

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 November 2023.)

Mr TEAGUE (Heysen) (19:52): I rise to address the bill and at the outset indicate that I will be the lead speaker for the opposition. I indicate that the opposition opposes the bill and I will make some remarks in relation to the reasons for that view. I also indicate, as I have to the government, that as presently advised the opposition is not moving amendments in this place, and consider that with a view to the possibility of doing so in another place in due course. I look to flesh out the areas of particular concern in the course of my contribution on the second reading.

Such is the nature of the amendment bill that it is perhaps particularly suited to the consideration of the various discrete topics that are the subject of the bill in the course of the committee process. I flag, therefore, the opportunity in committee to go through those discrete topics, although, as I say, with a view to moving any ultimate amendments in another place in due course.

Perhaps at the outset, I just make the observation by reference to the Residential Tenancies Act 1995, the principal act that this bill would amend, that it is a reasonable body of legislation but quite straightforward in many ways as well. It is structured according to nine parts, or 10 if you include part 5A dealing with the database, but really concerning itself with firstly the administration and the oversight responsibilities for the legislation. It is consumer protection legislation in large part. It spells out the jurisdiction of SACAT in part 3 and provides for various specific aspects of the enforcement of obligations as between tenants and landlords.

The primary purpose of the act, I just make the observation, is to underscore the mutual nature of the relationship between tenant and landlord; in fact, part 4 bears that title. The bulk of the body of the act is concerned with the rights and obligations of landlord and tenant, and indeed part 5, dealing with termination, is very much characterised in terms of the mutual rights of landlord and tenant, including in some key respects really mirroring the rights of landlord and tenant, one key example of which is the obligation on both sides, as it presently stands, to give 28 days' notice of the termination of a fixed-term tenancy at the end of such a fixed term.

I come in a moment to deal with the changes. We now move to a circumstance in which, for want of a better term, the dial is very much shifted by the provisions, particularly with respect to termination, in favour of the more unilateral rights of a tenant.

There can be no doubt about the fact that, in this environment, there is a healthy dose of consumer protection and there is the need to ensure that, so far as is reasonably possible to facilitate by ameliorative legislation, parties to this particular kind of contract

are as equal in their bargaining power as can be in order to make good one of those basic foundational aspects of the law of contract: that parties come freely, they form a consensus, and they contract with relatively equal bargaining power. I underscore the importance of the fact that we are talking about a contract between willing parties and the emphasis in the current legislation on the mutuality of the rights and obligations as between tenant and landlord.

The changes that are the subject of the bill, as I have indicated, shift the dial, and quite deliberately on the face of it, to increase the rights of a tenant when dealing with any individual tenancy contract. The merits of that can be debated, and it is important that we think carefully about making sure that there is no disadvantage as between one party and another, but I just come back to that foundational point: we are dealing with a contract between parties freely entered into, and we ought not impose more than is necessary in order to ensure that that arrangement can indeed be entered into freely.

The bigger picture concern is what happens outside the four walls of the legislation: the impact that legislation of this kind can have on those broader drivers for investment, for the availability of rental property and the individual decision-making of landlords in particular, who will see as the result of the legislation their freedom of contract really substantially constrained by the provisions of these amendments.

To be really clear, having identified the structure of the act as it currently stands, section 115 in part 9 makes it very clear that these are not only guiding provisions to be adjudicated upon by SACAT. They are core to any residential tenancy, and any attempt to exclude the provisions of the act will be void. In fact, to be clear, section 115 provides that, under the heading 'Contract to avoid Act':

(1) An agreement or arrangement that is inconsistent with this Act or purports to exclude, modify or restrict the operation of this Act, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void.

(2) A purported waiver of a right under this Act is void.

(3) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Act...is guilty of an offence.

And there is a very substantial penalty associated with it. In that very direct sense, the provisions of this act ought to be read as mandatory terms of the contract between tenant and landlord.

There are a range of provisions here that invoke reasonableness in one way or another by different words. There is the introduction of the concept of what might be disproportionate with respect to a rental review—and I will come to that in a moment—that will require ultimately adjudication by SACAT. But it ought be borne clearly in mind

that these are effectively unavoidable provisions of a contract between landlord and tenant.

In a highlight kind of way, they really set significantly on rails the whole subject matter of rent, the question of housing standards and the consequences of housing standards, termination and notice of termination as I have addressed at the outset, and, in a very critical way, rights in relation to termination and of notice that go together and, importantly as well, the vexed balancing topic about pets and the regulation of permitting and managing risks associated with pets. They are high-line, central core issues to any tenancy agreement that are addressed, the subject of the bill.

I will come back to it perhaps when stepping through the relevant provisions, but it is worth noting that the bill adopts a structure of requiring a particular trigger in the nature of breach or some other circumstance in order for the exercise of rights to be permitted but, in several respects, there is then reserve to regulation the particulars of the relevant trigger to exercise ordinary rights. That might be ameliorative. It might make more rigid the circumstances in which rights including termination may be exercised. So I just want to be very clear about those baseline parameters.

The concern that the opposition has about the consequences going forward should the bill in its present form be enacted goes to both the particular consequences in terms of those provisions of every residential tenancy and the macro: the effect that it will have on the incentive to invest and make available properties for residential tenancies in the future.

That bigger question we can all have arguments about, both economic and ideological, and everywhere else in between. There is a certain amount of speculation about the consequences of shifting the dial in this way across the board towards constraining the freedom of contract by these means, but what we know is that there is now to be a really very significant change to the landscape, a very significant change to the nature of the relationship between a landlord and a tenant.

Just to illustrate the status quo by what was a relatively recent amendment to the act, an amendment, as I understand it, by act No. 13 of 2013 in part 5 of the act that provided for the continuation of a fixed-term lease that was not terminated, converting it to a periodic tenancy, and then by mirroring provisions in division 1 and division 2 respectively, sections 83A and 86A, we saw the right and the obligation of both the landlord and the tenant to give appropriate notice of intent at the end of a tenancy.

As I said at the outset, it goes to what is at the core of the act, which is the establishment of a mutuality of rights and obligations between landlord and tenant, which is very important in terms of maintaining the principle of freedom of contract.

To address concern about where this will leave administration and enforcement, there are to be now a number of circumstances under which the South Australian Civil and Administrative Tribunal (SACAT), with jurisdiction to deal with disputes or differences or

matters of necessary interpretation, will be called upon to either be a much more necessarily early point of recourse for a landlord or a tenant or, in certain circumstances, needing to be called upon to make some law in terms of determining what has been, until now, subject matter that is hardly touched upon by the existing act.

That includes determination, for example, the subject of clause 16, the amendment of section 56, and the concept that is introduced there of what disproportionate might mean in terms of assessing a proposed increase in rent from time to time.

The headline point is that SACAT will become, I think, a body that is much more familiar in terms of the day-to-day life of landlords and tenants should these amendments be applied because we will be moving away from that mutuality of right and obligation. We will be moving away from the capacity for these two particular parties to an otherwise private agreement to freely contract between each other.

It is not only me saying this and it is not only the opposition bringing these concerns to the house and to the parliament. I do want to emphasise that this is not a rash or hasty set of provisions that has been brought to the parliament. I recognise there has been considerable work done over a period of many months to determine that, right, this is what we want to bring.

We have seen a first tranche of amendments prior to this really much more substantial bill coming to the parliament now and it has been the subject of detailed consideration, in particular by the Real Estate Institute of South Australia, but I think it is probably fair to observe—and the minister might be able to in a more detailed way particularise that in the course of the committee or subsequently—and I get the impression that those in the industry, those involved in oversight of these agreements on behalf of both tenants and landlords, are well aware of the subject matter that is being traversed here.

To the extent that there is controversy about how the dial is being shifted and to what extent, then those differences are well known. It might ultimately be a matter, as we have become used to over these recent months, that the government will have its way here in this house at least and the government will need to satisfy a small number of members in another place, and that will be how the outcome ensues.

I do not pretend that some clumsy remarks from me in the course of the debate are necessarily going to be particularly persuasive, but nonetheless the concerns both as to the capacity of two particular parties freely to enter into a contract with mutual rights and obligations, so far as possible with an equality of bargaining power and with relevant protections, is an important matter and, to the extent that we are derogating from that, then we ought to do so only very carefully.

As to the broader consequences, in terms of the availability of tenantable properties, the extent to which investors will wish to invest in residential property and all the rest of it, again, I will readily concede there will be a range of views about it. I fear that the

result of the legislation will be to reduce incentives and to create an atmosphere of concern for landlords about the nature of their exposure to risk in a whole variety of circumstances, and I will address that, but I think it is safe to say that there is a widespread awareness of the process that has been undertaken over recent months.

One individual observation to perhaps make that good before I get to some of the industry bodies that have given some careful consideration to the proposals and expressed their view might be just to refer to an email that was sent to my colleague earlier this year of what at that point was in consideration in draft, and this from a professional property manager, expressing concern about that core point about the freedom of contract but then addressing some of the practical issues that have already been experienced in the industry and then are certainly feared should the bill proceed in its present form.

The property manager indicates that he writes on behalf of the 20 staff specialists in that particular business and makes the observation that together they have 140 years or so of experience in the industry and make the confident observation that they know what they do and they do it very well, so much so that there are here referred a number of steps that have been taken by this particular property manager and his firm unilaterally, as it were, to attempt to see what might flow from applying different notice periods and so on. I will get to that and let his words speak. He says, and I quote:

We are concerned with the amendments to the South Australian Residential Tenancy Act and the effects this may have on the rental market in South Australia. Although some changes are fair—

and I pause here to indicate that that is true to the opposition's observation as well. There are a number of reforms here that are uncontroversial and, to the extent that they might be controversial, they are supportable and meritorious.

Again, this is already a rather portmanteau approach to the second reading, but all the more so when we step through those individual provisions in the committee. I think we will find that there is a particular number of topics that will emerge, the subject of a small number of clauses that are highlighting those core concerns. There are a number of meritorious changes and that is important to observe. He goes on, and I quote:

We feel the South Australian government isn't seeking proper advice and can't see the negative effects of these changes—

and there are two in particular—

that they will have on tenants and on future investment in South Australia.

The first of those two that is highlighted is firstly, no-cause evictions, and he makes the observation:

It's worth noting that we do not evict tenants. Only SACAT can evict a tenant. As property managers and landlords we enter into a fixed-term contract with the tenant to rent the house for a period of time. Forcing a landlord to sign a lease renewal to someone that isn't fulfilling their contractual obligations will cause issues from the beginning steps of tenant selections. If the landlord is forced to renew to a tenant that is constantly in arrears, etc., the selection process will become tougher.

I pause here again to say that the retort might be, 'Well, if there's a tenant who's in breach of the agreement, there's a sure means of having a pathway to termination.' But it is not quite as simple as that as a matter of practicality. He goes on:

Landlords will be more selective with new tenants and we fear this will create a situation where young tenants entering the rental market, new arrivals to the country, will be looked over and not given opportunity.

Secondly: increasing notice periods. He makes the observation:

As the department manager, I implemented a 42-day notice period for our tenants to vacate due to the lack of available rentals on the market. This was done unilaterally.

However, he makes the observation:

It's already caused many problems. Once notice has been given and a vacate date set, an increasing amount of tenants have ceased rental payments as soon as the vacate notice is received, and this has prompted us to go back to the 28 days' notice to lower the losses to the landlord. This means that by the time the vacate date has been reached, the tenant is six weeks in arrears, plus any damages which the bond doesn't cover.

With the bond amount now being four weeks and the new proposed notice period being almost eight weeks, we pre-empt the wait time for a SACAT hearing increasing to secure an order for the bond and remaining four weeks plus any damage. As the bond will not cover the total, we also pre-empt cases going further to debt collection and the Magistrates Court, clogging up South Australia's legal system. As an office, we have already seen a growing number of SACAT hearings and extended wait times for these hearings.

This particular property manager's perspective highlights the key concern that if a landlord does not have the right to enter into a fair, legally binding contract with a tenant, including a reasonable period of time to rent the property, the vulnerable will become more affected, as landlords will not give new renters a fair go, on the rare chance the tenant defaults and the tenancy cannot easily be ended.

Secondly, if the tenant will not sign a new lease agreement, the lease will become periodic and the no-cause eviction will apply. If the landlord needs to refinance their mortgage and they cannot do that without a fixed lease, it remains unclear the extent to which that has been considered. Concerns about the amount of the bond

exacerbating that are then raised, and the property manager, rather concerningly, cites that already—and this goes back to the middle of the year—20 landlords have indicated they would sell their properties in the course of the year. Twelve of those sold for non-rental purposes, for residents, with the result that from this rather contained sample there is then that many reduced number of tenancies needing to find a rental, the effect being to exacerbate the crisis.

The property manager has conducted a survey, making contact with 500 landlords, with the result that 20 per cent said that they would sell if these particular provisions were altered. That results, should that come to pass, on the maths, in 100 fewer rental properties being available. I draw that example to attention, having outlined concerns about the nature of the effect on the contract on the one hand and the perceived or foreshadowed effect on the broader question of the health of the market investment and the offering of tenancies.

That is just one series of observations from the perspective of experienced and practical property managers, whose interest of course is ensuring that there is availability of tenancies at prices that are fair for tenants, and that there is fairness also for landlords.

