NSW Legislative Assembly Hansard (Proof)

Residential Tenancies Amendment (Social Housing) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 12 October 2005 (Proof).

Second Reading

Miss CHERIE BURTON (Kogarah—Minister for Housing, and Minister Assisting the Minister for Health (Mental Health)) [10.14 a.m.]: I move:

That this bill be now read a second time.

The Residential Tenancies Amendment (Social Housing) Bill 2005 provides the legislative foundations to implement the Government Plan for Reshaping Public Housing announced by the then Premier on 27 April 2005. These reforms are consistent with the Government's approach of delivering social justice through sound economic and program administration. These reforms focus on the fair allocation of scarce resources to those most in need in our community, the fostering of tenant responsibility, the promotion of efficient and effective operations, and significant investment in the renewal of public housing.

The New South Wales Government is committed to allocating the valuable resource of public housing to those most in need because this approach delivers the best outcomes. Well-targeted public housing assistance provides the opportunity to maximise the outcomes of health, welfare, educational and support services provided to tenants by other New South Wales agencies. It provides the best outcome for Government and, more importantly, for the people of the community in greatest need. The Reshaping Public Housing reforms announced in April this year are intended to ensure that public housing is well placed to assist those in greatest need. Over time, with declining Commonwealth contributions to public housing, and with the demographic and social changes, public housing has increasingly been focused on those most in need. The New South Wales Government's challenge is to make effective use of limited resources given the growth in demand for public services by those who require support. The Reshaping Public Housing reforms respond to this challenge.

In summary, they provide for eligibility for public housing to be based on the concept of housing need rather than the traditional measure of income level as the primary eligibility criterion; an end to the policy of public housing for life to be replaced by assistance for the duration of need through a range of renewable leases from two to ten years; changes to rent and water charging policies to ensure that public housing tenants make a fair contribution, with this contribution being invested along with a significant level of state funding above the Commonwealth-State Housing Agreement requirements to significantly renew the public housing asset base. Much of this reform package can be implemented without legislative change. However, there is a need for legislative reform in relation to a number of key elements and to ensure a smooth implementation. This bill proposes amendments to the Residential Tenancies Act 1987 and consequent amendments to three Acts—the Housing Act 2001, the Aboriginal Housing Act 1998 and the Real Property Act 1900—to provide these reforms.

In summary, this bill will achieve six outcomes. First, it institutes a structured and fair process whereby the eligibility to continue in public housing can be assessed at the end of the lease and allows for termination where the tenant is determined to no longer be eligible. It makes several amendments to the Residential Tenancies Act to ensure that tenants are treated consistently and the department has appropriate operational flexibility following the introduction of fixed-term leases. It allows the department to charge tenants for water usage costs. It adds a number of tenant protection clauses in relation to the revision of market rents. It is structured so that these changes also apply to the Aboriginal Housing Office and could potentially apply to Community Housing following consultation with that sector. It also amends the objects of the Housing Act and the Aboriginal Housing Act to ensure they are consistent with these reforms.

I will discuss each of these outcomes in turn. First, the bill institutes a structured and fair process whereby the eligibility to continue in public housing can be assessed at the end of the lease and allows for termination where the tenant is determined to no longer be eligible. Public housing is an important aspect of a fair society because it can offer so many opportunities to those most vulnerable in our society. Currently, however, if a person does not breach their tenancy agreement they can enjoy the benefits of public housing for life regardless of their housing need. The reshaping reforms change this. All new tenants from 1 July 2005 will be placed on a fixed-term lease that will commence some time after July 2006. The terms of the tenancy agreements will vary from two to ten years depending on the type of need. The ten-year leases will be aimed at households that are most in need and will remain in that state for some time to come.

These may include elderly pensioners or those with ongoing disabilities. The five-year lease will be aimed at households such as families with children at school, and whose circumstances may change when their children's schooling is complete, or households in which the parents are undertaking training to move into the work force or change jobs. The two-year lease is aimed at households whose need for public housing is most

likely to be of a passing nature. This may include young tenants with no family support or those experiencing homelessness and who are in need of time to address the issues they face.

At the end of these agreements, tenants will have to demonstrate an ongoing need for public housing. This will provide fairer access to a social housing system that both promotes responsibility and meets the needs of the disadvantaged well into the future. In order to operationalise this, the social housing landlord—that is, the Department of Housing, the Aboriginal Housing Office, or potentially a community housing operator—must be able to both review the ongoing eligibility of the tenant and, if they are no longer eligible, terminate their tenancy. This is a distinct and separate ground for termination that is not a part of the current Act, and allows the department to pursue its policy goals as earlier indicated.

