



Hon Adele Farina MLC  
Chair  
Standing Committee on Uniform Legislation and Statutes Review  
Parliament House  
PERTH WA 6000

Dear Ms Farina

### **Inquiry into *Residential Tenancies Amendment Bill 2011***

I refer to your letter dated 8 September 2011 inviting the Department of Housing to provide a written submission in respect of the above Bill. We are very pleased to have the opportunity to do so, given the importance of the provisions of this Bill to our activities, to social housing tenants and their neighbours, and to those on the social housing waitlist.

As identified in the Second Reading Speeches to the Legislative Assembly and to the Legislative Council, a key provision of the Bill is the inclusion of amendments to address antisocial behaviour and other matters in relation to social housing. In broad terms, social housing is that provided to people on low to moderate incomes who are unable to afford to purchase their own residential properties, or to rent housing through the private rental market.

The State Government has a responsibility to ensure that social housing is provided to those most in need. The Department of Housing, through its legal entity the Housing Authority (the Authority), is responsible for the provision and management of social housing under the *Housing Act 1980*. In doing so, we must also comply with the provisions of the *Residential Tenancies Act 1987*.

To put this into a practical context, as at 30 June 2011 we had:

- 36,539 rental properties for individuals and families on low to moderate incomes. (Subsidies ensure that tenants do not pay more than 25% of their income in rent.); and
- 23,411 listings on our rental waiting list.

Social housing presents many challenges. The vast majority of social housing tenants greatly respect their homes and their neighbours. However, the Government will not tolerate antisocial behaviour in public housing and has directed the Department of Housing to strengthen its application of the Disruptive Behaviour Management Strategy which was initially put in place in late 2009. In May 2011, changes to the policy were introduced in response to the continued poor behaviour of some tenants and its impact on their neighbours.

The strategy demonstrates the resolve of the Government to meet the community's expectation that firm action will be taken where necessary. It sets clearly defined standards of behaviour and introduces processes and sanctions for handling disruptive tenancies and for the termination of a tenancy where there has been ongoing and/or serious disruptive behaviour.

Information concerning the Strategy is available on the Department's website [www.housing.wa.gov.au](http://www.housing.wa.gov.au)

However, the effective implementation and operation of the Strategy is dependant upon complementary legislation, and in ensuring clarity and empowerment for the courts. The opportunity has also been taken to address situations unique to social housing. This includes situations where tenants are no longer eligible for social housing, or refuse reasonable requests to move to alternative social housing premises (e.g. where other premises are more suited to meeting the tenant's actual needs). In each of those scenarios, it is clearly the intention that those who are most in need receive appropriate social housing accommodation.

The Authority has worked closely with the Department of Commerce in developing and drafting the provisions of the Amendment Bill relating to social housing. We are confident that these provisions will enable tenancies to be managed in a fair and transparent manner that responds to the expectation of the public and of Government.

The key provisions of the Amendment Bill in relation to social housing are discussed below:

1. Clause 95, new section 75A – 'Termination of social housing tenancy agreement due to objectionable behaviour'

In this provision we sought to strike a balance between our responsibility as the public housing provider and the need to be able to effectively respond to persistent and serious disruptive behaviour.

Under the existing legislative framework we are constrained from effectively terminating public housing tenancies that engage in serious and persistent disruptive behaviour by virtue of the operation of s62(3) of the Act. The restriction occurs because although the tenant is in breach of the Act and/ or their tenancy agreement and the tenant is issued with a breach Notice, if the tenant rectifies their conduct for the term of the Breach Notice (14-day period), there can be no further action taken to terminate the agreement. The literal and common judicial interpretation of section 62 essentially allows tenants to avoid further legal action by refraining from disruptive behaviour for 14 days, while allowing the behaviour to continue unabated after this period.

The proposed section 75A of the Bill will provide for social housing lessors to seek termination of a tenancy on the basis that the tenant has used the premises for an illegal purpose or caused or permitted disruptive behaviour that justifies termination of the tenancy – without first having to issue the tenant with a notice of breach under section 62. In relation to disruptive behaviour, our initiation of legal action would only follow our application of the provisions of the Strategy.

Final decisions relating to termination will still rest with the courts, ensuring procedural fairness for tenants. Essentially, courts' decisions in these matters will be based on the strength of our case that eviction is justified, rather than the arbitrary breach period referred to in the current provisions.

The Legislative Assembly amended provisions in the Bill relating to matters the court may have regard to in deciding whether the behaviour justifies terminating an agreement. The intent of the amendment is to support the Strategy by allowing the court to give due consideration to cases in which there is a pattern of low-level antisocial behaviour in which each incident is minor but the cumulative effect on neighbours is significant.

The court must be satisfied that grounds exist for the application and that the behaviour justifies terminating the tenancy agreement and may have regard to whether the behaviour was recurrent and the frequency of any recurrences.

2. Clause 92, section 71C – ‘Notice of termination by lessor on ground that tenant not eligible for social housing premises’

The proposed section 71C includes two grounds for a social housing provider to seek termination of a tenancy agreement:

- on the basis that a tenant is not eligible for the social housing premises they occupy; or
- where a reasonable offer of a transfer to alternative social housing premises has been made and refused.

The provision relating to eligibility will be used to manage cases in which a tenant’s circumstances have changed and they are either ineligible for public housing or they are ‘under-occupying’ their premises, and termination or transfer to alternative social housing premises is considered the most appropriate course of action.

Similarly, the provision relating to an offer of an alternative social housing premises will allow a lessor to seek termination of a tenancy where there is a valid reason to request the tenant to transfer and the tenant is uncooperative, while maintaining a responsibility for the lessor to make a reasonable transfer offer.

The inclusion of this provision will enable the Authority to:

- ensure social housing properties are provided to the intended client group in a manner that is consistent with our funded and mandated obligations; and
- provide social housing to those clients eligible for assistance for the manner and duration in which they require it. This will assist us in providing alternative pathways for people to improve their long term housing and financial circumstances

The Authority seeks the support of your Committee for the social housing provisions of the Amendment Bill, and would be happy to assist if you have any questions concerning the matters discussed above.

Yours sincerely



GRAHAME SEARLE  
DIRECTOR GENERAL

3 October 2011

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