

## Preliminary comment

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### **Residential Tenancies and Housing Legislation Amendment (Public Housing – Antisocial Behaviour) Bill 2015**

**5 August 2015**

The Tenants' Union of New South Wales holds strong concerns about the *Residential Tenancies and Housing Legislation Amendment (Public Housing – Antisocial Behaviour) Bill 2015*. The bill, which will make significant changes to certain processes for ending social housing tenancies, among other things, has been introduced into the NSW Legislative Assembly without consultation. The Tenants' Union takes this opportunity to issue a preliminary comment in relation to the bill. We will produce a substantial comment addressing the bill in detail at a later time.

The bill intends to 'amend the *Residential Tenancies Act 2010* and the *Housing Act 2001* to facilitate the termination of public housing tenancies for antisocial behaviour and for other purposes'. The primary means by which it will achieve this is by removing the New South Wales Civil and Administrative Tribunal's ability to properly act as the independent dispute resolution forum in cases involving social housing tenancies.

It will do this in two ways:

1. By removing the Tribunal's discretion regarding termination of tenancy agreements in certain cases, in circumstances where discretion is necessary to avoid injustice.
2. By restricting the Tribunal's ability to consider evidence in certain matters, other than evidence tendered in support of applications by social housing landlords.

If passed, the bill will render the Tribunal incapable of delivering just outcomes in many cases. Rather than consider and determine social housing tenancy disputes as the independent arbiter, the Tribunal will be reduced to an administrative tool for social housing landlords.

#### **Removal of discretion**

The bill will mandate the immediate termination of social housing tenancies in cases where various criminal offences can be established at the civil standard of proof. But termination is not a just outcome in all circumstances. The Tribunal's ability to decline to make termination orders is an important safeguard. Removing this ability will lead to injustice.

Under current tenancy law landlords can apply to the Tribunal for orders terminating a tenancy on the ground that the premises have been used for an illegal purpose. Where this is proved, the Tribunal may terminate the tenancy or, at its discretion, decline to terminate, considering the

circumstances of the case. It is especially important and appropriate that the Tribunal have discretion in the following circumstances:

- Where a person other than the tenant has committed the offence.
- Where other household members not involved in the offence would also be evicted.
- Where criminal justice outcomes allow for the rehabilitation of the offender in their home.
- Where criminal justice outcomes have already been applied, and justice served.

Social housing landlords are known to have taken termination proceedings in all such circumstances. Even so, the Tribunal's discretion is never applied without rigorous consideration of all relevant factors.

### **Restrictions on ability to consider evidence**

The bill will allow social housing landlords to certify that certain evidence is 'conclusive proof' of relevant matters. It will do this in relation to applications for termination where a tenant has accrued three 'strikes' against them, and for compensation for the cost of repairs to damaged property.

In relation to the accrual of three 'strikes', a certificate from a social housing landlord will be conclusive proof of an alleged breach of a tenancy agreement, as long as the Tribunal is satisfied a 'strike notice' was issued to the tenant in relation to the alleged breach and the tenant did not raise an objection to the notice within fourteen days of receiving it. This creates an administrative burden that will be particularly onerous for tenants who have low literacy skills, limited support networks, poor mental health, or are otherwise hindered from responding to a 'strike' notice within the required time. Tenants who fail to meet this burden will be limited in how they may respond to 'certified' evidence of the landlord, and this could lead to the Tribunal being denied the opportunity to consider all relevant matters.

In relation to the cost of repairs to damaged property, a social housing landlord may determine the 'reasonable cost' of work by producing a certificate that the Tribunal must take as conclusive proof. This assumes that social housing landlords' are charged commercially competitive rates by their repairs and maintenance contractors, but this is not always the case. In fact, the NSW Land and Housing Corporation has identified this as an issue, and intends to change the pricing structures within its contracts to address it. But the bill provides no restrictions or limitations to this provision, or any indication as to who will be delegated to produce such certificates. It will be open to misuse.