

**RESIDENTIAL TENANCIES AND HOUSING LEGISLATION AMENDMENT (PUBLIC HOUSING—
ANTISOCIAL BEHAVIOUR) BILL 2015**

Bill introduced on motion by Mr Brad Hazzard, read a first time and printed.

Second Reading

Mr BRAD HAZZARD (Wakehurst—Minister for Family and Community Services, and Minister for Social Housing) [11.55 a.m.]: I move:

That this bill be now read a second time.

I am pleased to bring before the Legislative Assembly the Residential Tenancies and Housing Legislation Amendment (Public Housing—Antisocial Behaviour) Bill 2015, a bill that seeks to address antisocial, illegal and fraudulent behaviour in social housing. The management of antisocial and criminal behaviour is a challenge for the social housing system. The Public Accounts Committee recent report on tenancy management identified the need for better management of antisocial behaviour in and around public housing.

The primary goal of this bill is to improve the behaviour of a minority, and I stress "a minority", of tenants engaging in antisocial behaviour and to create better, safer communities for the large majority of law-abiding tenants, including those who are ageing and vulnerable. Many of these tenants have had what might be termed a pretty rough trot in life. Often they find their way in public housing after facing great challenges. The consistent message I keep hearing from many of these wonderful tenants in social housing is that they want the Government to know, first of all, we need more social housing but we also need it to be safe.

Social housing providers across New South Wales manage 140,000 tenancies. Most social housing tenants are good tenants; they are law-abiding people who treat their properties and neighbours with respect. However, there are a minority of tenants who choose to engage in antisocial behaviour. This behaviour can range from ongoing nuisance and annoyance to outright physical violence or the manufacture and dealing of illegal drugs, amongst a range of other activities. This behaviour adversely impacts neighbours and the broader community. It impacts on the vulnerable. This behaviour diverts scarce resources away from those waiting for social housing assistance. It is only fair that current tenants comply with the terms of their tenancy agreement, including respect for their property and the property of others and respect for their neighbours.

As the Minister for Social Housing, I have heard firsthand from social housing tenants about the impact of antisocial and illegal behaviour on their lives. During the Government's recent consultation process on the social housing discussion paper, the issue of better management of antisocial behaviour was one of the most common and high priority issues raised by tenants and people living in social housing. Many people expressed their frustration at a system that they believe allows those who perpetrate antisocial behaviour to remain in social housing even when serious criminal behaviour is occurring. Many tenants report noisy or disruptive neighbours and some identified a problematic level of drug and alcohol use in some social housing communities.

This bill demonstrates that the Government has heard our tenants and our communities. It demonstrates this Government's commitment to improving the quality of life for people living in social housing.

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A recent survey of 780 tenants indicated that 78 per cent think antisocial behaviour in public housing is a problem and 72 per cent think eviction is an appropriate response for people who commit criminal acts in public housing. It also found 51 per cent of tenants have experienced antisocial behaviour in public housing

and one-third have experienced or witnessed serious crime. This is obviously extremely concerning to the broader community and the New South Wales Government. At present, social housing landlords have limited tools to manage antisocial, illegal and fraudulent behaviour before such behaviour escalates to require eviction or other action in the NSW Civil and Administrative Tribunal, which I will refer to from hereon in as the tribunal. A simpler, more transparent approach is needed that provides a clear and strong message to problematic tenants and potentially problematic tenants about the consequences of their behaviour. This bill will help protect vulnerable tenants by removing those engaged in serious breaches of their tenancy agreement from their social housing property.

The provisions within the bill will allow social housing landlords to intervene more effectively to better deal with people who engage in antisocial, illegal and fraudulent behaviour. This new approach will ensure it is balanced with the need to protect the rights of people who experience a range of vulnerabilities, including mental illness, and/or are subject to domestic and family violence. This bill introduces a one-strike policy to apply where a tenant or occupants have been involved in the most severe criminal behaviour. In the event that a tenant is involved in those serious crimes, termination of the tenancy will be automatic. Those crimes include being charged with storing illegal firearms or the show cause offences under the Bail Act 2013, in particular violence that constitutes grievous bodily harm and the manufacture, cultivation or supply of illegal drugs. There has been a number of cases where the tribunal has accepted that significant drug cultivation or dealing is occurring from a public housing property and has not issued a termination order.

