honourable member rightly pointed out, those tenants already get recognition of their particular economic circumstances, which might occur for a whole range of reasons, including mental health or unemployment reasons. I will not accept the proposition that it is a failure of leadership. The government reserves the right to say that it expects the same standards to apply to the conduct of tenants, such as the provisions around how they keep their homes.

Hon Dr Brad Pettitt: But both of those are causes. This is about no-cause evictions. By interjection, both of those are already valid causes under the act.

Hon SUE ELLERY: The point I am trying to make is that I reject the honourable member's assertion that because we say that we have the same expectations of tenants in social housing as we do of those in the private sector, that is a failure of leadership. It is a judgement call that the member is entitled to make, and I respect that.

Hon Dr Brad Pettitt: I didn't say that, for the record.

Hon SUE ELLERY: I think that is what Hon Dr Brad Pettitt did say. In any event, for the reasons I have already outlined, we are not going to support the amendments. I do not take anything away from the right of both Hon Dr Brad Pettitt and Hon Wilson Tucker to argue their points, but they cannot have it both ways by having a lengthy debate on clause 1 and then revisiting all those arguments and asking the same questions when we get to these amendments. I am not going to take a long time to refute the propositions, but the government will not accept the amendments.

Hon Dr BRAD PETTITT: To be clear, we have not discussed social housing in particular at any point in this debate, including on clause 1, to the best of my knowledge. The only points against no-grounds eviction that were raised by the Leader of the House during the clause 1 debate were always framed in the context that we do not want to impact the private rental investment market. This amendment would not do that. I understand the rationale for saying that, but the fundamental part of this amendment is that it would not impact the private market, it would not impact investment and it would not impact new private rentals coming onto the market; all it would do is bring the WA public housing sector in line with the rest of the country. One key, fundamental right around housing is that someone should not be able to be evicted without cause. It is an entirely reasonable amendment and I do not understand why the government will not support it. The only reason I can think of is a pretty horrible one—that it wants to be able to keep evicting tenants without reason or without cause. That is fundamentally the reason. I am getting looks from members on the other side and shakes of the head. Well, I would love to hear another reason that this government will not get rid of no-cause eviction from social housing in this state, because I cannot think of another reason. That is my comment. My question is: the Leader of the House said that there needed to be extensive consultation before something like this could be entertained, but given that the government is the sole owner of these properties, who would need to be consulted if something like this were to happen?

Hon SUE ELLERY: It would be the Department of Communities. The very nature of, I guess, some of the most challenging tenants would be such that there would need to be extensive consideration of how to protect the rights of the state against the rights of those individuals when it comes to how to apply no-grounds eviction. That would need a lot more consideration than has gone into the provisions before us now. I take the honourable member's point about not having to consult with a thousand different stakeholders, but, effectively, Communities would have to consult with advocates of public housing tenants. I understand the point that the honourable member is making. This was considered by government when we were putting the bill together. The government's position is that we do not believe it is appropriate to change the provisions as they apply to social housing tenants.

Hon WILSON TUCKER: I would like to try to understand how often the Department of Communities is using no-grounds evictions to evict people from public housing. I have previously asked some questions about this, but I have not got that far to be honest. Is the Leader of the House able to give the chamber an update or some data on how often, within a year time frame, no-grounds evictions from public housing have occurred?

Hon SUE ELLERY: No. I am not the Minister for Community Services, honourable member, so I do not have that information. The advisers who are with me are not from the Department of Communities.

Hon WILSON TUCKER: I think we will be going through this bill for a little while longer. Is the Leader of the House able to take that on notice?

Hon SUE ELLERY: No. There is another way in which the honourable member can ask a question on notice or a question without some notice. I am happy to give the honourable member an undertaking that I will raise his

question with the minister, and if the minister wants to provide the member with some information outside this process, she will do that. I will raise the member's concern with her, but I am not able to provide that information during the course of this debate.

Hon WILSON TUCKER: I have asked a number of questions in this chamber. I believe one may have been on notice. I have been trying to go down this wormhole to get a number, but I keep getting a lot of bureaucratic answers back. It has taken at least two or three weeks and I am stilling hunting for that number. I think it is important to get some visibility here, because if no-grounds eviction is not used very often, it might even exonerate the government's use of it. I understand that no-grounds eviction of people from public housing is probably applicable in some instances, but I think we would all like to see some information. The debate on this bill is likely to continue for a number of hours. If it continues beyond the dinner break, is the Leader of the House able to take that on notice and potentially raise it with the appropriate minister?

Hon SUE ELLERY: No. I have already given the honourable member an undertaking. I am not the Minister for Community Services and I do not have the Minister for Community Services here. I have given the honourable member a personal undertaking that, outside the consideration of the bill, I will raise his concerns with the relevant minister and she can seek to provide the honourable member with the information as she sees fit. I will not hold up the bill to get that information and I do not have it available to me at the table.

