



The National Association of Tenants Organisations

Do you want to make a submission to the Social Services Legislation Amendment (Housing Affordability) Bill 2017

Introduction

The Senate's Community Affairs Legislation Committee is holding an inquiry into the *Social Services Legislation Amendment (Housing Affordability) Bill 2017*.

The National Association of Tenants Organisations (NATO) is an affiliation of Tenants Queensland, Tenants Union of NSW, Tenants Union of ACT, Tenants Union of Tasmania, Tenants Union of Victoria and the Darwin Community Legal Centre.

NATO has concerns about some aspects of the Bill and is circulating this DRAFT summary to assist other interested parties to make submissions by the due date of November 10. Submissions can be uploaded here https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission

According to one of the committee members, Senator Murray Watt,

"In summary, this Bill extends the existing, voluntary, Rent Deduction Scheme so that it can be applied more broadly by States and Territories, as well as community housing providers to withhold a portion of tenants' income support and/or Family Tax Benefit payments and use these funds to directly pay rent and utilities costs on behalf of those tenants".

The Bill can be found here:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=5974

Summary of Submission to the Senate Community Affairs Legislation Committee Inquiry into the Social Services Legislation Amendment (Housing Affordability) Bill 2017

1 Overview of Operation of the Bill

- (a) The Social Services Legislation Amendment (Housing Affordability) Bill 2017 (**Bill**) proposes establishing an automatic rent deduction scheme (**ARDS**) in respect of certain amounts owing by social housing tenants (a **Tenant**) to social housing providers.
- (b) If enacted, the Bill would introduce a new Part 3E into the *Social Security (Administration) Act 1999 (SSA Act)*. Deductions made pursuant to the ARDS established under the new Part 3E would be an additional exemption to the inalienable protection otherwise afforded to an individual's social security entitlements. Similar amendments are proposed in respect of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- (c) Under the ARDS, a social housing lessor (defined to include public housing providers and community housing providers) (a **Lessor**) may enter into an agreement with a Tenant permitting the Lessor to request that the Secretary deduct from certain welfare payments payable to a Tenant an amount to:
 - (i) satisfy an outstanding or ongoing obligation for rent and/or household utilities; or

- (ii) compensate for loss of, or damage to, property arising in the course of the Tenant's occupancy of the rented premises.
- (d) The ARDS would also permit a Lessor to request that the Secretary deduct certain welfare payments payable to a Tenant to satisfy an amount described in sub-paragraph 1(c)(ii) above where the Tenant's liability to pay that amount to the Lessor has been finally determined by a court, tribunal or "other body that has the power to make orders".

2 Summary of Key Concerns

2.1 The Bill goes too far

- (a) **(Payment obligations other than rental arrears)** The Bill goes too far by extending to payment obligations that are not usually essential terms of the tenancy agreement and would not necessarily result in termination rights under tenancy agreements. Lessors may request that deductions be made in respect of not only rental arrears but also to rent obligations generally, as well as household utilities, which is defined broadly to include electricity and fixed-line telephone payments, and compensation for loss or damage to property. The rationale for the Bill is to prevent the accumulation of rental arrears which may result in eviction and homelessness. The excessive reach of the ARDS to "household utilities" and amounts which may be payable in respect of general maintenance or repairs is unnecessary to achieve this purpose.
- (b) **(No grace period or materiality threshold applicable to non-payment)** A Lessor may request that deductions be made in satisfaction of "outstanding obligations" (of the kind described at paragraph 2.1(a) above). The Bill does not specify a period for which the amounts owing must be outstanding. This concept may be abused by Lessors. For example, in circumstances where a Tenant has accrued one week of rental arrears, the Lessor would be entitled to request that automatic deductions be made in respect of the Tenant's ongoing obligation to pay rent, irrespective of whether the Tenant may be in a position to pay the arrears in the following rental payment period.
- (c) **(No cap on amount of deduction)** The Bill provides that the amount deducted by the Secretary must not exceed either of the following:
 - (i) the amount specified in the Lessor's request;
 - (ii) the amount of the social security payment (from which the deduction will be made) remaining after all deductions (if any) specifically required by law are made.

There is nothing on the face of the Bill that would prevent the Secretary from ordering that a deduction be made which would exhaust the entire residual amount of a Tenant's social security entitlements. In circumstances where a Tenant receives only one social security payment, the deduction could constitute the entirety of a Tenant's income. In that event, a Tenant who is already experiencing financial hardship would have one of two options:

- (iii) to go without other "basic needs", as defined in the SSA Act; or
- (iv) to secure a loan for those basic needs, which may give rise to increased financial hardship (through the Tenant's inability to meet his or her payment obligations under the loan agreement).

