

The Senate

Community Affairs
Legislation Committee

Social Services Legislation Amendment
(Housing Affordability) Bill 2017 [Provisions]

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45th Parliament

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TABLE OF CONTENTS

Membership of the Committee	iii
Abbreviations	vii
List of Recommendations	ix
Chapter 1	
Introduction	1
Purpose of the bill.....	1
Bill structure	3
Financial impact	3
Reports of other committees.....	3
Conduct of the inquiry.....	4
Report structure	5
Acknowledgements	5
Chapter 2	
Schedules 1 and 2—Automatic Rent Deduction Scheme.....	7
Policy rationale.....	7
Initiating an automatic deduction process	9
Range of social security payments effected	13
Impact of the ARDS on tenants' financial autonomy.....	15
Procedural fairness—notifications and reviewable decisions	17
Inalienability of social security	18
Committee view.....	18
Chapter 3	
Schedule 3—Amendments to the National Rental Affordability Scheme.....	21
Background.....	21
Proposed amendments	22

Committee view.....	27
Australian Labor Party Senators' Dissenting Report	
Schedules 1 and 2 - Automatic Rental Deduction Scheme	29
Schedule 3 - Amendments to the National Rental Affordability Scheme Act 2008	33
Dissenting Report by the Australian Greens on Schedules 1 and 2 of the Social Services Legislation Amendment (Housing Affordability) Bill 2017.....	
Scope of the ARDS	41
Lack of a cap for the ARDS	43
Procedural fairness	44
Appendix 1	
Submissions and additional information received by the Committee	47
Appendix 2	
Public hearings.....	49

ABBREVIATIONS

ACOSS	Australian Council of Social Services
ANAO	Australian National Audit Office
ARDS	Automatic Rent Deduction Scheme
bill	Social Services Legislation Amendment (Housing Affordability) Bill 2017
CDC	Cashless Debit Card
committee	Senate Community Affairs Legislation Committee
DCC	Darebin City Council
DSS	Department of Social Services
EM	Explanatory Memorandum
FTB	family tax benefit
HIA	Housing Industry Association
Human Rights committee	Parliamentary Joint Committee on Human Rights
Minister	The Hon. Christian Porter MP
NAHP	National Affordable Housing Providers Ltd.
NATO	National Association of Tenants Organisation
NRAS	National Rental Affordability Scheme
NRAS Act	<i>National Rental Affordability Scheme Act 2008</i>
NSSRN	National Social Security Rights Network
NSWFHA	New South Wales Federation of Housing Associations
RDS	Rent deduction Scheme
Social housing lessor	lessor
Social housing	tenant

tenant	
Social Security Administration Act	<i>Social Security (Administration) Act 1999</i>
TUNSW	Tenants' Union of New South Wales

LIST OF RECOMMENDATIONS

Recommendation 1

2.70 The committee recommends that the government consider whether there is merit in imposing a cap on the maximum percentage of a tenant's divertible welfare payment which can be deducted under the Automatic Rent Deduction Scheme, to ensure that an amount is available to meet a tenant's other basic and reasonable needs.

Recommendation 2

2.71 The committee recommends that the government clarify how the scheme will interact with other forms of income management, such as cashless welfare arrangements, or other deductions made from a tenant's income support payment under Commonwealth law.

Recommendation 3

2.72 The committee recommends that the government consider the arguments for including a provision in the Automatic Rent Deduction Scheme guidelines for notification to be provided to a tenant when: a request for an automatic deduction is made by a lessor, the stated reason(s) for a request; the outcome of the Secretary's consideration of a request; and, if the Secretary approves a request, the amount that will be deducted, the deduction schedule and information regarding government funded financial counselling and other relevant support services available to a tenant.

Recommendation 4

2.73 The committee recommends that the government consider whether there is merit in providing a review mechanism in the Automatic Rent Deduction Scheme to provide a tenant with an accessible process for requesting a review of a decision made by the Secretary.

Recommendation 5

3.35 The committee recommends that the bill be passed.

Chapter 1

Introduction

1.1 On 19 October 2017, the Senate referred the provisions of the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (bill) to the Community Affairs Legislation Committee (committee) for inquiry and report by 27 November 2017.¹

1.2 The committee notes that the principal reason for referral of the bill was to allow for consideration of the bill's effect on income support recipients.²

Purpose of the bill

1.3 In his second reading speech, the Minister for Social Services, the Hon. Christian Porter MP (Minister), outlined that the purpose of the bill is to introduce the Automatic Rent Deduction Scheme (ARDS), to enable tenancy payments to be deducted from income support payments and to make amendments to the *National Rental Affordability Scheme Act 2008* (NRAS Act).³

1.4 The bill is designed to support the government's housing affordability package as announced in the 2017–18 Budget.⁴ The bill introduces the framework for the ARDS to enable tenancy charges and other housing costs to be deducted from income support payments and family tax benefit for occupants living in social housing; and making amendments to the NRAS Act to support streamlining and simplifying the administration of National Rental Affordability Scheme (NRAS), until it ceases operation in 2026–27.

1.5 The Minister explained that these measures were designed to reduce instances of homelessness:

The government is committed to putting in place measures which aim to reduce homelessness for social housing tenants who are in serious rental arrears and to reduce rental costs for low- and moderate-income households. The measures in this bill will support the Housing Affordability Package and contribute to this goal.⁵

Automatic Rent Deduction Scheme

1.6 The Explanatory Memorandum (EM) explains the bill introduces the ARDS which enables social housing lessors to request the Secretary deduct the cost of rent

1 *Journals of the Senate*, No. 67, 19 October 2017, p. 2138.

2 Senate Standing Committee for Selection of Bills, *Report No. 12 of 2017*, 19 October 2017, p. [7].

3 The Hon. Christian Porter MP, Minister for Social Services (Minister), *House of Representatives Hansard*, 14 September 2017, pp. 10419–10421.

4 Australian Government, *Budget Measures 2017-18—Part 1: Revenue Measures*, pp. 26-31, <http://budget.gov.au/2017-18/content/bp2/download/bp2.pdf>.

5 Minister, *House of Representatives Hansard*, 14 September 2017, pp. 10419–10421.

and other associated housing utilities, from social housing tenants' divertible welfare payments.⁶

1.7 Part 8 of the bill contains the main provisions of the ARDS, including proposed section 124QB of the *Social Security (Administration) Act 1999* (Social Security Administration Act), which defines divertible welfare payments. Divertible welfare payments include any social security payment, or payment under ABSTUDY, excluding a narrow band of exceptional payments such as the Disaster Recovery Allowance.⁷

1.8 Part 8 of the bill also includes proposed section 124QD, which defines a social housing tenant as anyone over the age of 18 who pays rent, or is liable to pay rent, to a social housing lessor regardless of whether they are party to a rental agreement. Deductions can therefore be sought from the divertible welfare payments of any adult occupant of a social housing household.⁸

1.9 Under proposed subsection 124QF, social housing lessors' requests must specify the amount to be deducted and the amount:

...must not be more than that required to satisfy rent, household utilities or both payable by the tenant, and any outstanding payment or rent, household utilities or both payable by the tenant.⁹

1.10 Deductions from social housing tenants' divertible welfare payments will be paid to the social housing lessor and the Secretary may charge a fee for the service provided.¹⁰

National Rental Affordability Scheme amendments

1.11 The EM details amendments made to the NRAS to 'clarify and correct' certain provisions of the NRAS Act, which have been identified as 'ambiguous in their application' since the commencement of NRAS in 2008.¹¹ Amendments to the NRAS Act include:

- *Rent charged*—proposed subparagraph 7(2)(b)(ii) clarifies the rate of rent charged for dwellings under the scheme must be 20 per cent lower than the market rate each and every time rent is charged;
- *Transfer of allocations*—proposed paragraph 8(ba) provides express legislative authority for an allocation to be transferred to another dwelling under specified conditions;

6 Explanatory Memorandum (EM), p. [5].

7 EM, p. [6].

8 EM, p. [7].

9 EM, p. [8].

10 EM, pp. [9–10]; Social Services Legislation Amendment (Housing Affordability) Bill 2017, ss. 124QK, 124QR.

11 EM, p. [17].

-
- *Vacancy periods*—proposed paragraph 7(2)(c) provides greater flexibility regarding treatment of maximum vacancy periods for NRAS allocated dwelling; and
 - *Conditions of allocation*—proposed subsections 7(4) and 7(5) provides express legislative authority for variation of the conditions of allocation under the Scheme (other than those prescribed under the NRAS Act), including for a condition to be imposed after an allocation is made.¹²

Bill structure

1.12 The bill is structured into three schedules:

- Schedule 1—includes the main provisions of the bill which establish the ARDS, through amendments to the Social Security Administration Act, and consequential amendments to the *Social Security Act 1991*;¹³
- Schedule 2—includes provisions for tenancy charges and other housing costs deductions under ARDS to be made from family assistance benefits, through amendments to the *A New Tax System (Family Assistance) (Administration) Act 1999*;¹⁴ and
- Schedule 3—includes provisions to clarify ambiguous elements of NRAS relating to: rent charged; transfer of allocations; vacancy periods; and conditions of allocation, through amendments to the *National Rental Affordability Scheme Act 2008*.¹⁵

Financial impact

1.13 The EM notes the financial impact over the forward estimates for ARDS is not for publication. Financial impacts from the amendments to NRAS will be nil.¹⁶

Reports of other committees

1.14 The Senate Standing Committee for the Scrutiny of Bills reported it had no comment on the bill.¹⁷

1.15 The Parliamentary Joint Committee on Human Rights (Human Rights committee) considered the bill in Report 12 of 2017.¹⁸ The committee raised questions about the compatibility of the bill with the rights to social security, adequate standard

12 EM, pp. [19–21].

13 EM, pp. [5–11].

14 EM, pp. [12–16].

15 EM, pp. [17–21].

16 EM, p. [3].

17 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2017*, 18 October 2017, p. 48.

