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Housing Payment Deduction Scheme Consultation

Housing Policy Branch (MSH 3)

Department of Families, Housing, Community Services and Indigenous Affairs

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**Submission regarding the Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013**

The Commonwealth and ACT Ombudsman’s Office has investigated a range of complaints about remote Indigenous Housing in the Northern Territory, the ACT Public Housing system and rent related issues and complaints about the range of schemes that are administered by DHS (Centrelink) which assist people to manage their money and pay debts, including rent. These complaint investigations, together with observations from this office relating to public administration generally, inform the following comments relevant to the Housing Payment Deduction Scheme.

The short timeframe which FaHCSIA has provided for submissions limits the capacity of this office to provide a detailed submission or include case studies or specific examples to support our comments. Nevertheless, we would be happy to meet with FaHCSIA to discuss our comments in more detail.

**General comments**

One concern that this office has with the proposed scheme is the risk that it will be used to collect from public housing tenants, debts that are unconfirmed, disputed or have not been through the appropriate State/Territory based channels for recovery. It is not clear how it will be determined whether ‘reasonable action’ to collect the debt has been made by the public housing lessor. Further, it is not clear how or where this scheme fits with the channels already available under State/Territory residential tenancy legislation, and whether ‘reasonable action’ requires that a public housing lessor has first exhausted the options available under State/Territory residential tenancy legislation.

For example, we note Housing ACT’s policy on debt collection which states that it may enter into a repayment agreement with a tenant to pay off rental arrears or sundry debts by agreed instalments if:

* debt has been substantiated;
* the tenant has accepted liability; and
* payment in full is not a viable option.[[1]](#footnote-1)

It is not clear whether these same requirements would need to be met before the Housing Payment Deduction Scheme is applied to a person or whether the ACT’s own process would first have need to have been exhausted. We note that the scheme is intended to be a last resort, however it is not apparent what processes are in place to ensure that this is the case.

There also does not appear to be a requirement for the Secretary to consult with or seek the comments, views or input from the person subject of a request by a public housing lessor, prior to a deduction decision being made. Given the nature of this scheme appears involuntary and can have significant consequences for a person, without the requirement for the Secretary to first seek the comments from the person affected, not only are they not afforded procedural fairness, but there is also the risk that decisions will be made without consideration of all the evidence and information. We consider that the Commonwealth should require proof of the debt and the ‘reasonable action’ taken by a public housing lessor to collect it before commencing deductions under this scheme. We would not be in favour of Centrelink treating the public housing lessor as a ‘trusted source’ of information and circumventing the usual procedural fairness that would require it to seek comment from the person before taking a decision that affects their pre-existing rights to receive their otherwise inalienable Centrelink payments.

Further, as it currently stands, the proposed Bill does not appear to include any requirement for the Secretary, in deciding whether or not to apply the scheme to a person, to consider all of the individual circumstances of the person affected. We note that in s 7(3) of the proposed Bill there is capacity, by way of a legislative instrument, for the Minister to determine that deductions must not be made. However it is not clear as to the circumstances in which this will be used and we cannot see the relevant legislative instrument.

There appears to be a risk that this scheme may disadvantage people who have, or had, co- or joint tenancy arrangements. It would seem unfair for this scheme to be applied to a person who is meeting their own rental obligations but where a co-tenant or joint tenant (or past co‑ or joint tenant) is not. We consider that it would be inappropriate for a person’s Centrelink payment to be directed to a debt or arrears caused or owed at least in part by another person. This will be particularly important where the co-tenant has abandoned, or been removed from the premises and the person left behind has no capacity to hold them accountable for the rental arrears. In some cases, rental arrears and property damage will have arisen in a household where the current tenant was a victim of family violence, and as a direct result of that family violence. We believe that a decision to deduct a person’s payment under this scheme should only be applied to a debt or arrears that they themselves have caused or at least proportional where a co- or joint tenancy arrangement existed and that it would be appropriate for Centrelink to have discretion to take into account a person’s circumstances in deciding whether to commence deductions.

In relation to the *maximum amount of deduction* it appears that this amount is determined by the public housing lessor. There does not appear to be a capacity for the decision maker to assess the financial circumstances of the person and whether the amount stipulated is likely to cause other financial hardship for a person or their family. It would seem that this requires consideration.

It is apparent that the scheme is not intended to be applied to people on the Income Management (IM) scheme (as per s 6(2)(a) of the schedule), however the proposed s 123YA(2A) allows for the Secretary to make a deduction by way of an IM allocation. It is not clear how this process will work, however this office suggests that IM allocations are not made without first discussing the allocation with the person affected. Also, the objective of IM is for a person to maintain significant control in relation to the expenditure of their welfare payments and that the intention is for people to take control of their finances. Centrelink’s e‑reference guidance to staff states that the DHS should work with people subject to IM to ensure that IM decisions do not impede these objectives.[[2]](#footnote-2) Additionally, IM allocations to public housing authorities as per the proposed s 123YA(2A) need to be considered against all of the priority needs of a person and their children. A decision under s 123YA(2A) should ensure that this occurs.

We also note that the scheme includes review rights, however it appears that there is limited discretion available to the Secretary in deciding whether or not to apply the scheme to a tenant, which makes the review process potentially meaningless. Additionally, our experience is that people do not always access their review rights or complaints mechanisms (particularly vulnerable people or Indigenous people living remotely) and when they do, it does not necessary result in a comprehensive review of the person’s circumstances. Another barrier to people exercising their review rights is that they do not always know or may be unable to identify when a mistake has been made that warrants review or complaint. Again, given the potential impact of this scheme on a person, these issues require consideration.