Hon Dr BRAD PETTITT: I will follow up that very good question from Hon Wilson Tucker. I will put this out there and I am happy for the footage to be tendered. The information I have is that over a decade-long reporting period, from 2013–14 to 2021–22, over 30 per cent of tenants, or 1 264 people and/or families, including children, were evicted from public housing with no grounds—over 30 per cent! I am putting that on the table from the evidence that I have. If the minister wants to say that is wrong, it is not; that is the data we have received from stakeholders. I think it is really important. This is why this amendment is significant. At the heart of it is that we are not using no-grounds eviction on rare occasions; it is used almost a third of the time to evict people from social and public housing, and that is not good enough. That is why this amendment is so important. I put to the minister that if she thinks those numbers are wrong, I am very happy to be corrected, but they are the best numbers I have got.

Amendments put and negatived.

New clause 34A —

Hon WILSON TUCKER: I have two amendments relating to new clause 34A. Basically, all the amendments I have on the notice paper are related to no-grounds evictions.

The DEPUTY CHAIR: Hon Wilson Tucker, there needs to be a question before the chair before I can let you proceed. Is it your intention to move one amendment or both amendments on the supplementary notice paper at this time?

Hon WILSON TUCKER: I intend to move both amendments on the notice paper concurrently.

The DEPUTY CHAIR: You need to seek leave to move them.

Hon WILSON TUCKER — by leave: I move —

Page 52, after line 16 — To insert —

34A. Section 64 deleted

Delete section 64.

Page 52, after line 16 — To insert —

34A. Section 65 amended

Delete section 65(1) and insert:

(1) Where proceedings are pending for an order, or an order is in force, under section 32 fixing the maximum rent in respect of premises the subject of a residential tenancy agreement, any notice of termination of the agreement given by the lessor is ineffectual unless first authorised by a competent court under subsection (2).

These amendments relate to no-grounds evictions. I raised this as part of the clause 1 debate. I do not intend to take up more time rehashing old arguments, but I think it is important to spend this time to summarise no-grounds evictions, really try to voice my opposition to them and perhaps pose some questions about the lack of evidence for the government's decision not to remove no-grounds evictions so far.

When we talk about renters' rights, there are 700 000 renters in WA, and they are about 30 per cent of the population. I am a renter, and I believe I am one of the only renters in the WA Parliament. In the last couple of days, I have

been served with an eviction notice. My fixed-term tenancy has come to an end, my landlord has decided not to renew the tenancy using a no-grounds evictions clause, and I will be joining thousands of people competing for a handful of properties in what is now the tightest rental market in the country.

As difficult as this may be for me, I know a lot of people are in a much more difficult situation. Families out there are looking for a home, and people are rocking up to home opens and literally competing against hundreds of people for a single property. As highlighted in the Make Renting Fair survey data, a lot of renters feel that they cannot exercise their rights. They cannot speak up if the property is in a terrible condition, and they do not feel that they have the right of reply. In some cases, they feel that they are being taken advantage of. They cannot speak up, and they cannot raise their opposition for fear of reprisal and the metaphorical axe hanging over their heads, which is no-grounds evictions. Given how tight the rental market is, a no-grounds eviction could mean that renters are evicted and essentially homeless.

It has been said before that WA is the only state or territory in Australia that is not removing or has not removed no-grounds evictions. The government's own consultation process highlighted this and came up with a recommendation to remove it. Cabinet is not talking to the public sector here; there is a complete disconnect. In recent weeks, we heard from Hon Sue Ellery, the Minister for Commerce, that the government's position is that it does not want to remove no-grounds evictions for fear of spooking the investment market, which is a fair concern. Given how tight the rental market is, I can understand where the minister is coming from, but we have not seen the evidence to back this up. Hon Dr Brad Pettitt and I have asked questions about this in question time. Is it just a finger in the wind by this government? Where is the evidence or the data? We have seen data contrary to this from other jurisdictions in the east coast that have not seen any disinvestment in the property market after removing no-grounds evictions. The Minister for Housing, John Carey, said that he has not consulted with his eastern states counterparts about no-grounds evictions. It feels like this government has a finger in the wind; it has not consulted, and it has blinkers on. Disappointingly and perhaps unsurprisingly, it has sided with the real estate industry and property developers over the state's 700 000 renters.

It is disappointing because, as the minister said, we are dealing with this bill right now; there is no assurance when tranche 2 will be coming. There is no continuity of service here. We are about to head into an election period. This government will disband, and when it comes back, there will be nothing compelling it to revisit this in the next term. We will have to live with this, and renters will have to live with this for a very long time.