18 Parliamentary Joint Committee on Human Rights, *Report 12 of 2017*, 28 November 2017, pp. 43–52.

of living, privacy, protection of the family and the rights of children and sought advice from the Minister.

1.16 The Human Rights committee also noted that the ARDS 'appears to have a disproportionate negative impact on women and persons with a disability' and the cashless welfare regime amendments may have a disproportionate negative effect on Indigenous people, raising questions about potential unlawful discrimination.¹⁹ The Human Rights committee has sought advice from the Minister about both issues.²⁰

1.17 The Statement of Compatibility with Human Rights contained in the EM concluded the bill is compliant with relevant human rights provisions and provided the following rationale:

Schedules 1 and 2 are compatible with human rights. ARDS will limit people's capacity to withdraw from their social housing deductions to meet their obligations under their leases.

To the extent that this 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.

...[Schedule 3] is compatible with human rights because it supports the protection of the right to adequate housing.²¹

Conduct of the inquiry

1.18 Information regarding the inquiry was published on the committee's inquiry webpage.²²

1.19 On 27 November 2017, the Senate granted an extension of time for reporting until 6 December 2017.

Submissions

1.20 The committee called for submissions to the inquiry by 10 November 2017 and wrote to key stakeholders inviting them to make a submission.

1.21 By the reporting date, the committee had received 32 submissions. A list of these submissions is at Appendix 1 of this report.

Hearings

1.22 A public hearing was held in Canberra on 14 November 2017. The committee heard evidence from seven non-government organisations and the Department of Social Services. A list of witnesses is at Appendix 2 of this report.

19 *Report 12 of 2017*, pp. 50, 52.

20 *Report 12 of 2017*, 28 November 2017, pp. 50, 52.

21 EM, pp. [25–26].

22 The committee's inquiry webpage can be located here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/HousingAffordability/.

Notes on references

1.23 References made in this report are to the proof *Committee Hansard*. Page numbers may vary between the proof and official *Committee Hansard* transcripts.

Report structure

1.24 This report comprises three chapters:

- this first chapter provides a summary of the bill and the committee's inquiry;
- Chapter 2 details the committee's consideration of the key issues of Schedules 1 and 2 of the bill; and
- Chapter 3 details the committee's consideration of the key issues of Schedule 3 of the bill.

Acknowledgements

1.25 The committee thanks the submitters and witnesses who contributed to the inquiry.

Chapter 2

Schedules 1 and 2—Automatic Rent Deduction Scheme

2.1 Schedules 1 and 2 of the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (bill) seek to introduce the Automatic Rent Deduction Scheme (ARDS), which provides for the cost of rent, or other household payments, to be automatically deducted from the income support payment received by social housing tenant by request of social housing lessor to the Secretary.¹

2.2 If passed, the ARDS is expected to be operational from March 2018.²

Policy rationale

2.3 The Department of Social Services (DSS) outlined in its submission to the inquiry that the ARDS is consistent with the policy direction taken since the National Affordable Housing Agreement was implemented in 2009. The ARDS furthers the current Rent Reduction Scheme (RDS) and, unlike the RDS, provides for automatic deductions which cannot be amended by tenants without the input of lessors.³

2.4 DSS submitted that the ARDS responds to 'concerns from all levels of government and the community about evictions and homelessness due to rental arrears.'⁴ DSS provided the following summary of the policy context for the ARDS:

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.⁵

2.5 In his second reading speech, the Minister for Social Services, the Hon. Christian Porter MP (Minister) remarked that families evicted from social housing are highly likely to 'end up in specialist homelessness services, or staying with family or friends, or, indeed, sleeping rough.'⁶ The Minister went on to say:

1 Explanatory Memorandum (EM), p. [5].

2 Department of Social Services (DSS), *Submission 1*, p. 1.

3 EM, pp. [22–23].

4 *Submission 1*, p. 1.

5 *Submission 1*, p. 1.

6 The Hon. Christian Porter MP, Minister for Social Services (Minister), *House of Representatives Hansard*, 14 September 2017, p. 10419.

This is undoubtedly a terrible circumstance for the individuals and families involved and of course can lead to long-term homelessness. However it would also contribute to additional and avoidable costs for governments and does put extra pressure on community service providers.⁷

2.6 Despite the potentially dire consequences of rental arrears, several submitters questioned the evidence base for establishing the ARDS and whether the bill would achieve its stated objectives of reducing homelessness, or improving social housing.⁸ Submitters referred to data on national rental collection rates from social housing tenants being in the high 90 percent.⁹ Submitters also noted the low rates of eviction from social housing households due to rental arrears.¹⁰

2.7 The National Social Security Rights Network (NSSRN) suggested the bill 'fails to recognise that the causes of homelessness are complex and go beyond the non-payment of rent.'¹¹ NSSRN and the St Vincent de Paul Society suggested it is unlikely the ARDS will reduce homelessness.¹² Other submitters considered the ARDS to be a disproportionate response to the problem of rental arrears.¹³

2.8 Mr Paul McBride, Group Manager, Welfare and Housing Policy, DSS, informed the committee that, while only a small percentage of public and community housing tenants are in serious rental arrears, 'the consequences of those people not paying their rent are dramatic.'¹⁴

2.9 DSS further explained that state and territory governments have estimated they are losing more than \$30 million annually from the 'unpaid rent and administrative costs' of social housing tenants and this places an 'unnecessary burden on the already financially strained public housing system'.¹⁵ In evidence to the committee, Mr McBride said:

...we estimate that will be \$30 million extra that will be available to the states and territories for public housing that isn't there now. This is a more

7 Minister, *House of Representatives Hansard*, 14 September 2017, p. 10419.

8 See the following submissions: National Social Security Rights Network (NSSRN), *Submission 2*, p. 2; St Vincent de Paul Society, *Submission 6*, p. 3; Darebin City Council, *Submission 10*, p. [3]; Catholic Social Services Australia; *Submission 11*, p. 2; Shelter New South Wales, *Submission 17*, p. [1]; Tenants' Union of New South Wales (TUNSW), *Submission 21*, p. 2; Equality Rights Alliance (ERA), *Submission 25*, p. [1]; North Australian Aboriginal Justice Agency (NAAJA), *Submission 32*, p. 7.

9 *Submission 2*, p. 2; National Shelter, *Submission 3*, p. 3; *Submission 25*, p. 2.

10 *Submission 21*, pp. 2–3.

11 Ms Genevieve Bolton, Chairperson, NSSRN, *Committee Hansard*, 14 November 2017, p. 1.

12 *Submission 2*, p. 2; *Submission 6*, p. 3.

13 Shelter New South Wales, *Submission 17*, p. 2; *Submission 21*, p. 2; *Submission 25*, p. 2.

14 Mr Paul McBride, DSS, *Committee Hansard*, 14 November 2017, p. 19.

15 DSS, *Submission 1*, p. 1.

efficient way of getting people to pay their rent, and that efficiency will allow more money to be available for public housing.¹⁶

2.10 DSS stated that the ARDS will ensure social housing providers 'receive rent from tenants on time, including [from] those tenants who consistently fail to pay' and, that participating states and territories will receive 'a more steady income stream, which will encourage increased private investment in social housing.'¹⁷

2.11 DSS advised the committee that the ARDS is 'an initiative that the states wanted and we [DSS] were prepared to facilitate.'¹⁸ In an answer to a question on notice, DSS confirmed that the then NSW Minister for Social Housing wrote to the Commonwealth Minister for Human Services in 2016 and sought the Commonwealth's agreement to introduce the ARDS. The correspondence was provided to the Minister for Human Services on behalf of all states and territories, excluding Victoria and the Australian Capital Territory.¹⁹

2.12 DSS submitted that ministers from participating states and territories had agreed to progress the ARDS 'with the intention to reduce homelessness, ensure financial sustainability of the system and support greater investment in social housing.'²⁰

2.13 DSS noted that the role of the states and territories in ARDS is paramount:

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.²¹

Initiating an automatic deduction process

2.14 The bill provides for automatic deductions to be initiated by social housing lessors, which are defined under proposed subsection 124QC(1) as an authority, or body, approved by a state or territory to provide social housing.

2.15 Under proposed section 124QG, the Secretary is authorised to make a deduction in accordance with a lessors' request properly made under proposed section 124QF.

16 Mr Paul McBride, Group Manager, Welfare and Housing Policy, DSS, *Committee Hansard*, 14 November 2017, p. 22.

17 DSS, *Submission 1*, p. 2.

18 Mr McBride, *Committee Hansard*, 14 November 2017, p. 22.

19 Mr McBride, Answers to questions on notice, 14 November 2017 (received 17 November 2017).

20 *Submission 1*, p. 2.

21 *Submission 1*, p. 3.

2.16 Under proposed subsection 124QF(1), social housing lessors are able to request the Secretary make a deduction from the divertible welfare payment of a social housing tenant, if the tenant:

- has an outstanding, or ongoing, obligation to pay rent or household utilities, and the tenant has an agreement with the lessor which authorises the lessor to request deductions under the ARDS;
- is ordered by a court, tribunal or body with appropriate power to pay the lessor for loss, or property damage arising from the tenants' occupancy; or
- agrees in writing to pay the lessor for loss, or property damage arising from the tenant's occupancy.

2.17 In accordance with proposed subsection 124QF(3), a social housing lessor's request for an amount deducted 'must not be more than required to satisfy' the liabilities stipulated by proposed subsection 124QF(1).²²

2.18 Under proposed subsection 124QH(1), the Secretary is required to determine the amount to be deducted under 124QG. The Secretary's deduction must not: exceed the amount lessors' request under proposed subsection 124QF(1), or the amount remaining from a divertible welfare payment after any other deductions required by Commonwealth law are applied.

