

# Submission on the proposed

# ‘Housing Payment Deduction Scheme’

# April 2013

# *Contact:* Jennifer Clarke Ph: 02 6247 7744policy@homelessnessaustralia.org.au

# Homelessness Australia: submission on the proposed

# ‘Housing Payment Deduction Scheme’

***Background***

 **The proposed Housing Payments Deduction Scheme (HPDS)**

Clause 21 of the [National Affordable Housing Agreement](http://www.federalfinancialrelations.gov.au/content/npa/housing/affordable/national-agreement.pdf) (NAHA) states:

The Parties commit to ongoing reforms in the housing sector. The agreed policy actions to achieve this are:

...

(g) providing compulsory rent deductions and improved information exchange between the Commonwealth and the States and Territories to improve the operational efficiency of public housing and to reduce evictions from public housing;...

At the March 2013 COAG Select Council on Housing and Homelessness meeting, under the heading ‘Housing Payment Deduction Scheme’:[[1]](#footnote-1)

Ministers confirmed their in-principle commitment to pursuing the Housing Payment Deduction Scheme which assists in the prevention of evictions and possible homelessness of public housing tenants due to unpaid rent. It will also improve efficiency by reducing the cost of managing arrears for public housing authorities.

In Homelessness Australia’s (HA) view, the dual policy rationale for the HPDS – reducing both evictions from, and the costs of administering, public housing – does not withstand critical scrutiny because these two objectives are not always consistent. Not only does the scheme appear relevant to a very small proportion of public housing tenants, but aspects of it appear to prefer debt collection over reducing ‘exits into homelessness’ and may *increase* homelessness. Considering that the scheme’s administration is likely to be cumbersome and therefore costly, HA is concerned about its overall effectiveness.

**Do public housing rent arrears cause evictions?**

The Productivity Commission’s [*Report on Government Services 2013*](http://www.pc.gov.au/gsp/rogs/2013) indicates that:

* rent collection rates for most public and community housing across Australia are high: close to 100 per cent for all but indigenous community housing, where rates are above 90 per cent everywhere except South Australia; [[2]](#footnote-2)
* the approximately 5 per cent of Australians who live in public and community housing[[3]](#footnote-3) already spend, on average, between 20-25 per cent of their gross income on rent.[[4]](#footnote-4)

According to a 2013 AHURI report on the costs of homelessness, the annual rate of reported evictions *per public tenancy* is 0.28 per cent,[[5]](#footnote-5) or one eviction for every 357 tenancies. However, as might be expected, eviction rates *per household* are much higher among users of homelessness services (50 per cent)[[6]](#footnote-6) than they are in the general population (0.01 per cent, or one eviction for every 1000 households).[[7]](#footnote-7) Single men who use homeless services in particular are very vulnerable to eviction (50 per cent).[[8]](#footnote-8)

‘Fact sheets’ associated with the exposure draft legislation assert that 600 public housing tenants a year are evicted for rent arrears.[[9]](#footnote-9) Unpublished 2007 data referred to in *The Road Home* were said to show that 2000 public housing tenants were evicted that year. If these statistics have a similar base, rent arrears may not be the main cause of evictions from public housing. Obviously, compulsory rent collections will not alleviate evictions for other causes (eg domestic violence, tenants being visited by drug dealers, or other anti-social behaviour). In 2006, AHURI concluded that those most at risk of eviction were people living alone, young people, sole parents, older men, people with substance abuse problems and women escaping domestic violence, and that:

The interview data [from about 150 people in three states] shows that most evictions occurred because of rent arrears and this finding is consistent with the established evidence base around this topic. However, we also found that a significant number of our respondents had been evicted because of damage to the property, or as a consequence of the complaints of neighbours; ... [[10]](#footnote-10)

It is not surprising that people already at risk of homelessness – those without the support of a partner or family, those with violent (ex-) partners or drug addictions – are disproportionately likely to be evicted. The question is whether a facility for the compulsory diversion to lessors of the welfare payments of a much wider class of public housing tenants really will alleviate the eviction rate. This seems unlikely, given the low rate of evictions among public housing tenants generally and the fact that the majority already take advantage of Centrepay deductions to pay their rent.[[11]](#footnote-11) The HPDS might be a good way for State and Territory housing authorities to shift to Centrelink the costs of collecting other rents or tenant debts, but it seems unlikely to reduce rates of eviction from public housing, and therefore the homelessness rate, because evictions often have other causes.

