

RESIDENTIAL TENANCIES AMENDMENT BILL 2011

Second Reading

Resumed from 30 August.

MS R. SAFFIOTI (West Swan) [3.21 pm]: I rise to speak on the Residential Tenancies Amendment Bill 2011 and to reiterate some of my colleagues' comments. I will talk briefly about some representations I received in my office, as many other members have, in relation to this bill.

The bill comes about after an extensive review process, but many of the representations I have received, in particular in person from landowners in my electorate and from the Property Owners' Association, raised concerns about the range of fine increases and the number of new fines in this bill. Although I understand it is a positive move to standardise the forms and practices for the whole issue of tenancy, there are specific concerns, which I understand our shadow spokesperson for housing raised and which will be covered during consideration in detail, particularly about the significant increase in some fines and some of the new fines introduced. From what I have seen, some of the penalties—for example, for giving somebody the wrong form—are quite significant. Other new issues have been brought into play, such as the inability to pay more than two weeks' rent in advance. These are some of the specific issues that have been raised by property owners in my electorate and from the Property Owners' Association.

A lot of people manage their own properties. Of course a lot of people use real estate agents and go through real estate managers, but a lot manage their own properties. I do not want to see a situation in which it becomes too difficult for people to manage their own rental properties. I believe an impact of this bill could be that people are pushed to real estate agencies, which will impact on price and, of course, on rents. I do not want a situation in which it becomes too difficult, or too costly, for people to manage their own properties, because, let us face it, a lot of people do. Some of the representations I received in my office were from people who manage their own properties and who are concerned that some of the fines and penalties are so significant that it could impact on their ability to manage those properties; again, shifting everyone to the real estate agents or to property agents will possibly impact on rents. That has to be looked at. I would like to find out, possibly through the minister's response at this stage, what led to significant increases for property owners. Of course there was an extensive review. I read the second reading speech and explanatory memorandum to understand the logic or reasoning behind some of these new and increased penalties, but I have not seen it. It is worth pursuing through the minister during consideration in detail what instigated these massive increases in fines and penalties.

I also want to touch upon the issue of community or social housing. The member for Gosnells asked about circumstances in which government housing is contracted out or passed onto the community housing sector. A particular issue in my electorate related to a complex of 11 units, all previously owned and run by the state government through Homeswest. We are still trying to find out the detail, but two of those units have now been contracted out or sold to non-government organisations. The question that needs to be clarified is: do the responsibilities and obligations attached to government housing transfer as part of this contracting out or privatising process? In this situation, Homeswest had particular rules and regulations in managing that whole complex. Now that two units have been passed on to a non-government agency, it seems that those same rules and obligations do not apply in this process. It is something that the member for Gosnells raised, but I also would not mind the minister responding to this issue. It seems to be an issue that is happening more and more throughout the suburbs whereby Homeswest properties are going to the non-government sector. As I said, rules and obligations have been developed over years—of course new obligations have been included in this legislation—but do they pass on to tenants of non-government owned housing? Hopefully, the minister will let us know exactly what happened.

I will reiterate some of the points made by the member for Rockingham. The opposition is also concerned that private landlords will not have the same flexibility in dealing with tenants as the state government will. That is something the member for Rockingham will talk about in the next stage of the bill. It is certainly something worth considering. This is a complex area. It has been an area of review. Many of the representations made to me have been from property owners. I would like to hear from the minister the reason behind some of these new penalties and increases in penalties and fines. A lot of concern has come through to me from not only the Property Owners' Association but also other private landlords who live in my electorate.

They are the two key points I wish to make on this bill. I hope that when the minister rises at the end of this stage of the debate or in the next stages of the bill, he can clarify what drove the increases in the penalties for landlords and also clarify the process by which Homeswest housing is passed on to the non-government sector; what happens to the rules, responsibilities and guidelines that apply in that sector?

