



This submission is endorsed by Shelter Tas, other state shelters may be making their own submissions.

Submission to Community Affairs Committee

Social Services Legislation Amendment (Affordable Housing) Bill 2017

Committee Secretary,
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear members of the Senate Standing Committee on Community Affairs, we welcome the opportunity to make a brief submission regarding the Social Services Legislation Amendment (Affordable Housing) Bill 2017 and any opportunity to address the committee further.

We are concerned this Bill, if enacted, while intended to improve rent collection for state housing authorities and community housing providers, will make the lives of tenants more difficult to manage than they already are.

Most allocations to social housing go to households in extremely high needⁱ who often lead complex lives and need to manage their household budgets carefully. Imposing a form of income management on those households by automatically deducting rents, utilities, repairs and other costs associated with housing, diminishes the ability of those households to manage their own finances.

The government in its legislation through the Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017, recognises the importance of compliance with human rights specifically citing in its explanatory memorandum;

1.58 The Bill engages the right to an adequate standard of living, including housing under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.59 Article 11.1 of ICESCR states that everyone has the right to ‘an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’ and that ‘appropriate steps’ be taken to ‘ensure the realization of this right’.ⁱⁱ

The right to self-determination is contained in article 1 of the International Covenant on Civil and Political Rights (ICCPR) and in article 1 of the International Covenant on Economic, Social and Cultural Rights.

Article 1 of both Covenants states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

National Shelter cannot reconcile this Amendment Bill with those rights and believes the measures outlined in this amendment interfere with the right to freely pursue their economic, social and cultural development.

About National Shelter

National Shelter is a non-government peak organisation that aims to improve housing access, affordability, appropriateness, safety and security for people on low incomes.

Since 1976, National Shelter has worked towards this goal by influencing government policy and action, and by raising public awareness about housing issues.

National Shelter's aim is to work towards every Australian having access to housing that is:

- **affordable** — people should not be left in poverty after they have met their housing costs
- **adequate** — everybody is entitled to housing that meets basic standards of decency and their own basic needs
- **secure** — people should not live under threat of loss of home and shelter
- **accessible** — access to housing should be free from discrimination
- **in the right place** — housing should be located close to transport, services and support networks, job opportunities, and social and leisure activities
- **able to meet their lifecycle needs** — people have different housing needs at different stages of their lives, and housing should be available to meet these changing needs.

Principal points

National Shelter is opposed to the intent of this Bill at schedule 1 "... to provide for automatic deductions from certain welfare payments for rent or household utilities, or loss of or damage to property arising as a result of occupancy of premises, so as to:

- (a) reduce homelessness; and
- (b) ensure financial effectiveness and sustainability of the social housing system; and
- (c) support greater investment in social housing."ⁱⁱⁱ

We are also opposed to Schedule 2 allowing automatic deductions from family payments under, "A New Tax System (Family Assistance) (Administration) Act 1999 Part 3A (about automatic deductions from family tax benefit to pay rent or household utilities)"^{iv}

Recommendation 1: The Committee should reject schedules one and two of this Bill.

Schedules one and two of this Bill allow every social housing tenants' rents to be automatically deducted from their account. This is despite most social housing tenants paying their rent on time.^v National Shelter is opposed to this measure in principle, as we oppose compulsion as diminishing self-management, a key to independence and social, economic and cultural participation. We also oppose this in practice as its impact on social housing tenants will be to deepen the existing stigma social housing tenants often experience. It will play into existing prejudices about social housing tenants and make them more vulnerable than they already are.

Schedules one and two do not address housing affordability or reduce homelessness. Instead, they limit people's ability to manage their very limited incomes and lead to some people incurring debts for other expenses or running out of money because they no longer have control over paying their rent.

We do not see any conceivable justification to remove autonomy from tenants heading up the 394,300 social housing households^{vi} in Australia.

Our members, especially Tenant Unions and Tenant organisations around Australia are also concerned these amendments will have unintended consequences in some households. Many households within social housing have multiple occupants and the rent charged, by social housing authorities or community housing providers, is calculated on a household income basis, accounting for the total household income. In many cases those household members may be irregular and not registered on leases while still contributing to rents. In these cases it will be the principal lessor (head tenant) who is named on the lease and she^{vii} will be responsible for collecting rent contributions from household members, generally in advance of rent being due.

If these rules are applied in these cases, the head tenant may have all the rent deducted from her Centrelink payment potentially leaving other household members to fail to contribute and creating a burden for her to recover rent owed from sometime unwilling contributors. The legislation does not understand the limited incomes and forms of managing from week to week employed by vulnerable households. The approach assumes social housing tenants are poor at paying rents when the evidence suggests they are actually very good.

