

10 November 2017

Committee Secretary
Senate Standing Committees on Community Affairs

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

NSSRN submission in relation to the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (Cth)

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to current and former social security and family assistance recipients. The NSSRN draws on this front line experience in developing its submissions and policy positions.

Overview of proposed legislation

2. The NSSRN does not endorse the Social Services Legislation Amendment (Housing Affordability) Bill 2017 ("the Bill"). The Bill should be rejected in full.
3. The Bill proposes to allow a portion of a person's social security or family assistance payment to be automatically deducted and paid directly to a social housing organisation. These deductions are for payment of ongoing or outstanding rent, household utility costs¹, or to compensate for loss of or damage to a social housing property as a result of a person's occupancy. The deductions apply to most social security payments and family assistance payments.
4. The Bill is structured as follows:
 - i. Schedule 1 of the Bill details amendments to the *Social Security (Administration) Act 1999* to permit these deductions from certain social security payments.
 - ii. Schedule 2 of the Bill details amendments to the *New Tax System (Family Assistance) (Administration) Act 1999* to permit these deductions from family assistance payments.
 - iii. Schedule 3 of the Bill details amendments to the *National Rental Affordability Scheme Act 2008* to accommodate this scheme.
5. The NSSRN is opposed to any form of income management for social security and family assistance recipients. The proposed rent deduction scheme compromises the inalienability of social security payments that is enshrined in s60 of the *Social Security (Administration) Act*. The scheme also undermines a person's right to social security, right to self-determination, and right to equality and non-discrimination.²
6. The automatic rent deduction scheme raises many serious administrative concerns and inequities. In summary, the proposed legislation:

¹ Pursuant to the Social Services Legislation Amendment (Housing Affordability) Bill 2017 sch 1 item 15 & sch 2 item 1, household utilities include electricity, gas, water, sewerage, garbage collection, and fixed line telephones.

² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

- a. is a disempowering and discriminatory scheme;
 - b. proposes a very broad management scheme for social housing which ignores the complex causes of homelessness;
 - c. gives social housing organisations the ability to recover debts for payments other than for rent and rent arrears owed under tenancy agreements, without adequate safeguards for tenants;
 - d. may compel social housing tenants to sign broad written agreements for the recovery of rent, rent arrears, household utilities, and compensation deductions in order to gain and maintain housing;
 - e. may compel vulnerable tenants to agree to pay unsubstantiated compensation amounts for damage to property;
 - f. imposes a liability onto social security and family assistance recipients who are not named in a social housing lease;
 - g. will likely cause hardship to tenants already experiencing financial stress; and
 - h. may lead to inconsistent treatment and application across the states and territories.
7. If there is strong support for this scheme, we urge that it is only available as a last resort to state and territory residential tenancy tribunals. These tribunals could make rent deduction orders as an alternative to eviction on the grounds of excessive rent arrears.

Homelessness & Social Housing

8. The Bill's stated objectives are to:
- (a) reduce homelessness;
 - (b) ensure financial effectiveness and sustainability of the social housing system; and
 - (c) support greater investment in social housing.
9. The NSSRN supports evidence based strategies designed to prevent homelessness which are consistent with Australia's international human rights obligations. However, this Bill does not meet this criteria. We do not anticipate that this proposed legislation will have any significant impact on reducing homelessness or improving social housing. Our concerns outweigh any likely gains made in these areas.
10. The proposed automatic rent deduction scheme will not have wide-spread benefit for social housing tenants. Since 2011, the rent collection rate for social housing organisations has been above 98%.³ There are a number of existing mechanisms used by social security recipients to meet social housing rent obligations, such as the use of Centrepay deductions.
11. There are many causes of homelessness in Australia. A Commonwealth Government report of 2008 identified family breakdown, a shortage of affordable and adequate housing, financial difficulties, unemployment, mental illness, and substance abuse as driving precursors to homelessness.⁴ These issues are multifaceted. As many do not involve an accumulation of rent arrears, automatic rent deductions will not address homelessness issues. Automatic deductions of household utilities costs will have even less impact. Rather, these deductions may exacerbate an individual's financial insecurity in time of crisis.

3 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>, Table 18A.50

4 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (2008) *The Road Home. A National Approach to Reducing Homelessness*, FaHCSIA, Canberra.

