

Dissenting Report by the Australian Greens on Schedules 1 and 2 of the Social Services Legislation Amendment (Housing Affordability) Bill 2017

1.1 The Australian Greens recommend that Schedules 1 and 2 (Schedules) of the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (bill) not be passed.

1.2 The bill makes provision for an approved social housing provider to request the Secretary of the Department of Social Services make automatic deductions from a tenant's income support payment for the rent and other household expenses such as utilities or property damage. Such deductions will be able to be made from income support payments (including family assistance payments and the unrestricted portion of a tenant's income support payment provided under cashless welfare card arrangements) of any tenant over the age of 18 who pays rent, or is liable to pay rent, regardless of whether they are a party to the lease agreement.

1.3 The Automatic Rent Deduction Scheme (ARDS), introduced by the Schedules of the bill, is another example of the Government imposing harsh and unfair measures on individuals receiving income support, demonising them for their need for Commonwealth assistance.

1.4 As Mr Roland Manderson, Deputy Director, Anglicare Australia, said at the public hearing of the inquiry:

...it runs completely counter to that principle of respecting people and including them in the decisions that affect their lives. Simply because a person is on income support and living in social housing the landlord apparently will now be able to take rent and back payments direct from government before they get any income themselves. It's not hard to imagine where this might lead.¹

1.5 He went on to say that:

It strikes us that this is a deliberate narrowing of the value and purposes of human services to being a low-cost way of managing risk rather than an investment in the people who most need our help. It may prove profitable for some businesses, but it's based on the practice of leaving people behind.²

1.6 The Australian Greens agree with many of the submitters and witnesses to the inquiry that the Schedules will not help to reduce homelessness for social housing tenants, which is the first object for Part 3E of Schedule 1.

1.7 As Ms Genevieve Bolton, Chairperson, National Social Security Rights Network (NSSRN), said:

1 Mr Roland Manderson, Anglicare Australia, *Committee Hansard*, 14 November 2017, p. 3.

2 Mr Roland Manderson, Anglicare Australia, *Committee Hansard*, 14 November 2017, p. 4.

In our view, the bill is misguided. We do not anticipate that this proposed bill will have any significant impact on its stated objectives to reduce homelessness or to improve social housing. In our view, the proposed bill fails to recognise that a key cause of homelessness is severe shortage of affordable and adequate housing. It also fails to recognise that the causes of homelessness are complex and go beyond the nonpayment of rent. ... Our experience is that there's a chronic shortage of affordable and safe properties within Australia. In our respectful view, a broader housing strategy is required to address the complex issues associated with homelessness, with a key plank being a greater investment in social housing.³

1.8 Ms Genevieve Bolton also said:

...the Productivity Commission in its report in 2017 noted that, since 2011, the rent collection rate for social housing organisations has been above 98 per cent. At the moment, public housing tenants can avail themselves of Centrepay—like a direct deduction scheme. I work at Canberra Community Law as well as being chair of the network. Our experience is that there's a high take-up rate already for people using voluntary means to be able to meet rental payments. The more complex cases that we see at Canberra Community Law wouldn't actually be addressed by this scheme.⁴

1.9 There are real concerns about the impacts the ARDS will have on the ability of affected income support recipients to manage their money. We know that low-income individuals are good at managing their budgets, however, automatic deductions for rent or utilities or property damage will remove their ability to manage their budgets for emergencies from time to time.

1.10 The Australian Council of Social Service said in its submission:

The fundamental problem with the Bill is that it removes the autonomy of social housing tenants over their financial affairs. People living on low incomes must have control over paying their rent so that they can manage their finite resources most effectively. Most social housing tenants live fortnight to fortnight and manage their budgets fastidiously. Tenants on fixed incomes through social security are on income levels that are inadequate to meet the most basic needs. ...Removing control could lead to tenants running out of money, being unable to afford doctor's or specialist appointments and ironically, ending up in debt.⁵

1.11 St Vincent de Paul Society said in its submission:

Were payments such as Newstart Allowance, Youth Allowance, Austudy and Abstudy paid at above the poverty line, this would be less of a problem. Currently Newstart Allowance for a single person is just 66% of the

3 Ms Genevieve Bolton, National Social Security Rights Network (NSSRN), *Committee Hansard*, 14 November 2017, p. 1.

4 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 4.

5 Australian Council of Social Service, *Submission 13*, p. 2.

Pension rate, with Youth Allowance and Austudy set at an even lower rate. Such low rates of payments force people into an invidious juggling act. If this group is forced into the ARDS then they will have less control of their budgets when crises arise and more people will have to resort to applying to charities such as the St Vincent de Paul Society for help.⁶

1.12 The Australian Greens have numerous concerns in relation to this bill, in addition to those outlined above. These concerns include:

- scope of the ARDS;
- lack of a cap for the ARDS; and
- procedural fairness.

