



Residential Tenancies and Housing Legislation Amendment (Public Housing—Antisocial Behaviour) Bill 2015 (Proof)

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

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Second Reading

The Hon. RICK COLLESS (Parliamentary Secretary) [3.08 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I am pleased to bring before the Legislative Council 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 in New South Wales. The primary goal of this bill is to stamp out the illegal and disruptive behaviour of a minority of tenants engaging in antisocial behaviour and create better, safer communities for the large majority of law-abiding tenants, including those who are ageing and vulnerable.

Many members have contributed to the debate on this bill and many important issues have been raised. The Minister for Family and Community Services, and Minister for Social Housing covered much of this important detail in his speech in reply in the other House. I wish to reiterate some of those key points today. The bill is a critical part of the Government's reform of the social housing system. It provides legislative underpinnings to policies that seek to provide a better experience for a vast majority of law-abiding tenants by tackling antisocial and criminal behaviour carried out by a minority of tenants and to protect the vulnerable people who live in social housing.

Unfortunately, there are numerous examples of social housing tenants living in fear in their homes and whom these reforms will protect. I bring to members' attention one example. Last year in Ermington a person was dealing drugs out of a block of units. This brought fear and chaos into the lives of the residents within the block as they dealt with the harsh reality of what it means to live next door to a drug dealer. Every night the dealer's customers would disturb the neighbourhood trying to get access to the building to get to this person's unit. On more than one occasion people tried climbing through open windows of neighbouring apartments to get into the unit block.

The customers of the dealer would knock on every door late at night because they did not know which unit the dealer lived in and people would force their way past residents entering the front door of the unit block. Drug dealing results in people living in fear. One tenant was so frightened she decided she could not invite her grandchildren to visit as it was no longer safe for them. It is unacceptable that some of the most vulnerable people in society are living under these circumstances. This bill will help to deal appropriately with those disruptive tenants.

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 show cause offences under the Bail Act 2013, in particular, violence which constitutes grievous bodily harm and the manufacture, cultivation or supply of illegal drugs. These provisions 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, many of whom 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 need 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 our local communities and the people living there. But there are also protections for tenants in the bill. Natural justice and procedural fairness are important to the process. 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.

Many commentators raised concerns about the removal of the tribunal's discretion where a one-strike offence has been carried out by another occupant of the property, not by the tenant, where the tenant may be unaware that the illegal behaviour is taking place. An amendment has been made to the original bill in the other place so that the one-strike provision will apply to some of the prescribed offences only if the tenant has intentionally or recklessly caused or permitted those offences to take place. As well, when a first- or second-strike notice is issued against a tenant, they will have the right to make a submission to the social housing provider outlining why they disagree with the details in the strike notice. If they are still not happy with the response, they can apply to have the strike notice reviewed by an independent review panel.

A person who is taken into the tribunal under the one-strike policy still has the right to appeal, as the tribunal also has an appeals panel which can review a tribunal decision. Anyone who is evicted will be provided with access to private rental products, including a no-interest loan for a bond and assistance with locating properties through real estate agents. Also, the Department of Family and Community Service [FACS] will refer these people to support services and provide support to access assistance in the private rental market in locations that are affordable.

The bill also proposes the introduction of a three-strikes policy. A number of similar schemes have been introduced in other States and there is evidence to support it as a preventative measure. In Queensland and Western Australia, for example, over 80 per cent of first strikes do not proceed to a third strike, demonstrating the effectiveness of this approach in modifying tenant behaviour. Tenants will have two opportunities under the bill to challenge each strike. The first is to challenge the facts under which the strike was issued and the second opportunity is through the appeals process carried out by an independent review panel. All decisions made by the review panel will be binding and FACS will be obliged to reverse a strike where the panel finds in the tenant's favour. Further, factors including steps a tenant has taken to remedy prior breaches can be taken into account under the tribunal's capacity to apply discretion.

Tenants will always be offered the opportunity to respond to allegations of antisocial behaviour. Support agencies will be contacted where tenants are engaged with existing services or referrals will be made to link people to services to assist them to meet their tenancy obligations if they are engaging in behaviour that places their tenancy at risk. Advocates have suggested that tenants should be able to take every strike notice issued to the tribunal. However, this is not the best approach for tenants. The three-strikes policy is about keeping people out of the tribunal, not taking them to it. The chief executive of one of our non-government community housing providers, Evolve Community Housing, stated:

The three chances may be just what [a vulnerable tenant] needs to successfully sustain their tenancy ... You have to understand, for a lot of our tenants, they need support and guidance to become good tenants, neighbours and community members. Under this new bill, social housing tenants are given not just one but three chances before they risk losing their rental property.

