



**Darebin City Council**

**Submission to**

**The Community Affairs Committee**

**Parliament of Australia**

**SOCIAL SERVICES LEGISLATION AMENDMENT  
(HOUSING AFFORDABILITY) BILL 2017**

## **Introduction**

The City of Darebin is an inner metropolitan suburb of Melbourne of around 160,000 people. The city is currently undergoing rapid gentrification. Social and affordable housing is the single most urgent and acute issue facing residents with many low income families being 'priced out' of the city.

Darebin City Council has a strong history of encouraging social housing and has provided Council owned land in partnership with the state Government and Community Housing Providers (CHP's) for the provision and management of social housing across the city.

This submission is based on decades of practice wisdom provision and advocacy for social housing and social housing tenants.

## **Summary**

Darebin City council recommends that The Community Affairs Committee should;

1. Reject schedules one and two *Social security amendments and Family assistance amendments* of the Social Services legislation Amendment (Housing Affordability) Bill 2017.
2. Pass schedule 3 of the Social Services legislation Amendment (Housing Affordability) Bill 2017 and extend these provisions beyond 2018.
3. Refer the relevant Government department to work with relevant State Governments, Tenant Tribunals and community and social housing peak bodies to formalise and regularise all state legislation regulation and procedures for allow automatic rent deductions as a last resort option for social housing tenants who are facing immediate eviction because of arrears.

## **Specific comments on the proposed Social Services legislation Amendment (Housing Affordability) Bill 2017**

### **SCHEDULE 3 – NATIONAL RENTAL AFFORDABILITY SCHEME AMENDMENTS**

*Strongly supports the removal of current ambiguous provisions with regards to*

1. *Rent charged; and*
2. *Transfer of allocations to other dwellings*

The purpose of this Schedule is to clarify and correct certain ambiguous provisions in the *National Rental Affordability Scheme Act 2008* (NRAS Act), and to provide further flexibility in the future administration of the National Rental Affordability Scheme (the Scheme) so as to further the objects *the spirit and intent of the National Rental Affordability Scheme Regulations 2008* (NRAS Regulations).

These provisions also directly meet the proposed stated objectives of the (Housing Affordability) Bill 2017

- (a) Reduce homelessness;
- (b) Ensure financial effectiveness and sustainability of the social housing system; and
- (c) Support greater investment in social housing.

The evidence and rationale for schedule 3 are clear and logical

This Schedule is compatible with human rights because it supports the protection of the right to adequate housing without imposing on or in conflict with any other human rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Extend these provisions beyond 2018 (The incentive period)

#### SCHEDULES 1 AND 2 – SOCIAL SECURITY AMENDMENTS AND FAMILY ASSISTANCE AMENDMENTS

- There is no evidence or rationale (rent arrears/ default on rents) provided in the Explanatory Memorandum to justify the creation of the Automatic Rent Deduction Scheme (ARDS) to enable rent and other social housing tenancy costs to be deducted from social housing tenants' social security payments.
- There is no evidence or rationale provided in the Explanatory Memorandum to justify the creation of additional legislated Automatic Rent Deduction Schemes over and above those successful schemes that currently exist within State Government jurisdictions and Tenancy tribunals.
- Schedules one and two of this Bill would create the legislative pre conditions for every social housing tenants' rents to be automatically deducted from their account. This is despite the evidence that almost 100% of social housing tenants paying their rent on time.<sup>1</sup>

Further this would increase the already unfair power balance between landlords and tenants without any recourse for tenants.

- That Social security payments remain must absolutely inalienable under section 60 of the Social Security Administration Act as a fundamental principle and that this should be informed by the right to an adequate standard of living as per Article 11.1 of the ICESCR which 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*

<sup>1</sup> 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

*continuous improvement of living conditions’ and that ‘appropriate steps’ be taken to ‘ensure the realization of this right’.*

It is Council’s view that Article 11.1 does not privilege housing above other living conditions and therefore the Commonwealth Government has no ethical / moral basis to impinge on the primacy and agency of individual citizens on the basis of their also being a tenant.

- It is Darebin Council’s view that an Automatic Rent Deduction Scheme (without any supporting evidence) is fundamentally in breach of Article 1 of the International Covenant on Economic, Social and Cultural Rights ICESCR which states that *‘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’.*

Low income tenants are best placed to manage and balance their constrained incomes by providing greater flexibility and control to meet both planned and unplanned living expenses.

- Linking the NRAS provisions and an Automatic Rent Deduction Scheme under a single Bill is both an over reaching conflation and an apathetic administrative blanket short cut that only serves to confuse the community and diminish the urgency of growing homelessness and the fragile state of the social housing system.

#### Victorian Ombudsman Report on the Victorian State Government’s management of claims against public housing tenants.

The following extract is provided as a cautionary example of where an Automatic Rent Deduction Scheme could further exacerbate and further entrench a culture of coercion against public tenants.

This is timely example of where the proposed objects proposed by the Bill can be met through cultural and procedural changes at a State level rather than the unnecessary legislative heavy hand of the Commonwealth.