Of course, it is just their particular experience, and it is one that we ought well have particular regard to when considering changes that are not just setting a regulatory landscape or providing for oversight but are really very particularly applying themselves to each and every contract, each and every tenancy.

I referred to those headline topics of particular concern. I think just to restate them: rental, rights of termination and notice; the uncertainty of the provision of regulations in a variety of respects; the question of regulation of the keeping of pets on the premises; and the issue of compliance with minimum housing standards and the consequences that flow, responsibilities as defined by the bill. I propose to concentrate on those areas and one other I might say as well, and that is the subject of part 7 of the bill as it currently stands: providing for rooming houses that is the subject of clause 70 of the bill and on.

The particular concerns that have been raised by the Property Council of Australia in relation to drawing a necessary distinction between the very particular nature of what is termed purpose-built student accommodation, or PBSA, on the one hand, and rooming houses on another and the concern that the Property Council has raised about the incompatibility of PBSA accommodation with rooming houses and otherwise the so far inadequate, as they put it, provision for PBSA accommodation that is the subject of the bill. I understand that the Property Council has written to the minister as recently as today about that and it may be that there can be some further work in that regard or consideration, but I flag that that is one particular matter that has been drawn to attention by the Property Council.

I will step through in a moment the contribution of the Real Estate Institute of South Australia. There is what seems to me to be a high degree of courtesy and complimentary expression, I think, on the face of these contributions. I think we do not

want to be too quick to misread what appears to be a broadly complimentary set of observations about the bill as a whole, either from the Property Council or from the Real Estate Institute of South Australia, because they are both bodies that need to be in their nature the world's diplomats.

They will have priority issues and I do not want to put words in their mouth so I will stick to observations about what has been expressed, but we see the Property Council really quite deliberately focusing on the issue of the purpose-built student accommodation because that is an issue of acute concern. I would just caution against taking too much from opening observations about the agenda, perhaps bearing in mind that we might take it as a given that we are all working constantly towards enhancing the accessibility of rental housing across the state as the Property Council observes. That has to be the common objective. The test, really, is whether or not changes are going to have that desired outcome.

I also recognise that it is fair enough to think in some ways that if the objective is enhancing accessibility of rental housing across the state, then you might think that goes hand in hand with improving the circumstances in which tenants are able to access and enjoy that rental housing. They do not necessarily go together, and it may be that certain provisions here are shifting the dial of rights in the tenants' favour. The government might concede that that may well reduce the accessibility of rental housing across the state, but we are willing to do that because we think the tenants who are occupying on terms more unilaterally to those tenants' advantage will benefit sufficiently as to outweigh any detriment that flows from a broader detriment in terms of reduced availability of rental housing that might follow.

So I recognise the tension as well, and I think the goal must be towards a mutuality of obligations and rights and, in turn, as the Property Council says, towards the enhancement of the accessibility of rental housing across the state.

The Real Estate Institute of South Australia is to be commended, I respectfully observe. With respect I note with appreciation the work of Paul Edwards, who is the REISA's Legislation and Industry Adviser, who has led the preparation of a really quite careful and thorough submission clause by clause on the bill.

As I have indicated the Real Estate Institute of South Australia expresses support, if not wholehearted support, for quite a range of the measures that are the subject of the bill. But in a really quite neatly structured gradation of observations, where it does not support a particular provision it has applied a measure commencing with reserving support and then moves to opposing, strongly opposing, and in a number of cases very strongly opposing, measures that were, at the point of the submission that I am referring to, the subject of the consultation paper.

Regrettably from the point of view of the opposition and, I expect, from the point of view of the Real Estate Institute of South Australia as well, many of those who are in the very strongly opposed category appear in the bill we are now debating, so those

observations at the time of the circulation of the consultation paper remain apposite, and that work has proved to be valuable, if only recording what is no doubt going to need to remain a position in case the bill is not amended now or in the course of its passage through another place.

There are a couple of passages of the Real Estate Institute of South Australia's submission that address themselves to those key headline topics that I have addressed and that I bring to the house's attention and would refer to quite specifically. The first is with respect to section 56 of the act and the amendments under the heading 'Excessive rent'.

For those following, we are here talking about clause 16 of the bill. I have made reference already to the introduction of the term 'disproportionate' when considering the amount of a proposed increase in rent. For context, as is presently provided in section 56 of the act it is for the tribunal to consider and make any declaration in relation to rental payable under a residential tenancy being excessive. That is a provision of some long standing, and the power of the tribunal to make that determination is also uncontroversial and longstanding.

In subsection (2) of section 56, the tribunal is provided with a series of matters to which it is to have regard in determining this question of whether or not a proposed rental increase in particular is excessive. I will not stay to rehearse all those considerations, but it is at that point that the new proposed paragraph (fc) would be inserted as additional to the other specific considerations that the tribunal is already to have regard to. I might say that the tribunal is not constrained; there is a catch-all provision, and the tribunal can determine its own destiny to a pretty broad degree because it is empowered to consider any relevant matter outside of those that are more specifically identified.

What we have introduced—which is the first of the key points of opposition of the Real Estate Institute of South Australia as well—is a new provision that provides:

...if the rent has been increased—whether the increase was disproportionate considering the amount of rent payable...

This follows on from and is connected to the preceding paragraph:

(fb) if the rent was purportedly increased under section 55(2a)—

which is the previous section—

whether the tenant was put under any undue pressure to agree to the increase...

So the addition of what would be a new section 56(2)(fc) might be described as introducing unnecessary uncertainty in circumstances where there is already a very thoroughgoing range of identified factors. Nobody has set out to me what 'disproportionate' might mean in those circumstances. Should it be introduced by this

amending bill, then it is one of those areas for which the tribunal would be required to make some law and apply what it considers 'disproportionate' to mean in those circumstances.

I stress, as the Real Estate Institute of South Australia does, that there are already, if you like, proportional measures or relative measures that are the subject of section 56(2) including, perhaps chief among them, 56(2)(a) which is a mandatory provision:

(2) ...the Tribunal must have regard to—

(a) the general level of rents for comparable premises in the same or similar localities...

So the introduction of disproportion might overlap. It certainly introduces a fresh uncertainty in relation to the setting of, in particular, an increase in rent and it is a first, or if not first, it is a key point at which the Real Estate Institute opposes the particular measure.

The Real Estate Institute makes the observation, and I quote here from part of the contribution:

Allowing the Tribunal to consider whether the rent increase is disproportionate to the current rent being paid does not take into consideration the circumstances when a landlord may not have increased the rent for a period of time for whatever reason but now wishes it to return...to a more relevant market price.

It goes on:

To allow the Tribunal to consider this factor will ensure that landlords stay financially protected by increasing the rent every 12 months thereby denying the tenant an opportunity of a small increase or no increase for a period of time.

As I observed perhaps a moment ago, the proposed amendment would also seemingly contradict section 56(2)(a) where the tribunal must have consideration to 'the general level of rents for comparable premises in the same or similar localities'.

The objective here—to come back to the point about mutuality, rights and obligations—has got to be one of creating the circumstances of freedom of contract that are enlivening and enhancing that engagement between both parties, in the interests of both parties, and so it would be a mistake to simply look at a critique of provisions only from the point of view of some sort of wrestle between the interests of one party, on the one hand, against another and to say, 'Which one's got the upper hand? Which one is coming out of this with more rights?'

The more productive position from which to consider the circumstances, in my view, is to consider how the measure may enhance the quality of the bargain and the robustness, if you like, of the willingness and capacity of both parties to participate in that bargain. So if there is an unnecessarily introduced uncertainty or if there is an

unnecessarily introduced rigidity, then there will be a combination of unintended consequences and disincentives.

In terms of this particular uncertainty, I think the concern expressed by the Real Estate Institute of South Australia is that one unintended consequence might be that there is likely to be a more thoroughgoing resort to rights at that one and only occasion at which they may be exercised, if only to protect against the vagaries of uncertainty—circumstances where otherwise matters might have proceeded on a mutually agreeable basis in some more flexible way.

The Real Estate Institute goes on, and again I will not stay to rehearse the entirety of those observations. Again, I know and am confident that the government has had the benefit of the observations of the institute, and I commend those observations. For the benefit of those who are following the debate, I commend the submission as a whole as a companion to those documents that have sat alongside the bill to support its interpretation in the course of the debate. It is a 40 or so page document and, as I have said, reflects a really very careful consideration of the bill in its entirety.

I will come back, perhaps, to pets because that has been the subject of consideration in the first round. It has been the subject of consideration by not only the Real Estate Institute of South Australia but by lots of others over an extended period of time. The way in which the keeping of pets on premises is regulated will, I suspect, remain a balancing act about which there will perhaps be a need to continue to revisit, but the Real Estate Institute has made particular observations about those matters.

From the opposition's point of view, again I just make the observation that where parties to a residential tenancy have freedom with which to determine matters like the suitability of particular pets to particular premises, then an ideal outcome is that within the range of circumstances that we are all very familiar and an environment in which pets are often part of the extended family, for want of a better description, the desirability of providing for pets in a way that is appropriately managed is a good thing to work through.

But, again, should there be unnecessary rigidity, unnecessary lack of mutuality about those arrangements, then unintended, undesirable consequences can follow and we just need to be particularly conscious of that. As I say, the Real Estate Institute of South Australia addresses that in particular detail both in this submission and in its prior submission.

I move next in terms of dealing with those headline matters, the subject of the bill, to really a more technical area about which the Real Estate Institute of South Australia is really particularly well placed to provide informed observation. It is one that attracts the Real Estate Institute of South Australia's very strong opposition—that is the highest on the scale from the Real Estate Institute of South Australia, at least in this submission—and that is the insertion by clause 27 of a new section 67A that deals with occupation of premises that do not comply with minimum housing standards.

I say this is a technical matter. It may be that the observer might regard it as a matter of commonly accepted practice that minimum standards of housing ought to be maintained. It might be therefore instructive to consider the Real Estate Institute of South Australia's observations in this regard. The institute notes that it understands that safe and secure housing is essential for all South Australians and comprehensive minimum housing standards are appropriately set out in the Housing Improvement Act 2016. The institute observes:

The legislation clearly sets out the policies and procedures in relation to substandard properties and these are clearly understood by property managers. The legislation already provides protection, process and remedies such as rent reductions where the landlord does not comply. [The institute] would support education for landlords and tenants concerning housing improvement matters.

Again, right in the midst of part 4 and this emphasis on the mutuality of the rights and obligations of landlord and tenant, section 68 of the act as it stands provides that:

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

(a) will ensure that the premises, and ancillary property, are in a reasonable state of repair at the beginning of the tenancy and will keep them in a reasonable state of repair having regard to their age, character and prospective life; and

(b) will comply with statutory requirements affecting the premises.

I have made observations about the Housing Improvement Act 2016. That is there as a term of the agreement. The institute further notes that the vast majority of private landlords would be ignorant of these standards and certainly not deliberately renting out properties that did not fulfil these requirements. That might be a fairly ordinary sort of observation. The point I would emphasise here is that the institute observes that:

The amending legislation will essentially require a landlord or property manager to do an audit of the property prior to the commencement of the tenancy to ensure that it meets minimum housing conditions. Landlords and property managers are not equipped or qualified to perform these audits and such matters should be undertaken by the Housing Improvement Branch...who already deal with these matters.

Currently, it is open to the tenant to issue a Form 4 for breach of the housing standards [under the section I have just referred to] and remediation or indeed to refer the matter to the HIB for a housing assessment and consequent orders if appropriate.

It is also noted that the new provisions relating to retaliatory evictions will also assist tenants in exercising the options available to them without fearing repercussions from the landlord.

So the institute makes the observation that there is no need for the provision, that it just creates another unnecessary obstacle and disincentive for landlords when tenants already have well-established access to remediation avenues as required.

The particular concern here—and there is a \$25,000 penalty that attaches—is that by legislating in this way, and to the extent that it is both unnecessary and practically introducing a super-added process of, as the institution describes, auditing of a property prior to commencement, then again it will have the deleterious effect of disincentivising landlords from entering the market. It is both a matter of detail in terms of what it imposes on every residential tenancy and really goes to the broader question of how it will affect incentives or otherwise for participation in the market. I presume that is how it attracts that very strong opposition level in terms of those grades that the institute applies. That is then a matter of concern, both the particular contract and to conditions generally.

Next, perhaps in the interests of brevity, I turn to the question of termination and notice and the way those two come together. This, I suppose, might be anticipated to be the most substantial cultural shift that will affect tenants and landlords in an immediate and tenancy-by-tenancy way: changing the particulars of notice, changing very fundamentally the rights to both terminate and to bring to an end a tenancy and the exposure to regulations about the particular triggers. Again, it might be most convenient to address this by reference in part to the Real Estate Institute's observations.

The first of those provisions that I would draw attention to is at clause 36 and the introduction of this novel concept of a maximum liability for rent payable following a tenant's termination of a fixed-term tenancy. It attracts the opposition of the institute and applies what is a novel concept of a maximum liability for rent in the course of any one year and then a maximum over the course of any particular tenancy, and that would be the subject of the new section 75A. Section 75A(1) would provide that in circumstances where:

...a tenant under a residential tenancy agreement for a fixed term terminates a tenancy, the tenant will not be liable to pay more than 1 month's rent under the agreement for each 12 month period of the remaining term of the agreement (provided that a tenant cannot be liable to pay more than 6 months' rent in total under this section).