Section 63B provides new grounds for termination of a tenancy agreement where the tenant has failed the eligibility review. Tenancies will be renewed if the housing need still exists. It is, however, the duty of responsible Government to focus on those in serious need for public housing. As the current legislation does not allow for the social housing landlord to ask those no longer in need to move on following the review of a completed fixed-term tenancy, it is the Government's duty to respond to this. If a tenant no longer has the housing need and could be accommodated in the private rental market, it is the public responsibility of the social housing landlord to ensure that the tenancy is not renewed in order to make room for someone in greater housing need.

Section 63C provides a process for the assessment of the eligibility of a tenant under a social housing tenancy agreement to continue residing in the social housing premises concerned. The criteria for eligibility will be established by guidelines approved by the Minister for Housing. This will allow the criteria for continued eligibility to vary from those used for assessing entry. For example, this could be used to permit tenants with moderate but insecure incomes—say from casual wages—to remain in public housing for a further period while they become more established. The eligibility assessment may only occur in the last six months of a fixed-term tenancy.

Section 63D provides for a review process in cases where the landlord decides to issue a notice of termination on the ground that the tenant is no longer eligible. This process provides for notice to the tenant and for the tenant to make representations to the decision maker. This builds in important procedural fairness requirements. The section also provides for the Minister to make guidelines in relation to the appeals process. I undertake that in addition to the legislated requirement for an internal review of the decision, I would require in these guidelines that a second tier appeal would be available to the Housing Appeals Committee. The Housing Appeals Committee currently hears second-tier appeals from Department of Housing decisions on a number of matters. Its recommendations are nearly always adopted by the department. This will provide a useful and credible oversight function.

In addition to this, schedule 1 [3] inserts section 14A in the Act to enable a landlord under a social housing tenancy agreement to declare, by notice given to the tenant, that the agreement is subject to a fixed term from a date specified in the notice. This is most important because, under current legislation, when a fixed-term tenancy is not renewed, the tenancy lapses to a continuous tenancy. This is in direct conflict with the intention of public housing being available to those most in need, which is facilitated by issuing fixed-term tenancies subject to an assessment of such need.

The second key outcome of the bill is that it makes several amendments to the Residential Tenancies Act and the Real Property Act to ensure that different tenants are treated consistently and the department has appropriate operational flexibility and efficiency following the introduction of fixed-term leases. By way of explanation, the introduction of fixed-term leases for up to ten years involves a major operational change for social housing landlords. Most tenancy agreements in the social housing sector are of a continuous nature, that is, they technically operate from week to week or fortnight to fortnight, despite the fact that tenants have "lifetime tenure". This allows for tenancy agreements to be revised and updated as circumstances and needs change.

The introduction of fixed-term leases could have the effect of preventing such revision of tenancy agreements. This, in turn, could have the effect of leaving different tenants with different rights and obligations under their tenancy agreements depending upon when they were entered into. Ultimately this could severely limit the operational flexibility of social housing landlords, including the Department of Housing. The social housing system administers more than 138,000 properties and needs operational flexibility to ensure valuable administrative resources are directed to the most important tasks.

Let me describe the areas where consistency and operational flexibility are required, and how the bill responds to those requirements. As many honourable members would be aware, a number of our public housing estates require sustained attention or upgrading. In some cases, substantial rebuilding is required to allow these upgrades to occur, and to do so the dwellings need to be vacated. Without amendment, the significant improvement of an entire estate could be jeopardised by a handful of tenants who refuse to vacate their premises, even after reasonable alternatives have been offered, and insist on their rights under a long, fixed-term tenancy agreement.

Proposed sections 63F and 63G provide a process that allows a landlord under a social housing tenancy agreement to give notice of termination of the agreement after offering the tenant a new tenancy agreement in respect of alternative premises. This would allow the department to relocate a tenant to alternative accommodation if the premises are no longer suitable or are required for redevelopment, or for some other reason. Of course, the department would continue its current practice of seeking to relocate by negotiation. However, this power is essential to ensure that important renewals are not delayed unnecessarily, which is of benefit to all tenants of public housing.