For example, a public housing tenant was found with more than 12 kilograms of cannabis in her home and more than 20 kilograms in her car. Police seized nearly two kilograms of cannabis leaf bud with a street value of \$15,000, which had been dried in a kitchen cupboard. Charges were laid, and a two-year suspended sentence with a good behaviour bond was handed down by the courts. Even though there was clear evidence that this serious crime was committed on Government property, the tribunal declined to terminate the tenancy. These provisions in this bill will ensure that, in these very serious cases, the tenancy is not continued. Our priority here must be to protect the people who live near these criminals—it must be to protect the majority of tenants in social housing who do the right thing; and in particular to acknowledge that many of these tenants are vulnerable and afraid.

The tribunal will, however, maintain some level of discretion in exceptional circumstances for other serious behaviour. Should the tribunal not terminate a tenancy in such cases, it will be required to document its reasons for that decision. We are not talking about minor offences here. We are talking about serious crime that has a terrible impact on individuals in our social housing community and the broader community. If a tenancy is at risk through the one-strike process because of the behaviour of other household members, the Department of Family and Community Services will still have to prove, as now, that the tenant intentionally or recklessly caused or permitted the behaviour.

Take for example a scenario where a mother and son are living together in social housing with the mother holding the lease and the son found to be dealing drugs. While the mother is the tenant and is liable for the breach, if she is unaware of the drug dealing it is unlikely she will be evicted. However, if it is shown that she is aware then she is liable for the breach and will be evicted. Further, we will not apply these measures to people who get into difficulty through no fault of their own. Family and Community Services currently has tenancies where a serious crime such as drug dealing is carried out by a violent partner against the tenant's wishes. In these cases, if the partner cannot be forced to leave, Family and Community Services will rehouse the innocent tenant.

In a recent case in Redfern, a vulnerable tenant with an intellectual disability was preyed upon by drug dealers who used his flat as a location from which to distribute drugs. The tenancy had to be terminated to get rid of the drug dealers, but the tenant was rehoused. This is an example of how Family and Community Services will continue to respond to cases where people with a vulnerability, such as those who experience mental illness or disability, get caught up in situations for which they are not responsible.

I now turn to the three-strike policy. This bill will introduce a three-strike policy. This aspect of the bill will act as a warning system for social housing tenants with the aim of modifying the behaviour of people who

engage in ongoing antisocial behaviour and helping them to sustain their tenancy. The use of the three-strike policy will be for breaches of a tenancy agreement that are not considered serious enough to warrant an immediate eviction. If a tenant acquires three strikes within a 12-month period, action can proceed to the tribunal to terminate the tenancy.

Natural justice and procedural fairness are important to the process. It is important to note that when a first or second strike is issued against a tenant, the tenant will have a right to appeal the decision through an independent review panel. For a third strike the tenant will have the opportunity to put their case before the NSW Civil and Administrative Tribunal. Where a tenant experiences mental illness and is involved in behaviour that may constitute a breach or strike, Family and Community Services does everything in its power to avoid evicting that person.

For example, Family and Community Services is currently involved in a case where a tenant is hoarding goods, and where there is severe tension with neighbours and allegations of extreme verbal and some physical abuse. Family and Community Services is working with an organisation called Partners in Recovery, which helps people who experience mental illness. It is agreed that the tension between the neighbours and the hoarding by the tenant has reached a point where the tenancy cannot continue without affecting the mental health and wellbeing of everyone involved. But the intent of Family and Community Services is not to make this vulnerable person homeless. Family and Community Services is arranging a new tenancy and Partners in Recovery are working with the tenant to help him limit the amount of goods he moves into the new property. I hope, and I am sure all members hope, they succeed.

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But this is an example of how Family and Community Services, under the direction of this Government, approaches vulnerable tenants. Evicting tenants is a last resort, but it has to be done in some cases because the obligation of Family and Community Services to neighbours, many of whom are small children, the elderly or those who have other vulnerabilities, including mental illness, cannot be ignored. Family and Community Services weighs the risks to the tenant against the risks to others in the community. However, the tenant would be provided with access to private rental products, including bond loans, advanced rent and assistance with locating properties through real estate agents. Family and Community Services would continue to make referrals to health services in the event the tenant had not yet engaged with them.

The bill also introduces neighbourhood impact statements for consideration by the tribunal once a breach has been proven. Neighbours will be able to have a confidential discussion about what is happening with a Family and Community Services officer, and will be able to table a statement outlining the impact of the antisocial or illegal behaviour on the local community. The statement may draw on information from more than one source and will only include information the officer assesses to be accurate. The source of the information will not be identified. The tribunal will have to take this statement into account when making its decisions. The weighting of this evidence is still a matter for the tribunal to determine. At the moment the only way the tribunal can hear of the impacts of antisocial behaviour on neighbours is where Family and Community Services can find a witness willing to appear at the tribunal. This is very difficult, as many tenants fear retribution.