At this point, without previewing too much the committee stage, I just query how that might relate to the short fixed-term tenancy provided for in section 4, the typically 90-day fixed term. That might also be an interesting question in relation to the introduction of the 60-day notice. I have not found, and I might be corrected, any carve-out of the short-term fixed agreement, both for the purposes of the 60-day notice and the maximum liability. I just mention that in passing on the way.

The Real Estate Institute opposes that particular construction, and it provides an example. It says if a tenant signs a three-year lease and terminates after 2½ years, this amending legislation would stipulate that no rent is payable as there are fewer than 12 months remaining on the lease. I do not read this to be amended as per the suggestion, but the Real Estate Institute is particularly recommending that the 12-month period should be clarified to read 'for each 12-month period or part thereof of each 12-month period' so as to not negate altogether the amount of rent once one is below 12 months. That is something that might be a matter of technical interpretation, and it might be amenable to some questions in committee.

here is an overall acknowledged desire to augur towards longer term tenancies that is the subject of the reforms overall, and there has been some consideration of the discrete amendment to section 69 of the Real Property Act for that purpose. I am grateful for some consideration about the way that is proposed to work with the industry's support, but just to illustrate, there is this encouragement or endeavour to foster a culture of longer term tenancies. The institute makes the observation that not getting this particular aspect right will have the effect of undermining that desire because of the way in which they are limited to one month per 12 months remaining on the lease and that it might have the effect therefore of detracting from that objective: securing long-term leases for tenants.

I might just pause here to observe that I have had some, although not lifelong, years of experience in living in other parts of the world. Certainly, the culture of long-term rental that applies particularly in Europe is one that is of long standing and a core part of the way that people secure a home over the very long term.

The objective of fostering longer term rentals and the objective of providing a satisfactory form of home with all those aspects of certainty akin to ownership is one that ought to be explored, supported and all the rest of it, but I just emphasise again it must be brought along in an environment of mutuality, where it is not simply a matter of imposing a shifting of the dial, as it were, in favour of the unilateral rights of tenants as the means of securing that outcome. It needs to be an outcome that is achieved by enhancing mutuality rather than taking away from it, and this is one particular area in which that concern is raised by the institute.

The next in that suite of provisions that I have particular regard to is the amendment at section 80 that is the subject of clause 43. I just draw that to particular attention in the course of these remarks because it is one of these areas in which we are left to see what the regulations might contain before being able to determine what the outcome will be.

Clause 43 of the bill will provide for notice of termination by the landlord on grounds of breach of agreement and provides that the regulations may make provision in relation to matters to which regard may be had in determining whether a landlord has taken reasonable steps to mitigate any loss. It is one of several. I will not state a catalogue of

all of the circumstances where regulations are made for particular purposes. That is just one example.

I then turn to clause 46 of the bill and really what is quite a fundamental shift. It might be too little to say that it is a shift in terms of the balance between landlord and tenant. It really is going to very dramatically alter the current arrangements, in that section 83 of the act as it currently stands is really specifically dealing with the right of the landlord to terminate without specifying a ground of termination in those particular circumstances.

It is really flipping that completely on its head, taking a provision that was really there for the purpose of providing for the circumstances in which termination could occur without specifying a ground, and introduces then what will be prescribed grounds and grounds prescribed by regulation. So we see what they might be. I just highlight that it takes a provision of the act, that is there for that purpose of providing for termination without specifying a ground, and really flips it on its head and uses it for another purpose altogether.

I note and take onboard the institute's observation that there is a corollary here to retaliatory provisions and that there has been a meritorious amendment with respect to retaliatory provisions, and that the dismay of the institute is then in those circumstances where this is maintained, despite then the absence of any need to abolish the right to do so, and the institute expresses its concern. Again, this attracts that highest level of strong opposition to the amendments from the institute. The institute makes the more particular observation:

The introduction of these amendments would breach fundamental principles of contract law and substantially disadvantage landlords. Effectively, this reform would provide tenants with the unilateral right to determine the length of a tenancy agreement and would prevent landlords having control over an essential contract term.

In this case, it is the duration of the tenancy agreement. Particular reference is made to section 49 of the act, which stipulates that the term of the tenancy agreement is an essential term of the said agreement.

We are here very much concerned, through the body of these termination provisions, with dealing with a fixed-term residential tenancy agreement and, as the institute points out—it would be unsurprising—the term of the tenancy agreement is an essential term where there is a fixed-term tenancy. So once one applies a mutual obligation giving, as it were, a heads up that the end of the term is coming and indicating an intent around that, that is a reasonable thing to do in the context of a fixed-term agreement.

To move beyond that—to say, 'Well, it's a fixed-term agreement,' but it's actually not a fixed-term agreement at all so far as the landlord is concerned, because you are actually going to introduce basically a new unilateral regime that renders the notion of the fixed term, really is something that we will have to move away from being any

longer an essential term of the agreement if it is to apply. I do not think clause 10, in so far as it amends section 49, is moving away from that concept that the term remains an essential term of a fixed term contract.

So there is a key example of the principle of both freedom and certainty that is potentially really quite fundamentally derogated from and in a way that, on the face of the act, has to remain uncertain because we have to wait for regulation to see what those permitted grounds might be.

Let's be clear: this goes very much to the core of the terms of each individual residential tenancy agreement. As the institute indicates, it would appear to trammel those fundamental principles of contract and is of particular concern. The real estate institute is alive to the arguments in favour of, as it were, providing for the extension of a fixed term more or less, theoretically, in perpetuity and it makes the observation that the practical reality is that it really would render full control of the tenancy duration to the tenant and it would eliminate uncertainty for landlords.

I made some brief observations about the desirability to provide for and enhance a culture of longer term tenancy arrangements. Providing certainty for tenants and rights of control for tenants are certainly desirable goals, but you cannot go about achieving that desired longer term tenancy arrangement by simply dragging a tenant into an environment over which they are on notice from the commencement of any particular tenancy that not even the end of the fixed term contract, not even the bounds of the bargain, are providing parameters around which there can be certainty.

There may well be mutual desirability to extend and to continue and, of course, there is no constraint of the term upon which a residential agreement might be entered into in the first place, nor are there constraints on what parties might decide elevate the level of certainty, both in terms of renewal and the conditions upon which renewal or extension would not be permitted.

But to make it so one way and to leave landlords with no option but to be in the hands entirely of the tenant with regard to the term of the tenancy, again, may well have a response that is protective in nature, that is necessarily then a response to that shifting of risk and the ultimate effect might be to both disadvantage would-be tenants and to disincentivise landlords from participating in the market in the first place.

Again, as I repeatedly concede, observations beyond the point of principle in terms of the freedom of contract have to enter into some degree of speculation in terms of the way the market plays out. But that is why it is important to approach matters from a point of view of principle, so that those things that cannot be known in advance can be given at least the best environment in which to be tested.

For those following, I have already had reference to the Real Estate Institute's submission. This particular topic is one that is the subject of really quite extensive treatment by the Real Estate Institute and can be found in its submission. Again, in the

interests of brevity, I will not stay to rehearse that part of the submission at any particular length. There might be occasion to do so in the course of the committee stage, but I certainly do commend it to those who are following the debate and certainly to all members of this place in considering the merits of that new regime that will be the subject of the amended section 83, the subject of clause 46.

Next is the related point about notice, and that is in the very next clause, in clause 47, and that is an amendment of section 83A. I am just looking for the parallel—I might come back to it. I said at the outset of my remarks that in the nine plus one parts of the Residential Tenancies Act 1995 as it currently stands, parts 4 and 5 are very much concerned with mutual obligations and rights of both tenant and landlord, and we know that there is a mutual right and obligation on 28 days' notice to a landlord and a tenant to give relevant notice.

So the amendment in clause 47, the amendment to section 83A, will do a couple of things. Instead of the 28 days, so far as the landlord is concerned, it will instead replace the 28 days with a period of notice to be at least 60 days.

As I have already referred to, in the contribution from the property manager who has provided a practical observation about practice in his experience, and even having unilaterally introduced a greater notice period beyond the 28 days, the concern with extending the notice period out to 60 days is that there is a tendency, in that particular manager's experience, for there to be issues around the payment of rent then over a longer period in the lead-up to the end of the tenancy.

But that becomes a moot point in the context of new section 83A because not only is there the introduction of a now 60-day notice period, substituting for the 28 days, but on the other side of that, on the 60 days' notice, the section will be amended so that a tenant in receipt of such notice would be required to provide not more than seven days' notice of an intention to give up possession of the premises, and would then be liable only for those seven days.

Whether by necessary unintended consequence, there is introduced a rigid requirement on the one hand that extends out the notice period, and it might have practical benefits in giving a greater period of notice in circumstances of scarcity of availability of tenancies and so on, and one can see that the greater period of notice the better in that first round kind of way, the practical consequences must be considered.

The super-added capacity of a tenant to then not only take matters into their own hands but to do so in such a particularly unequal way means that you have the very real prospect of the introduction of a notice-related penalty that applies even in the most otherwise benign of circumstances. So the landlord must provide the 60 days' notice, and the tenant then enjoys the benefit of the seven days' notice, but that might be applied as early as the 60-day notice period, leaving the landlord with a heretofore unheard of exposure up to the 53-day balance of that period.

It might be that there is a saving grace here, the subject of clause 47(4), in that if the regulations, the subject of that subclause, are sufficiently broad ranging and sensible, there might be a means by which the unfairness that might be predicted could be dealt with to some extent. At the very best, we are left to speculate about what those regulations might contain and how they might constrain that otherwise inequality of notice of 60 days on the one hand and a responding notice of intention to give up possession of seven days.

There are particular concerns about section 83A and the way that that will work in progress. Again, in the interests of brevity I commend the Real Estate Institute's further observations in that regard. By not addressing those matters in more particular detail, I do not mean any disrespect to the author or otherwise, to diminish the importance of that expression of opposition relative to the areas that I have addressed or drawn from in more detail. The whole of the observations in this regard are of particular merit, in my view, and ought to be taken on board.

There is a more particular concern about notice of termination that is the subject of clauses 50 and 51 respectively, that would add a new section 85AA and a new section 85B in particular. They refer to notice of termination by a tenant for successive breaches of the agreement in the first case and notice of termination by the tenant due to the condition of the premises in the second, both of which attract the highest level of opposition from the institute.

Again, I caution not to be drawn into some sort of emotive tug of war between rights on the one hand of a tenant and rights of a landlord on the other hand, and rather look at the capacity of the legislation to foster and facilitate the greater availability of tenancies and the more productive, for want of a better word, mutuality between tenant and landlord.

These amendments the subject of clause 50 and clause 51 that have attracted this highest level of strong opposition from the Real Estate Institute are in that category. On the one hand, one might say that successive breaches and condition of premises ought to be core matters of concern, but when looked at from the point of view of the health of the agreement and the various forms of existing recourse for these matters it is a matter of not further detracting from mutuality—the institute uses the word 'reciprocity' as well—and raising the spectre of unintended consequences by legislating in circumstances where existing remedies are appropriate. Again, the institute addresses both of those matters in considerable detail and I commend those observations.

To return to the question of the reform as a whole, I observe that the various reforms that are the subject of the bill contain within them—many of them meritorious and supportable, and that has found voice in both the individual stakeholders and the institutional responses and I do want to be clear in that regard.

There are a range of reforms, the subject of the bill, that are to be supported and are meritorious and either uncontroversial and overdue and in that category, or are simply

important reforms improving the circumstances of tenants in particular, but participants in residential tenancy agreements generally. Those are to be commended and there may be opportunity to address some of them in particular detail in the course of the committee stage. The amendments that are the subject of clause 52 of the bill are very much in that category.

At this point, I will perhaps just make some reference to the really very helpful summary provided by Consumer and Business Services and the government, and I am grateful to the minister for it. The amendment that is the subject of clause 51 in amending section 85D, and clause 52 amending section 89A, and related provisions section 90B and sections 66A and 66B, are all provisions to improve the security and access to recourse, including termination, to a tenant on grounds of domestic abuse.

Those amendments, it might be hoped, will have the practical effect of ensuring that a person who is in circumstances of domestic abuse is able to terminate a tenancy and to have SACAT oversee, relevantly in section 89A. The means by which a person in those circumstances can more easily exit a residential tenancy are to be commended.

There has been some consideration—and I am grateful to the minister for affording a briefing in this regard—of a circumstance in which a perpetrator is not on a lease. I have raised the question of whether or not it may be desirable to establish a fund. The retail tenancies fund is an existing mechanism that might be comparable. I just flag again that I have raised the question to the minister as to whether or not these are circumstances in which this is an insurable risk.

All of those matters I think are under consideration or have been considered in the course of bringing these provisions to the amending bill. To the extent that there is a novel pathway that is provided here, it may be that it is a matter of testing how effective these provisions are. I just make particular reference to them at this point.

I have addressed earlier in my remarks the particular concerns of the Property Council. Again, the Property Council has made those observations about the purpose-built student accommodation I think, the way I read it, not so much as a means of emphasising how much it loves the balance of the provisions but to zero in on this particular area of concern. Like the Property Council, I do not stand here giving up all hope that some further consideration might be had to providing for a more suitable regime for purpose-built student accommodation. To the extent that that might yet be achievable, in the course even of this debate, then I certainly stand ready to work with the government towards addressing these concerns that have been fairly succinctly outlined in at least the Property Council's letter to the minister dated earlier today, 14 November.

