



Australian Government
Department of Social Services

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Deputy Secretary

Ms Jeanette Radcliffe
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Senate Standing Committee on Community Affairs
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Dear Ms Radcliffe

SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Thank you for the opportunity to make a submission to the Community Affairs Legislation Committee about the Social Services Legislation Amendment (Housing Affordability) Bill 2017 referred for inquiry by the Selection of Bills Committee on 19 October 2017.

The Department of Social Services (the Department) welcomes the opportunity to provide additional assistance or information that is required by the Committee to support their deliberations.

Yours sincerely

Serena Wilson

10 November 2017

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SOCIAL SERVICES LEGISLATION AMENDMENT (Housing Affordability) BILL 2017

This submission by the Department provides information on the measures contained in the *Social Services Legislation Amendment (Housing Affordability) Bill 2017* (the Bill).

The Bill is designed to support the Government's housing affordability package as announced in the 2017-18 Budget. It introduces the framework for an Automatic Rent Deduction Scheme (ARDS) to enable tenancy charges and other housing costs to be deducted from welfare payments for occupants living in social housing.

The Bill also amends the *National Rental Affordability Scheme Act 2008* to support streamlining and simplifying the administration of the National Rental Affordability Scheme (NRAS or Scheme) until it ceases operation in 2026-27.

Schedules 1 and 2 – Social Security and Family Assistance Amendments

The introduction of an ARDS (formerly known as the Compulsory Rent Deduction Scheme), has been a reform and policy direction since the inception of the National Affordable Housing Agreement in 2009.

The new scheme, which is expected to be available from March 2018, responds to concerns from all levels of government and the community about evictions and homelessness due to rental arrears.

Eviction due to non-payment of rent or other tenancy costs is a major pathway to homelessness.

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 due to rent defaults. In NSW, over 80 per cent of those evicted due to serious rental arrears had previously participated in the current voluntary Rent Deduction Scheme (RDS) until they cancelled their payment arrangements. If ARDS was in place, this group would have been unable to cancel their payment. This strongly suggests that ARDS would be effective in reducing tenancy eviction rates.

The RDS is voluntary and easy to bypass. This is because arrangements can be cancelled by the tenant without the housing provider's knowledge which can lead to increasing rental arrears and eventual eviction.

For example in 2013-14, around 80,000 households in social housing stopped their voluntary deductions at some time during the year which put them at greater risk of falling behind in their rent.

Social housing tenants not paying their rent can also put unnecessary pressure on local support and homelessness services.

In addition, state and territory governments estimate that the social housing system is losing more than \$30 million annually from unpaid rent and administrative costs. This

places an additional and unnecessary burden on the already financially strained public housing system.

An ARDS will help prevent high levels of arrears, reduce evictions and property abandonments from social housing.

The new ARDS will enable rent and other household payments that are legally required to be paid under social housing leases to be deducted automatically from an individual's welfare payments and paid directly to the social housing providers. Other amounts, such as rental arrears or amounts for damages due will also be able to be deducted from a tenant and all adult household members living in a social housing residence.

An ARDS, unlike the current RDS, would ensure that social housing tenants, whose social housing costs are deducted from their social security payments, will be unable to cancel those deductions without their social housing provider's agreement.

Tenants will be able to seek changes to deductions by working with their social housing provider, but only housing providers would be able to instigate, amend or cancel deductions with the Department of Human Services.

This will assist tenants to avoid rental arrears and address debts in a managed and affordable way.

Through this Bill, ARDS will improve the operational efficiency of social housing by ensuring social housing providers receive rent from tenants on time, including those tenants who consistently fail to pay.

In addition, participating States and Territories also view ARDS as driving greater efficiencies through a more steady income stream, which will encourage increased private investment in social housing.

The Government is committed to ensuring that adequate safeguards are in place to protect tenants from hardship. These include an administrative review system under the *Social Security Act 1991* and provisions in the Bill, which provides the Secretary with discretion to change deduction amounts in particular cases, as a further protection.

Policy guidelines will also be developed following the passing of the Bill which will provide further clarity on the operation of ARDS.

In addition, deductions under the scheme will stop as soon as the person is no longer living in public or community housing covered by a current lease.

ARDS is designed to work alongside government funded financial counselling and other available support services, to ensure that tenants continue to be housed safely and affordably while they get the help they need to sustain their tenancy.

