

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

*Portfolio: Social Services*

*Introduced: House of Representatives, 29 May 2013*

*Status: Lapsed at end of 43<sup>rd</sup> Parliament*

*PJCHR comments: Eighth Report of 2013, tabled 19 June 2013*

*Response dated: 26 June 2013*

### **Information sought by the committee**

3.40 The committee sought further information:

- whether compulsorily directing how social security payments are to be spent was consistent with the right to privacy;
- why it was necessary to enable deductions for up to 12 months after a person had satisfied their debt for the amount of rent or household utilities; and
- 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) was consistent with the right to non-discrimination.

3.41 The former Minister's response is attached.

### **Committee's response**

3.42 The committee thanks the former Minister for his response. The committee considers that most of its concerns have been satisfied by the information provided in the response.

3.43 The committee, however, retains concerns about the broad powers conferred by the bill to extend compulsory deductions for a further 12 months after a person has settled their arrears for rent and utilities. The former Minister's response argues that the bill provides for procedural fairness because the public housing lessor is required to take reasonable action to inform the person of the proposal to extend compulsory deductions and to give the person a reasonable opportunity to make representations to the lessor about the proposal. The response also states that the bill allows a lessor to revoke a request to extend compulsory deductions, for example, if the person's circumstances change. The committee, however, notes that no corresponding right is provided to the individual subject to the deductions. In addition, the person's ability to make representations is restricted to the lessor only.

3.44 The committee notes that this bill lapsed at the end of the 43<sup>rd</sup> Parliament. However, should it be reintroduced in a similar form, the committee considers that further safeguards should be included in the bill to ensure that the powers to extend

compulsory deductions for a further 12 months are exercised consistently with the right to privacy. At minimum, provision should be made to ensure that a review process will be undertaken to ensure that the 12 month extension is in fact justified in the particular circumstances.



THE HON MARK BUTLER MP  
MINISTER FOR MENTAL HEALTH AND AGEING  
MINISTER FOR HOUSING AND HOMELESSNESS  
MINISTER FOR SOCIAL INCLUSION  
MINISTER ASSISTING THE PRIME MINISTER ON MENTAL HEALTH REFORM

MC13-006885

26 JUN 2013

Mr Harry Jenkins MP  
Chair  
Parliamentary Joint Committee on Human Rights  
S1.111  
Parliament House  
CANBERRA ACT 2600

Dear Mr Jenkins *Harry*

I am writing in response to comments in the Parliamentary Joint Committee on Human Rights' (the Committee) Eighth report of 2013 about the Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013 (the Bill).

You have asked the following questions:

- a. Whether compulsorily directing how social security payments are to be deducted is consistent with the right to privacy and the right to social security.
- 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.
- c. 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.

Please see below, my response to Committee's request for further information about the Bill.

- a. **Whether compulsorily directing how social security payments are to be deducted is consistent with the right to privacy and the right to social security.**

*The Right to Privacy*

I note the Committee's comments that in addition to the right to social security, the Bill engages the right to privacy "insofar as it interferes with the personal autonomy of public housing tenants to choose how to spend their benefits". The Report states that this right 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.

i. Legitimate purpose

While the Bill may restrict the personal autonomy of some public housing tenants, it is aimed at achieving a legitimate purpose which is the prevention of evictions and housing abandonment due to arrears. It therefore supports another important right, which is the right to an adequate standard of living.

ii. Reasonable and objective criteria

The criteria for a person to be subject to deductions is reasonable and objective. The first criterion is that the person owes a minimum amount for rent and utilities, as set out in a legislative instrument, being the equivalent of four weeks rent; the second is that the public housing lessor has taken reasonable steps to recover the arrears. Specifying the equivalent of four weeks rent in the legislative instrument will ensure that only tenants at real risk of eviction or abandonment who have accumulated high levels of arrears will be able to be included. The Bill also ensures that the person has been advised of the intention to make deductions and been given a right of reply; advised of their review rights and support services. Each jurisdiction will need to demonstrate that systemic, rights based processes are in place in order for the Commonwealth Minister to approve their access to the scheme. A framework for this decision making process is being developed with the assistance of the Commonwealth Ombudsman. If, at any point, jurisdictional practices or processes change, the Commonwealth can withdraw access to the scheme.

iii. Proportionate to the aim to be achieved

Public housing is generally the most affordable housing available, and people including families with children who are evicted from or abandoning public housing can end up with family/ friends, living in in caravans or cars, or sleeping rough. In addition to the personal distress of not having safe and stable housing, families and individuals being forced to vacate public housing due to arrears will often need to access crisis accommodation, mental health and other health related services, or child protection services. Evidence shows, that for the majority of public housing tenants, the voluntary Rent Deduction Scheme (RDS) is successful in ensuring rent is paid and arrears are not accumulated. Tenancy failure is strongly associated with discontinuing RDS<sup>1</sup>. The limit on these tenants autonomy in choosing how to spend a part of their benefit is proportionate to the aim of preventing evictions and housing abandonment, which may lead to homelessness.