Having touched on that variety of headline matters in the course of some otherwise more general remarks about the bill, I would perhaps just make some reference to the discrete amendment to section 69 of the Real Property Act 1886. That is the subject of the first of the related amendments that are provided for in clause 1 of schedule 1. I

think there is only one schedule. The amendment to section 69 of the Real Property Act is one that, on its face, I understand certainly has the endorsement of industry and, more particularly, the Real Estate Institute. It has been the subject of some consideration and interpretation, and I am grateful to the minister for advice about it.

I understand that it is another one of those provisions that is intended to augur a culture of more long-term residential tenancies. Again, I have indicated that such a move is one that is laudable and to be desired. I would just explain—perhaps for the benefit of people like me who might be prone to being concerned about what the provision really does on the face of it—that the existing section 69(h) provides a qualification to indefeasibility among a whole range of other qualifications to indefeasibility for a residential tenancy, a letting, an occupation, provided it is not exceeding a year.

The effect of the provision is to grant that automatic qualification to indefeasibility to the title of the owner, and therefore there is no need for the tenant to protect that interest by taking some other security step on the title, such as lodging a caveat or otherwise. The amendment to extend that qualification to indefeasibility to at least not exceeding three years, rather than being intended to create the greater qualification to indefeasibility, which it clearly does, is a practical measure, by rendering that automatic, to not having as many tenants seeking the formal security by going and lodging a caveat over the title in order to protect the interest that would otherwise not be a qualification to indefeasibility because it is greater than a year.

I get where that might be coming from. It is an interesting, backwards way of going about improving a situation or removing a formality that would otherwise have to be more formally secured. If that has the effect of moving towards a more routinely longer term tenancy arrangement, then it will be good step. As I say, the effect of it, I am quick to confess, was lost on me on the face of it. The industry is in support of it, for reasons that I hope I have summarised accurately, and it is one of those further provisions that is designed to encourage those somewhat longer terms of tenancy.

With some concluding words, I might say that by reference to part 4 and part 5 of the act in particular, but by reference to the free and contractual nature of residential tenancy agreements as a core starting point and by recognising that this is one of those pieces of legislation that is very close to walking alongside as an additional party to such a free arrangement, we ought to be very careful not to create unnecessary rods for the backs of tenants or landlords. We should always be very careful to ensure that measures that are contained in the legislation enhance the mutuality of arrangements as between tenant and landlord so as to give both parties as mutual a capacity to chart their own course in myriad different and various circumstances that will be encountered by landlords and tenants in a whole variety of circumstances.

The concerns that I have expressed amounting to the reasons for the opposition's opposition to this bill, I hope, have been tolerably clear. I have not stepped through or directly addressed some of those other discrete aspects of the bill providing for provision in various alternate and particular circumstances of accommodation: parks,

granny flats and so on. I hope there is an opportunity to do so in the course of the committee process. Otherwise, with those words of contribution, I hope, to the second reading debate, I indicate again the opposition's opposition to the bill. I look forward to analysing it further in the committee stage.

Ms THOMPSON (Davenport) (21:58): I rise to speak to the Residential Tenancies (Miscellaneous) Amendment Bill. Before last year's election, the Malinauskas Labor team laid out our plan for a better housing future and, overwhelmingly, the people of South Australia backed that plan in. Central to our housing commitments was a promise to improve outcomes for renters and prospective renters living in our state and, as we have right across the board, we moved quickly to deliver on those promises.

Earlier this year, we commenced the Residential Tenancies (Protection of Prospective Tenants) Amendment Act 2023 to provide South Australian renters with immediate and lasting relief. We banned rent bidding and introduced penalties of up to \$20,000 for landlords and agents who solicit bids. We better aligned the bond threshold with today's rental prices, a decision which has already saved South Australian tenants millions of dollars. And we have delivered renters much needed security through the outlawing of cruel and emotionally taxing 'no cause' evictions.

Right now, South Australia is experiencing unprecedented rental demand, with the state's residential vacancy rate sitting at just half a per cent in August this year. And it is important to note that these pressures, which impact both existing and prospective tenants, are the driving force behind this change. This is not about restricting the rights and freedoms of our landlords; this is about ensuring there is appropriate balance within our housing legislation.

In the interests of brevity, I will not go into all of the details of the bill. The changes included in this bill are important, but our commitment to serious reform will not end upon this rubber stamping. The Malinauskas government recently announced its intention to explore rental opportunities for additional dwellings, like granny flats. These structures already exist in backyards across our state, but right now they can only be used to provide housing to family members of the owners.

We want to unlock accommodation wherever we can to ensure that South Australian families have roofs over their heads, whatever those roofs may look like. We are leaving no stone unturned, and we are working tirelessly to address the demand that exists in our thriving state and economy today.

I extend my sincere thanks to the renters and landlords living in my electorate who contributed so significantly to this process, along with the community organisations that worked with us to ensure we struck the desired balance in delivering this legislation. I look forward to seeing these changes implemented for the good of all in the sector, and to the good of our state more broadly. I commend the bill to the house.

Ms CLANCY (Elder) (22:02): I am really proud to stand here tonight in support of the Residential Tenancies (Miscellaneous) Amendment Bill 2023. Almost one third of my electorate are currently renting, and it is incredibly hard. Data published by the South Australian Housing Authority shows just how much private rentals have increased in the last five years, with the smallest increase in median household rent being found in my electorate in Clarence Park, at almost 30 per cent.

In the past five years, rents in my community have increased by at least 40 to 50 per cent, reaching as high as 68 per cent in Westbourne Park. These increases are not sustainable, they are not healthy, and they are keeping South Australians out of housing and all of the benefits that a secure home provides. This is a crisis that only those of us on this side of the house are committed to addressing. Crossing your hands behind your back and hoping the market will do your job for you is not in the best interests of South Australians. And some of the arguments being made by those opposite is just nonsensical.

The Australian Housing and Urban Research Institute shows what is very important to investors in deciding to sell is that it is a good time to sell and realise capital gains and wanting money for another investment. But if someone did choose to sell, let's be clear those properties still exist—they do not cease to exist—they will be sold to somebody else who may choose to live in it or choose to rent it out. There is still housing being used in our community. And I guess the real question is: will these reforms make the opposition leader sell one of his 14 properties? It will be interesting to see.

We have also seen in New South Wales and Victoria that tenancy law reforms have not stopped rental investment. We can, and we must, do more to support South Australians who are going through this current crisis, and it is shameful that those opposite cannot see that. We as a parliament, and as a society, as a community, need to acknowledge just how difficult things are getting for people.

The Malinauskas Labor government is acting decisively to address the rental crisis by improving security for tenants and addressing rental affordability. The bill before us this evening includes the most significant reforms to South Australia's residential tenancy laws in a generation. Our reform of the act will put an end to no-cause evictions, extend the end of the tenancy notice period from 28 days to 60 days, make it easier to rent with pets, protect tenants' information, ensure rental properties comply with minimum housing standards and provide additional support for victims of domestic and family violence.

These are all opportunities, opportunities to reduce the stress on renters, improve safety, and foster a more even playing field. It is an opportunity for a healthier and safer community. It is not the doom and gloom that we have been hearing about for the last two hours. All of this follows our initiatives earlier this year to address rental affordability by banning rent bidding, protecting tenants' information and raising the bond threshold, which have already saved South Australian tenants more than \$11.5 million since being introduced in April.

The successful passage of this bill would allow landlords to only end a periodic tenancy or to not renew a fixed term lease for a prescribed reason such as breaches by the tenant or wanting to sell, renovate or occupy the property. It would also increase the minimum notice to end a tenancy from 28 days to 60 days so tenants have more time to secure a new home and make the necessary and often difficult arrangements to move.

Even 60 days is not a gigantic amount of time, given the current rental market, but it is a hell of a lot better than 28 days. A few months ago, I had a woman in my community whose lease was coming to an end, she was given the 28 days' notice and she applied for more than 15 properties but was unsuccessful. When her 28 days were up—and this was a woman who was working full-time, she has an income, she could pay rent somewhere, but the rental availability was not there—she and her teenage son moved into a caravan park. These are the kinds of situations that are happening in our state and why our government wants to take action to make things fairer.

These amendments are crucial to promoting the security currently not afforded to most renters in this state. Renters in South Australia have every right to feel secure in their homes and know that they will have enough time to organise themselves and their families should they need to move.

A very common request I have received both as the member for Elder and as the Premier's Advocate for Suicide Prevention is to support legislation that would allow renters greater rights when it comes to pet ownership. We know pets can play a huge role in the lives of all South Australians who are lucky enough to own one. Pets provide companionship, reduce loneliness and promote better mental health. They provide emotional support and strengthen the sense of home, which can be lost to many renters.

Pets, particularly dogs, also promote healthier lifestyles, physical activity and a greater sense of responsibility for children in the family as well. A quick shout-out to my pup, Pepsi, who I wake up at 5.15 most mornings to walk—I am sorry sweetheart, you might miss out tomorrow morning, given the time. Thank you for getting me out of bed and into the fresh air in the mornings and for the cuddles in the evenings.

I am so proud tonight to support reform which will for the first time in South Australia allow renters to keep pets with reasonable conditions to be set by their landlord, such as keeping the animal outside or having the carpets cleaned at the end of their tenancy.

In closing, I would once again sincerely like to thank the Minister for Business and Consumer Affairs and everyone in her team. I would also like to thank each and every single South Australian who participated in the YourSAy consultation reviewing the Residential Tenancies Act or who wrote to me in support of these important reforms. I hear you, the Malinauskas Labor government hears you, and we are getting on with the job of immediately addressing the rental crisis in our state.

The Hon. J.A.W. GARDNER (Morialta—Deputy Leader of the Opposition)

(22:08): I rise to speak on the government's proposed reforms to rental laws that change the balance in terms of the relationship between tenants and landlords. The proponents of the bill have described it in terms of, I think I quote accurately when I say they said that it will get the balance right, and they talk about fairness. Certainly, fairness and balance is an aspiration to which we all aspire.

We take into account the considerations of people who are renters and we take into account the considerations of people who have put their hard-earned money into purchasing property. Many such people in my electorate, sir, as you would be well aware, particularly people who migrated to Australia in the 1950s and 1960s, worked hard through their lives and it is a fact I am very well aware of that many choose to invest in property rather than shares, if that is something in their capacity to do.

Many have based their retirement around such arrangements, and certainly when we were having the land tax debates a couple of years ago that was a cohort of people whose interests were very much at the forefront of the consideration of every member in the house at that time—not always the case any more as it appears. The balance right: a balance of laws that are fair for renters and fair for landlords as well is certainly a desirable outcome.

Since the minister introduced this bill some 10 or 12 days ago, I have had constituents raise some specific issues with me. I will briefly read a couple of excerpts, which are not the only letters I received but are characteristic of a greater number. In the interests of time I have chosen two, which raise different issues, but issues which have been identified by a number with some of the laws. Constituents write:

I write to you today to explain why it is all too difficult to be a Landlord today...At our age—

and I indicate the constituents are of retirement age—

why would we want to rent out our properties with all the changes occurring with new rental laws and rates and taxes going through the roof? You may ask, but house prices are on the increase. I think house prices will steadily slow down. Furthermore, as a self-funded retiree and not eligible for senior's Health Care Card, I believe the government should force banks to pass on interest rates on a savings account a lot sooner and avoid onerous and inconvenient conditions that suit the banks.

I truly believe this may be a problem as to why there is a shortage of rental properties available in South Australia today.

The constituents go on to identify their financial circumstances, the situation that is on top of them in trying to serve the money to live from, and they have identified that they have decided to sell their properties and simplify their lives going forward. Hopefully, somebody may be able to buy their properties and be able to live in them, and that will

be great for those families. Certainly for the tenants who have been looked after by these landlords for many years, their circumstances might be more difficult.

A very different case—and I think the member for Heysen highlighted to some extent the challenges the SACAT has in meeting the needs where there is a difficulty. It is highlighted by one constituent of mine's circumstances, and I quote from their correspondence:

I am writing in regards to my opinion about the new proposed law for tenants and landlords.

Firstly, I want to share my true experience with you.

After 5 years of hard work, I bought my first house in 2021. However, I could not afford the mortgage...So me and my wife decided to live with my mother and put our house into the rental market to cover the cost of living.

My first tenant was a mother with 3 children, who unfortunately lied to me in the application, which stated that she and her children would be the only people living in the house. She stopped paying the rent after 3 months. It took me nearly 3 months waiting for a SACAT hearing and another 4 weeks for the bailiff eviction. By the time they left the house and the garden were totally trashed. Even with landlord insurance, the total loss for me is more than 5 figures and there is no way to recover it as the process in the Magistrates Court is time consuming and hopeless if the tenant receives Centrelink payments.

What I want to point out is that the current SACAT overwhelming situation is far worse than you can imagine. Changing the current broken law will hurt the landlord harshly. The landlords like me who used hard working money to buy the property are sitting in a vulnerable situation because of the overloaded SACAT. New laws will only be applied as designed if justice can arrive on time.