2.19 The Secretary must pay the amount deducted from the tenant to the social housing lessor.²³

2.20 Following a lessors' request for a deduction to be made, the Secretary may charge the lessor a fee, in accordance with proposed section 124QR for actions associated with processing the request.²⁴

2.21 If a deduction is made in excess of the amount determined by Secretary (see proposed section 124QH), the Secretary must pay the relevant tenant an amount equal to the excess deduction, regardless of whether the Commonwealth can recover the excess deduction paid to the lessor.²⁵

Definition of 'tenant'

2.22 Submitters to the inquiry expressed concern at the apparent breadth of the definition of 'tenant' in the bill.

2.23 Proposed section 124QD defines a tenant for the purposes of the ARDS as anyone over the age of 18 who pays rent, or is liable to pay rent, for premises let by a lessor. A person is considered a tenant 'whether or not the person is named in an agreement (however described) with the lessor for occupancy of the premises'.²⁶ The

22 EM, p. [8].

23 Social Services Legislation Amendment (Housing Affordability) Bill 2017, s. 124QK.

24 EM, p. [10].

25 Social Services Legislation Amendment (Housing Affordability) Bill 2017, ss. 124QO(4).

26 EM, p. [7].

Explanatory Memorandum to the bill (EM) provided the following context for the definition:

State and Territory social housing schemes provide for rent to be calculated based upon the income of all members of a tenant's household, despite the fact not all members of the household may be party to the lease with the social housing lessor. This definition will allow deductions to be sought from the welfare payment of any of the adult occupants of the house.²⁷

2.24 Some submitters expressed concern that the broad scope of the definition of tenants risks capturing individuals not liable to pay rent. For example, NSSRN argued that through the definition, social welfare recipients are:

...unfairly targeted, as there is no mechanism to compel rent or compensation payments from other compensation payments from other household members who do not receive welfare payments.²⁸

2.25 Shelter WA expressed a similar concern regarding the proposed definition and suggested that the provision may disadvantage indigenous women:

Many Aboriginal women who are social housing tenants and named on leases but who have within their house-holds other family members who contribute to a household rent. Shelter WA is concerned that because they are named on a lease, it will be they who have the rent deducted from their payments and are then in a position where they have to get rent off their other adult family members who are not named on the lease. Once the rent is already paid they may struggle to be paid by other family members.²⁹

2.26 However, the Community Housing Council of South Australia, the peak industry body representing community and not-for-profit housing providers in South Australia, expressed support for automatic deductions from any adult household member.³⁰

2.27 The NSW Federation of Housing Associations Inc. (NSWFHA) cautioned that the proposed automatic deduction of rent from tenants not listed on tenancy agreements would need to be designed in such a way as to avoid inadvertently creating property rights for residents not named as tenants on leases, and to ensure that the overall responsibility for paying rent is not confused.³¹

27 EM, p. [7].

28 NSSRN, *Submission 2*, p. 3.

29 Shelter WA, *Submission 23*, p. 6.

30 Community Housing Council of South Australia, *Submission 15*, p. 2.

31 NSW Federation of Housing Associations Inc. (NSWFHA), *Submission 24*, p 10.

Circumstances in which a deduction can be made

2.28 In accordance with proposed subsection 124QF(1), the ARDS will apply in a broad range of circumstances. Submitters to the inquiry expressed concern at the range of circumstances in which ARDS could be applied.³²

2.29 Whilst not supporting any form of automatic deductions, the NSSRN suggested that if there was support for ARDS, deductions should only be applied to tenants in a limited range of circumstances, such as when: tenants are in significant arrears; tenants have a significant history of rental arrears; lessors have demonstrated a significant attempt to put a tenant in arrears in contact with appropriate support services; and other available remedies have been exhausted.³³

2.30 The Salvation Army, Darebin City Council and the Australian Council of Social Services (ACOSS) also proposed that automatic deductions from tenants' divertible welfare payments should only be applied in limited circumstances.³⁴ ACOSS recommended in its submission:

If schedules one and two are not rejected, the Bill should be amended to allow automatic rent deductions as a last resort option for social housing tenants who are facing immediate eviction because of arrears. Automatic rent deductions could only be ordered by a state tenancy tribunal.³⁵

2.31 DSS informed the committee that if the ARDS were to apply to tenants in a narrower range of circumstances then it is 'arguable' that the potential administrative savings would not justify the up-front costs to the states in setting up the scheme.³⁶

Written agreement for deductions

2.32 The committee notes that under proposed subparagraph 124QF(1)(ii) a lessor may only make a deduction request if a written agreement is in place with the tenant which authorises the lessor to request a deduction be made from the tenant's divertible welfare payment.

2.33 Whilst proposed subparagraph 124QF(1)(ii) expressly requires tenants' written authorisation, Mr Ned Cutcher, Senior Policy Officer, Tenants' Union of New South Wales (TUNSW) suggested that the authorisation requirement may eventuate as a standard condition of rental agreements:

...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

32 See for example: Mornington Peninsula Shire, *Submission 9*, p. 2; NSSRN, *Submission 2*, p. 6; Salvation Army, *Submission 7*, p. 3; Darebin City Council, *Submission 10*, p. [7]; New England and Western Tenants Advice and Advocacy Service, *Submission 19*, pp. 2–3.

33 NSSRN, *Submission 2*, p. 6.

34 Salvation Army, *Submission 7*, p. 3; Darebin City Council, *Submission 10*, p. [7]; Australian Council of Social Services, *Submission 13*, p. 1.

35 *Submission 13*, p. 1.

36 Mr Paul McBride, Group Manager, Welfare and Housing Policy, DSS, *Committee Hansard*, 14 November 2017, p. 20.

tenant's propensity to fall into arrears or to establish liabilities...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...would give the social housing lessor the opportunity to access the scheme.³⁷

2.34 NSSRN expressed a similar view and anticipated 'all new social housing tenants will be compelled to sign written agreements authorising requests for automatic deductions in order to gain housing.'³⁸

Retrospective deductions

2.35 Under proposed subsection 124QF(2), lessors' request for a deduction are not limited to tenants' liabilities which arise following commencement of the ARDS, i.e. lessors can make retrospective requests for deductions for tenants outstanding obligations, in accordance with proposed subsection 124QF(1).

2.36 The National Association of Tenants Organisation (NATO) commented that the effect of proposed subsection 124QF(2) is to 'capture *any* historical amounts for rent of household utilities owed by the [t]enant, even if the amounts are arbitrary or are no longer being pursued by the Lessor.'³⁹

2.37 NATO and National Shelter recommended that lessors should not be able to make retrospective requests relating to tenants' outstanding obligations.⁴⁰ The Salvation Army went further and urged 'the total waiving' of past arrears for ARDS participants.⁴¹

Range of social security payments effected

2.38 For the purposes of the bill, tenants' social security payments are defined as 'divertible welfare payments' from which automatic deductions under ARDS can be made. The EM outlines the scope of divertible welfare payments:

Section 124QB defines a divertible welfare payment for the purposes of this Part as a social security payment or a payment under the ABSTUDY scheme that is payable (except as an advance), that is not an Australian Victim of Terrorism Overseas Payment, a Disaster Recovery Allowance, a student start-up loan, or an ABSTUDY student start up loan under the Student Assistance Act 1973. The Minister may also determine, by legislative instrument, that one or more kinds of social security payments are not divertible welfare payments.⁴²

37 Mr Ned Cutcher, Senior Policy Officer, TUNSW, *Committee Hansard*, 14 November 2017, p. 9.

38 NSSRN, *Submission 2*, p. 4.

39 National Association of Tenants Organisation (NATO), *Submission 22*, p. 3.

40 National Shelter, *Submission 3*, p. 4.

41 *Submission 2*, p. 2.

42 EM, p. [7].

2.39 Schedule 2 of the bill proposes amendments to the *A New Tax System (Family Assistance (Administration) Act 1999* (Family Assistance Administration Act) to allow automatic deductions to be made from the family tax benefit (FTB) paid to a tenant.⁴³

2.40 The committee received submissions indicating concerns regarding the range of payments to which the ARDS will potentially apply (see proposed subsection 124QB(1) for excluded payment types).⁴⁴ Micah Projects proposed that FTB payments should be excluded from automatic deductions, as FTB is an income based secondary payment to support children.⁴⁵ NSWFA also recommended that FTB be excluded from the ARDS and observed:

The inclusion of Family Tax Benefit...seems inconsistent with the Commonwealth's concerns about the well-being of children and its support for optimising their opportunities and potential.⁴⁶

2.41 However, the EM notes:

The Bill recognises that recipients of a range of social security payments and family tax benefit have children and that the best interests of children are served when parents responsibly ensure that their welfare benefits are directed towards housing as a primary and basic need. The Bill also aims to reduce pressure on child protection services by maintaining continuity of accommodation through ARDS.⁴⁷

2.42 The bill also proposes that automatic deductions be made from income support payable under cashless welfare arrangements, typically referred to as the Cashless Debit Card (CDC), and makes provisions for deductions from both the restricted and unrestricted portions of that payment.⁴⁸

2.43 NSSRN expressed concern that automatic deductions could potentially be made from the unrestricted portion of a CDC holder's income support payment. NSSRN argued this provision will cause card holders to have access to even less discretionary money than the already limited amount available to them through the CDC (20 per cent).⁴⁹ In providing evidence to the committee, Mr Roland Manderson, Deputy Director, Anglicare Australia, questioned the interaction between the ARDS

43 EM, p. [12].

44 For excluded payment types see: Social Services Legislation Amendment (Housing Affordability) Bill 2017, ss. 124QB(1).

