

Agreement in Principle

Mr MATT BROWN (Kiama—Minister for Housing, and Minister for Tourism) [3.35 p.m.]: I move:

That this bill be now agreed to in principle.

The Housing Amendment (Tenant Fraud) Bill amends the Housing Act 2001. This bill continues the reshaping of public housing reforms introduced by the New South Wales Government in 2005. The most significant reforms to public housing in 50 years have been successful in improving equity and efficiency to our housing system so that we can continue providing homes to those most in need. This bill provides a substantial legislative foundation to bring about the prevention, detection, investigation and prosecution of public housing tenant fraud. Firstly, let me provide the House with some real-life examples of the types of fraud this bill sets out to address. A tenant subleased his Housing New South Wales property while living in Western Australia and collecting rent from a second property he owned there. The tenant now owes \$65,000.

Another example is of a daughter and son-in-law residing in a relative's property who were owners of two properties; both were employed. The debt assessed in this case was \$125,000. Another tenant was found to be running a painting and decorating business and owned numerous properties in New South Wales and interstate. This tenant owes \$67,000. Many other examples with similar circumstances have been presented. We are committed to looking after older people. One of the Government's most important priorities is ensuring that our elderly people enjoy the stability and security of a decent home.

Demand for affordable housing suitable for older people is set to increase considerably over the next two decades. That is why we have committed \$420 million to "New Directions in Social Housing for Older People", delivering 2,800 new properties over the next four years to house our elderly tenants. The lemma Government will also invest \$75 million over the next four years to modify properties that will make life much easier for older people. We will install lifts, adapt kitchens and bathrooms, develop designated older persons precincts in all major redevelopments, refocus policies on housing older people only with other older people, and encourage people in social housing to keep an eye out for older neighbours. The lemma Government is delivering on its commitments to provide safe, decent and affordable accommodation for our elderly people, giving them the dignity they deserve.

This bill will allow Housing New South Wales to address rental rebate fraud with the seriousness it deserves. Housing New South Wales directly manages some 130,000 public housing properties. It is the largest single property provider in the country and provides properties for residents in our State who are most in need of housing. Housing New South Wales charges market rent for its accommodation and provides a rental rebate to eligible tenants based on income criteria. In 2003-04 Housing New South Wales collected approximately \$529.5 million in rent from its 340,000 tenants.

The cost of rental rebate fraud has been estimated at between 5 per cent and 10 per cent of the value of all rental subsidies. These figures are based on industry standards. In dollar terms this means that even if only 5 per cent of rental rebate subsidies are claimed fraudulently there is an annual cost to Government of \$26 million. If 10 per cent is used for the calculation, the annual cost to Government of fraud reaches \$52 million. Those funds could be used to provide up to 200 new homes per year—to provide homes for those most in need of assistance.

There are significant benefits to be gained with the successful prevention, detection, investigation and prosecution of cases of intentional rental rebate fraud. Prosecution sends a clear signal to the public that Housing New South Wales is committed to addressing rental fraud. Importantly, it reinforces the efforts of front-line staff to identify individual cases of fraud. Finally, it ensures the Government receives a proper return for its assets so that maximum resources are available to house those in need. Housing New South Wales historically has relied on civil rather than criminal law to deal with tenant fraud. This has been due in part to Housing New South Wales's previously limited legislative powers. However, with this bill, the tide has turned, and tenant fraud is being seen for what it is—a crime against the public, and a crime against the public purse. Importantly, this bill provides innovative solutions to protect the public purse.

Tenant fraud arises when an applicant for public housing provides Housing New South Wales with false information about the composition and income of their household, or when an existing tenant fails to advise Housing New South Wales of a change in the household's financial circumstances. This usually relates to a failure to declare changes in their own or other occupant's income. It can also arise from a failure to declare all of the occupants living in a public housing premises and their financial and property interests. Tenant fraud includes the crime of intentionally or recklessly making a false, misleading or incomplete declaration whether orally or in writing to Housing New South Wales. As a result rental moneys, which would otherwise be legally payable to Housing New South Wales, are wrongly retained by the tenant.

Should Housing New South Wales receive information that there may be additional undeclared income received by any member of the household the tenant is given the opportunity to correct or rebut that information. That opportunity is given in writing. Fairness lies at the heart of these reforms. However, if a person is found responsible for fraud against the public purse then I expect Housing New South Wales to take action to obtain possession of the premises in question. I expect the Consumer, Trader and Tenancy Tribunal to make an order for possession. There should be no notion of preserving the tenancy because a criminal sanction has been imposed under criminal laws. This bill has been developed to emphasise that rental rebate fraud is a crime against the system of public housing and to give Housing New South Wales greater fraud-related powers generally.

This bill introduces a number of amendments to the Housing Act 2001. This bill amends existing section 69 of the Housing Act 2001 to create a penalty of imprisonment for obtaining housing by falsely representing financial or other circumstances. The bill maintains the existing penalty of a fine of up to \$2,200 and adds to that penalty a term of imprisonment of up to three months, or both. It is clearly intended that Housing New South Wales will also have the power to separately terminate the tenancy. This bill creates an offence for a tenant to fail to report to Housing New South Wales a change in circumstances which impacts on their entitlement to a rental rebate or other benefit within 28 days. The sanction for breach is a fine of up to \$2,200 or a term of imprisonment of up to three months, or both. There is no current offence of this nature. Social equity considerations warrant the creation of such an offence.

