



18 August 2015

The Hon Brad Hazzard MP
Minister for Family and Community Services, and Minister for Social Housing
By email: office@hazzard.minister.nsw.gov.au

Dear Minister Hazzard,

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

1. Women's Legal Services NSW (WLS NSW) is writing to express significant concerns about the Residential Tenancies and Housing Legislation Amendment (Public Housing Antisocial Behaviour Bill) 2015 ('the Bill').
2. Women's Legal Services NSW is a state-wide community legal centre for women which provides specialist legal services including relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. We have read and endorse the Briefing Paper provided by Redfern Legal Centre, Marrickville Legal Centre, Eastern Area Tenants' Service, Kingsford Legal Centre and Illawarra Legal Centre.
4. Our letter focuses specifically on the impact on victims of domestic violence.

Impact on victims of domestic violence

5. We are concerned that by removing the Tribunal's discretion to consider matters on a case-by-case basis the Bill is inconsistent with the rule of law. The Bill is also inconsistent with Australia's human rights obligations to ensure that women and children have access to safe and secure housing.
6. We submit the Bill is neither a reasonable nor proportionate response to what is acknowledged as seeking to address the behaviour 'of a minority' of tenants. It has many unintended consequences.
7. We do not support the Bill in its current form.

Mandatory termination of tenancy

8. It is not an uncommon scenario that women victims of domestic violence may have a violent

partner or family member who may be using their premises for the purpose of manufacture, sale or supply of a prohibited drug. Women may be unaware that the premises are being used for this purpose or if they are aware, due to fears for their safety and the safety of their children, have no way to prevent the premises from being used in this way. Under proposed s154D(b) the Tribunal must terminate the tenancy in these circumstances.

9. If an occupant, be it a violent partner or child, causes an injury amounting to grievous bodily harm to, for example, a neighbour or social housing worker, and the matter went before the Tribunal, under proposed s 154D(1)(a) the Tribunal would be required to terminate the woman's tenancy even though she may not have had knowledge or control over such behaviour.
10. It is also possible that a violent perpetrator stores an unlicensed firearm on the premises. Under proposed s154D(1)(c)(i) if the matter went before the Tribunal the Tribunal would be required to make a termination order irrespective of whether the woman knew that the firearm was stored on the premises.
11. Under proposed s154D(1)(c)(ii) another ground for the Tribunal to make a mandatory termination order of a social housing tenancy is if there is a show cause offence within the meaning of the *Bail Act 2013* and the tenant or other person has been charged with an offence relating to those circumstances.
12. Section 16B of the *Bail Act 2013* provides a list of offences to which the show cause requirement applies. It includes:
 - 12.1 Sexual intercourse with a person under the age of 16 years by a person of or over the age of 18 years; or
 - 12.2 Infliction of actual bodily harm with intent to have sexual intercourse with a person under the age of 16 years by a person of or over 18 years; or
 - 12.3 A serious personal violence offence, or an offence involving wounding or infliction of grievous bodily harm, if the accused person has previously been convicted on a serious personal violence offence
13. If a violent perpetrator is charged with sexual intercourse with a person under the age of 16 years in the household or a serious personal violence offence towards someone in the household, if this goes to the Tribunal would this result in a mandatory termination order? It is our view that this is a possibility.
14. Section 16B(1)(i) of the *Bail Act 2013* applies where there is 'an indictable offence, or an offence of failing to comply with a supervision order, committed by an accused person while subject to a supervision order'. This may be easily breached and again the victim of violence will be held liable for the behaviour of the perpetrator.
15. The Bill does not take into account the nature and dynamics of domestic violence and its impact on tenants who are victims of domestic violence. In some cases a victim of domestic violence may be coerced into participating in criminal behaviour. In other cases, a victim of domestic violence may have no knowledge of the criminal behaviour or no ability to control the behaviour of the alleged criminal and fears for the safety of herself and her children should she challenge such behaviour. A victim of violence should not be blamed and held liable for the behaviour of a violent perpetrator.

16. At the moment the Tribunal is well placed to use its discretion in the above circumstances to ensure that there is not a miscarriage of justice. The Bill, if passed, removes this vital protection.