45 Micah Projects, *Submission 20*, p. [7].

46 NSWFA, *Submission 24*, p. 5.

47 EM, p. [23].

48 EM, p. [6].

49 NSSRN, *Submission 2*, p. 12.

and income support payable under cashless welfare arrangements, particularly the potential impact on individuals who could be left with no discretionary income.⁵⁰

Impact of the ARDS on tenants' financial autonomy

2.44 A number of submitters expressed concern that the bill will unduly impact on tenants' financial autonomy.

2.45 The Australian Association of Social Workers described the financial vulnerability of social housing tenants:

In all states except South Australia, the income limit for entry to public housing sector is significantly below the minimum wage. This means that the only people who are eligible for social housing must be in insecure employment, or dependant on government pensions or allowances. The shortage of housing in this category means that priority goes to people with an added layer of need, such as people with a disability or mental health condition. Therefore, the people who fall under the scope of this bill are among our most financially disadvantaged and socially isolated.⁵¹

2.46 NATO similarly suggested:

...the ARDS is a form of income management that would erode Tenants' financial independence and make it difficult for Tenants to manage their money, potentially giving rise to increased financial hardship.⁵²

2.47 Concerns regarding the ARDS's potential to limit tenants' financial autonomy were raised by several other submitters to the inquiry.⁵³ For example, Redfern Legal Centre was of the view that the bill 'unreasonably limits tenants' financial flexibility, discourages financial independence and may increase tenants' financial hardship.'⁵⁴ The Housing for the Aged Care Action Group Inc. observed that the bill will reduce 'the capacity of older tenants to manage their finances and, in particular, to deal with unexpected and sudden expenses'.⁵⁵

2.48 Shelter TAS and Darebin City Council suggested that the ARDS is inconsistent with the right of self-determination contained in Article 1 of the International Covenant on Economic, Social and Cultural Rights.⁵⁶

50 Mr Roland Manderson, Deputy Director, Anglicare Australia, *Committee Hansard*, 14 November 2017, p. 5.

51 Australian Association of Social Workers, *Submission 28*, p. 3. [Footnotes have been removed from this quote.]

52 NATO, *Submission 22*, p. 2.

53 See for example: Shelter NSW, *Submission 17*, p. 2; The ParentHood, *Submission 18*, p. 2.

54 Redfern Legal Centre, *Submission 27*, p. 2.

55 Housing for the Aged Action Group Inc. *Submission 8*, p. 2.

56 National Shelter, *Submission 3*, pp. 1–2; Darebin City Council, *Submission 10*, p.4.

Cap on deduction amounts

2.49 A number of submitters expressed concern that there is no effective cap on the amount of deductions that can be made and that this raises the potential for automatic deductions to precipitate a trade-off between tenants' cost of housing and the cost of other basic necessities for tenants in financial stress.⁵⁷ The NSSRN summarised the perspective:

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.⁵⁸

2.50 Similarly, the Salvation Army observed that the absence in the bill of provisions regulating the maximum deduction amount could lead to increased housing stress for social housing tenants:

While the bill requires that the Secretary must not request a deduction of more than that required to satisfy current and outstanding obligations, there is no upper limit of the deduction specified. Furthermore, there is no requirement to negotiate any such payment or amount with the social housing tenant, thus alienating and disempowering the tenant from managing their own affairs.

As 30 per cent or more of household income has historically provided the benchmark against which households are considered to be in housing stress, collection of amounts that may exceed this creates significant risk.⁵⁹

2.51 The NSSRN also noted the bill does not make provisions to limit the number of requests for deductions a lessor can make for housing costs associated with a tenants' divertible welfare payments.⁶⁰

2.52 National Shelter, NATO and Shelter WA recommended that a cap be placed at a percentage of the total value of income support payments received by tenants.⁶¹ Whilst the Salvation Army is 'cautiously supportive of the bill', it specifically recommended the maximum amount deducted from tenants under the ARDS should be capped at below 30 per cent.⁶²

2.53 The committee notes DSS' submission states that tenants will be able to seek amendments to deductions made under the ARDS by working with their social

57 See the following submissions: Glebe Housing Action Plan Now (Glebe HAPN), *Submission 14*, p. 2; NSWFA, *Submission 24*, p. 7; Shelter WA, *Submission 23*, p. 4; NSSRN, *Submission 2*, p. 5; Micah Projects, *Submission 20*, p. 2; Homelessness Australia, Homelessness NSW and the Council to Homeless Persons, *Submission 16*, p. 2.

58 NSSRN, *Submission 2*, p. 5.

59 Salvation Army, *Submission 7*, p. 2.

60 *Submission 2*, p. 5.

61 National Shelter, *Submission 3*, p. 4; NATO, *Submission 22*, p. 5.

62 *Submission 7*, p. 3.

housing lessor; however the capacity to request the Secretary amend the deduction amount would remain solely with the lessor.⁶³

2.54 The committee also notes DSS' evidence that the ARDS would operate 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'. The committee would welcome further information on this expectation.

Procedural fairness—notifications and reviewable decisions

2.55 The committee received evidence which emphasised concerns regarding the bill's provisions for procedural fairness and due process for tenants. The two principal concerns raised by submitters were the absence of provisions in the bill for reasonable notification to tenants regarding deduction requests and the absence of a mechanism for tenants to seek review of deduction decisions.

2.56 Submitters noted that whilst the bill includes provisions which require social housing lessors to notify the Secretary of matters relevant to a deduction request (see proposed subsection 124QI), the bill does not include provisions for the notification of tenants of matters relating to a potential deduction request.

2.57 Glebe Housing Action Plan Now noted that if the Secretary grants a lessor's deduction request, the provisions of the bill do not require the Secretary to notify the tenant that lessor's request has been approved, or the amount, or duration, of the request. Consequently, the first opportunity for social housing tenants to become aware that a deduction request has been approved is when amounts have already been deducted from their income support payment.⁶⁴

2.58 Submitters expressed concern that the bill does not make provisions for tenants to seek a review of a request for automatic deductions, or to negotiate or pay an outstanding amount from another income source.⁶⁵

2.59 Ms Genevieve Bolton, Chairperson, NSSRN, provided evidence to the committee and explained that vulnerable and disadvantaged people often have difficulty accessing administrative review processes. Ms Bolton subsequently said the ARDS 'poses real risk that tenants may end up paying debts which are simply not owed through the operation of this scheme.'⁶⁶

2.60 NATO recommended that the Secretary should be required to notify tenants when a lessor has made a deduction request and if that request has been approved or rejected. If the request is approved, NATO recommends that the Secretary be required

63 DSS, *Submission 1*, p. 2.

64 Glebe HAPN, *Submission 14*, p. [2].

65 See submissions from: Shelter WA, *Submission 23*, p. 5; Homelessness Australia, Homelessness NSW and the Council to Homeless Persons, *Submission 16*, p. [3]; NSSRN, *Submission 2*, p. 4; Housing for the Aged Action Group Inc., *Submission 8*, p. 2. Micah Projects, *Submission 20*, p. [3].

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

to notify the tenant of: the deduction amount; the period for which deductions will be applicable; and 'any rights of the review the [t]enant has in respect of the Secretary's decision.'⁶⁷

Inalienability of social security

2.61 The EM explains the bill amends the absolute inalienability of social security payments established under section 60 of the *Social Security (Administration) Act 1999* to be made subject to automatic deductions, as provided for in new Part 3E of Social Security Act and new Part 3A of the *A New Tax System (Family Assistance) (Administration) Act 1991*.⁶⁸

2.62 NSSRN suggested ARDS 'abrogates the principle of inalienability which ensures that an individual qualified for a Social Security payment receives that payment.'⁶⁹ Equity Rights Alliance commented the bill represented a 'departure from the fundamental inalienability of social security incomes.'⁷⁰ The North Australian Aboriginal Justice Agency asserted the bill 'grossly undermines the inalienability of social security payments.'⁷¹

2.63 NATO acknowledged that in limited circumstances, restrictions on the use of social security payments may be necessary, however argued that the 'erosion of the inalienability of social security entitlements is not necessary to achieve the Bill's objectives.'⁷² TUNSW held a similar view and suggested the affect the bill has on the inalienability of social security payments 'seems quite out of proportion to the issue as stated.'⁷³

2.64 National Shelter and Queenslanders with Disability Network opposed the compulsory nature of ARDS as it removes the ability of tenants to make their own budgets.⁷⁴

Committee view

2.65 The committee considers homelessness and the provision of sustainable social housing are complex public policy issues which require concerted effort on the part of governments and the community, social services and health sectors. The committee considers that the introduction of the ARDS will be an important contribution to this.

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

68 EM, pp. [5, 17].

69 NSSRN, *Submission 2*, p. 5.

70 Equity Rights Alliance, *Submission 25*, p. 2.

71 NAAJA, *Submission 32*, p. 6.

72 NATO, *Submission 22*, p 2.

73 TUNSW, *Submission 21*, p. 2.

74 National Shelter, *Submission 3*, p. [1]; Queenslanders with Disability Network, *Submission 12*, p. 5.

2.66 The committee values the evidence received from submitters to the inquiry and notes that evidence provided indicates rent collection rates from social housing households are high and that evictions resulting from rental arrears are uncommon. The committee also notes some submitters expressed opinions that the ARDS may not be effective in achieving its stated goals of reducing homelessness and reducing rental costs for low and moderate income households.

2.67 In receiving evidence from submitters to the inquiry, the committee considers that there may be some elements of the scheme that the government may seek to consider further. The committee recognises that some of these recommendations may be subject to negotiation with state and territory governments and that some recommendations may be addressed in guidelines produced after the bill has been passed. For example, the committee recommends the government consider whether a cap should be applied on the maximum percentage of a tenant's divertible welfare payment that is deducted under the ARDS. The committee recommends government consider how the ARDS will interact with other income support measures. The committee notes the evidence received regarding the bill's lack of provisions for notifications to be provided to tenants and tenants' access to a review process and the committee makes associated recommendations for the government's consideration.