The bill enables Housing New South Wales to access certain public registers and databases for the purposes of fraud prevention, detection, investigation and prosecution. The proposed new section 69B also allows Housing New South Wales to disclose information to the bodies to whom a request for information is made. This bill allows limited data exchanges between Housing New South Wales and other State agencies and bodies for the purpose of reducing fraud on the public revenue. I expect that these powers will be used to proactively detect fraud through risk-profiling measures or batch searching that may be developed in accordance with appropriate information-sharing protocols between the relevant departments whose registers may be accessed.

The relevant databases are the driver licence register under the Road Transport (Driver Licensing) Act 1998, the vehicle registration register under the Road Transport (Vehicle Registration) Act 1997, the Business Names register under the Business Names Act 2002, the Real Property register under section 31B of the Real Property Act 1900, the Register of Interest in Goods under section 4 of the Registration of Interest in Goods Act 1986, and any register maintained under the Maritime Services Act 1935 or the Marine Safety Act 1998 with respect to registrable vessels.

Registers such as those I have mentioned are of considerable value in ensuring that public housing goes to, and remains with, those most in need. It is therefore necessary in the public interest to provide a legislative solution that enables Housing New South Wales to obtain or even exchange information with certain specified State agencies for fraud-related purposes. Currently checks cannot readily be undertaken of applicants at the time of making an application for public housing or in the course of their tenancies. Nor can random checks of high-risk profile groups be undertaken to verify information already provided to Housing New South Wales. That can be done only if there is a current investigation. This bill will allow Housing New South Wales to undertake a more robust approach to fraud preventions and detection as well as investigation and prosecution.

It is critical to reducing fraud against the public purse that Housing New South Wales has the ability to obtain information readily and practically, unburdened by unnecessary red tape. There is presently no means by which Housing New South Wales can conduct a search of the State public register of business names by name or address to see whether a public housing tenant currently owns any businesses. This bill will allow searches to check whether tenants are illegally running a business from their home, or failing to declare income from that business where it is needed for the purpose of assessing their rent rebate.

The bill proposes to make a person other than just the tenant legally liable for obtaining the benefit of a rental rebate where that person has wrongly obtained the benefit of a rebate. The current tenancy agreement does not presently recognise the legal liability of anyone other than the tenant. This provision extends liability to an adult occupant who knowingly and wrongly obtains the benefit of a rent rebate. This means that when a tenant is without financial resources but the occupants have financial means at their disposal and have knowingly participated in a fraud on Housing New South Wales civil action for recovery will lie against the unauthorised occupants as well as the tenant.

The new section 72B enables Housing New South Wales to register an interest in real property when there has been a fraud perpetrated against Housing New South Wales and the tenant owns undeclared real property. This process will allow Housing New South Wales to protect and realise an asset in satisfaction of a large debt arising from major fraud. In early 2007 the Premier announced an investment of \$66 million as part of Building Stronger Communities. The Government is committed to ensuring that public housing communities are strong, and has invested significant funds to achieve that aim.

The Government wants to build community regeneration in our social housing estates. Through that investment there will be stronger, more vibrant and supportive communities for social housing tenants at six major locations

covering 18 housing estates across New South Wales. Those locations are Mount Druitt, Claymore, Macquarie Fields, Killarney Vale, Bateau Bay, Tumbi Umbi, Dubbo and Bathurst-Orange. Over the next four years those estates will be renewed into stronger communities, where people can live in safety and have access to important services as well as education, training and employment opportunities.

The program will provide an environment in which our youth can reach their full potential and older people can live with the support of their neighbours. Neighbourhood management boards comprising residents will be established on the estates. The boards will empower tenants to make decisions about their local communities. Regeneration plans will be developed to improve homes, public spaces and access to services, all to create a better social environment. Housing is a major priority of the Lemna Government and this strategy forms part of the overall vision for affordable and accessible housing in New South Wales. In initiatives such as this, when read in conjunction with the law, one can see that the focus of the bill is to look after our tenants and make sure that communities are strong, vibrant, productive and safe.

As a State entity, Housing New South Wales cannot recover an overpayment of any kind that it has made by deducting from a Commonwealth benefit received by a tenant. Such Commonwealth benefits are said to be inalienable, meaning that they cannot be garnisheed or subjected to other forms of civil recovery. The bill introduced an innovative approach to support the new fraud powers that allow Housing New South Wales the statutory right by notice to cancel or reduce a rent rebate for a specified period in order to recover a judgement debt against the tenant. Such arrears of rent may arise from any rental rebate or other benefit wrongfully granted, whether by Housing New South Wales by mistake, or by fraud on the part of a tenant. This provision is not subject to appeal at the Housing Appeals Committee. This provision also allows Housing New South Wales to recover money while maintaining tenancy in those cases where it has been decided that the tenancy need not be terminated.

The bill gives Housing New South Wales the power and ability to lay a complaint and to prosecute fraud offences under the Housing Act 2001. Where a criminal prosecution is undertaken, orders for monetary compensation can be made ancillary to the criminal charge. I make it clear that if a criminal action should fail that is no barrier to civil recovery. Equally, civil and criminal sanctions are to be kept separate and independent of each other. The imposition of a sanction by one part of the legal system must not be used to ameliorate the imposition of another different sanction by another part of the legal system. Members of the public may contact Housing New South Wales if they wish to report suspected fraudulent activity. An amnesty will be developed to operate for a limited period aimed at encouraging any tenant currently incorrectly claiming a rental rebate to rectify that situation. That will ensure that tenants who identify themselves will pay the correct rent in future. The bill will deliver equity, fairness and sustainability to our public housing system. I commend the bill to the House.