Participating State and Territory Ministers agreed to work with the Commonwealth, to pursue the development of a sustainable rental deduction scheme with the intention to reduce homelessness, ensure financial sustainability of the system and support greater investment in social housing.

The Department's view is that State and Territory housing authorities are best placed to understand the individual circumstances of the tenant because of their tenancy management responsibilities, and will be responsible for reviewing any decisions about tenancy agreements and ensuring their legal obligations are met. Jurisdictions will also have control over the implementation of the scheme.

The Department views this bill as a significant step towards ensuring a stable rental income stream for social housing providers. This will lead to a more efficient social housing system and reduces the risk of homelessness due to tenant evictions as a result of tenants not paying rent.

Schedule 3 – National Rental Affordability Scheme Amendments

The objective of the Scheme is to increase the supply of affordable rental dwellings and reduce rental costs for low and moderate income households.

The Department administers NRAS under the *National Rental Affordability Scheme Act 2008* (NRAS Act) and the National Rental Affordability Scheme Regulations 2008 (NRAS legislative framework).

In December 2016, the Department released a consultation paper seeking stakeholders' feedback to identify ways to improve the administration of the Scheme and reduce the regulatory burden on approved participants. Over 30 submissions were received with a range of suggestions on how the regulations could be streamlined to support the efficient and effective administration of the Scheme going forward. In its submission to the NRAS consultation paper, the Commonwealth Ombudsman (the Ombudsman) noted the need to improve transparency for investors in the Scheme.

In its 2016 audit report on the Scheme, the Australian National Audit Office (ANAO) noted the NRAS legislative framework is complex and lacking in clarity. The report further noted that 'the Regulations could be reviewed with the aim of simplifying and clarifying aspects of their operation'.

In January 2017, the Department commenced a review of the Scheme to address the concerns raised by the ANAO, the Ombudsman and NRAS stakeholders.

To that end, the Department is undertaking a staged process to reform the NRAS legislative framework to provide a clear framework for the administration of the Scheme. This measure amends the NRAS Act to clarify ambiguous provisions, provide increased flexibility in the operation of the Scheme and lay the foundation to support the efficient and effective administration of the Scheme until it ceases operation in 2026.

This measure introduces four amendments to the NRAS Act:

Clarifying the term 'at all times during the year'

One of the objectives of NRAS is to reduce rental costs for low and moderate income households. The NRAS Act requires that eligible tenants must, at all times during the year, be charged rent that is at least 20 per cent lower than the market value rent for the dwelling.

There is some ambiguity in the provision, in that it could be interpreted to require that the rent charged must be at least 20 per cent below the market value rent for the dwelling when averaged over the course of the whole year. This measure clarifies that the requirement to charge at least 20 per cent less than the market value rent at all times during the year, means that each time the rent is charged it must be at least 20 per cent less than the market value rent.

This measure will protect eligible tenants from being subject to a higher rent at any time during the year by preventing the approved participant from charging a higher rent for part of the year, and then a lower rent for other parts of the year to compensate.

Authority to transfer allocations

The ability to substitute dwellings is crucial to achieving the objects of the Scheme. Without this discretion, numerous allocations would fall out of the Scheme where a dwelling has been sold or where an owner of a dwelling no longer wishes to take part in the Scheme. This would lead to a significant reduction in the stock of affordable housing provided for under the Scheme.

This measure will provide clarity by giving express legislative authority for the NRAS Regulations to provide for the transfer of an allocation from one rental dwelling to another.

Setting maximum vacancy periods

The NRAS Act requires the NRAS Regulations to prescribe conditions of allocation that a dwelling is not vacant for longer than specified periods within an NRAS year and across two NRAS years. Failure to meet this condition results in a reduced incentive amount.

This provision is overly prescriptive and does not give the Department flexibility to set permitted vacancy periods to ensure that any reduction in the incentive is not disproportionate to the vacancy period, and to ensure the penalty does not act as a disincentive for the approved participant to rent the approved rental dwelling at 20 per cent below the market value rent in any NRAS year (being 1 May to 30 April).

This measure will give the Department flexibility to change the permitted vacancy periods should a policy change in this area be necessary in the future.

Providing express legislative authority to vary conditions of allocation

This measure will add two new provisions to provide express legislative authority for the NRAS Regulations to vary conditions of allocation.

The amendments will put it beyond doubt that conditions may be varied or imposed after an allocation has been made.

These new provisions will reduce the risk to the Commonwealth when varying or imposing new conditions on allocations, such as provisions to protect NRAS investors for the first time.