These sections also address the issue of under-occupancy, a problem that can prevent the allocation of suitably sized homes to struggling families. At times the department needs to be able to rehouse tenants who, because of changing circumstances, such as children leaving home, no longer require the larger family home they are leasing. The amendment allows the department to insist that the smaller household move to a smaller home—even though it may have a long-term tenancy agreement for that property—to ensure that a family who does require the larger property is able to access it. This will also be a measure of last resort, used in cases where the tenant has refused reasonable offers of alternative accommodation from the department, to address the imbalance.

It should also be noted that any terminations under this ground would also be subject to procedural fairness requirements and ministerial guidelines. Again, under these guidelines a second-tier appeal would be to the Housing Appeals Committee, further ensuring a useful and credible oversight function. This section will also provide a clear legislative basis for relocations as a measure for managing serious neighbour disputes, such as were experienced on the Gordon Estate in west Dubbo. Another potential impact of longer, fixed-term leases would be the requirement for leases of more than three years duration to be executed in the approved form under the Real Property Act 1900. Schedule 2 of that Act also amends section 53 of the Real Property Act 1900 in order to exempt social housing tenancy agreements from this potentially costly requirement.

Schedule 2 also exempts the Department of Housing from the requirement of the Real Property Act 1900 to register residential tenancy agreements that have a term of longer than three years. This helps avoid costs for the department in relation to an exercise that is required to protect the rights of private sector tenants, but would be costly for New South Wales social housing landlords. Another area of potential impact is that under the Residential Tenancies Act rent cannot be increased during a fixed-term tenancy unless there is a clause specifically stating the amount of rent increase or a specific formula setting out the terms of rent increases and the date from which they will apply. It is not possible for the social housing landlord to set such a formula with a property portfolio of more than 138,000 dwellings. As such, increases and formula are determined according to market conditions. It is necessary to keep market rents of social housing properties up to date, so that market rent paying tenants pay their fair share and contribute to the financial viability of this important government service.

Item 25 of Schedule 1 amends section 132 of the Principal Act to exempt social housing landlords from the requirements of section 45 (4) to allow revision of rents under fixed-term social tenancy agreements. This will simplify the process of uniformly addressing changes in rents across public housing. Proposed section 9A would enable regulations to be made to introduce particular terms or conditions to apply to all social housing leases. This would allow any changes to policy to be introduced for all tenants at the same time. This means that consistency can be maintained between social housing tenants regardless of when they signed their tenancy agreements and the length of their agreements. An important example of how a uniform change would be required is if, based on new circumstances or events, a refinement of what constitutes anti-social behaviour by tenants was required. To ensure that all public housing tenants were required to adhere to the same level of behaviour, to enjoy the same rights and to meet the same obligations, we may need to amend all agreements.

This is based on the clear policy need to maintain a uniform system of rights and obligations for all tenants. A further simple example of a change that may be required is the department's companion animals policy. New evidence or concerns may lead to new policies in relation to the keeping of dogs of certain breeds. The department would be in an invidious position if it could not implement changes to this policy that applied to all tenants through the tenancy agreement. Proposed section 9A would allow this to occur. All changes brought about through this power would be subject to the Government's well-established processes for approving regulatory change. That is, there would be a requirement for a regulatory impact statement. Furthermore, this regulatory power could not be used to insert a term that was contrary to the Residential Tenancy Act, an important caveat to which I draw attention.

The final area in which further flexibility is required is prior tenancy debts. There are likely to be cases where a person at the end of the fixed-term tenancy is in arrears, but is making appropriate progress in paying these off. If this tenant is still eligible for public housing, he or she will be granted a new fixed-term lease. The debt under the old tenancy agreement would then become a mere civil debt, which would be extremely difficult to recoup. As the financial viability of an important resource such as public housing relies on fair contributions by both Government and those utilising the system, it is important for Government to be able to fairly recover costs from consumers. For this reason, section 19B would provide for financial obligations to continue from one tenancy to another provided that the tenant remains the same. This means that debts from one fixed-term tenancy could be

carried over to a new fixed-term tenancy. This is important to ensure that tenants who are in arrears are obliged to pay back those arrears, whilst minimising the threat of jeopardising their opportunity to receive a new fixed-term tenancy.