2.68 The committee recognises the evidence provided by the government that, despite the relatively low rate of rental arrears, the effect of tenants failing to be pay rent can severe. The committee notes the Commonwealth's position that the bill is a 'significant step towards ensuring a stable rental income stream for social housing providers' that 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'.⁷⁵

2.69 The committee notes that the ARDS is an initiative requested by the majority of state and territory governments, as a means to streamline the rent collection process from social housing households. The committee notes that the Commonwealth anticipates that the streamlined rent collection process will contribute to the social housing system, through reducing the burden of unpaid rent and associated administrative costs for social housing providers. The committee therefore anticipates that participating state and territory governments will take a lead role in providing stewardship of the ARDS to deliver a successful policy outcome.

Recommendation 1

2.70 The committee recommends that the government consider whether there is merit in imposing a cap on the maximum percentage of a tenant's divertible welfare payment which can be deducted under the Automatic Rent Deduction Scheme, to ensure that an amount is available to meet a tenant's other basic and reasonable needs.

75 DSS, *Submission 1*, p. 3.

Recommendation 2

2.71 The committee recommends that the government clarify how the scheme will interact with other forms of income management, such as cashless welfare arrangements, or other deductions made from a tenant's income support payment under Commonwealth law.

Recommendation 3

2.72 The committee recommends that the government consider the arguments for including a provision in the Automatic Rent Deduction Scheme guidelines for notification to be provided to a tenant when: a request for an automatic deduction is made by a lessor, the stated reason(s) for a request; the outcome of the Secretary's consideration of a request; and, if the Secretary approves a request, the amount that will be deducted, the deduction schedule and information regarding government funded financial counselling and other relevant support services available to a tenant.

Recommendation 4

2.73 The committee recommends that the government consider whether there is merit in providing a review mechanism in the Automatic Rent Deduction Scheme to provide a tenant with an accessible process for requesting a review of a decision made by the Secretary.

Chapter 3

Schedule 3—Amendments to the National Rental Affordability Scheme

3.1 This chapter discusses Schedule 3 of the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (bill), which proposes amendments to the *National Rental Affordability Scheme Act 2008* (NRAS Act). The view of the Senate Community Affairs Legislation Committee (committee) is provided at the end of the chapter.

Background

3.2 The National Rental Affordability Scheme (NRAS) was introduced in 2008, via the NRAS Act, to encourage large-scale investment in housing to address housing affordability issues by both increasing the supply of affordable rental housing and to reduce rental costs for low and moderate income households. To achieve this, the scheme provides approved participants with a financial incentive for a period of 10 years to rent dwellings to eligible tenants at a rate of at least 20 per cent below the market rate.¹

3.3 The scheme has been the subject of a number of reviews. The Australian National Audit Office (ANAO) reviewed the scheme in 2015 and again in 2016.² The 2015 ANAO report highlighted the need for 'effective planning and sound administration if Government programs are to be successfully implemented and are to achieve their objectives and expected outcomes.'³ The 2016 ANAO report further examined the effectiveness of the administration of certain aspects of the NRAS by the Department of Social Services (DSS), and concluded:

The regulatory framework governing the administration of the National Rental Affordability Scheme could be reviewed to clarify the operation of aspects of the Regulations.⁴

3.4 In 2016, DSS initiated a consultation process to 'explore how the NRAS Regulations and administrative practices could be further improved while continuing to promote rental affordability policy outcomes.'⁵

1 Explanatory Memorandum (EM), p. [17].

2 Australian National Audit Office (ANAO), *ANAO Report No. 8 2015–16, 2015, Administration of the National Rental Affordability Scheme (ANAO Report No. 8 2015-2016)*, ANAO, (*ANAO Report No. 23 2016–17, 2016*), *National Rental Affordability Scheme - Administration of Allocations and Incentives (ANAO Report No. 23 2016–17, 2016)*.

3 *ANAO Report No. 8 2015-16*, quoted in *ANAO, Report No. 23 2016-17*, p. 7.

4 *ANAO Report No. 23 2016–17, 2016*.

5 Department of Social Services (DSS), *Improving the National Rental Affordability Scheme Consultation Paper*, 2016, p. 1.

3.5 In his second reading speech for the bill, the Hon. Christian Porter MP, Minister for Social Services (Minister), noted that over 30 submissions were received to the DSS' NRAS consultation, including a submission from the Commonwealth Ombudsman which noted 'the need to improve transparency for investors in the scheme' and made 'recommendations on measures to strengthen the integrity and compliance of the scheme.'⁶ Following the consultation, DSS 'commenced a review of the scheme to address the concerns raised by the ANAO, the Ombudsman and NRAS stakeholders' which resulted in some regulatory amendments being made in January 2017.⁷

3.6 In introducing the bill, the Minister stated:

The amendments introduced in this bill clarify what were ambiguous provisions in the NRAS Act and lay the foundation to strengthen and simplify the future operation and administration of the scheme.⁸

Proposed amendments

3.7 Schedule 3 introduces four key changes to the NRAS Act, to address existing provisions which 'have been identified that are ambiguous in their application'.⁹ Amendments in Schedule 3 seek to address this ambiguity to 'provide clarity to approved participants and other relevant stakeholders.'¹⁰ The proposed changes impact: the rent being charged; the transfer of NRAS allocations between dwellings; allocation vacancy periods; and, conditions of NRAS allocations.¹¹

3.8 Submitters expressed support for the proposed amendments to the NRAS Act and welcomed the intent of the amendments to remove ambiguous elements and improve existing operations of NRAS. For example, Darebin City Council submitted its strong support for the 'removal of current ambiguous provisions' regarding NRAS rent charged and the transfer of NRAS allocations to other dwellings. Darebin City Council observed that these amendments 'directly meet the bill's stated objectives.'¹²

Rent charged

3.9 A key objective of the NRAS is to reduce rental costs for low and moderate income households by requiring that rents charged for NRAS allocated dwellings are at least 20 percent lower than the market value rent for the dwelling.¹³ There is some

6 The Hon. Mr Christian Porter, Minister for Social Services (Minister), *House of Representatives Hansard*, 14 September 2017, p. 10420.

7 Minister, *House of Representatives Hansard*, 14 September 2017, p. 10420.

8 Minister, *House of Representatives Hansard*, 14 September 2017, p. 10420.

9 EM, p. [17].

10 EM, p. [17].

11 EM, pp. [17-19].

12 Darebin City Council, *Submission 10*, pp. [2-3].

13 DSS, *Submission 1*, p. 3.

ambiguity in the current provisions, in that the below market rate could be determined by averaging rents over the course of the whole year.¹⁴

3.10 The proposed amendment requires that every time rent is charged, whether that is weekly, fortnightly, monthly or on any other basis, that rent must be at least 20 per cent below the market value rent.¹⁵

3.11 DSS explained that the proposal would '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.'¹⁶

3.12 National Affordable Housing Providers Ltd. (NAHP) expressed support for affordable housing rent charged at below market rent, however, contended that the amendment did not go far enough in clarifying the ambiguity of the 20 per cent below market rate provision. NAHP suggested that ambiguity still exists for affordable housing providers calculating rent at 20 per cent below market rate and outlined examples of instances where approved participants could fall afoul of the rule.¹⁷

3.13 The Housing Industry Association (HIA) expressed support for the clarification of rental discount and emphasised:

[I]t would be entirely counter to the objective of NRAS to provide affordable housing to those otherwise in housing stress if the provider were able to charge above the rental discount level at any stage during the year.¹⁸

Transfer of allocations to other dwellings

3.14 The EM outlines that from the inception of the NRAS it was predicted that NRAS allocations may need to be transferred from one dwelling to another, in order to address situations where an NRAS allocated dwelling was sold and the new owner did not wish to participate in NRAS. Without the ability to transfer allocations, such cases would lead to a significant reduction in the stock of affordable housing provided under NRAS. The EM outlines the proposed change would provide 'express legislative authority for the NRAS Regulations to provide for the transfer of an allocation to another rental dwelling in certain circumstances.'¹⁹

3.15 DSS submitted this proposed 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' and is 'crucial to achieving the objects of the Scheme.'²⁰

14 EM, pp. [17-18].

15 EM, p. [19].

16 DSS, *Submission 1*, p. 4.

17 National Affordable Housing Providers (NAHP), *Submission 4*, p. 3–5.

18 Housing Industry Association (HIA), *Submission 5*, p. [1].

19 EM, p. [18].

20 DSS, *Submission 1*, p. 3.

3.16 In introducing the bill, the Minister stated:

The ability to substitute dwellings is crucial to achieving the object of the scheme, being to increase the supply of affordable rental dwellings. As investors exit the scheme, the ability to substitute a like-for-like dwelling ensures the level of NRAS housing stock is maintained.²¹

3.17 Submitters to the inquiry emphasised the importance of being able to transfer allocations. NAHP informed the committee that 'it is essential to have a clear transfer policy in place to retain the maximum number of dwellings in [NRAS]' and noted the result of a recent survey it conducted suggest that 28 per cent of respondents were planning to, or considering, leaving NRAS prior to their incentive ending. NAHP called for clarification of the transfer allocation provisions to ensure the maximum number of allocations remain within the NRAS.²²

3.18 New South Wales Federation of Housing Associations (NSWFHA) suggested a clear transfer policy was essential to 'retain the maximum number of dwelling in the Scheme [NRAS] and continue to provide affordable housing homes for eligible households.'²³

3.19 HIA submitted it was 'particularly pleased' with the proposed amendment to enable the transfer of allocations to other dwellings. HIA observed:

This measure will ensure that the Scheme can meet its maximum capacity to deliver affordable housing solutions over the intended lifetime of the program.²⁴