The circumstances as described there I am sure could have been told from the tenants' side as well: a parent, three children, potentially a vulnerable situation, a very sympathetic story; landlord, hardworking, financially squeezed, interest rates rising like no-one has ever seen in my adult lifetime. I do not speak for others in the chamber, but at 44 the first interest rate rises I experienced as a home owner started early last year. Like many families around South Australia, mortgagees are suffering significantly. That includes people who own properties and people who rent them out, whatever their circumstances may be.

Often if single people with homes move in together they might have a property, they might rent it out, that might be a source of income but it does not mean they are alleviated from the challenge of interest rates. A circumstance like this, where a family has identified the cost of meeting the mortgage being so significant that they would move back in with parents and rent it out are providing an opportunity for people to

rent those premises. Getting the balance right, getting fairness, means understanding that there is a challenge from both sides.

In seeking to better understand and be informed of views of my constituents, both renters and landlords alike, this week I have been seeking feedback from members of my community. I sent an email out and made social media posts. In the first 24 hours, we had more than 300 responses. Certainly, in the next couple of weeks as we lead into the debate on this matter in the Legislative Council as well, with a view towards presenting to my party those issues on which we might seek to move amendments potentially, or potentially not, I will continue to take feedback from my constituents. I anticipate, based on the first day and a half, that we will probably have a very large volume of those.

I asked a number of questions, and I hope that I have represented the positions relatively fairly. I have taken information directly from the bill but, for the record, I identified:

1. The new laws propose that termination and non-renewal of tenancy agreements (including at the end of a lease) would not be able to see tenants evicted without providing a prescribed reason, such as damage to the property, illegal behaviour or breach of contract, unless the landlord requires possession to sell, renovate or occupy...

I asked, 'Do you support, or are unsure, or oppose,' and so forth.

2. The new laws propose that if the landlord does require possession, as described above, they must provide sixty days notice. When a tenant receives notice that their tenancy will not be renewed, they may vacate their rental property with seven days notice (within that sixty days period) and not be liable to pay rent after they vacate.

'Do you support, oppose, or other?'

3. The new laws propose that tenants can apply to keep a pet on the premises. Landlords may require certain conditions, such as that the dwelling be cleaned to a professional standard at the end of the tenancy, but grounds for refusal are otherwise quite limited...

4. The new laws propose that the landlord (or agent) may inspect the premises no more than four times a year. The current provisions allow an inspection as many as once every four weeks...

5. The Bill will clarify that a landlord or agent must not unreasonably withhold consent for a tenant to sub-let a property. These provisions also specify that a landlord or agent must not charge a fee for giving consent to a tenant to sub-let the property...

In relation to all of these, I have not reflected on the early feedback from my community because it was early. I will make an exception in this case: the early responses from the first 300 respondents suggest that this is a particular concern over and above some of

the others, but I will certainly be happy to put on the record later, and certainly for my constituents, the final numbers prior to this bill being in the Legislative Council. Finally:

6. The Bill will require that rent increases not be 'disproportionate', with tenants able to make application to SACAT if they consider an increase to be excessive on this basis...

Those are six of the issues that were particularly identified to me by constituents as being of concern in some areas. Some people are very supportive of them as well. Certainly, I seek to serve my constituents by being informed by my constituents and raising in this place issues that they bring to my attention. I do so on this occasion. I am grateful to those constituents who have reached out to share their concerns. I am grateful to those constituents who have invested in the future of South Australia through providing housing opportunities to people who are their tenants, and I am grateful to those people who are renting in my community and adding to the community, as they do every day.

I look forward to the further consideration of this bill in the house and the committee stage, looking in some detail at some of these matters. I am confident that as we approach the Legislative Council I will be able to pass on the views of my constituents, including the hundreds who have already responded to my office and the hundreds more who I expect will in the coming days, to ensure that their views are taken into consideration in what the Liberal Party puts forward.

Ms HOOD (Adelaide) (22:18): I rise this evening in support of the Residential Tenancies Act (Miscellaneous) Amendment Bill. Firstly, I would like to acknowledge and thank the Minister for Consumer and Business Affairs, the Hon. Andrea Michaels MP, to whom the residential tenancies responsibilities fall, for her significant work. She has been doing incredible work in this area of policy, first with conducting the recent review into the act and now, importantly, implementing the recommendations that come from it.

It is a huge task, but I believe these reforms will be transformative for many in my local community. During the Residential Tenancies Act review, I know many in my community put in their submissions, sharing their thoughts and feelings on the current system, including many renters who detailed very legitimate concerns. I have already spoken in this place about local constituents of mine, such as Ariba and Toby, who first raised the issue of rent bidding with me. As a result of sharing their story and their advocacy, rent bidding is now banned in South Australia.

When I am out and about, listening to members of our community, I often hear about the difficulties that people have with rental properties, whether it is the ability to have a pet, the sudden and unexpected termination of a lease or the difficulty having timely repairs made to ensure the house is livable.

I want to share the story of a local in my community who I had the privilege of meeting on the steps of parliament today. His name is Hugo. Hugo hails originally from Dubbo in

New South Wales. He now lives in the CBD with his parents, Kitty and Nick. He works in the arts industry, performing in theatre productions, most recently *Legally Blonde* and the State Theatre Company's *Lady Day at Emerson's Bar and Grill*, as well as appearing in TV commercials. Hugo only weighs about three kilograms, and he loves going for walks around the CBD. If you have not guessed already, Hugo is a chihuahua.

Last week, Hugo's owners, Kitty and Nick, were left fighting to stay in their rental home in the CBD because they own Hugo. Previous assurances in writing that a pet was allowed at the rental property were reneged after discovering that Hugo was living at the rental. It left Kitty and Nick, who are exemplary tenants with a perfect rental ledger and glowing property inspection reports, heading to the tribunal to fight an order to vacate their fully furnished rental home in just 28 days. Kitty and Nick said this would have created extreme hardship, for them to find a property to live in and furnish the entire place in less than a month. As you can imagine, it has been a stressful time for the couple, awaiting the hearing, not knowing if they would have a home to live in.

Thankfully, Kitty and Nick utilised the services RentRight SA, who helped to advocate for them in the hearing, which they say was wonderful as they were inexperienced in the process. The RentRight team also helped them explore their rights and obligations and were really supportive. Last Friday, Kitty and Nick won the right to keep Hugo at their rental until their lease ends in May, after which they may have to find another home. It has been quite the battle for Kitty and Nick, all over a tiny puppy that weighs less than bag of baby potatoes. But having met Hugo today, I can say he is absolutely worth it, and I want to thank Kitty and Nick for sharing their story with me.

It is on behalf of locals in my community, responsible renters like Kitty and Nick, that I stand to speak in support of this bill this evening, because this bill will for the first time in SA give tenants the right to own a pet. Tenants will still be required to comply with any reasonable conditions imposed by the landlord, such as requiring a pet to be kept outside if it is not the type of pet ordinarily kept inside and that the carpets are cleaned professionally at the end of the tenancy. This reform is needed. Current estimates suggest that 68 per cent of South Australians have pets, but less than 20 per cent of rental properties are advertised as allowing pets.

According to the RSPCA, one in five animals surrendered is due to their owners being unable to find a rental property that allows pets. It is balanced reforms like this that will allow more responsible renters like Kitty and Nick to enjoy the love and companionship of a pet in their rental home.

The bill to amend the Residential Tenancies Act will also, importantly, increase the minimum notice to end a tenancy from 28 days to 60 days so tenants will have more time to secure a new home and make the necessary arrangements to move. It will also protect renters' rights, ensure rental properties comply with minimum housing standards and provide additional support for victims of domestic violence. This bill forms part of our government's commitment to take decisive action to improve housing

outcomes for South Australians. These reforms will assist tenants in the current rental crisis while also balancing the rights of landlords. I commend this bill to the house.

The Hon. D.G. PISONI (Unley) (22:23): I take some time to make a contribution to this bill. It is most disappointing to hear those speeches from the government members—not a single solution to the housing crisis that we are in at the moment. We are hearing how this legislation will help cement people into existing properties, but we are not hearing how it will see more properties built.

There are more investors in the market; 70 per cent of the private housing market are mum-and-dad investors. People who are investing money that they may have chosen to put into a bank account maybe today could get a 5 per cent return or even better than a 5 per cent return. For a rental property they may only get 3 per cent, and 3 per cent is probably not bad these days for a rental property. So you ask yourself, 'Why are they doing that?' Because they do not have the cash. It is not cash that they are spending. They are borrowing money, they are taking risks and they are providing for their future.

People are benefitting from having more properties on the market because people are investing in retail real estate. What we do not want to see is a situation where it is more difficult for people who are not in business—people who are not used to dealing with regulations and having to comply with additional paperwork—to protect their investment and their retirement or the future for their children.

People invest in property for many different reasons and many of those people who invest in property are our newest Australians. At the citizenship ceremonies that I speak at, one thing that I observe and share with those new citizens is that many of them have been able to identify opportunities in Australia that those who are born here walk past. They understand the value of real estate and they feel safe investing in real estate, and those who are looking for places to live but are not in a position to buy, people who are described as renters, benefit from that. The more rental properties in the market, the more choice there is for renters, providing a broader environment from which to choose something that suits them.

I can remember when I first left home and entered the rental market. There were about half a dozen properties I looked at, and I was the only one looking at those properties. It was a different time I know, but that is where we need to be in order for there to be a better deal for renters. We need to have much greater supply. This legislation actually puts at risk seeing an increase in supply in the private rental market.

I just wonder how many fewer homes the Riverlea development is going to sell to people who are investing in residential real estate. Fewer houses will be built because there will be fewer investors: people who might already be investing, they have made a commitment in their 30s or 40s to build up a nest egg through real estate, who might decide, 'We are not going to buy a second investment property now. We are going to perhaps look at another way in which we might provide for our own retirement.' So that

will be one less home that will be purchased and built in a development such as Riverlea.

Many of the provisions that are in this bill may very well be fine in a 0.03 per cent vacancy rate that we have at the moment in South Australia for landlords, and I am sure that it would not be a difficult task for them to get new tenants. Do not forget that people look at a long-term proposition when they invest in real estate; they do not look at short term. You just cannot look at short term because the first thing you have to recover if you sell property is the stamp duty that you pay. It requires a substantial amount of growth in the marketplace and the capital value of that home in order to retrieve that when you sell.

We are seeing people not getting enough rent to pay for the mortgage payments grow extraordinarily now where so many more people are now using negative gearing that they were not required to use before because they were simply able to get a tax deduction against the interest based on perhaps the rent that they were receiving covering the interest they were paying. Now the rent they are receiving does not cover the interest they are paying, so they need more money. They need to invest their own money in that property for that situation to continue.

There was an article in the *Financial Review* just last week about how, particularly in the Eastern States, we are seeing record numbers of investors dumping rental properties because they simply cannot afford to continue servicing that growing gap between the rent they receive, the government charges and taxes that they pay and the interest they must then pay with the 13th interest rate rise in a row.

I do remember—and I think we were reminded of this when we saw the clip of this speech—when the current Prime Minister as opposition leader said he would bring the cost of housing down. Reduced interest rates, he said when he was in opposition. Since then, we have had I think about 12 interest rate rises. We have had the biggest and most rapid interest rate rises in Australia's history in the first 18 months of the Albanese government. This, of course, is not money you can just print to pay those increased interest rates when you are a landlord. It is another cost—another deterrent—for people to invest in housing and for people to rent.

On some of the provisions, yes, it is great to talk about soft, cuddly things like pets, but I think there are some unintended consequences of this. I know that many people have a philanthropic streak through them and if they are in a position to do so they will choose to support people less fortunate than themselves. Some people may be a category of people. I know a couple that prefer to rent their properties to middle-aged single women because statistically they are the ones who are disadvantaged the most in the housing market. They are the ones who find it harder to get a home.

What happens if somebody with a dog applies for the same house that that middle-aged single woman applies for and the couple decide, 'No, we want the single woman to get that house because we know it is going to be harder for her to get a house.' They take

that person on as their tenant and then the person with the dog decides to take the couple to the tribunal arguing that they were discriminated against because they chose someone without a dog ahead of somebody with a dog. They may be wrong. They may not be able to pull that off, but that couple that owned that house have to go through that process. This is what happens when you manipulate the market with legislation that is bureaucratic and removes incentives for people to participate in that area.

One of the last times there were reforms in the real estate area, I was the shadow minister for consumer affairs and Jennifer Rankine was the minister. She described the real estate industry as robber barons—that was the language she used—and there were changes to the auction system. In those days, there was a fellow in the upper house called Nick Xenophon. The Labor Party had a firm view that they were not going to allow vendor bids.

The Liberal Party said, 'We think vendor bids, as long as they are identified as vendor bids, give potential buyers an indication of how far away they are for something that the vendor might be happy with, that they might consider.' Labor said, 'No, no vendor bids.' In the upper house, we said, 'We think there should be vendor bids,' and there was a stalemate.

Xenophon saved the day. Labor signed up to a deal that was put to them and that was that the legislation under his amendment would allow three vendor bids. So we had this ridiculous situation where you could do something for the first time, the second and the third time, but do it a fourth time and it is illegal. This is what elements of this legislation reflect; it is what they do. They have some unreasonable situations. For example, 60 days' notice for the landlord to the tenant, but then only seven days from the tenant to the landlord. Try to find tenants—even in this environment—try to get there to organise within a seven-day period.