**THE EXPOSURE DRAFT LEGISLATION AND INSTRUMENTS**

The following discussion focuses on proposed amendments to the *Social Security (Administration) Act 1999*, but virtually identical amendments are proposed to the *A New Tax System (Family Assistance) (Administration) Act 1999*.

***Positive features***

Were this regime enacted, the following time limits on payment diversion should be retained:

* The Bill and rules are framed in terms of continuing tenancy arrangements: proposed s 8(1)(b) makes clear that a triggering lessor request lapses with the tenancy. So a welfare payment could not be diverted to pay rent owing by a tenant who had already been evicted.
* A lessor request to divert a payment to cover the rent of someone considered ‘at risk’ of future default lapses after a year if the Secretary does not act on it: proposed s 8(1)(e).

Two other features protect lessees against double or overpayment of rent, although one is likely to have a cumbersome operation:

* Proposed s 11 of Schedule 6 reduces a lessee’s liability by the amount (reflecting the lessee’s diverted welfare benefit) paid to a public housing lessor by the Commonwealth. This is a safeguard against a lessor recovering rent twice: once through the Commonwealth, and again directly from a lessee (as the lease would allow, leases not being concerned with welfare payment diversion). Section 11(2) is concerned only with *reduction* of a lessee’s future liability to pay rent, not with the diversion of Centrelink payments to cover that future liability. It may be desirable to extend this safeguard to situations involving Commonwealth overpayments to lessors (by not enacting proposed s 16).
* Proposed s 14(3) requires the Secretary to refund to a lessee the equivalent of an overpayment of diverted benefit made to a lessor, whether or not the lessor has repaid it to the Commonwealth, in circumstances where the lessor refuses to refund it directly. Section 15 allows the Commonwealth to offset these overpayments against future payments to lessors (which may encourage lessors to repay them directly next time).

Finally, there is the Minister’s capacity to exempt some payment recipients from payment diversion under proposed s 6(3) of Schedule 6, and a power in proposed Schedule 1 s 5(3) of the *Family Assistance Act* amendments to specify kinds of family tax benefit from which similar deductions must not be made. For reasons given below, HA considers that these exemptions should be expanded.

***Relationship with voluntary Centrepay deductions and the income management regime***

Is it proposed that the HPDS be used to collect tenancy debts from people who are already paying their public housing rent via Centrepay? Or that these tenants be exempted from HPDS under s 6(3) of Schedule 6? It would be better if proposed s 6 were amended to make clear that Centrepay tenants *may not* be subjected to compulsory payment diversion at all. Without such an exclusion, HPDS looks a lot like a generic low-income-debtor debt collection scheme.

Proposed s 6(2) of Schedule 6 states that the Secretary must not divert the payments of a person who is already subject to the income management regime under this regime. However, a proposed amendment to s 123YA of the *Social Security (Administration) Act 1999* allows the Secretary, upon receipt of a request to divert a payment for this purpose, to take ‘priority’ action under the income management regime to pay the person’s rent. This means paying it before acceding to other spending requests from the person.

***Negative features of the exposure draft legislation and instruments***

**Placement of some payment recipients in ‘housing stress’**

**The upper limit for payment diversion imposed by proposed s 7(1)(c) of new Schedule 6 of the *Social Security Administration Act 1999* should be set no higher than the ‘housing stress’ level - for *all* payment recipients.** Even allowing for:

* the non-application of diversion to certain elements of payments;[[12]](#footnote-12)
* the potential for some people to be exempted from payment diversion;[[13]](#footnote-13)

If the upper limit of divertible payment is set at 35 per cent, some tenants could lose more than 30 per cent of their income, placing them into housing stress.[[14]](#footnote-14) There is clear COAG agreement that performance of the NAHA is measured in part by a *reduction* in such stress on low-income renters.[[15]](#footnote-15) Even without considering whether these lessees will need to devote further funds to securing ongoing housing, their precipitation into housing stress is unlikely to assist in reducing eviction rates.