Mandatory termination unless exceptional circumstances

17. It is very common for our clients to report that their violent partners or family members cause serious damage to their rental properties. Damage may include smashing windows to gain access to the premises; punching holes in walls; or throwing possessions within the property which causes serious damage. Under proposed s154D(2)(a) the woman's tenancy could be terminated in such circumstances unless she can show exceptional circumstances.

18. Similarly, under proposed s154D(2)(a) where a tenant or occupant causes injury to a neighbour or social housing worker which does not amount to grievous bodily harm, even where a tenant has no knowledge or control over that person's action, unless there are exceptional circumstances the Tribunal will be forced to terminate the tenancy.

19. Additionally, under proposed s154D(2)(b)(ii) a Tribunal must make a termination order unless there are exceptional circumstances in the context of commission of child pornography offences, including possession of child abuse material. Again, a tenant is liable for the behaviour of occupants.

20. Under proposed s154D(2)(c) the Tribunal must terminate a social housing tenancy if the premises are 'used for any unlawful purpose and... the use is sufficient to justify the termination' unless exceptional circumstances apply.

21. We fear that commission of domestic violence may be taken to be a use for unlawful purpose and so a grounds to terminate a social housing tenancy. While this may be unlikely, the current Bill provides no assurance that this will not happen.

Rehousing policies, domestic violence and homelessness

22. The second reading speech includes a reference to '[termination] measures will not apply ... to people who get into difficulty through no fault of their own.... In these cases, if the partner cannot be forced to leave, Family and Community Services will rehouse the innocent tenant'. Given this is the policy intent, we submit this important protection should be contained in the legislation to ensure its efficacy.

23. We also note that while in some circumstances rehousing may be an appropriate response in the context of domestic violence, it is not always the most appropriate response. Other factors should also be considered including: does the victim of violence want to remain where she is as she is close to the support of family and friends; close to employment; close to schools or child care; close to medical professionals? Are there family law orders in place which may limit her ability to move?

24. Where an authorised occupant is the victim of domestic violence will they be rehoused? We are unable to find reference to authorised occupants in Family and Community Services' rehousing policy. We recommend there be adequate protections for victims of domestic violence in legislation rather than relying on policy.

25. Domestic violence is the leading cause of homelessness in Australia. Contrary to the intention of the *Housing Act 2001* and the underlying principles of social housing, rather

than supporting the housing needs of women and children who have been victims of violence, we fear the Bill will lead to an increase in the numbers of these victims becoming homeless.

26. Most social housing tenants have no other housing options available to them and we believe that it would be extremely unjust if women and children who have been the victims of violence through no fault of their own were made homeless as a result of the conduct of an offender which they have no way of preventing.

27. We are also very concerned that women in these circumstances are at significant risk of being the subject of intervention by Family and Community Services. Without secure and stable accommodation they are at significant risk of having their children removed.

Response time

28. We are also concerned that if issued with a strike notice for a breach of the tenancy a tenant only has 14 days to respond. Under proposed s 154C (2)(h) of the Bill a failure to respond in this time will be taken as conclusive evidence of the breach and means when faced with a termination order for three strikes in 12 months, if you have not previously challenged the earlier breaches you will only be able to challenge the last breach.

29. In addition to the many barriers a social housing tenant may face in meeting this timeframe to respond – little English, low literacy, mental health issues, disability – a victim of domestic violence is faced with additional barriers as a result of complex trauma.

30. If the three strikes policy proceeds, tenants should have a minimum of 28 days to respond and a minimum of 28 days to appeal a decision.

Consultation

31. We commend you on your willingness to consider stakeholder input and hope that the unintended consequences of this Bill will be addressed.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Gabrielle Craig, Senior Solicitor on 02 8745 6900.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor

CC: The Hon Minister Goward, MP
Ms Tania Mihailuk, MP
Ms Jodie Harrison, MP
Ms Jenny Leong, MP
Dr Mehreen Faruqi, MLC
Rev the Hon Fred Nile, MLC
The Hon Paul Green, MLC