The last matter I raise relates to a land and housing development in my electorate—namely, concerns about the Whiteman Edge development. I understood it would be a key housing initiative from the government for affordable housing in the metropolitan area. I am concerned that what the Minister for Housing announced on 13 April in relation to the Whiteman Edge development does not seem to be happening. The arrangements put in place back in April, and announcements made by the minister about Whiteman Edge, are not being pursued because there has been a sale of that property from one of the joint ventures to another company.

I understand that the joint venture no longer exists. So, many of the benefits that were proclaimed on that day—which included an addition to the housing stock for Homeswest, and the application of the housing affordability fund, of, I think, around \$20 000 a block, to those who meet the criteria—will not happen now. I also understand that the scale of the development will now be a lot smaller than was announced on that day.

Whether it is through this debate or afterwards, I ask the Minister for Housing what happened to that joint venture that was announced on 13 April. As I understand it, it has been completely unwound because the joint venture was never finalised and the land has been sold to another company. I do not blame the particular companies involved. But I want to know that the commitments made by the Minister for Housing on 13 April—I think it was 13 April—in my electorate will actually come through and hold true.

I have raised three issues. The first is property owners. I seek an explanation of why there has been such an increase in the fees and penalties, and also why all these new fees and penalties have been included. I have particular concerns about whether it will push private landlords and managers out of the market and whether they will have to use someone else—a third party—to manage their tenancy because it will become too complex, and also about whether there will be an impact on rents through that process. The second key issue is the move in some areas for some properties to be passed from the state government to community and social housing, and whether the rules, obligations and rights that apply in the current scenario will transfer immediately to the new owners or managers of those properties. The third issue—this is something to be pursued maybe later by the minister—is the Whiteman Edge development. As I understand it, what was promised and committed to on 13 April by the minister is not necessarily the case now, because there has been a change in ownership. I have a concern about that one-in-nine social housing commitment. I also have a concern that the application of the housing affordability fund of about \$6.9 million, which equates to about \$20 000 a block for people who are eligible, is now not able to be undertaken. I have raised those three key issues and, hopefully, the minister will be able to address those in his response.

MS J.M. FREEMAN (Nollamara) [3.32 pm]: I also rise to speak on the Residential Tenancies Amendment Bill. When the Residential Tenancies Act was introduced in 1987, it was not without controversy. The member for West Swan might be interested to know that the need to find a balance between the competing demands of being fair to tenants and being fair to landlords has always been an issue in introducing this sort of legislation. It is certainly a balance between a disenfranchised and diverse group of tenants, who are relatively powerless as they are quite disparate, and a relatively powerful group of the community in landowners and landlords. Just to demonstrate that, the *Hansard* of Tuesday, 1 December 1987 records that Mr Watt, the member for Albany at the time, said —

Nevertheless, the Bill in its present form appears in many areas to be rather more generous in its application to tenants than to owners. It would seem to convey the impression that the Labor Party has a fixation that anybody with a property to rent must obviously be rich and, therefore, needs to be brought down a peg or two.

He then says further on —

In monetary terms a significant number of offences if committed by landlords can attract the maximum penalty, mostly of either \$400 or \$1 000, but as high as \$2 000.

I am trying to say to the house that legislation such as this act and this bill is always not without difficulty, because it is always about competing demands, and about people who have quite a strong voice in our community versus those who do not have that same strength in getting their voice heard.

Although this bill is welcome for its changes to the Residential Tenancies Act for private tenancies, I think it does not address some of the inequities that have been identified by organisations representing private tenancies, and it also introduces inequity for public tenancies.

As I said, the Residential Tenancies Act commenced operation in 1987. One of the major issues identified since that time is that the act is silent on the lack of protection for boarders and lodgers. That is something that we might know about in our own electorates where people who, because of the housing shortage, have to live in joint tenancies and have a lack of protection in their ongoing tenancies.