12. For example, family breakdown is often the result of domestic violence. The Australian Council of Trade Unions has recently estimated that the average cost of leaving a violent relationship is \$18,000.⁵ A social security recipient may urgently need to access their full payment in order to secure safe alternative accommodation. They may not be prepared or able to end their tenancy agreement before leaving the property, and the automatic rent payments may limit their options. An automatic rent deduction scheme will not assist those at risk of eviction due to reasons not related to rent.
13. The proposed scheme also fails to recognise the complex reasons for non-payment of rent, for example, unpredictable, ad hoc and fluctuating income. Practical implementation problems, such as fluctuating social security payments, are likely to undermine the objectives of automatic deductions.
14. In August 2017, UNSW's Social Policy Research Centre found that unemployment benefits were not sufficient to meet the basic standard of living cost.⁶ For some people, automatic rent deductions may compound financial problems. The scheme removes the flexibility for people to manage their finances in cases where there are payments more urgent than rent, such as the need for urgent medical or dental treatment. The scheme undermines a person's capacity to manage their own finances and relieve financial pressures.
15. The scheme also fails to recognise that homelessness is also caused by a shortage of affordable and adequate housing. Reports have indicated that social housing waitlists can be between 2 and 10 years.⁷ We urge the government to invest in the growth and ongoing operations of social housing across the country.
16. At the conclusion of this submission, we have attached a number of hypothetical cases studies from NSSRN member centre, Canberra Community Law. These case studies demonstrate some of the unintended consequences this proposal may have on social security and family assistance recipients.

Mechanisms of the proposed legislation

17. Under the proposed legislation, a "social housing tenant" is broadly defined.⁸ It includes any person over 18 who pays or is liable to pay rent whether or not named in a social housing lease agreement. As the Explanatory Memorandum explains, this definition "will allow deductions to be sought from the welfare payment of any of the adult occupants of the house."⁹ This means that social security or family assistance recipients may be subject to automatic deductions for rent and utility payments, or damage to the property, regardless of whether they are legally liable for these payments under a lease agreement. These recipients are unfairly targeted, as there is no mechanism to compel rent or compensation payments from other household members who do not receive welfare payments. Social security and family assistance recipients may bear the burden for joint financial liabilities.

5 'Cost of fleeing violent relationship is \$18,000 and 141 hours: ACTU', *SBS World News (Online)*, 4 November 2011, <http://www.sbs.com.au/news/article/2017/11/04/cost-fleeing-violent-relationship-18000-and-141-hours-actu>.

6 Peter Saunders & Megan Bedford, 'New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians' (Report, Social Policy Research Centre, August 2017).

7 Antoinette Lattouf, 'Social housing: Publicly funded beds left empty, while waiting list grows, new data shows', *ABC News (Online)*, 21 July 2017, <http://www.abc.net.au/news/2017-07-21/social-housing-has-an-under-occupation-problem/8730790>.

8 Social Services Legislation Amendment (Housing Affordability) Bill 2017 sch 1 pt 1 item 8 (s124QD).

9 Explanatory Memorandum, Social Services Legislation Amendment (Housing Affordability) Bill 2017 (Cth) p7

18. The Bill does not describe any procedure where a person:
- a. is notified of a request to have their social security or family assistance payments deducted;
 - b. can seek a review of the amounts deducted, particularly in the case of rent arrears or household utility costs (which fluctuate); or
 - c. can request to have the automatic deductions amended or cancelled.
19. Under the Bill, once a request for deductions have been approved, there is no expiry date or process for the deduction to be reviewed. The social housing organisation has an obligation to notify the Department "as soon as practical" after person ceases to be social housing tenant.¹⁰ However, we anticipate delays in this process, particularly for individuals who are not a party to the lease.
20. Although the Bill addresses overpayments to social housing lessors, we are concerned that social security and family assistance recipients will experience administrative delays in repayments. The Bill deals with overpayments to social housing lessors as a Commonwealth debt. The Department of Human Services must repay to the tenant the excess amount even if not recovered from lessor.¹¹ However, there is no compensation awarded to a tenant who may have an unauthorized and excessive amount deducted from their payment. This person may fall behind other financial obligations, and be subject to late fee penalties, during this time.