‘Victoria’s Department of Health and Human Services is failing to live up to its commitment as a social landlord and is wasting public resources through its “inept” management of maintenance claims at the end of public housing tenancies, Victorian Ombudsman Deborah Glass has found.

Disadvantaged Victorians are being charged thousands of dollars for the repair of damaged public housing, even when there’s no evidence they caused the damage, she says.

In a statement issued with the Monday release of her [report into DHHS’ management of claims against public housing tenants](#), the ombudsman did not hold back.

“The effect on the lives of already disadvantaged people caught up in the department’s egregiously unfair processes cannot be overstated,” Glass argues.

“The stress of a huge debt which could arrive at random, years after the end of a tenancy often comes on top of the social, economic and other challenges already faced by those dealing with disadvantage.

“There is the powerlessness of the already powerless, pitted against the state: the refusal of services until they enter a payment plan must be one of the most unconscionable acts of a government department I have encountered.”

The ombudsman said her office had uncovered systemic problems in the way the department manages and pursues maintenance claims against former public housing tenants. This included:

- A default practice of raising maintenance claims against former tenants for almost the entire cost of repairing a vacated property, failing to take into account special circumstances (such as family violence, mental and physical illness or evidence of third party damage) or fair wear and tear and depreciation, which can add up to thousands of dollars.
- Sending letters advising former tenants of claims against them to addresses the department knows they have left.
- failing to negotiate with tenants or their advocates.
- In effect outsourcing its responsibilities to determine a debt to VCAT, wasting public resources and breaching its responsibility as a model litigant.
- Withholding future housing from former tenants until a payment plan is agreed to.

Around 165,000 Victorians live in public housing, and another 35,000 households are on the waiting list. It’s a hugely important asset for the state, worth around half a billion dollars.

Originally designed to support people with low incomes, it now houses some of the state’s most disadvantaged people, with many households containing at least one person with disability, and many experiencing things like family violence. This makes it “surprising” and “deeply disturbing” that the department does not routinely take account of such problems, Glass argues.

“No allowance is made for who caused the damage, or even fair wear and tear. Notices are posted to the address the tenant has vacated. Eventually, an order is made by VCAT. The former tenant may not even become aware of the debt until they seek services again, years later, and is told that any services will be withheld until the debt, now greatly expanded, is settled,” she notes.

Last year the department raised maintenance claims against 38% of vacating tenants, claiming over 90% of the total cost of repairs.

“The evidence of this investigation is that department staff wrongly assess debts beyond a tenant’s liability, send correspondence to an address they know the tenant has left and routinely use VCAT to determine a debt — in breach of their requirement to be a model litigant,” Glass explains.

The department is the highest sole litigant on the VCAT Residential Tenancies List and more than 80% of claims proceed uncontested. VCAT rarely awards the full amount claimed; in many cases compensation awarded to the department is half the original claim.

Public resources are also wasted by the department's pursuit of debts against public housing tenants who are "judgment proof" — where an order for compensation cannot be enforced due to the debtor's financial situation.

The department has accepted all 18 of the ombudsman's recommendations, committing to many measures, including:

- Removing the requirement for applicants to make a debt repayment plan prior to an offer of public housing where the claim is in dispute.
- Implementing a change management package to equip department staff with the necessary knowledge, skills and resources so they engage with former tenants when determining the cause of any damage and liability for the repair costs.
- Establishing a high-level user group for public housing services to monitor the implementation of new and improved guidance.

The department is conducting a review on its allocations and tenant property damage operations guidelines is underway to ensure compliance with the *Charter of Human Rights and Responsibilities Act 2006*.

"It's time to inject both common sense and humanity into the bureaucracy here. To its credit, the department recognises the need to change. But more is needed than simply improving policies and guidance," says Glass.

"All those involved need to recognise that they are dealing with people, many of them vulnerable, and must do so with the fairness we should all expect."

### Other automatic deduction schemes

There are a range of automatic deduction schemes that provide a useful mechanism for some households to assist with managing the payment of utilities, energy, and telecommunications.

These schemes are usually developed and triggered by a social worker or financial counsellor and are structured and tailored as part of an overall financial plan for that household.

This scheme is available to and utilized public tenants for the payment of rent. This successful scheme is based on its voluntary nature ( except where it is part of a determination by a tenant tribunal) and should triggered in consultation with a social worker and / or financial counsellor to ensure each household is able to maintain as much control over their income as possible.

The introduction of another mandatory scheme would only lead to greater confusion.

### **Conclusion and recommendations**

Darebin City council recommends that The Community Affairs Committee should;

1. Reject schedules one and two *Social security amendments and Family assistance amendments* of the Social Services legislation Amendment (Housing Affordability) Bill 2017.
2. Pass schedule 3 of the Social Services legislation Amendment (Housing Affordability) Bill 2017 and extend these provisions beyond 2018.
3. Refer the relevant Government department to work with relevant State Governments, Tenant Tribunals and community and social housing peak bodies to formalise and regularise all state legislation regulation and procedures for allow automatic rent deductions as a last resort option for social housing tenants who are facing immediate eviction because of arrears.