Other major issues identified are the lack of protection on residential tenancy databases, and the lack of consumer protection over excessive rent increases. I note that we are never willing to go near that particular, I

suppose, Holy Grail, but it is an issue that certainly has a massive impact on our communities. Another issue is the real estate agents' practice of imposing option fees for rental applications. That is a real problem for low-income earners, and it is a particular problem for a lot of the newly arrived Australian migrants whom I represent, because their option fees for applying for a property may be tied up with a real estate agent, and if they are not successful in getting the tenancy that they have applied for, they then do not have the capacity to look for another tenancy. That makes it difficult for them if their current tenancy can no longer continue, or if they are homeless and are overcrowding other tenancies, and it thus multiplies the effect and the disadvantage on them.

As I understand it—I am happy to stand corrected—only residential databases are dealt with in this legislation, and that is in quite limited terms, with restrictive costs on people who want to gain information about what is written about them in databases; and, also, there is a little transparency.

In terms of the issue with public housing tenancies and the introduction of proposed section 75A(1) and the objectionable behaviour clauses, I believe public housing tenants are vulnerable, both financially and socially, and the capacity to make them more vulnerable through harsh and unjust processes is really just counterproductive. The goal of public housing is to provide affordable housing for those less fortunate in our community. In the United States, the successful 20-year Common Ground project actually focuses on this as part of its success. It focuses on providing permanent, affordable housing, with social services to address mental health, substance abuse, job training and placement, and community activities. We should be very cautious of attacking our most vulnerable with some of our most stringent and harsh laws. Twenty-four per cent of Western Australians live in rental housing. Only four per cent of Western Australians live in public rental dwellings. So this action is about a small percentage of our community. It is about the department's incapacity to manage those tenancies, and the government's incapacity to ensure that services to work with the most vulnerable are successful.

The briefing from the ministerial staff and the department, and also a housing conference last year that I attended, made it very clear that the inclusion of proposed section 75A, and the other inclusions in part 3 of the bill, is at the direction of the government. I wish to refer to a document that we would have all received from Shelter WA to raise its concerns about this bill. One of the concerns is the changes to the authorised power of the lessor, being the department or the social housing provider, to render tenant households homeless. Also, databases have no requirement to ensure accuracy, currency and validity for the person whose information is held. We are giving government the power to do that. This really attacks the most vulnerable in our community.

Further, the Equal Opportunity Commission "Finding a Place" inquiry in 2004 found systemic direct and indirect discrimination in public housing for Aboriginal people. Much good work has been done since that time in a final report that was released, I think last year, from the Equal Opportunity Commission on how the department should ensure that it treats people—that includes Aboriginal people—in a non-discriminatory manner. I recently heard the Director General of the Department of Housing, Grahame Searle, speak very positively about the changes that are being undertaken in the department. It is with some regret that we see that the changes about to be introduced into the act will undermine this good work, and the situation will be made worse because of a lack of the current transparent appeals process.

Just as a point of note, the previous Commonwealth–State Housing Agreement—the new incarnation of which is the National Affordable Housing Agreement—provided for an independent appeals process. The government continues to fail to meet that standard, because under the regional appeals process the three determining members include an officer from the Department of Housing and two community members. I believe that that undermines the capacity to make independent decisions on important aspects of policy implementation within the department.

In the most recent issue of *Discrimination Matters*, which we all would have received on our desks when we came to Parliament, the Commissioner for Equal Opportunity said that she believes that this change—the introduction of part 3—will undo much of the good work of the "Finding a Place" inquiry. She said that leaving people homeless would not get rid of problem behaviour, and I believe that is true; it will just have a multiplier effect and cause families to enter into an unending cycle of dislocation. I learnt that when I had the opportunity to work as a policy officer for the Minister for Housing some 20 years ago. I have spoken in this house before about how, during that time, I was privileged to be able to establish, with colleagues and the department, the special housing assistance program. Such programs have been very effective in preventing the cycle of homelessness and the impact that it has on generations of people. That is the sort of area we should be looking at in terms of behaviour that is clearly not illegal, but is related to vulnerable housing tenancies.