In 2012–13, the national rent collection rate was 99.4 per cent for public housing and 99.6 per cent for State Owned and managed indigenous Housing (SOMIH). In 2011–12, the national rent collection rate was 100.6 per cent for community housing.^{viii}

In 2014-15, the national rent collection rate was 99.5 per cent for public housing and 96.3 per cent for SOMIH.^{ix}

The media release announcing the introduction of this legislation states “In 2013-14, more than 8,900 social housing tenants, including families with children, were in serious rental arrears, with more than 2,300 people evicted by local housing authorities due to rent defaults,” Minister Porter said.” Which equates to a rental default rate of only 0.5%.^x

These relatively low levels of rent arrears and levels of households in rental stress, compared to private rental markets do not justify imposing income management on the entire cohort of 394,000 social housing properties including those in community housing.

The proposed legislation amendments provide for potentially all of a tenant’s finances to be claimed by a social housing provider without recourse to procedural fairness and due process, there seems to be little consideration of notifications, notice periods, appeals mechanisms or a commitment to the management of personal economy.

Recommendations

Principal recommendation: Schedules one and two be rejected.

National Shelter works closely with its member organisations including the National Association of Tenant Organisations NATO. NATO has made a separate submission to this inquiry which raises many significant points from their perspective working with vulnerable tenants in private rental housing and social housing systems.

National Shelter supports recommendations in the NATO submission and the arguments mounted to support them in addition to the concerns and recommendations raised above, specifically:

Recommendation 1: The Bill should be rejected in its entirety.

Should the Bill proceed:

Recommendation 2: Deductions pursuant to the ARDS should only be permitted in respect of outstanding rental payments where the payment default amounts to a serious breach of the terms of the tenancy agreement and causes significant detriment to the Lessor.

Recommendation 3: "Outstanding obligation" should be defined to restrict the types of payments owing by a Tenant that may be satisfied by deductions under the ARDS to payments that have been outstanding for a defined period of time. The Bill should not apply retrospectively.

Recommendation 4: The Bill should impose an obligation upon a Lessor to take "reasonable action" (including to afford the Tenant a reasonable remedy period following written demand for payment) prior to submitting a request to the Secretary for deductions to be made under the ARDS.

Recommendation 5: The amount that the Secretary may deduct from a Tenant's welfare payments upon receiving a request from a Lessor should be capped at a percentage of the total value of all welfare payments to be received by the Tenant (to ensure that a minimum residual amount is available to meet the Tenant's other needs).

Recommendation 6: The Secretary should be required to notify a Tenant upon receiving a request from the Lessor for deductions to be made under the ARDS. The Secretary should be required to notify a Tenant of its decision whether to grant or reject the Lessor's request. If the request is granted, the Secretary should be required to advise the Tenant in advance of:

- the amount to be deducted;
- the period during which deductions are to be made and the amount to be deducted during each payment period; and
- any rights of review the Tenant has in respect of the Secretary's decision.

Recommendation 7: The Bill should provide criteria that an agreement between a Tenant and a Lessor permitting deductions from a Tenant's divertible welfare payment(s) should satisfy.

Recommendation 8: The Bill should set out the factors the Secretary must consider when determining whether to exercise its discretion to grant the Lessor's request that deductions be made from a Tenant's welfare payments, and when determining the amount of the deductions to be ordered. Those factors should, at least, include:

- the total value of welfare payments to which the Tenant is entitled;
- whether the deduction(s) would cause the Tenant to experience financial hardship;
- the materiality of the payment obligation;
- the circumstances in which the Tenant's payment obligation arose; and
- the nature of the outstanding amount (including the amount and length of time for which the Tenant's payment obligation to the Lessor has been outstanding).

Recommendation 9: A Tenant's social security and family benefit entitlements should only be diverted to satisfy payments arising from the occupancy of a premises where the Tenant has freely given informed consent to the amount being deducted.

Conclusion

National Shelter requests the Senate Community Affairs Committee reject this legislation as inconsistent to the rights of citizens under UN conventions the government rightly wishes its legislation to comply with. We believe this proposal reduces the ability of social housing tenants to exercise their right to economic freedom and will make managing their household budgets more difficult.

It ignores procedural fairness, reasonable notification processes and appeals which we would expect in any legislation. We are happy to answer further questions regarding this submission. Please contact:

Adrian Pisarski, Executive Officer

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- i <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2017/contents/priority-groups-and-wait-lists>
- ii http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6005_ems_a8236f9a-4d7a-4e7d-a965-45286380b13f/upload_pdf/650869.pdf;fileType=application%2Fpdf
- iii http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r5974_first-reps/toc_pdf/17202b01.pdf;fileType=application%2Fpdf
- iv Ibid, page 17
- v Productivity Commission (2017) 'Chapter 18 Housing - Report on Government Services 2017' <http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/housing-and-homelessness/housing/rogs-2017-volume-g-chapter18.pdf> p.155-158
- vi Australian Institute of Health and Welfare (2017) 'Housing Assistance in Australia 2017' <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2017/contents/social-housing-tenants>
- vii Across all social housing programs, main tenants were more likely to be women (61%), AIHW, <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2017/contents/social-housing-tenants>
- viii Productivity Commission ROGS, 2014, Chapter 17.6
- ix Productivity Commission ROGS Chapter, 2016 17.12
- x <https://www.mhs.gov.au/media-releases/2017-09-14-social-housing-rent-reform-support-vulnerable-families>