The third key outcome of the bill is to allow the department to charge tenants for water usage. This already occurs in the private market and in many community housing properties where premises are separately metered. The need to charge existing and new public housing tenants for water usage has been recognised by a number of other social housing organisations across Australia. Tenants pay for other utilities such as electricity and gas. Charging for water usage will promote responsible water usage and complements existing strategies to install water-efficient devices in public housing. This is an important additional reform in light of the effects of drought conditions across large parts of the State. Current tenancy agreements for public housing tenants do not include terms that incorporate charging for water usage. The bill will incorporate such a term into all existing leases. The bill also allows tenants to be charged where their premises are not separately metered. This has been put in place to ensure that such tenants are not advantaged relative to tenants with separate water meters, and to ensure that this issue does not discourage prospective tenants from accepting offers of metered properties. The determining, levying and collecting of water charges will be in accordance with ministerial guidelines.

I propose that water charges will be levied on the same cycle as rents, rather than impose a larger quarterly bill on tenants. At the outset all tenants will be levied with a water usage contribution charge of 4.1 per cent of their net rent or a little over 1 per cent of their household income. After a few months of operation, tenants with separate meters will have their accounts reconciled with actual usage and their charge will be adjusted. If their actual usage has been less, they will receive a credit. If it has been more, they will be advised and their charges will be adjusted upwards, but there will be no outstanding charge. For properties not separately metered, their charges will remain based on a percentage of rent. Given the need to levy a charge on tenants without separate meters to maintain equity with metered tenants, this is a fair basis for assessing a water charge. Obviously, this approach aligns closely with the capacity of tenants to pay. A single pensioner will pay approximately $2.40 per week and a pensioner couple will pay $3.90.

This approach is also well aligned with actual usage. The vast majority of social housing households are dependent on Centrelink benefits. Such benefits are based on household composition, and water usage is also driven by household composition. If the usage of water by tenants without meters declines over time then the overall percentage also will be adjusted. The percentage will be set to collect less than total unmetered usage to allow for common area usage. Metered tenants with medical or other conditions requiring excessive water usage will be able to apply to be treated as an unmetered tenant and pay only a flat percentage of their rent. It is important to remember that the regime established under these amendments for water usage charges is based firmly on equity of charging across both metered and unmetered tenants. It is a fair and stable approach to ensure that public housing tenants are brought within our existing strategies for responsible water usage.

I am proud to say that the fourth key outcome of the bill is an enhancement to tenant rights in the determination of market rents. Under the current legislation, particularly regulation 22 of the 1995 regulations, a social housing tenant in receipt of a rent rebate cannot dispute under section 47 that an increase in market rent under section 45 is excessive. Section 47A of the proposed legislation enables a social housing tenant whose rent rebate has been cancelled to apply to the Consumer, Trader and Tenancy Tribunal for an order that the current market rent applicable to his or her premises is excessive. This is a strong consumer protection principle. It means that a tenant with the opportunity and the initiative to improve his or her circumstances will not be discouraged by having to pay an excessive rent that was inadvertently imposed during the period in which the tenant was subsidised. This amendment responds directly to concerns raised with me and with my predecessor by tenant representatives.

In addition, under Section 132 of the Residential Tenancies Act, the department is not required to provide 60 days notice of a rent increase. As a further consumer protection for tenants, the bill removes the exemption applying to housing let by the New South Wales Land and Housing Corporation and the Aboriginal Housing Corporation, and now requires the giving of advance notice of rent increases. The fifth key outcome of the bill is to extend the reshaping reforms to the Aboriginal Housing Office [AHO] and, potentially, to community housing. At the announcement of the reshaping reforms, their extension to Aboriginal Housing was foreshadowed subject to consultation with the Aboriginal Housing Office Board. I am pleased to inform the House that the board has endorsed the reforms and as a result they will apply consistently to tenants of the department and of the AHO.

The reforms have been drafted to allow them to include all social housing tenancy agreements, subject to the ability to exclude certain landlords by regulation. At the outset community housing providers will be excluded, but I will consult further with the community housing sector regarding the extension of these reforms to that sector. The sixth and final outcome of the bill is that the change in focus for social housing is recognised by proposed amendments to the objects of the Housing Act and the Aboriginal Housing Act. Schedule 2 to the bill amends the Aboriginal Housing Act 1998 and the Housing Act 2001 to insert objects into those Acts aimed at ensuring the public housing system is focused on housing people who are most in need and that the available supply of housing is shared equitably among those people. In closing, this bill introduces important changes to

the structure and operation of residential tenancy management in New South Wales in relation to social housing tenancies. Without these amendments the Government will not be able to deliver the sound economic and program reforms required to ensure that our social housing system provides a fair and just opportunity to those most in need. I commend the bill to the House.