Vacancy periods

3.20 The current vacancy period provisions of the NRAS prescribe two types of maximum vacancy periods. The first period covers one year and the second covers a continuous period that crosses two years. The EM states the existing vacancy period 'limits the Scheme's ability to adapt and develop in response to emerging issues and demands and is contrary to the initial intent in relation to how the Scheme should be administered.'²⁵

3.21 The Minister stated the proposed change would 'assist in the future administration of the scheme should changes be required on how the maximum vacancy periods are to operate.'²⁶

3.22 The issue of the vacancy period was raised during the 2016 NRAS consultations undertaken by DSS. NAHP and NSWFHA submitted to DSS that approved providers were unduly disadvantaged when a vacancy period spanned two

21 Minister, *House of Representatives Hansard*, 14 September 2017, p. 10421.

22 NAHP, *Submission 4*, p. 2.

23 New South Wales Federation of Housing Associations (NSWFHA), *Submission 24*, p. 9.

24 HIA, *Submission 5*, p. 1.

25 EM, p. [19].

26 Minister, *House of Representatives Hansard*, 14 September 2017, p. 10421.

NRAS years, because even if there was a minimal crossover of the vacancy period to the second NRAS year, the approved provider would receive nil incentive payment for both years.²⁷

3.23 Both NSWFA and NAHP expressed support for the amendment proposed in Schedule 3 to the bill.²⁸ NAHP submitted to the committee that this amendment is a positive step to reduce the prescriptiveness of the current provisions and to enable a more flexible approach vacancy periods.²⁹ Ms Carol Croce, Policy Officer, NAHP, explained:

We feel that this stops penalising approved participants for a timing quirk of when the vacancy occurs and it appropriately addresses the situation, particularly in rapidly changing rental markets such as some of the former mining communities.³⁰

Conditions of allocation

3.24 As outlined in the EM, proposed paragraph 8(ba) seeks to provide clarity that amendments to the conditions of allocation can be made by NRAS Regulations. The proposed amendment would provide a clear legislative authority to vary conditions of allocation that are prescribed by the NRAS Regulations 'to enable the Scheme to continue to respond to emerging issues that arise from time to time.'³¹

3.25 The EM further outlines two key aspects of the proposed change:

- the power to vary conditions of allocations cannot be used to vary the conditions specifically provided for under the NRAS Act, to ensure the NRAS Regulations cannot override the operation of the NRAS Act, and
- a condition provided for by the Scheme may be imposed on an allocation after it is made, to address emerging issues such as a safety requirement to use certain non-flammable materials, or replace existing dangerous materials.³²

3.26 NAHP argued that the amendment to the conditions of allocation give DSS a 'wide ranging power to significantly change the conditions of the allocation' and recommended that parameters be included in the bill to indicate where it is appropriate for DSS to significantly amend the conditions of allocation. NAHP remarked of the amendment:

[T]his broad authority will result in investor uncertainty and distress if there is an ongoing possibility that the conditions of allocation can be varied and imposed at any time. Compliance with the new conditions of allocation

27 NHAP and NSWFA, *Submission to the 2016' DSS consultation on improving the National Rental Affordability Scheme*, p. 7.

28 NSWFA, *Submission 24*, p. 9; NAHP, *Submission 4*, p. 5.

29 NAHP, *Submission 4*, p. 5.

30 Ms Carol Croce, Policy Officer, NAHP, *Committee Hansard*, 14 November 2017, p. 11.

31 EM, p. [19].

32 EM, p. [20].

could result in unanticipated costs and possibly a partial loss of the incentive if it proves difficult to comply with the new conditions in a timely manner.³³

3.27 DSS submitted that 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.'³⁴

3.28 HIA expressed its support for the amendments to the conditions of allocation and considered:

With the program [NRAS] extending for ten years it is desirable to be able to adjust the scheme promptly to address unforeseen changing market conditions.³⁵

Investor safeguards

3.29 Whilst not directly related to a provision in the bill, the committee received evidence from Mr Paul Donovan, Director, MDS Legal, and Mr Neil Henson, Director, Henson Property Management Pty Ltd, concerning the conduct of some NRAS approved participants.³⁶

3.30 The committee notes that on 18 November 2017, the NRAS Regulations were amended to specifically require an approved participant to pass on incentives to an investor in a timely manner.³⁷ The amendments to the NRAS Regulations enable investors to request the Secretary transfer their allocation from the relevant approved participant to another approved participant if the Secretary is satisfied on several stated grounds, including when the relevant approved participant has:

- failed to pass on an incentive to an investor;³⁸
- provided false or misleading information regarding NRAS to the investor;³⁹ and
- acted in such a way in relation to the allocation as to contravene consumer protection law.⁴⁰

33 NAHP, *Submission 5*, p. 3–5.

34 DSS, *Submission 1*, p. 4.

35 HIA, *Submission 5*, p. 1.

36 See: Mr Paul Donovan, Director, MDS Legal, *Committee Hansard*, 14 November 2017, pp. 14–16; Mr Neil Henson, Director, Henson Property Management Pty Ltd, *Committee Hansard*, 14 November 2017, pp. 17–18; MDS Legal, *Submission 30*, pp. 2–7; Henson Property Management Pty Ltd, *Submission 29*, pp. [1–2].

37 National Rental Affordability Scheme Regulations 2008 (NRAS Regulations), Division 2.

38 NRAS Regulations, para. 21A(2)(b).

39 NRAS Regulations, para. 21A(2)(c).

40 NRAS Regulations, para. 21A(2)(d).

Committee view

3.31 The committee notes the government's commitment to improving the supply of affordable housing. The committee welcomes the measures proposed in Schedule 3 of the bill.

3.32 Submitters to the inquiry supported the bill's proposed amendments to the NRAS Act and noted the amendments seek to address ambiguous elements of NRAS and support the bill's stated objectives. The committee notes some submitters called for more flexibility in the application of the NRAS '20 per cent below market rate' provision, and the committee would support further consideration of this provision by DSS. The committee also recognises some submitters raised concerns regarding the proposed amendment to 'conditions of allocation' via the NRAS Regulations; however, the committee is satisfied the amendment proposes an appropriate mechanism for the government to ensure NRAS operates as intended.

3.33 The committee was concerned to receive evidence from some submitters regarding some NRAS approved participants potentially acting contrary to the intent of NRAS, and to the detriment of NRAS investors and their property managers. The committee would support consideration of the use of 'fit and proper person' criteria in the assessment of applications for allocations. However, the committee anticipates that the recent amendments to the NRAS Regulations will provide effective safeguards for the concerns raised by submitters. The committee welcomes the amendments to the NRAS Regulations and considers that NRAS now provides more equitable protections for investors.

3.34 Reviewing, consulting on and amending the NRAS regulatory framework in response to emerging market conditions and stakeholder feedback is an example of good public administration. The committee anticipates NRAS will operate more effectively as a result of the bill's proposed amendments.

Recommendation 5

3.35 The committee recommends that the bill be passed.

Senator Slade Brockman

Chair

Australian Labor Party Senators' Dissenting Report

1.1 Labor referred this bill to a Senate Inquiry to ensure that it was given proper scrutiny.

1.2 Labor Senators welcome the recommendations of the majority report to further consider issues relating to the Automatic Rental Deduction Scheme, but believe amendments should be made to the bill to address these and other issues.

Schedules 1 and 2 - Automatic Rental Deduction Scheme

1.3 This bill creates an Automatic Rental Deduction Scheme which allows States and Territories the option of automatically deducting an amount from a social housing tenants' income support payment to cover rent, utilities and an amount for damage to the property.

1.4 Labor Senators note that the Parliament has previously considered legislation to enable the deduction of social housing rent from income support payments in the *Social Services Legislation Amendment (Public Housing Tenants' Support) Bill 2013* ('Public Housing Tenants' Support bill').

1.5 The previous Labor Government introduced the Public Housing Tenants' Support bill to act on a recommendation from *The Road Home* homelessness white paper that the former Labor Government commissioned.

1.6 Labor Senators on the Committee acknowledge that automatic rent deductions can play a role in preventing homelessness.

1.7 Labor Senators on the Committee are concerned that the voluntary nature of the existing rent deduction scheme is not sufficient to protect some groups. An example of this may be a tenant who is pressured to stop using the voluntary deduction scheme to make cash available to a partner with drug or alcohol abuse issues.

1.8 The Public Housing Tenants' Support bill included a number of safeguards that are not included in this bill, such as:

- The amount deducted from an income support payment for rent in the Public Housing Tenants' Support bill was able to be varied in accordance with changes in rental and utility amounts provided the tenant was notified. The current bill does not require that the tenant be notified of changes made to the amount deducted.
- The Public Housing Tenants' Support bill limited the costs that be deducted to rent, rental arrears and household utilities. The current bill also allows for an automatic rent deduction to include an amount to compensate for loss of, or damage to, the rental property.

1.9 The Senate Inquiry heard evidence from a number of community organisations that the proposed scheme is unnecessarily broad.

1.10 Witnesses told Senators that the proposed scheme is 'A disproportionate response. It doesn't address some of the critical causes of homelessness'¹ and that it would 'generate other problems for tenants across the board.'²

1.11 Labor Senators on the Committee agree with the Department of Social Services statement that although the proportion of social housing tenants evicted annually as a result of rental arrears is small, the impacts of this can be significant.

1.12 However, Labor Senators on the Committee share the concerns of many of the witnesses who provided evidence at the Public Hearing that the scheme proposed in the bill goes too far, is too broad and could be detrimental if applied as written in the bill.