Scope of the ARDS

1.13 While the proposed reasoning of the Government for this bill is to prevent tenants of social housing accumulating rental arrears, subsequently being evicted and potentially becoming homeless, submitters and witnesses suggested that the bill did not contain provisions to limit the scope of the ARDS to this intended purpose. Instead, submitters and witnesses thought that the ARDS would be able to apply to all social housing tenants, even when they were not experiencing rental arrears.

1.14 In this regard, Mr Ned Cutcher, Senior Policy Officer, Tenants' Union of New South Wales, said:

In the way this bill is drafted it really worries me that there's an intention for it to be universally applied, and not only applied in circumstances where people demonstrate some kind of failing in meeting their obligations.⁷

1.15 He went on to say:

The expectation I have, and the expectation that tenants have, and I think the expectation that some social housing providers have is that they would be able to start applying this across the board, regardless of a tenant's propensity to fall into arrears or to establish liabilities, so they would actually be taking and diverting payments from every tenant who is on a social security payment or family assistance payment. Their income would just as a matter of course be diverted. That's facilitated by the bill through the provisions that allow the social housing landlord to utilise the scheme with prior agreement from a tenant. Residential tenancy agreements would include this as a standard provision—or simply a written agreement that the tenant says, 'Yes, I owe you money,' would give the social housing lessor the opportunity to access the scheme. That ability to access the scheme would apply to existing and prior liabilities, and there are aspects within our tenancy legislation that require tenants to resolve debts from previous social

6 St Vincent de Paul Society, *Submission 6*, p. 4.

7 Mr Ned Cutcher, Tenants' Union of New South Wales (TUNSW), *Committee Hansard*, 14 November 2017, p. 7.

housing tenancies in order to take up a new social housing tenancy. And people cycle in and out of tenancies from time to time as well.⁸

1.16 NSSRN thought it would apply to all new social housing tenants and Ms Genevieve Bolton said at the hearing:

We foresee that all new social housing tenants will be compelled to sign written agreements to gain housing. We also note that the bill does not specify the form of these written agreements. Given the power imbalance between social housing tenants and landlords, we're concerned that potential tenants desperate to secure housing will sign broad agreements without fully appreciating the implications of this scheme.⁹

1.17 There were also concerns regarding the use of the proposed ARDS to recover for property damage.

1.18 The joint submission from Homelessness Australia, Homelessness NSW and Council to Homeless Persons said:

...In Victoria, an Ombudsman's report released in October 2017 revealed systemic problems in the way the Department of Human Services (DHHS) manages and pursues maintenance claims against former public housing tenants, that resulted in tenants being charged for maintenance claims for thousands of dollars in excess of what they were liable for.

The Bill appears to try and navigate this by only enabling automatic deduction after the tenant agrees, in writing, to pay the social housing provider an amount for loss of, or damage to, the property. However, given the disproportionate power relationship between tenants and social housing providers, we believe tenants may be pressured into agreeing to automatic debt reduction.¹⁰

1.19 Ms Genevieve Bolton said at the hearing:

We are very concerned that the bill allows for deductions other than the payment of rent, including amounts owing by the tenant for alleged property damage. In our experience, which is informed by our casework experience, this is often a highly contentious and fraught area, where liability is often in question. We're concerned that tenants may end up paying for debts which have not been proven or which, on further examination, would actually not be owed if those amounts were contested. We know that vulnerable and disadvantaged people suffer significant barriers in terms of being able to access administrative review processes, and there's a real risk that tenants may end up paying debts which are simply not owed through the operation of this scheme.¹¹

8 Mr Ned Cutcher, TUNSW, *Committee Hansard*, 14 November 2017, p. 9.

9 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 2.

10 Homelessness Australia, Homelessness NSW and Council to Homeless Persons, *Submission 16*, pp. 2-3.

11 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 2.

1.20 Mr Ned Cutcher raised similar concerns and noted that not all tenants have access to an advocate who can assist them when they are presented with a bill for a former tenancy.¹²

1.21 Further, Mr Adrian Pisarski, Executive Officer, National Shelter, said:

...one of the things the ombudsman in Victoria points to and that I've heard numerous stories about over the years from public tenants is the case where people, especially women, have suffered domestic violence and their property has been damaged by a partner in a family violence incident where they are clearly not liable for that. But in the Victorian ombudsman's experience, those women—and it's all too often women—have been pursued for maintenance and repair claims for that damage even though they've had nothing to do with that.¹³

1.22 The Australian Greens are very concerned that the ARDS could be used for all new social housing tenants, that it can be used for prior liabilities and that deductions may be made from tenants' income support payments for property damage they may not have caused, including women experiencing family and domestic violence.

Lack of a cap for the ARDS

1.23 It was noted at the hearing of the inquiry that there is no cap on the amount of money that can be deducted from any one individual's income support payment.¹⁴ This means that an individual's entire payment could be taken as deductions under the ARDS.

1.24 The harshest aspect of the proposed ARDS is that deductions will be able to be made from the unrestricted portion (usually 20 per cent) of a Cashless Debit Card recipient's income support payment, if they live in social housing.