We know of hundreds of horror stories from renters. I have had those conversations, and I am sure that all members here are familiar with them. As we have these conversations and hear these stories, it is frustrating because no reprieve or release will be coming, certainly not in the form of this Residential Tenancies Amendment Bill. The bill has some good elements, but they are all overshadowed by no-grounds evictions. Allowing pets and modifications is all fine, but if renters cannot speak up or voice their concerns, what is the point? From the data, we see that a lot of renters are concerned about speaking up and voicing their opinions. Given how tight the rental market is, the power balance is completely with landlords to the detriment of renters. In a nutshell, that is why I am opposing section 64 and why I am so concerned about no-grounds evictions.

Division

Amendments put and a division taken, the Chair of Committees casting his vote with the noes, with the following result —

Ayes (3)

Hon Dr Brad Pettitt	Hon Dr Brian Walker	Hon Wilson Tucker *(Teller)*

Noes (27)

Hon Martin Aldridge	Hon Sue Ellery	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Klara Andric	Hon Donna Faragher	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Nick Goiran	Hon Stephen Pratt	Hon Neil Thomson
Hon Sandra Carr	Hon Lorna Harper	Hon Martin Pritchard	Hon Darren West
Hon Peter Collier	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Rosie Sahanna	Hon Peter Foster (*Teller*)
Hon Colin de Grussa	Hon Steve Martin	Hon Tjorn Sibma	

Amendments thus negatived.

Clause put and passed.

The CHAIR: Hon Dr Brad Pettitt, can I just check that it is not your intention to move amendment 16/NC36B?

Hon Dr BRAD PETTITT: I have been advised that it is redundant because an earlier amendment was not moved.

Clauses 35 to 42 put and passed.

Clause 43: Part 5A inserted —

Hon NEIL THOMSON: I refer to proposed section 81M, "Paying amount of bond assistance loan to Housing Authority". I specifically refer to proposed subsection (4), which states —

> The balance of the tenant's security bond refund amount that is not paid to the Housing Authority under subsection (3)(if any), becomes the amount of the security bond payable to the tenant under this Division.

I understand that. That is logical; the bond is paid back. If there is a call on the bond—the minister might be able to tell me where it appears—for damages to the property and outstanding funds have still not been repaid, who gets the first call on the funds? I assume the bond is a bond, and that goes to the landlord. Regardless of whether the loan has been repaid, there could still be an outstanding loan amount after the payment of the bond to the landlord. Is that correct?

Hon SUE ELLERY: I refer the member to proposed subsection (2)(a), which states —

> an amount of the security bond for a residential tenancy agreement is payable to a tenant under this Division …

The bond will always go to the landlord first and then to the tenant.

Hon NEIL THOMSON: Is this a new provision or is it in the existing legislation? I do not have the blue bill.

Hon SUE ELLERY: It is new. It will allow the bond agency to pay direct to the Housing Authority. The current arrangement is that the bond agency pays the tenant and the tenant then has an obligation to pay the Housing Authority. This goes directly, in the first instance, to the Housing Authority.

Hon NEIL THOMSON: Obviously, this is one of these provisions that we support. It is a sensible provision in that it does not provide the opportunity for the tenant not to pay in the case when they have not repaid, and additional effort would be required to get them to pay.

By way of information, does the department or the commissioner have any view on the potential savings to the state that might arise out of this provision coming into effect?

Hon SUE ELLERY: No, the commissioner does not. If the member were interested in that, he could direct a question to the Minister for Community Services because it is the Department of Communities' loan system.

Hon NEIL THOMSON: I refer to proposed section 81T, "Unclaimed security bonds". I assume that a number of unclaimed security bonds are already in the system. By way of clarification, do those unclaimed security bonds end up in the unclaimed moneys register or whatever it is called that Treasury operates?

Hon SUE ELLERY: I am advised that the answer is yes. If it helps the honourable member, I am also advised that this provision was taken straight out of the existing schedule 1 in the act, so it is not new.

Clause put and passed.

Clauses 44 to 61 put and passed.

Clause 62: Act amended —

Hon NEIL THOMSON: In relation to residential parks and by way of completing my interrogation of this bill, I refer to clause 62, which just states —

> This Part amends the Residential Parks (Long-stay Tenants) Act …

My question relates to the impact of this legislation on long-stay tenants and residential parks. To the degree to which the other provisions impact on that act, what level of discussion has there been with the sector in relation to that very important sector for overflow and last-resort tenancy? Could I get some read on the impact of that aspect of the bill having an impact on the requirements of an owner and/or lessor in that situation?

Hon SUE ELLERY: I am advised that these are not new provisions in the Residential Tenancies Act. There are some consequential amendments. It will put into this bill the changes that were already made to, for example, bond arrangements. I am advised there is no substantive difference. If your question was: is there is a new set of obligations? No.

Clause put and passed.

Clauses 63 to 65 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Minister for Commerce)**, and passed.