Financial Pressures on Tenants

1.13 Adrian Pisarski of National Shelter explained to Senators that 'overwhelmingly public housing tenants are very good payers of rent. Some 99.5 per cent are recorded every year up until 2017 as paying their rent.'³

1.14 Genevieve Bolton from the National Social Security Network argued that the proposed scheme 'goes too far beyond its stated object, which is to prevent tenants from accumulating rental arrears, ultimately resulting in their eviction and potential homelessness.'⁴

1.15 The Committee also heard that 'the bill enables a greater proportion of a person's Centrelink payments to be deducted to meet a liability in situations where an amount has not been paid during their suspension period... This is likely to push people into further poverty and severely compromise their ability to meet essential day-to-day expenses.'⁵

1.16 Joni Gear from the National Social Security Rights Network explained that this could result in a 'significant reduction of their actual benefit.'⁶

Notification of tenants

1.17 In their submission to the Senate Inquiry, National Shelter recommended that the bill be amended to require the Secretary to notify a tenant in advance if the amount of deduction was to change.⁷

1 Ms Genevieve Bolton, Chairperson, National Social Security Rights Network (NSSRN), *Committee Hansard*, 14 November 2017, p. 2.

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

3 Mr Adrian Pisarski, Executive Officer, National Shelter, *Committee Hansard*, 14 November 2017, p. 6.

4 Ms Genevieve Bolton, Chairperson, NSSRN, *Committee Hansard*, 14 November 2017, p. 1.

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

6 Ms Joni Gear, Legal Project Officer, NSSRN, *Committee Hansard*, 14 November 2017, p. 5.

7 National Shelter, *Submission 3*, p. 4.

1.18 Labor Senators welcome the recommendation of the majority report that the Government consider including a provision in the automatic rental deduction scheme guidelines for notifications to be provided to tenants when lessors make a request of the Secretary regarding a deduction.

Setting a cap on the amount deducted

1.19 In their submission to the Senate Inquiry, the Salvation Army expressed cautious support for the bill as a means to prevent 'some individuals from needlessly exiting social housing through eviction and being subject to the consequent rotation through homelessness services.'⁸

1.20 The Salvation Army recommended that the rate of compulsory deductions should be capped below 30 per cent of income.⁹

1.21 A number of other submitters recommended that a cap be placed on the amount of deductions, including Micah Projects; National Shelter; and the National Social Security Rights Network.

1.22 Labor Senators on the Committee welcome the recommendation of the majority report that the Government consider imposing a cap on the amount deducted; however recommend that this be addressed now through an amendment to the bill.

Property Damage

1.23 The Committee heard a range of other community concerns regarding the proposed automatic rent deduction scheme, including concerns about allowing an amount to be deducted to cover damage to the rental property.

1.24 Ms Bolton explained that the National Social Security Rights Network '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...this is often a highly contentious and fraught area, where liability is often in question.'¹⁰

1.25 Mr Pisarski told the Committee that allowing an amount for the damage of property to be deducted from a tenants' income support payment may especially disadvantage women who had experienced domestic violence. Mr Pisarski referred to a report by the Victorian ombudsman and explained:

One of the things the ombudsman in Victoria points to...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

8 Salvation Army, *Submission 7*, p. 1.

9 *Submission 7*, p. 3.

10 Ms Genevieve, Bolton, Chairperson, NSSRN, *Committee Hansard*, 14 November 2017, p. 1.

experience, those women...have been pursued for maintenance and repair claims for that damage.¹¹

1.26 Labor Senators on the Committee are concerned about the impact of allowing an amount for property damage to be automatically deducted and recommend that the bill be amended so that deductions can only cover amounts relating to rent and utilities.

Impact on Income Management

1.27 Additionally the Committee heard that the bill could potentially further reduce the amount of cash that is available to a participant of the cashless debit card trials or a person participating in a scheme of income management.

1.28 Ms Gear explained to the Committee that for a cashless debit card trial participant, this bill:

...removes the description of the unrestricted portion of a person's benefit. Currently the legislation says that that unrestricted portion, 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.¹²

1.29 Roland Manderson of Anglicare Australia raised a concern that applying a further deduction to the discretionary portion of an income managed income support recipients payment could have a significant impact on their quality of life:

what does that say about our attitude to those people, that we are actually quite happy for them to have no discretionary income or no say in how they live their life and manage their finances?¹³

1.30 Labor Senators on this Committee share the concerns raised by witnesses about the additional impact this bill would have on income managed income support recipients, by further limiting their discretionary income.

1.31 Labor Senators welcome the recommendation that the government clarify how the proposed rental deduction scheme will interact with other forms of income management, but believe that this needs to be addressed now through amendments to the bill.

Recommendation 1

Labor Senators on this Committee recommend that the Social Services Legislation Amendment (Housing Affordability) Bill 2017 be amended to:

11 Mr Adrian Pisarski, Executive Officer, National Shelter, *Committee Hansard*, 14 November 2017, p. 10.

12 Ms Joni Gear, Legal Project Officer, NSSRN, *Committee Hansard*, 14 November 2017, p. 6.

13 Mr Roland Manderson, Deputy Director, Anglicare Australia, *Committee Hansard*, 14 November 2017, p. 5.

-
- **only allow an amount to cover rent and utilities to be deducted,**
 - **ensure that where the tenant is also part of an income management scheme or a cashless debit card trial, deductions may only be taken from the quarantined portion of the income support payment, not the unrestricted portion,**
 - **set a cap for a maximum amount to be deducted,**
 - **not allow an amount for rental arrears as a result of the suspension of a payment to be deducted in a single fortnightly payment, and**
 - **include a provision to require the lessor to inform the tenant of a change in the amount of payment to be deducted.**

Schedule 3 - Amendments to the National Rental Affordability Scheme Act 2008

1.32 Schedule 3 of the bill makes changes to the administration of the National Rental Affordability Scheme (NRAS) to:

- remove ambiguity in relation to the calculation of below market rents in any one year;
- provide flexibility in the way maximum periods of vacancy are prescribed;
- provide express legislative authority to the Secretary of the Department of Social Services to make variations to the conditions attached to incentive allocations; and
- give express legislative authority for the NRAS Regulations to allow for the transfer of an NRAS allocation from one dwelling to another in certain circumstances and where to do so would reduce the risk of the dwelling being taken out the Scheme.

1.33 Labor Senators support the provisions in Schedule 3 that provide flexibility in the way maximum periods of vacancy are prescribed and which give express legislative authority for the NRAS Regulations to allow for the transfer of an NRAS allocation from one dwelling to another.

1.34 These provisions are uncontroversial and are supported by submitters to the inquiry.

1.35 There are however two provisions in Schedule 3 about which submitters indicated their support in principle but raised concerns over the way in which they are drafted and undesirable consequences which could arise.

1.36 These concerns are in relation to Item 1 of Schedule 3 which prescribes how rent on an NRAS dwelling is to be calculated and Item 3, which would allow the Scheme to provide for the variation of conditions attached to an allocation, including an allocation that has already been made.

Calculation of Rent

1.37 The intent of Item 1 of Schedule 3, which prescribes how rent on an NRAS dwelling is to be calculated and charged that each time rent is charged, it must be at

least 20 percent below the market value rent for the dwelling. It is not intended that an approved Scheme participant can charge a higher rent for part of the year, then a lower rent for part of the year to compensate.

1.38 Submitters to the Senate inquiry support the change but raised a practical problem that can arise in circumstances where an unintentional overcharge of rent occurs due to a market rent valuation on the NRAS property which results in a rent reduction in order to keep the rent at least 20 percent below market rent.

1.39 National Affordable Housing Providers Ltd (NAHP) is a representative peak body whose members are NRAS Approved Participants holding over 50 percent of NRAS allocations.

1.40 NAHP provided further evidence of circumstances in which unintentional rent overcharges can occur.

Approved Participants are required to do market rent valuations (MRV) to determine the market rate to calculate the 20% discount. These MRVs are undertaken in Year 1 of the NRAS incentive and at the end of Years 4 and 7 (effectively in Years 5 and 8) and coincide with the dwelling's 'available for rent anniversary' (AFRA) date. The MRVs are the most accurate assessment of the market rent since they are done on the individual dwellings. During the other years, the rents are adjusted according to the NRAS Index.

...Rent reductions are not uncommon following an MRV. A significant number of NRAS properties were built in those now declining mining communities precisely to deal with the lack of affordable housing several years ago. In other communities, even a small market downturn can result in a slight decrease in an MRV and any reduction in rent, even a few dollars, must be implemented immediately.

There are a few ways that Approved Participants can run afoul of the 20% rule. NRAS Regulations require that a rent reduction resulting from an MRV must take effect no later than the AFRA. NRAS Regulations also permit an MRV to be undertaken within a 26 week period around the AFRA, i.e. 13 weeks on either side of the AFRA. That becomes a problem when the MRV is done during the allowable 13 week period after the AFRA. If the MRV unexpectedly results in a decreased valuation that triggers a rent reduction the Approved Participant is now non-compliant because the AFRA date has already passed. The Approved Participant is prohibited from rectify (*sic*) this unavoidable overcharge with a refund or credit and will lose a portion of their incentive.

A more common situation that can result in rent overcharges concerns rent payments in advance. Tenants often pay their rent at least a fortnight in advance (it is required in some jurisdictions) and sometimes pay their rent several months advance. Where there is a decreased MRV resulting in a rent reduction, the Approved Participant may be noncompliant even if they actioned the rent reduction on the AFRA date: the tenant may have already paid the higher rent weeks before because they paid in advance. Again, because the Approved Participant cannot rectify the unintended overcharge

with a refund or credit, they are in jeopardy of losing a portion of their entitlement to a full incentive.¹⁴

1.41 It is no simple matter to provide a tenant with a refund or credit of unintentional rent overcharges.

1.42 In relation to unintentional rent overcharges, NAHP said in its submission:

DSS has generally interpreted the '20% at all times' legislation as prohibiting rent rebates or credits when an unintentional overcharge has occurred. In the last year, DSS has allowed for some refunds due to minor errors such as rounding mistakes and these are approved by the Delegate on a case-by-case basis. However it is unclear what constitutes a 'minor error' other than the rounding example and guidelines on acceptable rent charging errors would be acceptable.¹⁵

1.43 At the public hearing, NAHP elaborated on their submission:

The bigger issue is the prohibition on refunds and credits. The legislation does not explicitly prohibit this, but the legislation on the 20 per cent at all times has been interpreted in that way. We assert that they should be permitted, if applied within a reasonable time frame. We propose that refunds or credits be allowed, if the correction and compensation is completed when the next rent payment is due. In this way, the tenant would only be paying the older higher rent for no more than one payment period, which usually is a fortnight, before the new lower rate would take effect, and it would also receive compensation for that overcharge with a refund or a credit in a timely manner.¹⁶

1.44 The NSW Federation of Housing Associations also submitted that it holds concerns about the rigidity of the how the requirement that the rent on an NRAS dwelling must be at least 20 percent below the market rent for the dwelling at all times.