*The Right to Social Security*

Clause 12 in Part 1 of Schedule 1 to the Bill and clause 11 in Part 2 of Schedule 1 ensure that any amount deducted is paid to the public housing lessor. Deductions cannot be made for any other purpose. Under clause 13 in Part 1 (and clause 12 in Part 2), “the person’s liability to the public housing lessor is reduced by [the] amount [deducted]”. This ensures that deducted funds can only be directed towards a person’s legitimate liabilities to pay rent and utilities.

There are also specific debt provisions that ensure that if deductions are made that are more than should have been made, there is a safeguard to ensure that tenants are immediately reimbursed (clauses 16 of Part 1 of 15 of Part 2 in Schedule 1 to the Bill).

These provisions in the Bill are consistent with the right to social security as they ensure that funds paid through the welfare system are directed exclusively towards an actual liability for housing rent.

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<sup>1</sup> Brotherhood of St Laurence, *Rent Deduction Scheme - Evaluation of the March 2003*, May 2005

This aspect of the Bill is consistent with the United Nations Economic and Social Council's General Comment No.19 on the right to social security (<http://www2.ohchr.org/english/bodies/cescr/comments.htm>) which states (page 2) that the "right to social security encompasses the right to access and maintain benefits, whether in cash or in kind". The Bill essentially operates to ensure welfare is paid "in-kind" to be able to be directly targeted at housing liabilities to ensure evictions are avoided.

The liabilities that can be met under the Bill are limited to rent and utilities. Other amounts which may be owing under a lease, such as maintenance expenses or damage, are unable to be the subject of deductions, as these are less likely to lead to eviction.

**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.**

The Bill (clause 7 of Part 1 and clause 6 of Part 2 of Schedule 1) provides that the public lessor *may* request deductions after arrears for rent and utilities have been paid for a further 12 months (clause 10(1)(e) of Part 1 and 9(1)(e) of Part 2).

The purpose of enabling such requests is to stabilise the housing situation for the tenant by ensuring that rent is paid. In many circumstances this will mean the tenant will be in a better position to receive uninterrupted personal support such as counselling, health services, financial or family services. Deductions under the scheme can only be made during this 12 month period to meet ongoing rent and utility liabilities that a person has under their lease. In many cases, this will mean that deductions for this period will be less than 35 per cent. At no time will the deductions be more than 35 per cent.

The Bill ensures that requests to continue deductions for 12 months can only be made where reasonable action has been taken to inform the person involved and where the person has had a reasonable opportunity to make representations about the proposal. This aspect of the Bill ensures that persons are given the right to be heard as a matter of statutory procedural fairness, in addition to their common law rights. There is also provision in the Bill to allow for public housing lessors to revoke a request. This provision would allow a lessor decide that the person is able to make their own rent payments without compulsory deductions, for example if the person's circumstances change.

**c. 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**

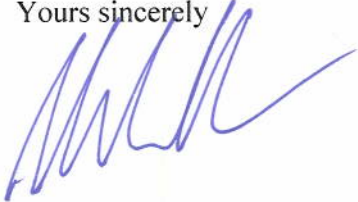
Public housing is often the final safeguard for people with critical or complex needs; providing safe and stable accommodation to the most vulnerable in our community. The scheme is targeted at the minority of public housing tenants who are at risk of eviction or abandonment through non-payment of rent.

While income support recipients paying rent in the private rental market may be also be evicted due to arrears, in the vast majority of cases tenants evicted from public housing have fewer options.

Before the Minister specifies a public housing lessor as able to participate in the scheme, the Minister must be satisfied of a range of matters as outlined in clause 3 of Part 1 of Schedule 1 to the Bill. These matters are intended to provide safeguards that the public housing lessors that are specified have appropriate and transparent processes in place to preserve the rights of the tenant.

If you require further information about the Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013, please contact Trish Woolley on 02 6146 4170.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Butler', with a stylized, cursive script.

**MARK BUTLER**