**Lessee liability**

**The Bill will create domestic inequality in households where all members are not also lessees.** Section 5(4) of proposed Schedule 6 makes clear that there is a risk of:

* One person’s benefits being diverted where other adults have caused or contributed to the default (eg co-residents but not lessees don’t contribute their share of rent or don’t do so on time; visitors damage the property) but don’t have their benefits diverted or their wages or child support payments garnished;
* Dependent children covered by diverted benefits losing out when the default is not theirs. Family Tax Benefit, which replaced a number of other Commonwealth payments, does not include a housing component: as with the other ‘divertible’ benefits, its recipients may be eligible for rent assistance in the private market. Given the policy focus of these payments on the costs of raising children, it is unclear why they would be diverted to cover housing.

**Diversion can be initiated for very small debts that bear no relationship to regional housing costs**

The **‘$100 owing for a month despite reasonable steps to recover’ floor for landlord action** under s 5(1)(a) and proposed ‘Minimum amount specification (No 1)’ rule 4 **is also set too low and takes no account of differential housing costs in different parts of Australia, how the debt arises or how it will be established.**

The policy rationale given for allowing recovery of such small debts is that ‘higher levels of arrears would be difficult to repay’.[[16]](#footnote-16) This seems to focus unnecessarily on *repayment of arrears*, rather than *preventing eviction* or *alleviating housing stress*. **All that the HPDS may achieve is *delay* in eviction: as a result of ‘successful’ repayment of arrears at a rate of 35 per cent of a Centrelink payment, a tenant may not be able to find *next* month’s rent.**

If the **debt** is rent, it **would be better expressed by reference to the number of weeks’ rent owing**, provided that the total debt is more than a specified amount (we would suggest at least $200). Taking account of comparable periods grounding eviction proceedings in state residential tenancy laws (which apply to public and private rentals), permitting income diversion for a debt of less than two weeks’ rent amounts to **unnecessary discrimination against public housing tenants**.

We note that amounts owing, including those other than rent under rule 4 of the ‘Minimum Amount Specification’, would need to be objectively ascertained (eg by a tribunal) – a debt could not be established simply based on a lessor’s assertion.

**The definition of ‘risk’ of future rent default is punitive and discriminates against public tenants**

**The definition of ‘risk of non-payment of amounts’ for the purposes of s 5(1)(b) of proposed Schedule 6 should be modified to avoid unnecessarily harsh impacts on tenants who have overcome past defaults or substantially met their present tenancy obligations:**

* **Risk based on past rent default** under proposed rule 4(2) **should be subject to a *retrospective* time limit** as well as the prospective one mentioned above:
	+ eg it should be defined as arising in relation to a person who has, **within the previous year**, been evicted etc for non-payment of rent.
	+ There is a case for limiting scrutiny to an even shorter time period where a prior lease has been abandoned or hasn’t been renewed because of rent default. Sometimes women ‘abandon’ rented housing involuntarily to escape partner or family violence.
* **Proposed rule 4(3)** is unjustifiably harsh: it allows a lessor to initiate benefit diversion where a lessee has underpaid rent on his or her present tenancy, and/or paid it 8 or more days late, on three occasions during the past year.
	+ At the very least, **paragraph (b) should be modified so that risk is deemed to arise only where underpayments have been significant (eg less than 75% of the rent) *and* not subsequently** (perhaps within a reasonable timeframe) **remediated;**
	+ For the purposes of **paragraph (a)**, **being a fortnight late on** three prior occasions **would be a more reasonable precondition.** Anyone, particularly someone on Newstart Allowance, can be a week late with the rent, and people on low incomes who don’t repeat these mistakes deserve another chance. Past tenant breaches that have been remediated within a reasonable time should also be overlooked.

These changes would bring the trigger for payment diversion into line with that for commencement of ‘eviction for non-payment of rent’ proceedings under state residential tenancy laws.