- Deductions for rent and utilities

21. Under the proposed legislation, social housing organisations ("lessors") can only request and receive rent or household utilities deductions in certain circumstances. This may be where there is ongoing or outstanding rental amount owing, and there is a written agreement by the tenant authorising the lessor to make a request for a deduction.¹² This rent obligation can arise before the commencement of the legislation.¹³
22. We foresee that all new social housing tenants will be compelled to sign written agreements authorising requests for deductions in order to gain housing. The Bill does not specify the form of these written agreements. There may be instances where potential tenants, desperate to secure housing, will sign broad agreements without fully appreciating the implications of the scheme.

- Damage to property

23. The Bill allows for deductions to compensate for loss of or damage to a social housing property as a result of a person's occupancy. These deductions can be made if an order is made by a tribunal or other body with powers to make orders (and the relevant appeal period has expired)¹⁴, or if the tenant agrees in writing to pay for loss of or damage to property.¹⁵
24. We are concerned that vulnerable tenants will sign written agreements for compensation amounts that have not been proven, or where causes of the damage is not determined. There may be instances where a fear of eviction causes a vulnerable tenant to agree to compensate

¹⁰ Social Services Legislation Amendment (Housing Affordability) Bill 2017 sch 1 pt 1 item 8 (s124QI(2)).

¹¹ Ibid Div 4.

¹² Ibid s124QF(1)(a).

¹³ Ibid s124QF(2).

¹⁴ Ibid 124QF(1)(b).

¹⁵ Ibid 124QF(1)(c).

disputed damages.

25. We are also concerned that orders for these deductions may be made at tribunal hearings where the tenant is not in attendance. We are conscious that there are many vulnerable and disadvantaged people within the social security system. Although the Bill states that the deduction will not be made until after the appeal period has expired, we are concerned that some people will not be aware of their hearing or the order made until their payment is reduced.

- **No limit on deductions**

26. The Bill does not impose a cap on how much may be deducted from a social security or family assistance payment. It only states that deductions cannot exceed:
- what is in an approved request, or
 - the amount of benefit remaining after other deductions have been made.¹⁶

Although in many cases, a tenant must approve in writing the request for deduction and the amount to be deducted, there is no limit on how many requests for deductions a social housing lessor may make against a person's payment.

27. The Bill proposes that if a person's payment is suspended, once it recommences, a greater portion of the payment may be deducted to discharge the person's outstanding obligation for amounts not paid during the period of suspension.¹⁷ There is nothing in the Bill which prevents a person's social security or family assistance payment from being fully expended on these deductions. This is unacceptable for the cohort of social security and family assistant recipients who are already living in poverty.

- **Cashless Debit Card implications**

28. The Bill includes a provision which amends s124PM of the *Social Security (Administration) Act*. This section relates to the Cashless Debit Card and the splitting of a person's payment into restricted and unrestricted portions. Currently, the legislation states that the unrestricted portion can be used "at the person's discretion". The Bill seeks to remove this provision to allow for automatic deductions to be made from the unrestricted portions of a person's social security payment.
29. We are very concerned with this amendment. The unrestricted portion of a Cashless Debit Card holder's social security payment is the only portion able to be accessed in cash form. For most Cashless Debit Card holders, this unrestricted portion equals 20% of their social security benefit. In the case of a single Newstart Allowance recipient, this is approximately \$50 per week. The proposed amendment indicates that some people, forced to use the Cashless Debit Card, will have even less access to money following any automatic deduction.

Human Rights implications

30. The scheme abrogates the principle of inalienability which ensures that an individual qualified for a Social Security payment receives that payment.¹⁸ The scheme also runs contrary to

¹⁶ Ibid s124QH.

¹⁷ Ibid s124QF(5)).

¹⁸ We note that the Bill seeks to amend the principle of inalienability as enshrined in s60 of the *Social Security (Administration) Act 1999*.

Australia's international human rights obligations, specifically the right to social security in Article 9 of the International Covenant on Civil and Political Rights. This right encompasses the right to access and maintain benefits without discrimination, and the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.