There is going to be a cost to the landlord. The hardworking family that is postponing holidays, perhaps sending their kids to different schools than they would prefer to send them to, or making other sacrifices so that they can provide for their future and the long-term benefit of their family, are hit with extra costs because they are in a situation where they need to move into that house or the situation has changed and they are not going to renew the lease for that tenant and they have to give 60 days' notice but only receive seven in return if that tenant moves out before the end of the lease. Commercially, it is 14 days' notice when a tenant gives a notice of not continuing a lease. Seven days guarantees that there is going to be an additional cost for a landlord in that situation.

Again, I remind this house that this legislation does not build one more rental property in South Australia—it does not contribute to building one more rental property. As a matter of fact, it makes it harder for landlords to actually manage their assets and for them to provide rental property for the private rental market.

We are seeing that there is a push for an expansion of the private rental industry, the build-to-rent industry that we have not really seen much here in Australia. It is very new, even in the Eastern States. It is a way of life in countries like Britain, for example. I can remember, in 2017, the member for Elizabeth and I joined the UDIA on a tour when I was the planning shadow and the member for Elizabeth was representing the government with the industry, and we went and visited these types of developments in the UK. Of course, they are big, private businesses.

So this nonsense that you cannot have businesses or private business opportunities or investment opportunities out of housing is a bit like saying you should not have people making money from producing food. Can you imagine if there were not profits in food? Where would it come from? I know an example where that happened: Zimbabwe. Remember Zimbabwe were a net exporter of food. Over the years of the Mugabe regime, there was government interference in the production of food and now, of course, they are a country that relies on international food aid. They used to export food to the world because it was run by the private sector but now, of course, they cannot even feed their own people because they were so opposed to profits being made from food.

That is how the economy works, and parts of this legislation interfere in that process and do not build one extra rental property here in South Australia. They do not put a house over a single head, and that is the problem with this, and yet those opposite—the government—think that they are going to save the world with this legislation.

It is about as useful as liking a post on a Facebook site as getting an outcome. It is not going to get the outcome that the government thinks it is going to get, that it is telling people it is going to get, because it does not address the housing shortage that we have here—or housing crisis that we have in South Australia.

The Hon. N.F. COOK (Hurtle Vale—Minister for Human Services) (22:40): I am wondering if it is still Tuesday or somewhere in some dark future where things are very different and laws are very different, but after that contribution I feel the need to put a few things on the record.

No, this policy is not about building houses, which is really fortunate because we need good, solid policy that looks after rental tenancies, renters and landlords. That is what this law will do. I will just put a few things on the record that actually will build some houses.

We have just watched a painful process this year of the obstruction of the passage of the Housing Australia Future Fund in the Senate, the federal parliament—the obstruction by the Liberal Party over there. What has happened with the Housing Australia Future Fund and what that will help to stimulate over time, providing a pipeline, is to invest \$10 billion into this future fund. It will ensure houses are built over time, in our state and all the others.

You should listen, because you have clearly had your ears shut for a while. The HAFF is just one part of a really comprehensive suite of policies being offered up by the federal government. Some of those policies include a national target, a building target of 1.2 million homes; a \$3 billion new home bonus; a \$500 million housing support program; and a \$2 billion social housing accelerator which will deliver thousands of new social homes across Australia being built to rent.

Actually, build-to-rent has been going on for decades. I think it is called social housing actually—build-to-rent. You can build-to-rent for private purposes. You can build-to-rent affordable homes, but build-to-rent has been going on for decades, and it is called social housing. In our world we understand this notion.

There is the National Housing Accord where there is federal funding to deliver 10,000 affordable homes over five years from 2024, being matched by another 10,000 homes—states and territories. There is an additional billion dollars in the National Housing Infrastructure Facility (NHIF) to support more homes. I could go on, but I think I have started, so perhaps a little chat with Google—because it is getting late—and you might find a really good document on the DSS website.

Apart from that, I think we have had plenty of conversations in here—maybe pay some attention in question time. We have some stamp duty changes here. We have the release of land, so that more than 25,000 homes will be built on land at Hackham, Sellicks Beach, Dry Creek, Concordia, Noarlunga Downs, Aldinga, and Golden Grove—just a little land release package that we have been doing.

I talk every day about the hundreds of additional public houses that we are building. This government has done more in housing over 18 months than we have seen happen for decades. We are very proud of that. There are hundreds of millions of dollars for social and affordable housing; massive land releases; and help for homebuyers, with low deposit loans and stamp duty relief.

We are agreeing to implement new elements of the construction code to improve accessibility, adaptability and energy efficiency. Yes, I do believe these things altogether will change the world, change the world for particularly vulnerable people who rely on others to provide housing for them, people we care about and we talk to every day.

We are slashing bonds by a third for homes rented between \$250 and \$800 per week and expanding access to private rental support. We are making it easier to rent out granny flats. I have heard that; I have heard that being discussed. It is in the bill. It is very important. This was all before the bill before us was even introduced, to be honest.

I must give credit to Minister Michaels, because this bill is possibly the most important of the housing works that we are doing as a government. This is groundbreaking, and it will make a difference. What it will do is ensure people are secure in their homes, their rental properties. It will stop people having to enter homelessness unnecessarily.

There has been an incredible amount of work consulting with tenants, agents, owners, peak bodies and other stakeholders. I heard the member for Morialta talk about his extensive consultation in his electorate, and I applaud him for doing that. I would like him to share his consultation. I hope that he will share all of his consultation, as Minister Michaels has shared the consultation, making everything transparent and easy for us to make good decisions when we legislate.

Reform proposals have been negotiated in good faith, with a genuine desire to make the system better. There is so much good news in the bill, and I understand why the member for Unley was a bit disappointed. I do not even have time, really, to list off all the key changes, let alone explain the great impact that each of them will have. I have picked my top five, and I will leave it to others to go through, as have many before me. I am sure there will be other speakers.

First of all, the bill includes multiple provisions around ending tenancies, about ending leases. These include requiring landlords to give a prescribed reason for not renewing a lease, so people cannot lose their home without good reason; limiting homes being rented out shortly after a non-renewal if a landlord has used one of the prescribed reasons like needing to live in the home themselves; more than doubling the notice period at the end of a fixed term lease, so people have more than a week or two to find a new home in a rental market with almost no vacancies; putting in place greater protections against retaliatory behaviour, as when a tenant reports substandard or dangerous conditions to the Housing Safety Authority in my department; and allowing compensation for landlords in certain circumstances. These are balanced, fair and sensible. They reflect the deep work that has gone into preparing this bill.

Second is the longer leases. When a good landlord and a good tenant get together we should be making it easier to enter into long-term and more stable arrangements. I know that some real estate agents may get slightly lower fees from not renewing leases every six or 12 months, but this is a small price to pay for greater stability on both sides of the rental agreement. I am sure they will work it out. They are clever people, real estate agents; they will work it out.

We will now have an organised and reasonable approach to renting with pets. This is particularly important for people with disability. It is particularly important for older people. It is so important when loneliness is such a massive issue in our community. Many of the people linked to my portfolio understand. Mr Deputy Speaker has held portfolios like this as well and is deeply connected to his community, so I am confident he totally understands where we are going. The people in our portfolios and our communities experience this social isolation, and often a pet is one of the very few connections to another living thing. Pets can bring comfort and purpose to people who are lonely or have experienced trauma. This is a very welcome change.

Third is about reasonable alterations to a premises. As I mentioned earlier, unlike the previous government, we have committed to making new homes more accessible and adaptable. Under this bill, it will be easier to make simple changes to a rental home that

may assist with mobility for older people or those with disability and help with security when a person is escaping violence. Some of these benefits that you actually get as part of a public housing or a social housing arrangement, you will now be able to secure more safely and without such a fight in a private rental situation.

With more people renting for longer, it is important that reasonable changes can be made. A combination of longer leases and the ability to make small changes may also help us unlock additional federal funding under My Aged Care or the NDIS. Fourth is about sharing a home. There are multiple provisions that help both tenants and owners to use a rental home to house more than one person. In a tight market, this is a critical change to help get more people safely housed, and I applaud the minister for this.

Fifth on my list are provisions specifically linked to family violence or abuse. It is a sad reality that people face the trauma of violence far too often and, as a government, we have a responsibility to make their lives easier in any way we can. There are so many other provisions around protecting information, managing bonds and rent, dealing with drug contaminated homes—I do not have time to deal with them, we do want to go home tonight—but they are all part of the biggest changes to rental agreements and arrangements in a generation.

This bill is fundamentally about making our housing system fairer. There are well-off renters out there who choose to rent, but there are tens of thousands who cannot buy a home, cannot access social housing, so private rental is their only long-term option. We owe it to them to build a system that supports stability and mutual respect between parties and that acknowledges we are not just talking about land and buildings; we are talking about people and homes. I commend the bill to the house.

The Hon. A. MICHAELS (Enfield—Minister for Small and Family Business, Minister for Consumer and Business Affairs, Minister for Arts) (22:51):

I genuinely want to thank all the members who have made contributions to this bill tonight, in particular of course the member for Hurtle Vale, Minister Cook; the member for Adelaide; the members for Davenport and Elder; and from those opposite—the members for Morialta, Unley and lead speaker, the member for Heysen. Thank you for your contributions.

This reform will make a difference. It is a generational reform for the Residential Tenancies Act. It is going to make a huge difference to the rights and obligations of tenants and, at the same time, we are looking at balancing the rights of landlords. It has been important to strike that balance and that has been done through extensive consultation with stakeholders. This process started in August last year with a roundtable. We had stakeholders including SACOSS, Shelter SA, Uniting Communities, REISA, and the Landlords' Association. We had representatives from SAHA and DHS. We had RentRight and we also had the Hon. Robert Simms, the Hon. Connie Bonaros and the Hon. Frank Pangallo in the other place attend that roundtable. That was the start of the conversation.

We then went to form a discussion paper which went out to public consultation. We ended up with over 5,000 survey responses to that consultation. We had over 150 written submissions. So I want to thank everyone again who participated in that consultation. We did pick out some immediate priorities off the back of that that has passed the parliament, interestingly with an amendment moved by the Greens but supported by the opposition in the other place, which was to allow the Residential Tenancies Fund to be used for a tenants' union. I thought that was an interesting amendment for the Liberals to support.

We are progressing with the tenants' advocacy service and I want to thank the Hon. Robert Simms for working with me very constructively in that regard. Residential tenancy laws have not really been so significantly updated since the introduction of the 1995 act. This bill will deliver a number of initiatives, some outlined by previous speakers and outlined in my earlier second reading speech. I will not go through them now.

Any significant reform like this has its challenges. It is about extensive consultation. As the member for Heysen said, not everyone is going to be happy with everything that is in this bill, but these are significant reforms. They are worth pursuing.

The member for Heysen quite extensively referred to the REISA submission, and I want to thank Andrea Heading and Cain Cooke, who are here with us this evening, for working with me after that submission. From that submission there have actually been changes in the bill—off the back of REISA's work—and I want to thank them for that and for working with us. Obviously, their presence here is testament to the fact that we have worked collaboratively on this, and the end result of this bill is something that REISA has publicly supported, and I appreciate that.

We would not be here without that constructive input from a range of stakeholders. I do want to thank them all for supporting us, including other stakeholders who have participated throughout the process: SACOSS, Anglicare, Shelter SA, the Anti-Poverty Network, Uniting Communities and SA Unions as well.

I will just touch on a couple of the issues that primarily the member for Heysen raised in his contribution. He started by referring to this essentially residential tenancies law as a consumer protection mechanism, and it is. So all the issues that the member for Heysen raised in terms of privity of contract are valid but in the context of what is broader consumer protection legislation. Residential tenancies laws have been around in South Australia, around the country and around the world for many, many years.

In terms of the mutuality of the landlord and tenant relationship, that is exactly what this bill seeks to do. We are seeking to develop a sustainable rental environment. We know more people are renting. We know more people are renting for longer. These are their homes, and in these regulatory reforms what we are seeking to achieve is ensuring that landlords have the support they need to continue their investments and tenants have the support they need to be able to call these properties their home. That

is the economic reality of the rental market, and that is what really was at the core of the end version of this bill.

In terms of some of the statements made by those opposite about landlords wishing to sell simply because of some regulation changes, there has been some extensive research undertaken. There is a paper, 'Regulation of residential tenancies and impacts on investment'. It was prepared by researchers from the University of New South Wales in Sydney, Swinburne University of Technology and the University of South Australia here. It examined very deeply what the factors were that shaped landlords' rental investment decisions.

I will briefly summarise the top three issues that impact mum-and-dad landlords and their investment decisions: 50 per cent said they would sell when it was a good time to sell to realise capital gains, and we can see that in the current market; 40 per cent said they were selling because they wanted the money for another investment; 36 per cent said they would sell because the rental income was insufficient—and that goes to the rent capping debate that has been aerated publicly in other forums.

None of those are actually the regulatory impact. In fact, last on the list was any consideration of dissatisfaction with tenancy laws as a reason under this research for why landlords would sell out of a property. We are certainly not expecting that to happen as a result of these reforms, because they have been carefully considered both with people representing landlords and real estate agents and with people representing tenants. They are very considered reforms in my view, and I hope to see them progress through the house.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The CHAIR: Member for Heysen, do you have any questions on clause 1, or would you like to move clauses 1 to 95 en bloc? It is up to you; I am in your hands.