Where antisocial behaviour arises because of mental illness, FACS will generally use a different approach to engage with the tenant. The Department of Family and Community Services is experienced in working with clients with complex needs and will engage with health and social support services to assist the tenant wherever possible. In every district there are formal arrangements for liaison between the mental health services of the local health district and the local housing staff. The department has 104 dedicated Senior Client Service Officer specialist staff located across the State whose responsibility is to work with vulnerable people and complex tenants to ensure they receive support to sustain their tenancy. The FACS staff make and receive referrals about individual tenants and they work together with tenants to reduce the risk of tenants losing their tenancy.

The first response of FACS is to engage health and social support services to assist the tenant. Where a neighbourhood dispute has arisen from a tenant's mental health condition and mediation or referral to support services has not resolved the situation, FACS will explore other options, such as relocating the tenants, rather than applying to terminate the tenancy. However, there will be cases where FACS may have no choice but to take action through the tribunal to terminate the tenancy, usually where the tenant will not accept mental health or other services. If the tenant accepts help at any time during that process, assistance can be provided to relocate the tenant if it is clear that the offending behaviour will cease.

In cases where tenants are victims of domestic and family violence, FACS will take a different approach to ensure the safety of the victims of violence is the priority. The department is committed to ensuring the safety of tenants and their children who are experiencing domestic and family violence. All efforts will be made to ensure the victim is not negatively impacted by antisocial behaviour on the part of the perpetrator of such violence.

When a family breaks up as a result of family violence, FACS may rehouse the party leaving the home. If the property is damaged due to domestic and family violence and it is evident that the damage is the result of the perpetrator's violence, it is within FACS policy to treat these clients with sensitivity and understanding and to apply discretion so that no financial impact is placed on the victim.

Concerns were raised about inadequate time frames for tenants to respond to strike notices. The concern that 14 days for a tenant, particularly a vulnerable tenant, to respond to a strike notice may be insufficient has been taken on board. An amendment has been made to the bill to give tenants a minimum of 21 days to respond to a strike notice. This provides sufficient time for a tenant who disagrees with the department's decision to issue a strike notice to make a submission to FACS outlining the reasons. It also provides sufficient time for the tenant to seek assistance to prepare a submission, if needed.

If FACS decides to proceed with a strike against the tenant following a review of a strike notice, the tenant will be given a minimum of 21 days rather than 14 days as stated in the original bill to request a review of the strike notice by an independent review panel. The Opposition has stated that both time frames—to make a submission to FACS and to request an independent review of a strike notice—should be further extended to 28 days. This would place an unnecessary administrative burden on the department and would make it unlikely that three strikes could be issued in a 12-month period. The notion that finalising a strike notice should take more than four months, taking into account review processes, is unacceptable.

The bill introduces neighbourhood impact statements for consideration by the tribunal once a breach has been proven. Neighbours will be able to have a confidential discussion with a FACS officer about what is happening and will be able to table a statement outlining the impact of the antisocial or illegal behaviour on the local community. 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. In response to concerns regarding the tabling of neighbourhood impact statements in NSW Civil and Administrative Tribunal proceedings, it was always the intention that such statements be tabled at the tribunal only once a breach is proven and the tribunal is considering whether to make a determination order. To put the matter beyond doubt, an amendment has been made to the bill in the other place which will clarify the position.

It is important that tribunal members accept the schedule of costs from FACS so that tenants pay the actual cost of repair and taxpayers are not left to foot the bill for a tenant's irresponsible behaviour. The legislation proposes that when assessing the cost of malicious damage to a property, the tribunal will be obliged to accept the actual cost of repairs from FACS. Tenants will still be able to dispute whether the repair is necessary and whether they were responsible for the damage. All social housing providers have a process to secure services at a competitive rate. This is a safeguard to ensure that they are not overcharged and they pay the correct amount.

Tenants will be able to dispute whether they are liable for a given cost and whether the work was necessary, but once this is established it is only right that they should pay the actual cost of the damage. In conclusion, the management of antisocial and criminal behaviour is a challenge for the social housing system. The Baird Government has heard from many tenants who wish for safer social housing communities and more pleasant environments for all who live in them. This bill will help to ensure that happens. I commend the bill to the House.