

Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013

Introduced into the House of Representatives on 29 May 2013

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Summary of committee view

1.30 The committee seeks further information as to whether compulsorily directing how social security payments are to be spent is consistent with the right to privacy, and why it is necessary to enable deductions from a person's social security benefits for up to 12 months *after* a person has satisfied their debt for the amount of rent or household utilities.

1.31 The committee also seeks further information as to whether the compulsory deduction of social security payments from public housing tenants, but not from other social security recipients (who may also be in rent/mortgage arrears) is consistent with the right to non-discrimination.

Overview

1.32 This bill seeks to amend the *Social Security (Administration) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to enable public housing providers to apply to the Secretary of the Department of Human Services to authorise the compulsory deduction of rent and household utility payments from certain social security and family benefit payments, if a person's payments under their lease are in arrears above a prescribed minimum.

1.33 Under the bill, the Minister will have the power to specify someone as a 'public housing lessor' (and therefore as someone able to apply for the deductions to be made) only if satisfied that the public housing lessor has appropriate processes in place to enable review of decisions relating to amounts due and payable and in dealing with matters relating to leases of accommodation.¹¹ Before an order for a deduction can be made, the person must owe an amount that exceeds the prescribed minimum (yet to be specified) and the public housing lessor must have taken reasonable action to recover the amount.¹² An order for these deductions will cease if the person leaves the accommodation, the request is cancelled, or the debt is paid, however, even once the debt is paid the compulsory deduction can continue

11 See clause 3.

12 See clause 6.

for an additional 12 months (as long as the person affected is notified and given an opportunity to make representations to the lessor about this).¹³

Compatibility with human rights

1.34 The bill is accompanied by a self-contained statement of compatibility that states that the bill engages the right to social security,¹⁴ the right to an adequate standard of living,¹⁵ the right to self-determination¹⁶ and the right to privacy.¹⁷ It concludes:

The Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013 is compatible with human rights. The Housing Payment Deduction Scheme will advance the protection of human rights by ensuring that a proportion of social welfare payments are spent on housing costs for people who are having difficulty meeting their obligations under their public housing leases and risking their tenancies. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of preventing evictions due to arrears and debt, which may force a person, and their children, into homelessness.¹⁸

1.35 The statement of compatibility states that the objective of the scheme is to reduce the capacity of individuals and families living in public housing, to accumulate large amounts of arrears, which could put them at risk of eviction and possible homelessness. It notes that the Secretary 'currently deducts public housing rent and other costs from persons' social welfare payments, and pays amounts to public housing authorities with the customer's consent, under the (voluntary) Rent Deduction Scheme'.¹⁹ The difference with this scheme is that the deductions will be made compulsorily.

1.36 The statement of compatibility provides no evidence as to the current rate of people in public housing who are in arrears with their rent or household utility payments and how many may be at risk of eviction, and possible homelessness. However, the explanatory memorandum notes that State Housing Authorities advise

13 See clause 10 together with clause 7.

14 Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 26 of the Convention on the Rights of the Child (CRC).

15 Article 11 of the ICESCR and article 27 of the CRC.

16 Article 1 of the ICESCR.

17 Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

18 Statement of compatibility, p. 4.

19 Statement of compatibility, p. 1.

there are around 600 evictions from public housing a year due to non-payment of rent, and many more leave each year owing rent.²⁰

Right to privacy

1.37 The statement of compatibility recognises that the bill engages the right to privacy in article 17 of the International Covenant on Civil and Political Rights (ICCPR), but confines its discussion of this to the information provided by a requesting public housing lessor for the purpose of administering the scheme. The committee notes that the right to privacy may not be limited solely to the right to respect for private and personal information. While privacy is a difficult term to define, it has been said that:

Privacy can be defined as the presumption that individuals should have an area of autonomous development, interaction and liberty, a “private sphere” with or without interaction with others, free from State intervention and from excessive unsolicited intervention by other uninvited individuals.²¹

1.38 The committee considers that compulsorily directing how social security payments are to be spent engages, in addition to the right to social security, the right to privacy, insofar as it interferes with the personal autonomy of public housing tenants to choose how to spend their benefits. This is not an absolute right and can be limited provided that the limitation is (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

1.39 The committee intends to write to the Minister for Housing and Homelessness to seek further information as to:

- (a) whether compulsorily directing how social security payments are to be spent is consistent with the right to privacy and the right to social security; and**
- (b) why it is necessary to enable deductions from a person's social security benefits for up to 12 months *after* a person has satisfied their debt for the amount of rent or household utilities.²²**

20 Explanatory memorandum, p. 1.

21 See *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, Human Rights Council, A/HRC/23/40, 17 April 2013, pp 6-7, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

22 As provided for by clauses 7 and 10(1)(e).

Non-discrimination

1.40 The committee notes that the bill applies only to public housing tenants and does not apply to persons renting privately or persons owing mortgages, who may also be in arrears with their rent/mortgage and are in receipt of social security benefits. Article 26 of the ICCPR prohibits discrimination on any ground and article 2 requires that the rights recognised in the ICCPR are to be granted without distinction of any kind. To be consistent with the rights to equality and non-discrimination, differential treatment must be demonstrated to have an objective and reasonable justification.

1.41 The committee intends to write to the Minister for Housing and Homelessness to seek further information as to whether the compulsory deduction of social security payments from public housing tenants, but not from other social security recipients (who may also be in rent/mortgage arrears), is consistent with the right to non-discrimination.