Mr TEAGUE: I did not realise those were the only two alternatives. I was prepared to chart a somewhat different course. I do not have questions until clause 3.

Clause passed.

Clause 2 passed.

Clause 3.

Mr TEAGUE: In clause 3 we see the amendment to the definition of 'residential tenancy agreement' to expressly include—and I think this is expressly by the note, so I take it then that the drafting is capable of incorporating such premises as are more expressly described in the note. So maybe it is not a change as such, but it is making it clear. It might be a convenient way to raise the point again that we have had some consideration, in the course of the second reading debate, of this now regime of 60 days' notice from a landlord and a responding seven-day notice obligation on the tenant that would apply in these circumstances—and we will see it in respect of rooming and so on, and that will apply broadly.

Perhaps something that is not necessarily clearly understood is that this now will expressly incorporate into the regime the studio, the granny flat—a premises located, as it is described:

...adjacent to or near the primary residence on the land and which the other person has exclusive access to, and possession of...

That is a residential tenancy agreement. The convenient point to stress here is that, by now being a residential tenancy agreement under the new arrangement, there is no capacity to terminate that tenancy, even at the end of the fixed term, except on the prescribed grounds. That is the consequence of it being a residential tenancy agreement. That is correct, isn't it? It is as straightforward as that. For any of these arrangements that are defined as residential tenancy agreements, we need to identify a prescribed ground in order to give the 60 days' notice. Absent any one of those prescribed grounds that we are yet to see and that will be the subject of regulations, there is no capacity to rely upon the end of the fixed term in order to simply allow the tenancy to come to an end.

The Hon. A. MICHAELS: In terms of that note, it is particularly to provide clarification around granny flats. It was first raised with us some time ago where, in the housing crisis, there were comments in the media saying, 'You can't rent out a granny flat,' and I obviously thought that was unusual because there was nothing in the Residential Tenancies Act that prevents it.

It turns out it is really a planning issue and councils are putting in conditions on development approval to say that only relatives can live in that granny flat. It actually had nothing to do with the Residential Tenancies Act, in my view, and the advice I have is if it were to be rented, if that condition was not imposed on councils, it would be a residential tenancy agreement, in any event. So this is really just clarifying that. Where that is the situation—where there is a granny flat or other property that is subject to a residential tenancy agreement—that will be subject to the act.

You touched on the prescribed reasons. They will come into regulations. I will just put on the record, again, the extensive consultation that we have had on those, and what some of those reasons might be, so they are on the record:

where the tenant or their visitor intentionally or recklessly causes serious damage to the property, including safety equipment and common areas;

where the tenant or their visitor puts neighbours, the landlord or the landlord's agent, contractors or employees in danger;

where the premises are unfit for human habitation, destroyed totally or destroyed to the extent that they are unsafe;

where the tenant or anyone else living at the property seriously threatens or intimidates the landlord, their agent or the landlord's contractors or employees;

where the tenant fails to comply with a SACAT compliance order;

where the tenant has already been given two breach notices—for example, paying rent late—and the same breach occurs for the third time—

In the comments of the member for Heysen, I think he referred to the perceived problem of where there is a breach of the tenancy and you would never be able to get that tenant out. That is, in fact, not the case. It would be covered by these prescribed reasons, absolutely, so that matter is already being dealt with. Other proposed reasons for a termination would include:

where the property is being used for illegal purposes;

where the tenant has brought in other tenants or subtenants without consent of the landlord;

where the tenant has not paid the bond as agreed;

where the landlord is a government housing authority and the tenant has misled the authority in order to qualify for social housing;

where the tenant has been involved in an illegal drug activity on the property;

where the tenant is keeping a pet without consent and SACAT has made an order to exclude that pet;

where the tenant is renting a house from a charity or a community housing provider and the tenant no longer meets that charity or community housing provider's eligibility requirements to continue as a tenant;

where the tenant has engaged in false, misleading or deceptive conduct, or concealed material facts from the landlord or the agent in inducing the landlord to enter into the agreement—

After some consultation, a couple of additional ones were included, predominantly for primary producers. Where there is employee accommodation provided as part of an

employment arrangement and that employment arrangement ends, we are proposing that would be a cause to allow for termination. Also, off the back of some consultation with the Property Council that you referred to, we are proposing that where there is student accommodation, if the person who is in that accommodation is no longer a student, that would be a prescribed reason for terminating the tenancy.

Of course, all the reasons that are currently in the act, in terms of the landlord requiring the property for themselves or a family member or renovating, are still in there. So there are quite extensive reasons that we are proposing to be able to end a tenancy, and that would cover, as you mentioned, granny flats and studios. They would be covered by residential tenancy agreements.

Mr TEAGUE: Can I indicate that I appreciate the minister's fulsome response. That is helpful, and drawing as it was from the information that has been the subject of the briefing as well, which I appreciate. It is convenient to address it here in the context of this more particular definition of what a residential tenancy agreement is.

Just to be abundantly clear—and it might be because I have demonstrated that I have the capacity to be pretty slow, in particular in the context of the section 69 amendment of the Real Property Act, for example—so that we are abundantly clear, we are entering a regime in which there is a fixed-term residential tenancy agreement (one year, two years, three years, five years or whatever it might be), including in respect of this more particularised category of accommodation, and all the others that might be caught by a residential tenancy agreement. Absent identifying one of those prescribed grounds, there is no terminating of the agreement by the landlord? So the 60-day notice period is not even applicable because there is no prescribed ground upon which the landlord can rely, and so termination is just not permissible because none of these circumstances apply?

I might just make the observation that they are ranging from very high level antisocial, contrary-to-contract sort of behaviour, through to sort of transformative kinds of steps like renovation. So, yes, there is a wide range of circumstances, but they are the sorts of things that offend against what you would ordinarily expect to be the conditions of a tenancy. It is a fair characterisation, is it not, for better or worse, to say that we are entering an arrangement where the fixed term is actually of at least altered meaning and of limited utility while ever there is a tenant wanting to remain in their tenancy?

So absent whatever the range of prescribed grounds exist—and I concede; I think there is credit for the point about an employment-related tenancy, and good that the student accommodation point also might respond to the particular circumstances—in the ordinary course, while ever a tenant is willing to pay whatever rent that SACAT allows to be charged, and everything else is peaceful, it is entirely in the tenant's hands how long they stay, and it could be basically tenancy for life with no other alternative except those transformative alternatives that involve taking back the property and, in those circumstances, a minimum of six months out of the rental market? Is all of that a fair characterisation of the new regime?

The Hon. A. MICHAELS: Largely. The intention, and I think you have touched on that, is to encourage longer tenancies. Where a tenant has done nothing wrong, the landlord does not need the property for anything else—it is an investment property for that landlord, they are not going to live in it—yes, it is the intention that that tenant would have the right to reside there for the long-term and create a home for these people. You mentioned longer term tenancies that are around in other jurisdictions and work quite well. It is the intention to create that sort of rental structure here, to allow those long-term tenancies, of course with those protections for landlords that I have mentioned. That absolutely is the intention.

Mr TEAGUE: Just to put it clearly on the record, one is left to ask the question: what purpose does the fixed term of any kind serve in that environment? Is there any relevant purpose for any fixed term beyond the fact that it is an agreement that meets the characteristics of a fixed term?

There is no real consequence that flows, apart from the section 69 Real Property Act stuff, from it being one year, two years, 20 years. Is there any other purpose for the notional fixed term to serve and if not, can we just make very clear to landlords that if you are renting your property in a residential tenancy arrangement, you have to be prepared basically to hand over that property for life to the willing compliant tenant?

The Hon. A. MICHAELS: I am just checking on the notice periods. I think it may be a difference in respect to landlords who might be moving into the property—those sorts of things—rather than those prescribed reasons may be different. Largely, it is going to be a market decision, so some landlords might want the security that they have a tenant there for a period of time: one year, two years, three years. They may choose that rather than have the uncertainty of a periodic tenancy.

I think that will come to the market to decide whether fixed tenancies are used as much as they have been in the past. I think tenants and landlords will make that decision. I suspect landlords will continue with fixed-period tenancies to have that security from the perspective of having a tenant who is there for that period of time.

I do think there might be some differences in the notice periods. I can clarify between the houses. I think the difference might be a 21-day versus a 28-day notice period for exiting on certain grounds that they leave on.

Mr TEAGUE: The periods of those tenancies relative to the amendments.

The Hon. A. MICHAELS: The period of a fixed-term tenancy? The security? That security issue from both sides, so I suspect the market will continue to go down that path, but I think the market will decide.

The Hon. D.G. PISONI: With reference to controlled drug, I notice in the act that the landlord is responsible for ensuring that the property is drug free when offering to

tenants. Who is liable for the cost of that if it has been identified that the drug contamination is the result of the previous tenant?

The Hon. A. MICHAELS: Are you asking in terms of the definition or do you want to come to that when we get to that part of the—

The Hon. D.G. PISONI: We can cover it now. I have asked the question and it relates to the controlled drug reference.

The ACTING CHAIR (Mr Odenwalder): I take the minister's point. In clause 3, all it does is define a controlled drug as having the same meaning as in the Controlled Substances Act. It does not talk about anyone's obligations or anything in terms of those; it is a simpler definition. If you have a question about the definition of a controlled drug, you might want to ask someone else. You could save your question for the relevant clause.

The Hon. D.G. PISONI: There is a change in the definition of a 'rooming house'. I think it has moved from three to two rooms. Can the minister advise what is a 'rooming house' and what constitutes a room for that definition to be relevant?

The Hon. A. MICHAELS: Typically rooming houses are houses with three or four bedrooms, and you will have a separate tenant in each of those rooms. It is often used to some extent for students. It is being used more and more with the housing crisis where people cannot afford a house. They are renting a room in a particular property. Those rooms are the rooms we are referring to in the 'rooming house' definition.

Now, under this bill, if you have two or more rooms that you are renting out to different people, you will be caught under the rooming house. The reason for the reduction is to give people more protection. Often significantly vulnerable people are put in the situation of using rooming houses as their accommodation; they are not in a situation where they can afford an entire property. Particularly vulnerable people are being subject to the rooming house scenario as their accommodation answer, and certain protections are offered by the Residential Tenancies Act in that scenario. We want to capture more people to make sure they have those protections.

The Hon. D.G. PISONI: Why is the registration of a rooming house required at five rooms and not at two rooms?

The Hon. A. MICHAELS: It is an additional obligation. I think the policy position is that, once you get to five rooms, we want certain registration criteria satisfied, including being a fit and proper person to run a rooming house. When you have that many people—we have put it at five—we do not want the red tape of it being two or three rooms. We have decided on five. There are broader protections for rooming houses in the Residential Tenancies Act that would now apply for two or more rooms instead of three.

The registration system is really an additional consumer protection for those people where there are more significant, more substantial, properties and someone has five or more rooms available for rent, protecting those people through a registration scheme, making sure those proprietors are fit and proper people and are able to continue to hold that registration for that protection.

Clause passed.

Clause 4.

The Hon. D.G. PISONI: This clause refers to testing and remediation in relation to drug contamination. Who is responsible for the cost of that at the end of a lease? Is there a remedy for a landlord if the clean-up, for example, is not covered by the bond?

The Hon. A. MICHAELS: I will draw the attention of the member for Unley to the fact that the question he might be asking might relate more appropriately to section 67B. This clause is simply making it apply to properties under the South Australian Housing Trust. The SAHA properties will need to comply with those particular provisions. The balance of section 5 of the act is talking about the application of the act more broadly and exempting SAHA from certain obligations, and we say those obligations will apply to SAHA in terms of testing and remediation, but I think your question might come at a later point in time.

Clause passed.

Clause 5 passed.

Clause 6.

Mr TEAGUE: If you will indulge me at the point, this is an amendment of the penalty provision, essentially. Can the minister identify the process of notification to a tenant of the sale of the premises, and therefore what are examples of circumstances where the highest level of penalty is likely to be incurred as a result of the offence?

The Hon. A. MICHAELS: I am advised that the most likely scenario is where there is blatant or deliberate misleading of the prospective tenant. If there is in fact a sales agreement that has been entered into with an agency to sell that property and then a rental agreement has been entered into or a prospective tenant has been encouraged to apply, in those deliberate scenarios it may be that the higher end of that penalty would apply if there is a prosecution. It is more likely to be an expiation fee in most cases, I would imagine.

Mr TEAGUE: I just note for clarity, and again with appreciation, I think there was a request at the briefing that there be a comparative table provided of penalties. That has been provided, and it is appreciated. My understanding is that this proposed new maximum penalty is not the highest of the new penalties; I think they run to \$50,000 as a maximum pecuniary penalty. There is a maximum penalty of \$20,000 or an expiation

fee of \$1,200, and there is no equivalent penalty as presently set out in the legislation, by reference to the table.

The Hon. A. MICHAELS: Yes. I think that is largely to be consistent with section 47B, which I think was in there under the first tranche of legislation. That was existing, so the immediate priorities bill had section 47B, and then there was a recommendation that we put in a consistent penalty for section 47A.

Clause passed.

