

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.45 p.m.], on behalf of the Hon. Ian Macdonald: I move:
That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

This bill continues the Reshaping Public Housing reforms introduced by New South Wales Government in 2005.

These have been the most significant reforms to public housing in 50 years and they have been successful improving equity and efficiency to our housing system so that we can continue delivering 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:

Case Studies

Tenant A subleased his Housing New South Wales property while living in Western Australia and collecting rent from a second owned property there. The tenant now owes \$65,000.

Tenant B's daughter and son-in-law all residing in the elderly tenants Housing New South Wales property were found to be owners of two properties and were both working. The debt was assessed at being \$125,000. However, the tenant in this matter is on a pension and recovery against the non-tenants is currently not legally possible.

Tenant C was found to be running a painting and decorating business and owned some sixteen (16) properties in New South Wales and South Australia. The tenant now owes \$67,000.

Tenant D owned and ran two real estate agencies as well as being a Director of a finance company. The tenant now owes \$16,000.

Tenant E had lived in a Housing New South Wales property for 45 years. The tenant was later found to own a two-storey property in Ulladulla and was also a Director of a company. The tenant now owes \$35,000.

These are significant instances of fraud that constitute a significant abuse of the public purse and deprive vulnerable people of the housing assistance they urgently require.

This bill will allow Housing New South Wales to address rental rebate fraud with the seriousness it deserves.

The Cost of Fraud

Housing New South Wales directly manages 130,000 public housing properties for those residents of New South Wales 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 2003/4 Housing New South Wales collected \$529.5 million in rent from its 340,000 tenants.

The cost of rental rebate fraud has been estimated to vary 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 the 10 per cent of figure is used the annual cost to Government of such fraud reaches \$52 million. These funds could be used to provide up to 200 new homes per year to provide homes for those most in need of assistance.

Importance of the bill

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 the maximum amount of resources are available to house those in need.

Housing New South Wales has historically 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.

With this bill however the tide has turned and tenant fraud is being seen for what it is a crime. 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.

Explanation of Tenant Fraud

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 monies 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 the crime 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.

The Legislation

This bill introduces a number of amendments to the Housing Act 2001. This bill amends the existing section 69 of the Housing Act 2001 to create a penalty of imprisonment for obtaining housing by falsely representing their 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 (3) 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 twenty-eight (28) days.

The sanction for breach is a fine of up to \$2,200 or a term of imprisonment of up to three (3) months or both.

There is no current offence of this nature.

Social equity considerations warrant the creation of such an offence.

Data-Matching Powers

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 those same 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 pro-actively detect fraud through risk profiling measures or batch searching which 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 contained in the Road Transport (Driver Licensing) Act 1998;

the vehicle registration register contained in the Road Transport (Vehicle Registration) Act 1997;

the Business Names register contained in the Business Names Act 2002;

the Real Property register under section 31B of the Real Property Act 1900, the Register of Interest in Goods maintained 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 with respect to 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 the fraud related purposes.

Currently, checks cannot readily be undertaken of applicants at the time of making an application for public housing or during 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. This can only be done 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 if 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.

Recovering DebtRecovering Debt

This 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 where the 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 then in those cases civil action for recovery will lie against the unauthorised occupants as well as the tenant.

The proposed new section 72B enables Housing New South Wales to register an interest in real property where 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.

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 subject to other forms of civil recovery.

This bill introduces an innovative approach to support the new fraud powers which allows Housing New South Wales the statutory right by notice to cancel or reduce a rent rebate for a specified period of time in order to recover a judgement debt against that 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 fraud on the part of the tenant.

This provision is not subject to an appeal at the Housing Appeals Committee.

This provision also allows Housing New South Wales to recover monies while also maintaining the tenancy in those

cases where it has been decided that the tenancy need not be terminated.

New Prosecutorial Powers

This 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.

It should be made clear that if a criminal action should fail it 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.

Reporting Tenant Fraud

Members of the public may contact Housing New South Wales if they wish to report suspected fraudulent activity.

There will be an amnesty developed to operate for a limited period of time aimed at encouraging any tenant currently incorrectly claiming a rental rebate to rectify the situation.

This will ensure that tenants who identify themselves go on to pay the correct amount of rent in the future.

This bill will deliver equity, fairness and sustainability to our public housing system.

I thank my colleagues for their support of the bill, and commend it to the House.