1.45 The Federation indicated it would support amendments to the bill to allow for refunds of unintentional rent overcharges in circumstances where a market rent valuations has resulted in a rent overcharge and there is a minor delay in charging the reduced rent to the tenant.¹⁷

1.46 Labor Senators accept that to the extent that NRAS is administered in such a way that refunds and credits of rent overcharges are generally not permitted in circumstances where a rent overcharge is due to a reduced market rent valuation, a more desirable result would be to provide an exception to a strict application of the '20% at all times' rule so that refunds or credits of rent overcharges may be made in a timely manner and the Secretary is notified.

14 *ibid*, pp. 3-4.

15 National Affordable Housing Providers Ltd (NAHP). *Submission 4*, p.3.

16 Ms Carol Croce, Policy Officer, NAHP, *Committee Hansard*, 14 November 2017, p.11.

17 New South Wales Federation of Housing Associations, *Submission 24*, p. 9.

Recommendation 2

That the bill be amended to provide an exception to the '20% at all times' rule in paragraph 7(2)(b) in circumstances where:

- **there is an unintentional rent overcharge as a result of a reduced market rent valuation; and**
- **the overcharge does not persist for more than one rental payment period; and**
- **the Approved Participant has notified the Secretary of the overcharge; and**
- **the Approved Participant has refunded the rent overcharge.**

Variations to conditions of NRAS allocations

1.47 The intent of Item 3 of Schedule 3 is to allow the Scheme to provide for the variation of a condition of allocation, including an allocation already made. While there is currently scope in the Act to attach conditions to allocations, there is no express authority to vary the conditions of allocations once made.

1.48 According to the Explanatory Memorandum, the bill provides a clear legislative basis for varying conditions of allocations to enable the Scheme, 'to continue to respond to emerging issues that arise from time to time. Conditions of allocation may be varied where it is necessary or appropriate to give effect to the objects of the Scheme.'

1.49 The Explanatory Memorandum also states that, 'The ability to implement new and varied conditions of allocations are important to further the objects of the Scheme, and to protect eligible tenants and ensure the safety and viability of dwellings.'

1.50 The drafting of the proposed subsection 7(4) provides that the NRAS may provide for the variation of a condition of an allocation (other than prescribed conditions) 'in certain circumstances.' The drafting of the bill provides a much wider scope for conditions to be varied than the circumstances described in the Explanatory Memorandum.

1.51 Representatives of NRAS approved participants who made submissions to the Senate inquiry raised concerns over the breadth and lack of particularity of the discretion to vary conditions the subsection would provide to the Secretary. There is also no requirement for the Secretary to consult with approved participants over either the circumstances giving rise to the need for the variation or the nature of the variation.

In NAHP's discussions with DSS they have reported that this legislative authority is necessary to afford them the powers to address significant emerging risk. However, the amendment does not limit the scope of that authority to varying conditions in order to mitigate risk. Nor does the amendment provide any caveats that reflect the intention in the Bill's explanatory notes that the conditions be imposed to deal with emerging issues and circumstances. The amendment simply states 'a condition provided for by the National Rental Affordability Scheme may be imposed

on an allocation after the allocation is made'. It appears to be a 'catch-all' authority to impose any condition not already specifically articulated in the Act.

NAHP believes this broad authority will result in investor uncertainty and distress if there is an ongoing possibility that the conditions of allocation can be varied and imposed at any time. Compliance with the new conditions of allocation could result in unanticipated costs and possibly a partial loss of the incentive if it proves difficult to comply with the new conditions in a timely manner.

NAHP acknowledges that DSS needs some flexibility to address situations that pose a risk to NRAS tenants and the overall operation of the Scheme. NAHP recommends that some parameters be included in the Legislation that indicate when it is appropriate to significantly vary the conditions of the allocation; and that there be established procedures for negotiation on any variations with Approved Participants and investors.¹⁸

1.52 The Department's submission to the inquiry states:

These new provisions will reduce risk to the Commonwealth when varying or imposing new conditions on allocations, such as provisions to protect NRAS investors for the first time.¹⁹

1.53 Further evidence was heard by the Committee in relation to emerging risks related to an approved participant failing to pass on incentives to investors, allegedly engaging in conduct in breach of consumer protection laws and making false and misleading representations about the NRAS Act to investors.²⁰

1.54 Regulations made on 16 November 2017 will hopefully address these issues by providing that investors may now apply to the Secretary for an allocation held by the investor to be transferred to another approved participant if any of the grounds in new Regulation 21A are met, namely:

- The approved participant has failed to comply with a condition of the allocation.
- The approved participant has provided false or misleading information to an investor.
- The approved participant has contravened a consumer protection law by for example, engaging in misleading or deceptive conduct or engaging in unlawful anti-competitive conduct such as third party forcing or exclusive dealing.
- The approved participant has claimed a tax offset they were not entitled to claim.

18 NAHP, *Submission 4*, p. 5–6.

19 Department of Social Services, *Submission 1*, p. 4.

20 Mr Paul Donovan, Director, MDS Legal and Mr Neil Henson, Director, Henson Property Management Pty Ltd, *Committee Hansard*, 14 November 2017, pp.14-18.

- The approved participant is subject to pending deregistration as a company.
- The approved participant has provided false or misleading information when making an application under the Regulations.

1.55 Labor Senators accept that the legislation should be amended to allow for the conditions attached to allocations to be varied to meet emerging risks.

1.56 However, in order to allay approved participants' and investor concerns over the breadth of the discretion to vary allocation conditions, it would be desirable to amend the bill to confine the discretion to circumstances where it is necessary to mitigate a risk to tenants, approved participants, investors or the integrity of the Scheme.

1.57 Labor Senators are also of the view that it would also be desirable to amend the provision to impose an obligation on the Secretary to consult with approved participants over the circumstances giving rise to the need for a variation to the conditions of an allocation and the nature of the variation to be made. There is no such requirement in the bill.

Recommendation 3

That the bill be amended to provide that legislative authority to vary conditions attached to allocations is confined to circumstances where a variation is necessary to mitigate an emerging risk to:

- a tenant of an NRAS dwelling; or
- an NRAS approved participant; or
- an NRAS investor; or
- the integrity of the Scheme.

Recommendation 4

That the bill be amended to provide that the Secretary must consult with an approved participant in relation to a proposed variation to a condition attached to an allocation, the circumstances giving rise to the need for a variation and the nature of the variation proposed.

Senator the Hon Lisa Singh

Senator Murray Watt

Senator the Hon Doug Cameron

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

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

- 1** Department of Social Services
- 2** National Social Security Rights Network
- 3** National Shelter
- 4** National Affordable Housing Providers
- 5** Housing Industry Association Ltd
- 6** St Vincent de Paul Society National Council
- 7** Salvation Army
- 8** Housing for the Aged Action Group
- 9** Mornington Peninsula Shire
- 10** Darebin City Council
- 11** Catholic Social Services Australia
- 12** Queenslanders with Disability Network Ltd
- 13** Australian Council of Social Service
- 14** Glebe HAPN
- 15** Community Housing Council of South Australia
- 16** Homelessness Australia; Homelessness NSW; and Council to Homeless Persons
- 17** Shelter NSW
- 18** The Parenthood

- 19 New England and Western Tenants Advice and Advocacy Service Inc.
- 20 Micah Projects
- 21 Tenants' Union of NSW
- 22 National Association of Tenant Organisations
- 23 Shelter WA
- 24 NSW Federation of Housing Associations
- 25 Equality Rights Alliance
- 26 Confidential
- 27 Redfern Legal Centre
- 28 Australian Association of Social Workers
- 29 Mr Neil Henson (plus nine attachments)
- 30 Lama Developments
- 31 MDS Legal
- 32 North Australian Aboriginal Justice Agency

Answers to Questions on Notice

- 1 Answers to Questions taken on Notice during 14 November public hearing, received from Department of Social Services, 17 November 2017

Tabled Documents

- 1 Correspondence from Department of Social Services to Gilbert and Tobin Lawyers, tabled by Mr Neil Henson, at Canberra public hearing, 14 November 2017

APPENDIX 2

Public hearings

Tuesday, 14 November 2017

Parliament House, Canberra

Witnesses

National Social Security Rights Network

BOLTON, Ms Genevieve, Chairperson

GEAR, Ms Joni, Legal Project Officer

Anglicare Australia

MANDERSON, Mr Roland, Deputy Director

National Shelter

PISARSKI, Mr Adrian, Executive Officer

Tenants' Union of New South Wales

CUTCHER, Mr Ned, Senior Policy Officer

National Affordable Housing Providers Ltd

CROCE, Ms Carol, Policy Officer

DONOVAN, Mr Paul, Director, MDS Legal

HENSON, Mr Neil, Director, Henson Property Management Pty Ltd

Department of Social Services

McBRIDE, Mr Paul, Group Manager, Welfare and Housing Policy

THOMAS, Mr Stewart, Branch Manager, Housing Programs and Homelessness