

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.08 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read second time.

I am pleased to introduce the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009, which will, for the first time, give all tenants in New South Wales important protections when a mortgagee seeks to recover possession of rented premises. Presently, the amount of notice given to tenants to vacate in these situations is entirely up to the mortgage lender involved. Some unfortunate tenants return home to find that the locks have been changed by the bank and a note pinned to the door advising them about how to go about retrieving their possessions. Other tenants may be given only a few days or a week or so to move out, if they are lucky. Clearly, this is an unacceptable situation to all fair-minded people and tenants deserve to be better protected.

New South Wales has one of the highest proportions of people living in rental homes in Australia, with about one-third of the community renting their homes. The Government has conducted a comprehensive review of existing tenancy laws. During the consultation period, urgent legislative reform regarding the plight of innocent tenants caught up in the crossfire between mortgage lenders and landlords received almost unanimous support from the community and peak organisations. This Government intends to introduce a wide range of reforms to the tenancy laws arising from the recently completed review. The Minister for Fair Trading expects to be in a position to release an exposure draft bill for public comment before the end of the year. However, given the impact of the global recession, the Rees Government believes it is critical that these amendments, which will protect tenants from having to pack their bags at the whim of a mortgagee, be separated from the overall reform package and introduced without delay.

There are more than 644,000 residential leases in the private rental market in New South Wales, which is dominated by small investors who rarely own more than one or two properties. The global recession has created unprecedented challenges, exposing more mum and dad investors to the risk of defaulting on mortgages. Among the leading reasons borrowers default on their loans are temporary unemployment, illness or relationship breakdowns. We are all acutely aware that unemployment is set to increase as a result of the current global recession. While there has been a slight downturn in repossession writs executed in New South Wales, the Rees Government is being upfront with the people of New South Wales about the future. In the first three months of this year 395 writs were executed compared to 423 writs executed in the first three months of 2008. While this figure includes owner-occupiers, many innocent tenants through no fault of their own face losing their homes with little or no warning as a result of the financial problems of their landlords.

Being evicted in such a manner has a significant impact on the lives of affected tenants. That is why the Government believes it is absolutely critical that these matters be given priority. Specifically, the bill has three main objectives: firstly, to require mortgagees to give tenants at least 30 days notice if they wish to recover vacant possession of the rental property; secondly, in cases where a tenant is told to leave by a mortgagee, to specify that no rent is payable during the period of the notice given; and, thirdly, to put in place a simple system to allow a mortgagee to authorise release of the tenant's rental bond.

The first objective is the most important, as it will put an end to the practice of tenants being asked to leave with little notice. The 30-day notice period was one of more than 100 reform proposals contained in the report entitled "Residential Tenancy Law Reform—A New Direction", which was released by the Government for consultation purposes. This particular set of proposals regarding mortgagee repossessions drew a wide cross-section of support in submissions—most people acknowledged the obvious inequity experienced by tenants under the present system. The Government considers that 30 days represents a fair balance between the interests of tenants and mortgagees. It will give those tenants affected a reasonable opportunity to find another rental property, while not unduly delaying the sale processes for the mortgagee.

Thirty days is consistent with the current notice period that can be given when a landlord ordinarily sells rented premises and the new owner requires vacant possession. The period is also consistent with the current approach taken in Queensland, Victoria and Tasmania, which all require tenants to be given at least 28 days notice by a mortgagee in such circumstances. That said, the bill will also allow mortgagees the flexibility to give tenants more than 30 days notice to vacate or to extend the notice period given already if the tenant is experiencing difficulty finding other accommodation. I appeal to mortgage lenders in these difficult economic times to consider compassionately all such requests for more time from tenants on a case-by-case basis.

New South Wales will lead other jurisdictions in the provision of a rent-free period for tenants who find themselves caught in such a difficult situation. The bill provides that when a tenant is given notice to vacate by a mortgagee, they will not be required to pay any rent, fee or any charge during the 30-day notice period, and they

can recover any rent that they may have paid in advance for that period. This will provide a level of immediate compensation for tenants to help cover their relocation expenses such as removalists' costs and any bonds for electricity and other utilities to be connected at their new home. Unfortunately, there have been occasions where tenants have been evicted by a mortgagee just days or weeks into a new tenancy agreement, resulting in the money the tenant had just spent on moving in essentially being wasted.

The rent holiday provided by the bill is the first time such a measure has been introduced in Australia and it will provide a quicker, simpler and more effective way of ensuring that some funds are on hand to meet the immediate expenses of tenants placed in this situation through no fault of their own. Tenants can and will continue to be able to seek additional compensation from their former landlord for the loss of the tenancy, but this takes time and effort on their part. Where the landlord has financial difficulties or has been declared bankrupt, pursuing them for compensation is often a fruitless exercise. Where a tenant already has paid rent in advance covering part of the rent-free period, he or she will be entitled to a refund from whoever has the money—the landlord, the landlord's agent or the mortgagee.

If the refund is not made, the Consumer, Trader and Tenancy Tribunal will have the power to make appropriate orders. This could include ordering the mortgagee to pay the money from the sale proceeds in the event that the landlord is bankrupt or the amount is otherwise irrecoverable. The New Directions report had initially proposed that the rent holiday apply for only a fortnight. However, many submissions to the review argued that this was inadequate. The Government has listened to the views of the public on this matter and has decided to extend the rent holiday to equal the notice period.

