



Tenants Advice Service Inc

18 August 2011

Mr Eric Ripper
Leader of the Opposition
Unit 6 / 268 Belmont Avenue
Cloverdale WA 6105

Dear Mr Ripper,

Thank you for your letter dated on 6 July 2011 informing us of the State Parliamentary Labor Party's amendments to the *Residential Tenancies Amendment Bill 2011* ("the Bill"). We appreciate the opportunity to comment on the proposed amendments. We acknowledge that these amendments may create a fairer public and private housing system. However, we are concerned that the proposed amendments have the potential to negatively impact on tenants. Please see below for our comments which we hope will assist you.

Proposed Section 61A

61A. Termination of social housing or residential housing agreement decision affected by previous behaviour.

- *In deciding whether to terminate a social housing or residential housing agreement, the court may have regard to the frequency and nature of any notices given to a tenant specifying a breach and requiring that it be remedied, as referred to in section 62(3) and (4)*

TAS comment:

Under s75A (3) of the Bill, the court may have regard to the frequency, nature and seriousness of the behaviour and the proposed amendment, s61A, repeats this provision. It is not apparent whether this proposal will increase protection to tenants if there are no amendments to the proposed s75A. As social housing providers are not required to provide any notice to tenants under proposed s75A (see s73A of the Bill) there may be **no avenue for courts** to "have regard to the frequency and nature of any **notices**".

The proposed s61A may increase protection for certain tenants where the breach was 'minor' and remedied by the tenant. However it is current practice for the Department of Housing, in instances of alleged anti-social behaviour, to apply to terminate a tenancy agreement using s64, without grounds. The proposed amendment to the Bill will have little effect to avoid termination under s64. The Magistrates Court **will not be required to consider whether the breach was/is remedied** and the frequency of breach by the tenant, it is only required to determine whether the correct notice to terminate, in this case 60 days.

TAS invites the State Parliamentary Labor Party to review the proposed s61A taking into account the proposed effects of s75A, s73A and s64 of the Bill.

Section 76 BA

76BA. Termination of agreement affecting a child or person who has a mental illness

- (1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department of Child Protection to determine if the child is in need of protection.
- (2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

TAS comment:

While TAS welcomes the acknowledgement that termination of a tenancy agreement will impact on innocent children, we are of the opinion that this proposed amendment should be clearer on how a child who is in need of protection **has an effect on the termination** of their tenancy agreement. TAS would like to clarify if DCP determines that a child is in need of protection under this clause, whether the court will withdraw the termination of the tenancy agreement. We will also appreciate further clarification on the intent of this proposed amendment because it is apparent that the consideration of children residing at the property **will only be made once the tenancy is terminated**.

We are of the opinion that this amendment will not provide any greater protection to these families and may even have a **greater detriment** to them who not only face **homelessness** but also the **possibility of loss of their child**. There is also a potential that this amendment will overlap with the current child protection legislations/policies. It is also inappropriate to include reference to the DCP in the Residential Tenancies Act (“RTA”) as it is a legislation which deals principally with the relationship between a lessor and a tenant.

TAS recommends that the proposed s76BA(1) be amended so the Magistrate Court must take into consideration of any child in the property and the effect of the termination on the child before ordering termination of the tenancy agreement.

S76 BA (2)

As for the reasons stated above, TAS considers it is inappropriate to include reference to the Commissioner for Mental Health in the RTA. This amendment has the potential to assist tenants who has a mental illness to ensure that they are referred to the Commissioner for Mental Health for further assistance after their tenancy agreement is terminated. However, this does not stop termination or ensure that the Magistrates Court take **into consideration of the tenant’s mental illness before making an order for termination** of the tenancy agreement. This amendment also does not assist a tenant to sustain their tenancy, and reduce their possibility of homelessness.

TAS recommends the s76BA(2) be amended so the Magistrate Court must take into consideration the tenants’ mental illness and the effect of the termination on the tenant before ordering termination of the tenancy agreement.

Proposed Section 75A

75A. Termination of social housing and residential tenancy agreement due to illegal behaviour

- (1) A competent court may, upon application by the lessor under a social housing or residential tenancy agreement, terminate the agreement where there is **evidence** that the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

TAS comment:

TAS is of the opinion that this amendment to the proposed s75A provides better protection the social housing tenants than the current Bill. This amendment removes the proposed s75A (1)(b) and (c) which allows for termination of the tenancy agreements when the tenant caused or permitted a nuisance or interfered or caused or permitted any interference with reasonable peace, comfort or privacy of a neighbour. It also creates equal right and responsibility for social housing tenants and private tenants by subjecting them to the same section. TAS recommended in our report on the RTA Bill 2011 (published on 30 May 2011) that the proposed s75A be removed as it is discriminatory to social housing tenant by allowing more grounds of termination to social housing tenants than private tenants. Please refer to our report for more information.

Even though the proposed amendment by the State Parliamentary Labor Party provides an improvement in terms of better protection for tenants than the current proposed s75A, TAS is of the opinion that this amendment should be varied slightly to further increase protection to both social housing tenants and private tenants.

Notice

Current Section 39 - If a tenant used the premises, or caused or permitted the premises to be used for any illegal purpose a **breach notice is required** under s62 before the lessor can apply to court for an order for termination of the tenancy agreement. This applies to social housing tenants and to private tenants alike.

State Parliamentary Labor Party's proposed Section 75A – The court only has to be satisfied that there is evidence that the tenant has used the premises, or caused or permitted the premises to be used for an illegal purpose. There is **no requirement that the lessor issue a breach notice**.

This creates an extra ground for termination of tenancy agreements and makes it easier for lessors to evict tenants.

Lower threshold

Section 39 – The Court must be satisfied that the tenant used the premises, or caused or permitted the premises to be used for any illegal purpose before making an order for termination.

State Parliamentary Labor Party's proposed Section 75A – It is sufficient if the Court is satisfied that there is **evidence** that the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

Under existing provisions in the Bill a tenant may be evicted only if they used, caused or permitted the premises to be used for any illegal purpose, as opposed to merely that there is **evidence** that the tenant used, caused or permitted such activity. The State Parliamentary Labor Party's proposed s75A may incidentally create a much **lower threshold** for social housing tenants to be evicted under this Clause rather than s39 of the current RTA.

As mentioned, we acknowledge that this amendment provides a better outcome and abolishes the discriminatory aspect than the current provision in the Bill between private and social housing tenants. However, we would like to point out that this amendment will provide an extra ground to evict tenants and also has the potential to create a lower threshold of termination since such termination can already be sought under **s39, s73(1) and s64 of the Bill**.

TAS would like to urge the State Parliamentary Labor Party to note that eviction does not assist the rehabilitation of offenders if it limits their access to secure housing and services that are part of the rehabilitation. It is also important to note that the protection of the community is reduced where a person in a secure social housing is evicted from premises and forced into homelessness.

TAS recommends that the proposed amendment be changed to reflect s39 of the Bill, and remove the words "there is evidence that". The recommended s75A in the Bill is:

75A. Termination of social housing and residential tenancy agreement due to illegal behaviour
(1) A competent court may, upon application by the lessor under a social housing or residential tenancy agreement, terminate the agreement where the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

We commend the State Parliamentary Labor Party for responding to the Bill and taking interest in this issue. TAS would also like to thank you for informing us of State Parliamentary Labor Party's amendments. We urge you to take into consideration our comments and recommendations which we trust will inform any amendments which the Party proposes. Please do not hesitate to contact should you have any queries. I look forward to an opportunity to work with you on this issue.

Yours sincerely

John Perrett
Executive Officer
Tenants Advice Service