Our complaint investigations have also shown that voluntary systems set up by Centrelink to assist a person to pay their rent do not always work as intended and people can accrue debts out of no fault of their own. These situations highlight the need for some consideration as to the circumstances of the debt and whether the scheme is the most appropriate course of action.

Complaint investigations by this office repeatedly show problems with the quality of government’s communication with people affected by government decisions and services. Letters advising people of this scheme and of the decision to apply it to a person must include clear information about the scheme, when and how it will be applied, how a person can seek additional information, how to access review and complaint mechanisms and quality reasons and explanations of decisions made.

Complaint investigations by this office about other programs that require cooperation and coordination across levels of government show that weaknesses in the administrative arrangements between agencies or levels of government can cause confusion and other significant problems for people. If the proposed scheme is introduced, it is critical that robust and clear processes between agencies involved are implemented first and that clear lines of accountability are well established. Processes between agencies need to also take account of and be tailored according to local issues, such as those discussed below in relation to remote Indigenous housing tenants in the Northern Territory (NT).

The scheme allows for the Secretary to charge a fee to the public housing lessor to utilise the scheme. Although this fee may be intended to cover the cost of administering this service, accounting behind this arrangement needs to be visible and transparent to avoid any real or perceived perceptions of deductions decisions being made for the wrong reasons.

**Application of scheme to remote Indigenous housing tenants in the Northern Territory**

In a recent report by this office into the remote Indigenous housing reforms in the NT[[3]](#footnote-3), we highlighted the significant challenges faced by the NT Government (Territory Housing) in implementing a new rental framework in remote Indigenous communities. In that report we expressed concern that Territory Housing did not have complete visibility of all remote housing tenants, of rent payable by those tenants or of the rent it was collecting from tenants. Relevantly, a number of complaints made to this office were about:

* too much rent being collected for individual households
* people moving houses and not knowing how to amend their tenancy status and continuing to pay rent for houses they no longer lived in
* people not knowing how much rent they were paying and whether it was correct.

Our investigations of these complaints identified that:

* the IT systems were not in place to adequately support the rental reforms and as a result Territory Housing did not have visibility of tenancies or rent
* the mobility of tenants and the lack of local housing staff meant that tenancy details became outdated quickly but this was not completely visible to Territory Housing
* tenants were confused about their obligations and how to report changes in their living arrangements and local channels to do this were ineffective
* despite people being signed up to new tenancy agreements, the delays by Territory Housing in getting these into its system and commencing rent deductions meant that people were not paying rent when they were meant to be
* there are three different categories of houses in remote NT communities, each with different rent arrangements and despite some people not being required to pay rent, they were and then faced lengthy processes for reimbursement.

The proposed Housing Payment Deduction Scheme assumes that State/Territory housing departments or authorities maintain accurate records and have adequate systems to appropriately identify rent arrears or other payments associated with tenancies. We have attached a copy of our report into *Remote Housing Reforms in the Northern Territory* and much of its content shows that this is not necessarily the case, which in turn has significant consequences for individuals. This raises concerns about the proposed scheme including that decisions will be made based on incorrect information and reinforces the importance of tight administrative controls over its use and application.

The scheme is intended to be applied to other costs and payments associated with a tenancy and not only rent. We understand that this could include unpaid repair and maintenance costs. In our report into *Remote Housing Reforms in the Northern Territory* we discussed the problems with making the head tenant responsible for these kinds of payments, particularly in the context of extreme overcrowding and housing stock which is already damaged or substandard. Specifically, the report (at paragraph 3.58) states:

*Although the new tenancy model may work in an urban context, when used in a remote Indigenous setting where overcrowding, mobility and cultural practices present additional challenges, the policy may place a heavy burden on head tenants. Specifically:*

* *head tenants may have no mechanism for holding other residents to account for paying their share of rent as recorded in the Family Agreement*
* *they can be responsible for the damage done by other residents of the house even though wear and tear and other damage may be the result of overcrowding*
* *there may be cultural barriers preventing a head tenant asking another resident to pay their share of the rent or to pay for damage done to a house*
* *other residents may not keep the head tenant informed of changes to their income, resulting in potential rental overpayments or underpayments*
* *ultimately, there is a risk that head tenants will accrue rental arrears and liabilities, particularly given problems with accessing rental statements.*

Close consideration needs to be given as to how this scheme will operate in the context of the remote Indigenous housing in the NT, particularly in light of the issues outlined in our report.

We trust that the information in this letter assists FaHCSIA’s review of the proposed Bill so that if it is enacted, appropriate safeguards and administrative arrangements are in place to ensure quality decision making, avoid placing people in financial hardship and to ensure quality communication with people affected.

Colin Neave

Commonwealth Ombudsman

1. <http://www.dhcs.act.gov.au/hcs/policies/debt_management> [↑](#footnote-ref-1)
2. DHS’ E-reference guidance – 003.06050 - Determining a person's priority needs for Income Management [↑](#footnote-ref-2)
3. Remote Housing Reforms in the Northern Territory – Report 03/2012. http://www.ombudsman.gov.au/files/remote\_housing\_reforms\_in\_the\_nt\_report.pdf [↑](#footnote-ref-3)