It is my belief that housing is a fundamental issue for the wellbeing of society. This was recently reinforced in a speech by Father Frank Brennan at the MercyCare Oration. In addressing the critical roles of organisations in the health and community sectors in improving the wellbeing of Australians, he identified five key influences on

health. Number two was social circumstances. Expanding on this, he identified housing stability as being critical to the wellbeing of Australians.

As we would all know in this place, the vast majority of constituents who contact our electorate offices are in need of advice on matters relating to housing. Inquiries generally fall into two categories—those relating to existing public housing tenancies or requests for information on how to access affordable public or private housing. Obviously, the reasons by which people present are complex, and the risks of homelessness are always present. Homelessness is not just sleeping on the street; homelessness is overcrowded accommodation or living in people's living rooms because a tenancy cannot be found. Homelessness is a person who is at risk of homelessness, and, therefore, forgoes food and other things so that they can maintain tenancies. It is not just the obvious aspect of people sleeping rough.

Although there is an obvious need to focus on the adequacy of social housing and housing affordability, we often find in our office that it is difficult to gauge how effective the existing network is in responding to the complexities of the issues faced by people who are homeless or at risk of homelessness. We also need to focus on providing a continuum of support for the growing number of individuals and families in crisis. People seeking assistance from an electorate office have often exhausted all other avenues to obtain accommodation, or simply do not know what services are available to assist them. There is a noticeable growth in the numbers of people visiting my office who have been priced out of the private rental sector, and that causes me great concern.

Although we are equipped to provide advocacy via liaison and referral to existing government services and non-government agency services, the effect of advocacy is really limited by the limited referral options. Despite my meeting frequently with and working with agencies in my local area that provide a wide range of housing advocacy support services, we need a one-stop shop or a coordination of services. We need an increase in services that go to what I was talking about with regard to the support services such as the successful Common Ground project, and other projects that occur in the United States. That is, we need the capacity to see what services are available out there—not just the services that already exist—to assist with not only with public housing, but, more so, private rentals.

I return to the Common Ground homelessness project in the United States. The philosophy is to keep engaging and re-engaging with people to facilitate change; it is to be there for the long haul and the long term. I think that a multi-agency approach that is accessible and well known to the general public, on a day-to-day basis, is absolutely what we need to achieve if we are to ensure wellbeing in our community.

The changes to this act at the direction of the government will introduce harsh and unfair procedures that could see the most vulnerable tenants enter into situations of homelessness, and that will not assist in this process. It does not assist the wellbeing of our community, and it does not reduce instances of matters we are concerned about in our community such as crime and lack of education. Increasingly, because of the outcomes-based way that we monitor some of the social services that we fund, there has also been a move towards easier clients. Increasingly, we pull back all the time from those difficult cases. It is basically the gentrification of services. If we can always get those people for whom we can show successful outcomes, we must be doing something right. We cannot be doing things right if we do not deliver services that give effective long-term tenancies to vulnerable clients in our public housing system. When that is, I think, the goal of our public housing system, we have to be able to do that. I do not suggest that behaviours should be accepted; I say that behaviours have to be worked with to ensure that there are ongoing, stable tenancies and ongoing, stable communities growing from them.

To me, this legislation will move our public housing towards easier clients and a gentrification of services, which will leave the difficult, hard stuff to someone else. Unfortunately, as we fund other agencies to do the difficult stuff and expect that they will meet performance outcomes, they also have to move to the easier clients. A section of our civil society becomes increasingly disenfranchised and alienated and then causes problems against which we come in here to legislate. Frankly, unless we actually confront the problem, the legislation will not work. We have to move away from perpetuation of disadvantage, focus on what it is that causes those behaviours, and start to move. I accept that the Department of Housing is a landlord for those purposes, but the Minister for Housing is a member of the government as a whole, and he needs a multi-agency approach to ensure these tenancies are ongoing and do not get into that cycle. Frankly, the people who the minister evicts one week will be only a short time away from homelessness and causing problems with other tenancies. We need solutions other than legislation that is punitive, patriarchal and just plain wrong.

Mr T.R. Buswell interjected.