1.25 On this, Ms Joni Gear said:

Essentially it removes the description of the unrestricted proportion of a person's benefit. Currently the legislation says that that unrestricted proportion, which is typically around 20 per cent, can be used at the person's discretion, and the bill seeks to remove that provision. The explanatory memorandum explains that that's to really allow for the possibility of automatic deductions to be taken from this unrestricted portion. And as Mr Manderson I think has indicated, there's a real concern around this, because you're already looking at people who have very, very little access to cash—20 per cent—particularly social security benefits. If we're looking at a single Newstart allowance, that's a very small amount of around \$50 per week, and it really limits somebody's ability to manage their own money, to be able to participate in a cash economy where they can share goods and buy things in bulk et cetera. But ultimately our concern is

12 Mr Ned Cutcher, TUNSW, *Committee Hansard*, 14 November 2017, p. 10.

13 Mr Adrian Pisarski, National Shelter, *Committee Hansard*, 14 November 2017, p. 10.

14 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 2.

that they're going to have much less access to money. What this will really do is exacerbate the financial insecurity they're already in.¹⁵

1.26 There was also concern that where an individual's income support payment is suspended, the Department will be able to deduct extra money from the person's payment once it recommences to make up for the sums that were not able to be deducted during the suspension.¹⁶

1.27 In this regard, Ms Joni Gear said:

So, if we're looking at a person who's on a social security payment that is suspended when their payments recommence, they could be looking at a significant reduction of their actual benefit, which is really unacceptable when we're looking at this cohort of people who are on social security, who are really living in poverty or below the poverty line.¹⁷

1.28 Ms Genevieve Bolton said:

This, in our view, will particularly be problematic for people under the community development scheme, where the amount of penalties is much higher than the overall social security compliance system. This is likely to push people into further poverty and severely compromise their ability to meet essential day-to-day expenses.¹⁸

1.29 The Australian Greens are concerned that an individual's entire income support payment could be expended through the ARDS, including Cashless Debit Card recipients and that the Government will be able to take additional amounts from an individual who's payment has recommenced following a payment suspension. Affected individuals will see themselves fall further into poverty as a consequence of the ARDS and there being no cap on the amount of money that can be deducted under the scheme.

Procedural fairness

1.30 A number of submitters also raised concerns regarding procedural fairness for tenants.

1.31 Specifically, there is no requirement for a tenant to be notified when a social housing provider requests the Secretary to make deductions under the ARDS, nor when a request is successful (including the amount to be deducted or the duration).¹⁹

1.32 The effect of this, as well as the lack of obligation on the social housing provider to take 'reasonable action' before making a request to the Secretary under the ARDS, means that the tenant's ability to challenge any decision of the Secretary

15 Ms Joni Gear, NSSRN, *Committee Hansard*, 14 November 2017, pp. 5-6.

16 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 2; Ms Joni Gear, NSSRN, *Committee Hansard*, 14 November 2017, p. 5.

17 Ms Joni Gear, NSSRN, *Committee Hansard*, 14 November 2017, p. 5.

18 Ms Genevieve Bolton, NSSRN, *Committee Hansard*, 14 November 2017, p. 2.

19 National Association of Tenants Organisations (NATO), *Submission 22*, p. 5.

through formal review processes under both the *Social Security (Administration) Act 1999* and *A New Tax System (Family Assistance) (Administration) Act 1999* is limited.²⁰

1.33 As the National Association of Tenants Organisations said in its submission:

In our experience, Tenants usually lack awareness of their legal rights and do not have the necessary skills or means to formally challenge a decision made about their housing.

A Tenant may have valid reasons for not being able to meet their obligations under a social housing lease (for example, due to unforeseen medical expenses and loss of employment). Further, a Tenant's welfare entitlements may not be the most suitable income source from which to satisfy his or her ongoing or outstanding payment obligations to a Lessor, and in many cases a payment plan may be a more appropriate means to repay rental arrears.

Tenants should be afforded an opportunity to make submissions of this kind prior to a request for deductions being made by a Lessor. The early resolution of any disputes regarding amounts owed by a Tenant would reduce the number of requests made by Lessors and the costs of administering the ARDS.²¹

1.34 Concerns were also raised over the potential for deductions to be made in compliance of the order/s of a court or tribunal relating to an amount owing for property damage and the potential for such orders to have been made when the tenant was not in attendance.

1.35 In this regard, NSSRN said:

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.²²

1.36 The Australian Greens are concerned that the bill fails to afford procedural fairness to affected tenants.

1.37 There are some significant flaws in this bill, which could have very serious consequences, and in fact make housing more precarious for some people and cause further financial problems for people already living in or near poverty.

Recommendation 1

Schedules 1 and 2 of the Social Services Legislation Amendment (Housing Affordability) Bill 2017 not be passed.

20 NATO, *Submission 22*, p. 5.

21 *Submission 22*, p. 6.

22 *Submission 2*, p. 5.

Senator Rachel Siewert