The third important improvement contained in the bill will enable the Rental Bond Board to refund the tenant's rental bond after receiving written authorisation from the mortgagee. Presently the Landlord and Tenant (Rental Bonds) Act does not recognise mortgagees in any capacity. This can cause delays in obtaining a bond refund for tenants if they cannot get the former landlord or agent to sign the claim form. Allowing mortgagees who issue eviction notices to also authorise bond refunds should help more tenants get their bond back before they need to pay the next one. This reform received general support when it was first outlined in the New Directions report. This proposal will not interfere with the right of the former landlord to lodge a claim against the bond if, for instance, they believe the tenant owes them rent from before the mortgagee obtained possession. If such a claim is received before the bond is released in accordance with a mortgagee authorisation, the Rental Bond Board will retain the bond until the dispute is settled between the parties or by the Consumer, Trader and Tenancy Tribunal.

The bill contains a number of other initiatives that are largely ancillary to the three main objectives. It clarifies the right of the mortgagee, or more specifically the real estate agent they appoint to handle the sale, to gain access to show the property to prospective purchasers. This access will be limited to a reasonable number of occasions and will be subject to agreement being reached with the tenant on the actual dates and times of each inspection. The bill makes it clear that all existing tenants will benefit from these changes. This will apply despite the terms of mortgage contracts or the wording of Supreme Court orders. The only exception will be in those cases where Supreme Court proceedings have already been finalised and the mortgagee is in the process of recovering possession.

The terms of the bill also make it clear that mortgagees will face the same penalties as landlords if they recover possession of a rented property without giving the required notice to vacate or before the specified date in the notice has expired. The Government believes that the bill as presently drafted is sufficiently clear in all aspects. However, in recognition of the bipartisan support for these important measures the Government will be moving an amendment to clarify one provision. The amendment makes clear the commencement date of the rent holiday period for tenants who are asked to leave by a mortgagee. There appears to be some confusion, particularly among members of the Opposition, as to when the rent holiday period is meant to start. This amendment spells out that the tenant is only entitled to stop paying rent once he or she is given the 30 days notice to vacate by the lending institution.

The rent holiday period was never intended to commence, as suggested by the member for Baulkham Hills in the other place, as soon as the owner falls behind with repayments, or when the mortgagee issues him or her with a notice of default, or when the lending institution applies to the court to foreclose. Nor was it meant to start when the Supreme Court makes a judgement order or issues a writ of possession. The rent holiday period is only meant to apply when a mortgagee gives notice to the tenant to vacate. Naturally, in most cases this will be shortly after the court order is made, which means there is essentially little difference between the two timeframes in most cases. However, the Government accepts that, from time to time, there may be some delay from when the court makes its order to when the mortgagee issues a notice to vacate to the tenant.

This Government amendment will remove any doubt and potential for legal argument that the tenant must still keep paying rent up until such time as they receive the 30 days notice from the mortgagee and that the rent holiday period only lasts for the period of the notice. The measures in this bill provide certainty for financial institutions and those investors who have already lost their property to the bank, and they introduce fairness for tenants caught in the system. Given that mortgagees already deal with similar notice requirements in most other States there should not be any difficulty in complying with these new provisions. The Tenants Union is on the

public record as calling for these changes to be made to the tenancy laws as a matter of urgency. Other peak organisations such as the Real Estate Institute and the Australian Banking Association also support these reforms. The Property Owners Association does not oppose giving better protection to tenants in this fashion. These measures deserve bipartisan support.

The Hon. Catherine Cusack, when she was Opposition spokesperson for Fair Trading, is on the record committing the Opposition to supporting a bill of this nature and I am pleased to see that support was reaffirmed in the other place last night. The issue of requiring landlords to disclose to prospective tenants if they are behind in their mortgage payments has been raised with the Government. While the Government can see some merit in this proposal, the Government is reluctant to introduce such requirements without proper consultation. The general issue of pre-disclosure of material facts to prospective tenants is being considered as part of the broader reforms to the tenancy laws. The Government believes issues surrounding the disclosure of mortgage details should be considered as part of the larger reform package to come.

Some have suggested that when a landlord has defaulted, the mortgagee should be required to step into the shoes of the landlord so that the tenancy can continue at least until the property is sold. While the Government considered this approach, we do not agree that this is the way to proceed. This would impose costs on mortgagees to take over the tenancy management role. Such costs would be a particular burden on smaller mortgagees. Some tenants may not wish to go through the inconvenience of having a steady stream of potential buyers traipsing through their home only to be asked to leave at the end of the day. They may prefer a clean break. There will also be those who will suggest that these laws should have been introduced earlier. The Government does not accept that it should have rushed through hasty, ill-prepared legislation just for the sake of being seen to do something.

We have taken the time necessary to examine all of the complex issues and potential ramifications to ensure that no unintended consequences result from these amendments. These changes are important not only for tenants but for landlords and mortgagees as well. They deserve proper consideration. These amendments should make mortgagees stop and think about whether they really need to evict tenants in order to sell the property. The bill specifically recognises the option for mortgagees to offer the tenant a new lease if they want the rent to keep coming in until the premises are sold. If mortgagees still desire vacant possession, the bill will ensure that tenants are given a reasonable period of time to find another home and immediate compensation to help with the costs involved. In doing so, the bill will not unduly interfere with mortgagee sales or discourage investment in the rental property market. I am proud to say that this bill is the result of a genuine consultation process.

I wish to acknowledge the contributions of all the organisations and individuals who assisted in the development of this bill. In particular, I make special mention of the role played by Alison Routley, from the Policy Division of the Office of Fair Trading. Alison was responsible for reading and summarising the more than 1,500 submissions received during the course of the review. Sadly, Alison recently lost her courageous battle with cancer. This bill is a fitting tribute to her dedication and hard work. The bill is tangible evidence of the Rees Government's commitment to helping working families and achieving social justice for vulnerable members of the community, and I commend it to the House.