2.2 The Bill fails to afford procedural fairness to Tenants

- (a) Tenants should be afforded procedural fairness where the ARDS is invoked in relation to their occupancy of a Lessor's premises. The Bill, in its current form, falls short of providing Tenants any

right of review from the decision of either of the Lessor (in making a request to the Secretary) or of the Secretary (in determining whether to grant the Lessor's request and, if granted, the terms (including as to amount and duration) of the deduction order).

- (b) **(No notice to Tenant)** There is no requirement under the ARDS for a Tenant to be notified when:
 - (i) a Lessor lodges a request with the Secretary for deductions to be made; or
 - (ii) the Secretary determines whether to grant the Lessor's request and, if the request is granted, the amount and duration of the deductions to be made,resulting in uncertainty as to the amount of money the Tenant should expect to receive pursuant to his or her welfare entitlements.
- (c) A right to request deductions immediately following non-payment would be inconsistent with any requirement under a tenancy agreement for the Lessor to notify the Tenant of a payment default before exercising the Lessor's powers which arise upon such default. Even in the absence of a contractual obligation to give notice, a Lessor would no longer be incentivised to notify the Tenant and/or to enter into a payment plan or similar arrangement. Practically, this also means the Tenant is afforded no opportunity to pay the outstanding amount from other income sources.
- (d) **(No opportunity to object; no right of review)** It is foreseeable that a Tenant may disagree with a Lessor about the amount the Lessor seeks to recover through the ARDS. In such situations, the Bill does not afford a Tenant an opportunity to dispute or contest the amount, particularly given that a Lessor may make a request to the Secretary as soon as a Tenant's payment obligation is outstanding (discussed at paragraph 2.1(b) above).
- (e) The Bill also fails to provide any mechanism by which a Tenant may challenge the Lessor's request to the Secretary (for example, a challenge may be made that the request is not permitted under the agreement entered into between the Tenant and the Lessor). The Bill permits a Lessor to request that the ARDS be invoked to satisfy an amount in sub-paragraph 1(c)(ii) above where the Tenant's liability has been finally determined by a court, tribunal or "other body that has the power to make orders". In relation to a social housing lease in Queensland, it has been our experience that the Queensland Civil and Administrative Tribunal will, at times, make such an order against a Tenant on an ex-parte basis. In these situations, a Tenant may only become aware that they are required to sacrifice their social security entitlements (to satisfy an order that they were not aware of) when the amounts are actually deducted.

2.3 The Bill lacks clarity

- (a) There are several significant gaps in the Bill that should be addressed prior to any implementation of the ARDS.
- (b) In particular:
 - (i) the Bill does not set out any criteria that an agreement between a Lessor and a Tenant must satisfy, other than that the agreement must state that the Lessor is permitted to make requests under the new Part 3E of the SSA Act for deductions from the Tenant's social security entitlements;
 - (ii) the Bill permits a Lessor to request that a deduction be made where the Tenant agrees, in writing, to pay the Lessor an amount for loss of, or damage to, the property as a result of the Tenant's occupancy of the premises; and
 - (iii) the Bill does not set out what factors the Secretary must consider in determining:

- (A) whether to exercise its discretion to grant a Lessor's request for deductions to be made from a Tenant's welfare entitlements;
 - (B) the amount to be deducted; and
 - (C) the term over which the deduction will be levied.
- (c) As to sub-paragraph 2.3(b)(i) above, the lack of clarity in the Bill about what is required in a written agreement permitting deductions under the ARDS exacerbates an existing power imbalance between a Tenant and Lessor. Tenants may feel bound to enter into a written agreement with a Lessor permitting deductions under the ARDS in circumstances where:
- (i) a Tenant must meet a high threshold of vulnerability before being eligible for social housing;
 - (ii) there are lengthy waiting periods for eligible Tenants; and
 - (iii) a Tenant is usually suffering from financial hardship.
- (d) As to sub-paragraph 2.3(b)(ii) above, it is not clear whether the agreement referred to in this instance must provide an express statement permitting the Lessor to make requests under the new Part 3E of the SSA Act. If such a statement is *not* required, a Tenant may be unaware of the means by which the Lessor may recover the amount owed by the Tenant, despite the Tenant's acknowledgement of the amount owing.
- (e) As to sub-paragraph 2.3(b)(iii) above, the considerations (or types of considerations) relevant to the Secretary's exercise of its discretion and to the determination of any amount to be deducted from a Tenant's welfare payments should be expressly stated or be able to be readily inferred from the scope and purpose of the legislation, in accordance with the principles of good administrative decision-making.

