

CPSA's submission  
on the Residential Tenancies and Housing  
Legislation Amendment (Public Housing –  
Antisocial Behaviour) Bill 2015

August 2015

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*CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 125 branches and affiliated organisations with a combined membership of over 32,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents.*

CPSA welcomes the Government taking action on antisocial behaviour within social housing but we have grave concerns about the likely consequences of a number of measures within this Bill. It is our view that the Bill should not pass in its current form.

CPSA notes that the Bill was introduced to the Legislative Assembly on 5 August with the second reading taking place on 12 August. A consultation meeting hosted by Family and Community Services (FACS) with relevant stakeholders was held on 20 August 2015. CPSA is concerned that consultation has only begun to take place after the Bill is already within the NSW Parliament and that this FACS session was by invitation-only. We are unaware of any other consultations taking place, either with tenants themselves or housing advocates.

### One strike notice

Section 154D within the Bill 'Tribunal required to make termination order in certain circumstances' will significantly restrict the New South Wales Civil and Administrative Tribunal's discretion in certain termination orders, namely where damage, injury or illegal use has occurred. Leaving the Tribunal to rely on untested evidence through strike notices and neighbour testimony is grossly inadequate and as noted by various legal practitioners, will turn the tribunal into an administrative arm and undermine the ability of tenants to get a fair hearing before an independent judicial body. This may well lead to unfair outcomes and the eviction of social housing's most vulnerable tenants.

The law as it currently stands already allows for the termination of a tenancy based on serious criminal conduct. CPSA cannot see why Tribunal discretion needs to be removed and we fear that doing so will lead to a spike in evictions and a change in focus from sustaining tenancies to eviction of 'troublesome' tenants. CPSA is particularly concerned about one strike scenarios where the tenant has not conducted illegal activity, but rather an occupant has.

CPSA is concerned that every circumstance is not covered by the Bill, nor should it be expected to be, which is why maintaining Tribunal discretion is so fundamental. CPSA is concerned that older tenants caring for relatives as well as women and children experiencing family violence may face homelessness under this legislation. This may well be an unintended consequence but will not help these individuals who will be required to prove that they did not condone behaviour taking place in their home/estate. These people may well know that such behaviour is taking place but are powerless to stop it from occurring due to fears for their own safety. These people should not be placed in a situation, however unintentional, where they face eviction due to the misdemeanours of fellow occupants over which they have no control. Such people are likely to be vulnerable and to have to come up with conclusive evidence to maintain their housing flies in the face of what social housing is all about.

## Three strike notices

CPSA is very concerned about the 14 day response requirement (Section 154C). This is not nearly enough time for responding to something as monumental as a threat to one's housing tenure. It also makes a number of assumptions, which are incorrect for many social housing tenants and the services available to them. It assumes that someone will actually receive the correspondence, that they will be able to read it and understand it, and that they will be aware of and able to access legal assistance. This is not the case for a wide number of tenants and local Tenancy Advice and Advocacy Services are often unable to assist people immediately. While against strike notices in their entirety, should they go ahead, CPSA recommends that at least six weeks be given to make submissions about the strike notice. Follow up calls to ensure that the tenant received and understood the notice should also be required as should providing tenants with information about the legal assistance available in their area.

CPSA is also concerned that there is no standard of proof which must be applied by the landlord in issuing the strike notice and that there is no independent review mechanism. The burden is placed on the tenant to prove that the breach didn't occur. We are also very concerned that a tenant is not able to challenge a strike notice if no appeal was made in the first instance. This puts too much onus on the tenant to exercise their rights at the time they receive the notice and may not understand the ramifications and removes any avenue for them to take recourse.

It is CPSA's view that housing providers should focus on other measures to address antisocial behaviour, such as linking tenants with intensive mental health support if required. A strike notice may well be an indicator that a tenant is in a crisis and should be treated as such. Merely sending a strike notice and assuming that they will be able to address the notice itself and the issue at hand is contemptible. We note that the experience in other States has had a disproportionate impact on certain tenant demographics. For example, in Western Australia, indigenous tenants who occupy less than 30 per cent of tenancies in the State, make up more than 60 per cent of the tenants who have been evicted for three strikes or other reasons. In numerical terms, from a total of 945 evictions, 519 were Aboriginal and Torres Strait Islander tenancies.<sup>1</sup>

## Neighbourhood impact statements (Section 154F)

While CPSA can see the merit in allowing tenants to provide evidence anonymously to alleviate fears about ramifications from the tenant in question, allowing these to be used determine the termination of a tenancy without being able to have this tested and

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<sup>1</sup> O'Connor, Andrew (26 December 2013) 'Public housing evictions are on the rise and families face homelessness with three strikes policy', ABC, [www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316](http://www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316)

questioned is negligent and flies in the face of one of the basic tenets of Australia's legal system, namely natural justice.

CPSA is worried about the impact of vexatious complaints and those based on prejudices or misinformation. Such statements may be used to assist a landlord in evicting a tenant (and potentially causing homelessness). We are also concerned that a summary of statements are to be provided to the Tribunal, not the statements in their entirety. These could therefore be selected to paint a different picture (for example, omit obvious indicators of prejudice or unsubstantiated claims) and unfairly pre-determine what the outcome is for the tenant.

### Repairs

With respect to the cost of repairs to damaged property provisions (Section 156B 'Evidentiary certificate of cost of work'), CPSA is concerned that it assumes that landlords are charged competitive rates by those contracted to complete repairs and maintenance but this may not always be the reality. CPSA questions why tenants should be required to fit the bill for these inefficiencies. We are concerned that the Bill does not place restrictions or limitations to this provision, stating 'the Tribunal must accept the certificate as conclusive proof of the reasonable cost of the work' and that this may be misapplied in practice. CPSA recommends that tenants continue to be able to challenge the cost of repairs.

### Rental rebate breaches

It is important that 'termination notices for non-payment of amount payable on variation or a cancellation of rent rebate' (Section 154A) be reviewable by the Tribunal.

### Increased funding for tenancy advice

Should this Bill pass Parliament, it will undoubtedly increase the need and demand for specialist tenancy advice for tenants affected, advice which will need to be provided quickly to ensure that tenants can remain in their homes. CPSA recommends that funding for the Tenancy Advice and Advocacy Service be increased substantially to meet this increased demand. CPSA notes that its tenancy service, the Older Persons Tenants' Service (OPTS) was defunded in November 2013 and that there is no longer a specialist service to meet the needs of older people, a group which can have particular vulnerabilities.