Tenants may give evidence about illegal behaviour at the tribunal, only to find that their neighbour is not evicted and they have to continue living alongside them. For this reason most tenants do not have confidence that they will be properly protected if they give evidence. In one case a tenant who was twice proven to have been using his public housing property to deal in drugs was allowed to remain by the tribunal, which refused to terminate his tenancy. There was no evidence from neighbours of the negative effect he was having on them, yet the neighbours are over 70 years of age and their front doors are metres from the drug dealer's front door. They could not be expected to give evidence, especially when there is no guarantee that the day after the tribunal hearing they will bump into the person allegedly involved in drug dealing again. After 15 months the decision to allow the tenant to remain was finally overturned on appeal, but elderly neighbours had to put up with a drug dealer and his customers making their lives a misery for more than a year longer.

These statements will enable the tribunal to take into consideration the wider effects of antisocial or criminal behaviour on communities while ensuring that neighbours are protected from recriminations. Other aspects of this bill will help Family and Community Services tackle subsidy fraud. The rent that public housing tenants pay is linked to their household income. Most tenants pay 25 per cent of their income in rent. If a tenant does not declare their income correctly and is found out, Family and Community Services will calculate the rent that he or she should have paid and charge the tenant that amount. This will result in a debt, which can amount to many thousands of dollars. The tenant is able to make arrangements with Family and Community Services to pay off that debt in small manageable payments over an agreed period of time. This bill will allow any debt arising from a proven subsidy fraud to be classified as rent arrears and therefore managed by the department as such.

This was the case for many years until a tribunal judgment in 2014 determined that the debt arising from fraudulently claiming a subsidy was a civil debt and not rent arrears. This is important because it is much easier to get repayment of the money owed if the debt is classified as rent arrears rather than a civil debt. The only way to have civil debt repaid is through costly and often very lengthy proceedings in civil courts. This bill will also provide Family and Community Services with the power to obtain information, documents and evidence from third parties such as employers, to help investigate fraudulent activity. These powers are similar to those that a number of other State agencies have. Furthermore, this bill changes the prosecution for tenant fraud from six months from the date of a false declaration being made by a tenant to 12 months from the date the fraud is detected by Family and Community Services. It is very common for Family and Community Services to become aware of offences sometime after the false initial income or assets declaration is made.

When a tenancy has been terminated for rent arrears or antisocial behaviour, the tenancy should be terminated within a reasonable period of time. This is so that rent arrears do not continue to accumulate or so that neighbours do not have to tolerate antisocial behaviour for longer than necessary. Tenants should not generally need more than 28 days to make alternative arrangements for themselves—for example, finding a property in the private market, especially as they will be given assistance to do this. If there are exceptional circumstances then the tribunal will be able to delay the vacation of the property for a longer period.

Family and Community Services conducts 400,000 maintenance jobs per year and has binding contracts for maintenance in place. The prices within these contracts are determined by competitive procurement processes and maintenance providers generally offer discounts because of the volume of work commissioned. These contracts provide Family and Community Services with a detailed and agreed schedule of costs for all maintenance work. As these properties are a public asset, an appropriate standard of workmanship is required. Need I add, simply to make sure that social housing tenants have a good standard of living an appropriate standard of workmanship is required.

Under the contracts Family and Community Services is able to establish and monitor the standard of work provided by its contractors. It is important that tribunal members accept Family and Community Services' schedule of costs, so that tenants pay the actual cost of repair and tax payers are not left to foot the bill for someone else's irresponsible behaviour. This legislation proposes that when assessing the cost of malicious damage to a property the tribunal will be obliged to accept Family and Community Services' actual costs of repairs—I stress actual costs of repairs. Tenants will still be able to dispute whether the repair is necessary and whether they were responsible for the damage.

The management of antisocial and criminal behaviour is a challenge for the social housing system, but it is critical that it be addressed so that the vast majority of tenants who live in our social housing system feel safe and protected. In my few months as Minister, and also from my many years as a member of Parliament, I have heard from social housing tenants of their wish to ensure that our social housing communities are safer and more pleasant environments for all who live in them. I am also sure that many members in this place are well aware of the high level of concern amongst social housing tenants for the need to ensure that their homes are safe and that they can feel totally confident when they walk out their front doors to engage with the rest of the community. I assure the House that this Government is committed

to ensuring not only that more social housing is provided over the next few years but that it is safe for tenants. I commend the bill to the House.

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Debate adjourned on motion by Ms Sonia Hornery and set down as an order of the day for a future day.