Clauses 7 to 11 passed.

Clause 12.

Mr TEAGUE: Again, for those who are following along, we have been through largely a number of provisions that are amending penalties, and clause 12 is another one of those. Again, I take the opportunity to ask if the minister might be able to identify circumstances that would be likely to attract the maximum penalty pursuant to section 52. For the reference point, it is one of those where the maximum penalty has gone up very significantly. I just wonder whether there is an example of egregious behaviour that would justify that maximum.

The Hon. A. MICHAELS: A lot of the increases in the penalties more broadly are for consistency, having regard to parliamentary counsel's advice on penalties more broadly. It would have to be, I would imagine, fairly egregious to get to that maximum penalty point, where potentially a landlord has explicitly said, 'You're not getting this property because you have children,' but a court would decide what range of penalty they think is appropriate.

The Hon. D.G. PISONI: Minister, are you able to advise how many penalties have been issued over the last five years for that clause?

The Hon. A. MICHAELS: I am advised that none have been.

The Hon. D.G. PISONI: Has it ever been used?

The Hon. A. MICHAELS: I could not answer the question of whether it has ever been used, but I could answer, in recent times, none.

Clause passed.

Clauses 13 to 15 passed.

Clause 16.

Mr TEAGUE: I have addressed, at least to some brief extent in remarks in the second reading, this additional provision that adds to the catalogue of specific considerations

that SACAT must have regard to and now precedes a catch-all 'any other'. I refer again to my appreciation for the opportunity for a briefing in this matter and for the narrative that is provided in a summary from Consumer and Business Services. This involves the insertion of a new reference, in the context of a rental increase, to SACAT needing to consider whether the increase was disproportionate considering the amount of rent payable.

I just ask whether or not there is any indication as to what, other than the ordinary meaning of the word, might be contemplated when SACAT is going to have to consider what 'disproportionate' means, particularly bearing in mind that there is (a) through (h), including things like comparative rentals. I just compare it with—I do not have it in front of me just now—I think section 76 that uses the term 'harsh or unconscionable'. We have that test elsewhere, 'harsh or unconscionable'. This is under the heading 'Excessive rent'. There is a bunch of criteria, and now we have this word 'disproportionate' added. Is there anything that provides us with any particular guidance as to where the government is coming from or what further achievement is anticipated by the addition of that word in that subclause?

The Hon. A. MICHAELS: I would expect the tribunal to take the ordinary meaning of that word. It would be an additional factor that they need to balance. For example, paragraph (a) talks about the general level of rents for comparable properties. If there was—I am picking numbers out of the air—let's say a general market increase of 10 per cent for that particular type of property, and there was suddenly a 50 per cent increase, that might be considered disproportionate. So it is an additional factor to be considered by the tribunal with all of those factors, and they will weigh up which factor they think is more important. There have been in recent times some quite substantial increases by some of the tenants who have put submissions in to us, where it may be regarded as over and above what the market would bear.

Mr TEAGUE: I think I understand then how 'disproportionate' might be applied as compared to some of the other measures and, if so, is there not a risk that there is more vice in that than there is merit? I have been fulsome in my recognition of the Real Estate Institute's contribution.

At this clause, where the particular example might be that for whatever reason a landlord has not changed the rent for a long period of time, and the market all the way surrounding all the various other factors steers towards rent being let's say double what it has been, and the opportunity comes to apply the increase—and there is a very substantial increase, albeit maybe still relative to the market under or reasonable or comparable—is there not a risk that SACAT would apply the ordinary meaning and say, 'Well, that is disproportionate; all the other rents have gone up by a tiny amount,' and you lead to a problem, an unfairness, because of some super-added attempt to be fair in whatever circumstances might have preceded it?

The Hon. A. MICHAELS: The comment I would make on (fc) being disproportionate to the existing rent, in your example where the market had gone up by some way and rent

was kept low for whatever reason for a long period of time, is you have two competing factors in that looking at this provision. The tribunal would then weigh up which of those in its mind would cause the rent to be excessive as it is defined under this section. I would suggest that it would be up to the tribunal to determine in your situation, where the rent had not gone up for quite some time but actually it was being proposed to go up to market, which one would weigh up more.

In many cases, where there is a market appraisal there is actually a band. Realistically, you will get a real estate agent to come and look at your property and they will say, 'You can rent it at somewhere between \$500 and \$550,' for example. If you were jumping up—and that was presented, I presume, to the tribunal as evidence—potentially, if it was disproportionate, it might go to the lower end of that band. They are the factors the tribunal is quite accustomed to. Having had section 56 in its purview for quite some time, I think they are quite accustomed to balancing those various issues.

Mr TEAGUE: So here is where I say—and I prefaced the whole debate in this place, and I take responsibility for it, that this is not accompanied by an amendment at this time—I just wonder in the context of kicking that all around, and the concern that is expressed by the Real Estate Institute that I hope I have faithfully adopted, whether or not really it is actually not serving an additional purpose over and above what is there in the catalogue of section 56 considerations. I just put it no higher than that.

There is a risk on the one hand that 'disproportionate' must add something to what is there already and, if that is not to say to the landlord who has been renting out without amendment of rent for a decade and, who knows, the circumstances of the landlord might change, and the same tenant—the circumstances of the landlord might change and we have to go to market now; we have to go to the market all of a sudden.

Unless there is a specific intent to prevent that, that is, you have been on a concessional rent over a long period of time and no other circumstances have changed, you are therefore actually in these circumstances prevented from charging a market rent, that is, a 56(2)(a)-type adjustment. You are not in that category. That would be disproportionate. Okay, you are out. Absent a specific policy intent of that kind, I just wonder what the utility of the provision is.

The Hon. A. MICHAELS: I think we start with the beginning of subsection (2), which is that the tribunal must have regard to these factors and weigh them up. That is the intention that there is an additional factor in terms of considering disproportionality with the existing rent, balancing that factor with, for example, the general market rent and determining a rent that is excessive.

Of course, this is when the tenant makes an application to the tribunal for that and I can tell you that I am not aware of a substantial number of applications to the tribunal in the current market on this, but it is just an additional factor. It not only takes into consideration what the general market is, but what that particular tenant and landlord

have as an agreed rent and where it ought to go to make it a fair rent and not excessive as the tribunal has been considering for quite some time.

The Hon. D.G. PISONI: How many orders has the tribunal issued over the last 12 months and how many of those orders have resulted in a penalty being issued?

The Hon. A. MICHAELS: We will take that on notice and provide that between the houses.

Clause passed.

Clause 17.

The Hon. D.G. PISONI: Here is an amendment to section 56A(5):

(2) A person must not charge or receive from a tenant a fee for the payment of rent by, or collection of rent from, the tenant.

There is a massive penalty for that. Does that include commissions? Businesses for some time now have been allowed to charge the actual cost of the commission of a credit card. If a tenant pays by credit card, many of those commissions are, if they are bank credit cards, Visa or Mastercard, between 1 per cent and 1.3 per cent, depending on how much business you do with the bank. Is that something that must be absorbed by the landlord or is that something that can happen with any other business where the customer can be asked to pay that commission?

The Hon. A. MICHAELS: Credit card fees would not qualify as a fee for the collection service. There are apps on the market at the moment where real estate agents will use that app and they will charge a fee to the tenant. I am advised there has to be one free electronic option, so a debit card with no credit card fees or an electronic EFT. It would not even allow credit card fees.

We are back to the credit card fee is not a fee for the collection of services. It is not anyone charging that for the collection of the rent, as some of these third-party apps are doing at the moment. We will confirm that between the houses, but it would include having an option that is fee free, so it might be that an EFT direct transfer where there are no charges needs to be made available. There might be multiple options to pay the rent. One might include a fee, but there has to be at least one that does not have a fee, which might be an EFT transfer.

The Hon. D.G. PISONI: What I am not clear on is if somebody chooses to use their credit card despite the fact that they have other options, who pays the commission? Can the commission be added to the rent?

The Hon. A. MICHAELS: Provided there is one free option, a tenant could choose one of the other options that are available to them that does include a fee. There just needs to be one free option.

The Hon. D.G. PISONI: So if they choose the Visa card, the tenant pays the fee? Just a yes or no on that.

The Hon. A. MICHAELS: If they choose the Visa card, and there is a surcharge on it by a credit card provider, they will pay that.

Clause passed.

Clauses 18 to 25 passed.

Clause 26.

The Hon. D.G. PISONI: I foreshadowed my concern on this amendment in my second reading contribution, where if somebody has a perception that they were denied the lease of residential property because they had a pet, firstly, the question is: does the landlord have to prove that that was not the case, or is the onus on the tenant to prove it was the case before the tribunal will act? Will the tribunal act on an allegation or will it require some evidence before it acts?

The Hon. A. MICHAELS: What is the specific clause you are referring to?

The Hon. D.G. PISONI: The specific question was: if somebody makes a claim to the tribunal that they were denied that rental property because they have an animal, does the tribunal act on that allegation or does it require some evidence from the applicant before they even bother the landlords with the allegation?

The Hon. A. MICHAELS: If I take you to section 66E, it requires a tenant to receive a notice under section 66C(4) refusing their application for a pet. They can view the tenancy application. A landlord can refuse a tenant's application for whatever reason.

The Hon. D.G. PISONI: This is if they are already tenants, though, is it not? Are you not referring to if they are already tenants? What I want to know is: there are 60 people who have lined up for a rental property; one group, whether it be a couple or a single person or whatever, are the lucky recipients, if you like, of the property, and somebody else who has a pet claims that they were denied that property because they have a pet. What is the onus of proof that they need to present before the tribunal will take any action on that landlord at that particular time?

The Hon. A. MICHAELS: What I am taking you through is the process. You apply for the tenancy and you also apply to keep a pet. You need to apply to keep the pet on the property. If you do get a notice from the landlord saying, 'I am refusing that pet,' that is the notice that is referred to under section 66E that the tenant can then take to SACAT. Without that notice, section 66E does not kick in to enable the tenant to seek tribunal orders.

The Hon. D.G. PISONI: So basically, if 60 people apply for that property, and the landlord has a view that he does not want pets and he just does not choose a person

with a pet, then it makes no difference; this clause has no action. Is that what you are saying? In other words, the landlord has to self-incriminate himself or herself in order for this to comply. They need to say, 'You didn't get the property because you have a pet.' They did not say, 'You didn't get the property because I chose somebody else.'

The Hon. A. MICHAELS: It is absolutely the intention that landlords can choose the best tenant for their property. If there are 60 applicants and they choose the best person, that is absolutely open for landlords to do. If they give a notice to a tenant that they are refusing that particular pet—let's say, as an example, I say, 'You are the successful tenant but I don't approve that pet,' I have given a notice to the tenant to that effect and that is the notice that is required to take to the tribunal. Otherwise, it is absolutely open for landlords to pick whichever tenant they think is appropriate for their property.

The Hon. D.G. PISONI: How often do you think that is going to happen?

The ACTING CHAIR (Mr Odenwalder): Member for Unley, you have had your questions. Do any other members have any questions on clause 26?

Mr TEAGUE: This is a bit of statutory construction interpretation. I note that it is a pity in a way that we have here a whole catalogue of new clauses under one clause, so I will do my best to keep it within the three questions.

I note that the new section 66C sets out an unconditional right of a tenant, as I read it. It is not conditional on the face of it, even to the application in subsection (2). The application in subsection (2) is permissive—a tenant may apply for approval—but you have a standalone right in subsection (1). The machinery will work its way through, but I just make the observation that it is not as though the right arises from the giving of permission. The right is there in subsection (1).

The process of setting out conditions, refusing and so on, are things that have to flow on from an application or possibly by notice in subsection (7). I just note that it appears very much that that right is freestanding in subsection (1), and then a landlord has to start to get proactive in order to engage in a response to any application that might come and, secondly, absent an application possibly in subsection (7), the landlord has to get proactive in seeking to impose or vary or revoke.

But, again, that all seems subsidiary to the application, so I guess the threshold question is: is it actually intended that there is a freestanding right in subsection (1)? I might then, for the purposes of giving context to that, just indicate that in 66F(b) once you are a tenant, having established the conditions for that particular pet, then that goes with the life of the pet, notwithstanding any change, including a change of the landlord.

The Hon. A. MICHAELS: I will answer the first part. When you are talking about section 66C(1) standing alone, you might be not reading the words 'with the approval of the landlord'.

Mr TEAGUE: I have that as well. I suppose it might be regarded as a necessary consequence, but the point is that it is a standalone right.

The Hon. A. MICHAELS: It is clear to me, and the advice that I have is that it needs to have the landlord's consent, which is why subsection (a) talks about 'with the approval of the landlord'. So you cannot keep a pet without the landlord's approval, unless of course it is an exempt guide dog.

Mr TEAGUE: That was my next one.

The ACTING CHAIR (Mr Odenwalder): Member for Heysen, we are running up against standing orders now, so if you could be brief.

Mr TEAGUE: That was all part of one. I am on two now.

The ACTING CHAIR (Mr Odenwalder): No, we are running out of time.

Mr TEAGUE: Okay, that standing order.

The ACTING CHAIR (Mr Odenwalder): Yes, that is right. We are running up against the immutable laws of the universe.

Progress reported; committee to sit again.

At 23:57 the house adjourned until Wednesday 15 November 2023 at 10:30.