**Definition of ‘public housing lessor’**

The proposed **definition of ‘public housing lessor’ in s 3 of proposed Schedule 6 contemplates ‘any person’** being so specified. While the Minister’s power to specify who is and isn’t such a lessor will be constrained by the ‘objects’ clause in s 1 (which refers to public housing), Schedule 1 of the *Social Security (Administration) Act 1999* (that Act’s ‘Dictionary’) presently contains no definition of ‘public housing’ and the Bill will not insert one – only a cross-reference to the definition of ‘public housing lessor’. Unless it is proposed to extend the income diversion scheme to private rental arrangements, it is desirable that such a definition be added.

 **Diverted payments deemed made to lessee, even where not forwarded to lessor**

**Section 12(3) is unfair** because it allows the Commonwealth to divert a welfare payment, not forward it to the lessor, but still treat the payment recipient as having received the diverted amount. Unless the lessor is paid the diverted amount, the lessee’s liability to pay rent will not be correspondingly reduced by section 11. **Section 12 should be amended by adding a sub-section (4):**

 To avoid doubt, section 11 has effect whether or not the amount was paid to the public housing lessor.

**Conclusion**

We are now well aware of the multiple disadvantages that contribute to homelessness and the complex needs of people experiencing it, or at risk of experiencing it.[[17]](#footnote-17) These people need well-resourced, ‘early and well-timed community and human service interventions to establish and maintain secure supported housing’,[[18]](#footnote-18) not measures that punish their actual or perceived inability to maintain tenancy arrangements by pushing them further into housing stress. The proposed HDRS appears to be a cumbersome and costly way to collect overdue rents from a small minority of public housing tenants, without ‘turning off the tap’[[19]](#footnote-19) of evictions among those tenants already at risk of homelessness.

1. See the Council’s communiqué of 28 March on <http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/coag-select-council-on-housing-and-homelessness> [↑](#footnote-ref-1)
2. Tables 16A30-33. [↑](#footnote-ref-2)
3. Tables 58-59. [↑](#footnote-ref-3)
4. Tables 16A42-46. [↑](#footnote-ref-4)
5. Zaretsky *et al*, [*The cost of homelessness and the net benefit of homelessness programs: a national study; findings from the Baseline Client Survey*](http://www.ahuri.edu.au/publications/projects/p82014), AHURI Final Report No. 205, April 2013, tables 21-2 and p 105. [↑](#footnote-ref-5)
6. p 6. [↑](#footnote-ref-6)
7. See table 21 of the 2013 AHURI ‘cost’ report. [↑](#footnote-ref-7)
8. [insert table ref] [↑](#footnote-ref-8)
9. FaHCSIA, [*Fact sheet 1 - Background to the Housing Payment Deduction Scheme*](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/exposure-draft-public-housing-tenants-support-bill-2013) [↑](#footnote-ref-9)
10. Beer *et al*, [*Evictions and housing management: final report no 94*](http://www.ahuri.edu.au/publications/projects/p40192/), p 3? [↑](#footnote-ref-10)
11. [*The Road Home*](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/the-road-home-the-australian-government-white-paper-on-homelessness-0) *p 26.* [↑](#footnote-ref-11)
12. Under s 7(2) of Schedule 6 and rule 4 of the ‘Disregarded provisions’ Specification. [↑](#footnote-ref-12)
13. Under proposed s 6(3) of Schedule 6. [↑](#footnote-ref-13)
14. See [*AMP.NATSEM Income and Wealth Report 29: The Great Australian Dream: Just a Dream?*](http://www.natsem.canberra.edu.au/publications/?publication=the-great-australian-dream-just-a-dream) pp 5-6 [↑](#footnote-ref-14)
15. See [National Agreement on Housing Affordability](http://www.federalfinancialrelations.gov.au/content/npa/housing/affordable/national-agreement.pdf) cls 16(a) and 19(a). [↑](#footnote-ref-15)
16. FaHCSIA, Fact sheet 5 - [*Defining arrears and at risk of arrears*](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/exposure-draft-public-housing-tenants-support-bill-2013). [↑](#footnote-ref-16)
17. See, for example, Baldry *et al*, *Lifecourse institutional costs of homelessness for vulnerable groups* 2012, 77-80. [↑](#footnote-ref-17)
18. *Ibid* at 80. [↑](#footnote-ref-18)
19. [*The Road Home*](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/the-road-home-the-australian-government-white-paper-on-homelessness-0) chapter 3. [↑](#footnote-ref-19)