2.4 The Bill erodes personal autonomy and dignity

- (a) The deduction of payments under the ARDS would make it difficult for Tenants to manage their money, leaving them vulnerable to increased financial hardship. For example:
- (i) a Lessor would not be prevented from lodging multiple requests for deductions in respect of the same Tenant (for example, where the amounts owing to the Lessor arise at different points in time);
 - (ii) the Secretary would then be responsible for determining whether to grant those requests and the amount of deductions to be taken from a Tenant's welfare payments;
 - (iii) as discussed at paragraph 2.2(b) above, there is presently no requirement for a Tenant to be notified when a decision is made or action is taken under the ARDS in respect to the Tenant's welfare payments,
- resulting in uncertainty about how much money the Tenant can expect to receive under his or her welfare entitlements.
- (b) Examples of where uncertainty of income would cause particular financial hardship include:
- (i) emergency situations requiring a Tenant to have immediate access to cash;
 - (ii) where a person has ongoing medical expenses and are accustomed to recovering partial refunds in respect of those expenses through the Medicare system before paying rent; and

- (iii) where a Tenant is the sole tenant on the lease agreement for premises that are shared with other occupants from whom the Tenant will be required to recover their portions of the rent owed prior to paying the total rent due.
- (c) The introduction of the ARDS would erode Tenants' personal dignity and reinforce negative stereotypes about welfare recipients' financial literacy and ability to manage their personal finances responsibly.

3 Possible Recommendations

3.1 Recommendation 1

- (a) The Bill should be rejected in its entirety.
- (b) If the Bill is enacted, sufficient safeguards should be built in to the ARDS to:
 - (i) protect a Tenant's livelihood;
 - (ii) ensure that the decisions made under the ARDS are subject to external review; and
 - (iii) minimise the erosion of a Tenant's autonomy and dignity.
- (c) Recommendations to this effect are set out at 3.2 to 3.10 below.

3.2 Recommendation 2

- (a) The Bill should impose an obligation upon a Lessor to take reasonable action prior to submitting a request to the Secretary for deductions to be made under the ARDS.
- (b) "Reasonable action" should be defined to include at least the following:
 - (i) the Lessor must give written notice to the Tenant that the Tenant has an ongoing or outstanding obligation in respect of which the Lessor intends to make a request under the new Part 3E of the SSA Act;
 - (ii) the written notice must be given within a reasonable period of the outstanding obligation accruing;
 - (iii) the Lessor must make reasonable enquiries as to the Tenant's ability to satisfy the outstanding obligation prior to making the request; and
 - (iv) the Tenant must be afforded a reasonable period of time in which to respond to the Lessor's written notice prior to the Lessor making a request.

3.3 Recommendation 3

- (a) Deductions pursuant to the ARDS should only be permitted in respect of a Tenant's obligations to pay rent and for any amounts owing in respect of a serious breach of the terms of the Tenant's occupancy of the Lessor's premises.

3.4 Recommendation 4

- (a) A payment obligation owed by the Tenant should not be satisfied by deductions pursuant to the ARDS unless it has been owing for a defined period of time.

3.5 Recommendation 5

- (a) The amount that the Secretary may deduct from a Tenant's welfare payments upon receiving a request from a Lessor should be capped at a percentage of the total value of all welfare payments received by the Tenant.

3.6 Recommendation 6

- (a) A Lessor must give a Tenant reasonable notice prior to submitting a request to the Secretary for deductions to be made under the ARDS.

3.7 Recommendation 7

- (a) The Secretary must notify a Tenant upon receiving a request from the Lessor for deductions to be made under the ARDS.
- (b) The Secretary must notify a Tenant of its decision whether to grant or reject the Lessor's request. If the request is granted, the Secretary must advise the Tenant of:
 - (i) the amount to be deducted;
 - (ii) the period during which deductions are to be made and the amount to be deducted during each payment period; and
 - (iii) any rights of review the Tenant has in respect of the Secretary's decision.

3.8 Recommendation 8

- (a) The Bill should provide a Tenant with a mechanism by which the Tenant can challenge a Lessor's request under the new Part 3E of the SSA Act for deductions to be made from the Tenant's social security payments.

3.9 Recommendation 9

- (a) The Bill should provide a means by which a Tenant may apply for the review of:
 - (i) the Secretary's decision to grant the Lessor's request for deductions to be made;
 - (ii) the amount the Secretary determines may be deducted and the period during which deductions will be made.

3.10 Recommendation 10

- (a) The Bill should set out the factors the Secretary must consider when determining whether to exercise its discretion to grant the Lessor's request that deductions be made from a Tenant's welfare payments, and when determining the amount of the deductions to be ordered.
- (b) Those factors should at least include:
 - (i) the total value of welfare payments to which the Tenant is entitled;
 - (ii) whether the deduction(s) will cause the Tenant to experience financial hardship;
 - (iii) the length of time for which the Tenant's payment obligation to the Lessor has been outstanding; and
 - (iv) the circumstances in which the Tenant's payment obligation arose.