Ms J.M. FREEMAN: I support the Residential Tenancies Amendment Bill 2011 and the amendments that will be put by the Parliament. I support all the changes to the Residential Tenancies Act that go to that. I do not support the government's direction to insert part 3.

MR P. PAPALIA (Warnbro) [3.49 pm]: How timely and appropriate that I should stand immediately following the member for Nollamara's comments regarding the approach taken by the government in general. I know it attracted the interest of the Minister for Housing and probably a bit of derision from him when the member was speaking in a critical fashion, although it was not specifically related to the Department of Housing or this minister or, necessarily, this initiative. I share the member for Nollamara's view.

Mr T.R. Buswell: Will you vote for the bill?

Mr P. PAPALIA: At the outset, I will say that I support these amendments. I also support the comments of our lead speaker and many other speakers on this legislation, particularly given the likelihood that we will create an inequity in the treatment of tenants in the public sector as opposed to those in the private sector. I also acknowledge the concerns of landlords that there appears to be an over-emphasis on potential penalties for and obligations of landlords under this legislation. Although I understand we are supporting the Residential Tenancies Amendment Bill, it should be noted that those people have legitimate concerns, and their concerns have been represented in this place by members.

I want to speak to pursue the point made by the member for Nollamara. The member for Nollamara made the point that this legislation highlights, in effect, the incoherence or lack of coordinated response to the real issue. The real issue that part of this legislation attempts to address is far greater than what the amendment referred to in the second reading speech as "serious and sustained antisocial behaviour in social housing". Serious and sustained antisocial behaviour in social housing is only one symptom, but it is a symptom of a far greater problem. Let us look at the greater area of consideration that might be, and often is, referred to in the popular media as law and order and how this government is responding to that challenge of the breakdown of respect and responsibility within society. I am interested in speaking directly to the Minister for Housing on this, which is why I took the opportunity to rise while he was here. It is not surprising that the Minister for Police is not listening because he is a strong component of the current problem within the government and its method of dealing with this real issue. It is not the Minister for Housing's fault, and I am not critical of the Minister for Housing.

Mr R.F. Johnson: Why don't you stop being stupid?

Mr P. PAPALIA: I am speaking to the Minister for Housing right now. I am glad that the Minister for Police is listening.

Mr R.F. Johnson: You're being rather nasty as usual.

Mr P. PAPALIA: The Minister for Housing, like the Minister for Police and like previous ministers in our government and ministers in governments before them, is compelled to operate within a silo, given the way government in this state has evolved. The Minister for Housing is, if nothing else, an energetic minister. He brings a high degree of energy to his portfolio and he responds to issues. He is challenged with the issue of antisocial behaviour in public housing and he has brought something into the house to try to deal with it. But, unfortunately, as identified by the member for Nollamara and other speakers on this side, it is only one single component of the overall problem. By responding in his energetic way to the problem he is confronted with, all he does is shine even more light on the inadequacies of the Minister for Police in his approach to this problem for which he has far greater responsibility. His portfolios extend into a greater field of kinetic contact with the real problem. The Minister for Housing, by virtue of his housing portfolio, has a much smaller opportunity to deal with it.

Mr T.R. Buswell: I am less kinetic!

Mr P. PAPALIA: Yes. The fact that he has done so further highlights the Minister for Police's inadequacy. That is a sad indictment.

Mr R.F. Johnson: You are such a poor performer. That is why you lost your portfolio.

Ms J.M. Freeman: Talk about the issue.

Mr R.F. Johnson interjected.

Mr P. PAPALIA: I lost my shadow ministry for doing what I am doing now!

The SPEAKER: Thank you, members! Member for Warnbro, you may be far more likely to achieve an outcome on this if you were to speak to the bill itself. I will ask the Minister for Police to stop interjecting, along with the Minister for Housing at this stage, unless he is specifically asked by the member for Warnbro to respond to something.