31. The proposed scheme also constitutes an unacceptable limitation of the right to non-discrimination enshrined by the International Covenant on Civil and Political Rights. This scheme will create two classes of social housing tenants. It will divide social security and family assistance recipients from all other tenants. Social security and family assistance recipients will lose flexibility to make financial decisions. These limitations are not justified.
32. The proposal represents a drastic interference with the way that a person manages their finances, with little to show in terms of housing outcomes. It fundamentally undermines other Government programs and initiatives designed to build the capacity of people to fully participate in the economic and social life of their communities.

Limited application

33. We do not support any automatic deduction scheme for social housing tenants. However, if there is support for such a scheme, it must be limited to situations where:
 - a. the tenant is in significant arrears;
 - b. the tenant has a history of being in significant arrears over the course of the current tenancy;
 - c. the relevant social housing organisation can demonstrate that it has made significant attempts to put the tenant in contact with suitable support services; and
 - d. all available remedies have been exhausted (For example, this may mean that a tenant has been served with a notice to remedy and a notice to vacate in relation to the current arrears; the matter has come before the relevant residential tenancy tribunal; a conditional order has been sought and obtained; and the tenant has breached that conditional order).
34. In this limited scenario, any automatic deduction scheme must:
 - a. have a cap on the deduction amount;
 - b. be reviewable by an independent appellate body during the entire period in which the scheme is applied to an individual; and
 - c. have an end date to enable an appropriate exit strategy to be devised.

Conclusion

35. The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

Contact for this submission

Joni Gear, Legal Project Officer
National Social Security Rights Network

ATTACHMENT: CASE STUDIES

Canberra Community Law is a community legal centre and member of the NSSRN. These hypothetical case studies are based on their casework experience:

Case Study One

Deka receives a Centrelink payment and lives in social housing accommodation with her partner, Tom. Tom becomes violent and Deka chooses to leave the property. However, Deka's social security payment is subject to automatic rent deductions. She experiences financial stress trying to move out of the property. The rent is automatically deducted from Deka's payment before she can notify anyone. Her experience of fleeing the property is more difficult because of this financial stress.

Case Study Two

Chen is a social housing tenant. She receives a Centrelink payment, but her adult son, a resident in the property, is employed. Chen's son's income is taken into account in calculating the rebated rent. He contributes to the rent. Chen requires expensive medication for a chronic condition and could not afford the rent on her own. On two occasions in the past, Chen's son has disappeared without paying his share of the rent. Under the proposed policy, the entire rent may be deducted from Chen's pension. If Chen's son disappears again, she will not have sufficient funds to cover her medication while she waits for a new rebate to be assessed.

Case Study Three

Pete receives a Centrelink payment and has a perfect rent record. However, he requires treatment for a recurring injury, which requires him to make a significant upfront payment. He fails to pay a fortnight's rent in order to make the payment. He contacts his housing manager and negotiates the repayment of the missing fortnight over several weeks. As a result of the operation, he is able to resume working. He would not have been able to make the payment for treatment if his rent was automatically deducted, as the medical payment took most of his payment for that fortnight.

Case Study Four

Rose receives a small Centrelink payment as she has income from part time work and investments. Her rate of social housing rent is high because of her combined income from the three sources. There can often be a delay in the payment of her wages from her employer; however the reduction in her rate of Centrelink payment is immediate. The entire amount of rent is deducted from her payment and she is left in hardship as a result of her rent being compulsorily deducted.

Case Study Five

Jinan lives alone in social housing. He relies solely on Centrelink. One day, he accidentally leaves the bath on and causes the bathroom to flood. Some of the bedroom carpet is damaged. His social housing lessor asks him to sign a written agreement to pay the cost of repairs. Jinan does not want to upset his social housing lessor, so agrees to sign the document. However, under this proposal, there is no limit to the amount which can be deducted. Jinan's Centrelink benefit is dramatically reduced for the next month and he goes without meals to meet other living expenses.

Case Study Six

Josie is a social housing tenant. She works part time, but also receives a part Disability Support Pension. The proposal would allow the social housing lessor to take her rent directly from her Centrelink payment, despite the fact that Josie works for a charity, which can offer her a fringe benefit arrangement for the payment of her rent from her salary. Josie is financially worse off as a result of the rent being deducted from her Centrelink payment.