Mr P. PAPALIA: Thank you, Mr Speaker. I appreciate your protection, but I assure you that I am quite comfortable engaging in a little banter across the chamber with both my colleagues on the other side, the Minister for Police and the Minister for Housing. In fact, I welcome interjections on this debate. I apologise, Minister for Police, I was digressing from the objective of my contribution today, which was to draw attention to

the fact that there is a problem. The Minister for Housing identified it yesterday when he interjected on the member for Willagee. He acknowledged that solving the problems of antisocial behaviour from only one portfolio cannot be done; it is doomed to failure.

The erosion of responsibility within our society continues under this government, regardless of the claims by the Attorney General every now and then when he wheels out ridiculous and incredible statistics that mean nothing to the rest of society. The problem is that society is changing. We are faced with challenges such as an explosion in the number of clandestine laboratories. In one of the Minister for Housing's interjections yesterday he made a ridiculous suggestion that all the laboratories are being discovered because the police are suddenly looking for them. The minister must admit that it is most likely clan labs are being discovered more frequently because more of them are being created. It is not because members opposite are somehow resourcing the police more than ever before. We did that too. Crimes change with the movement in the nature of crime, and at the moment the sale of amphetamines is predominant.

Mr T.R. Buswell: When I went to school, the ratbags would sneak out at lunchtime and have a beer in the bushes behind Moore Street. Five years ago, when I was elected to Parliament, they would go over there and perhaps smoke some dope. They now go and brew up methamphetamine. It is a big issue.

Mr P. PAPALIA: I agree. This is the latest trend in crime but, again, it is a symptom. The actual problem is the breakdown of respect and responsibility. How are we going to deal with that? We cannot deal with it in isolation. We cannot choose one portfolio no matter how energetic or how focused the minister is.

Mr T.R. Buswell: You can if you become a hermit!

Mr P. PAPALIA: I will have a crack at the minister because he knows that down in Golden Bay he was about to cram thousands of people into an environment where there is inadequate resourcing. He has not wrapped services around the people he is going to house there, and he is condemning that community to the same sort of outcomes we are trying to address with this amending legislation.

Mr T.R. Buswell: That is an outrageous statement! I was ready to support you.

Mr P. PAPALIA: I digress. That is a subject in my electorate, but I am going to get back onto the wider subject of housing around the state. In a great contribution, during which he made some very salient points, the member for Willagee made the observation that the Minister for Housing alone cannot deal with this problem and that it must be a whole-of-government response. By interjection the Minister for Housing said—I should not quote from this document—that that was a fair point.

Mr T.R. Buswell: I think it was a good debate.

Mr P. PAPALIA: The member for Willagee said that we need to wrap other services around these challenging people in these challenging situations. The Minister for Housing said that that was a fair point and that on the issue of houses for mental health, he “agreed to build them if they are bundled with a support service. It is a far more holistic approach to delivering a better outcome.” I agree. I could not endorse his comments more. The problem is that that is not the right response. The minister cannot guarantee that; as he admitted, he can only guarantee that insofar as he is able to elicit some sort of cooperation on an individual basis in a very small number of trial locations. What is required is a higher overarching response from government that almost compels appropriate ministers and their departments to cooperate with a view to targeting the real problems—that breakdown of respect and that breakdown of responsibility. His challenge is to identify where the target is; that is his problem. He cannot say that it is just in social housing.

Mr T.R. Buswell: We will keep talking about this tomorrow. The hardest tenant I have ever had to work with the department to house was Gary Narkle. Do you remember Gary Narkle?

Mr P. PAPALIA: Yes.

Mr T.R. Buswell: Everyone knows Gary Narkle. He was living in a park in Gosnells or Armadale in that area, and we housed him.

Mr P. PAPALIA: I understand his case. We are about to run out of time. As I see it, the challenge is not how the minister properly addresses the problem, because I think he has a good handle on it. He understands that it has to be a holistic, across-government response, but the minister does not have the capacity to apply that across-government response. The minister does not have the capacity to compel other ministers to cooperate with his department.

Debate adjourned, pursuant to standing orders.