**Submission on *Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013* by the National Welfare Rights Network (NWRN)**

****About the National Welfare Rights Network****

**The National Welfare Rights Network is the peak body for services which specialise in social security, family assistance and employment assistance law and Centrelink administration. The Network includes 14 community legal centre members and three Aboriginal legal service associate members. There are member centres are located in every state and territory.**

**Based on the experience of our members’ clients, the NWRN develops policy, engages in policy analysis and advocates for reforms to the social security system.**

**NWRN member centres provide casework assistance to their clients. NWRN members also conduct training and education for community workers and produce publications to help social security recipients and community organisations understand the system.**

**The Consultation Process**

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide comment on the *Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013*.

The short timeframe to provide comments on the exposure draft is deeply concerning, requiring organisations with limited capacity to divert resources to meet this unreasonably tight deadline. The limited timeframe may affect the quality of the consultations on the Bill and the level of feedback on what is a significant piece of legislation which could affect tens of thousands of the most vulnerable in society.

It is appropriate to note the existence of the National Compact which is supported by FaCHSIA. It sets a framework for community consultation which was not adhered to in this instance.

If the legislation proceeds FaCHSIA should provide for appropriate time to seek feedback from stakeholders.

Submissions on the exposure draft should be published in a timely manner on the FaCHSIA website.

**About the Bill**

The exposure draft gives effect to the *National Affordable Housing Agreement* (NAHA) that the Commonwealth and State/Territory Governments agree to a compulsory rent deduction scheme to reduce evictions from public housing as per the recommendation in the Federal Government’s 2008 policy directions paper on homelessness, *The Road Home: A National Approach to Homelessness.*

The Government states that the exposure draft is intended to:

* reduce the level of public housing arrears and debt that can be accumulated;
* reduce evictions and abandonments from public housing;
* make management of public housing more efficient.

The Department of Families, Community Services and Indigenous Affairs describes the Housing Payments Deduction Scheme (HPDS) as being a ‘last resort’.

The Bill will be introduced in the parliamentary sitting later in 2013.[[1]](#footnote-1)

**Key provisions**

In summary, the Housing Payment Deduction Scheme (HPDS or compulsory rent deductions) allows public housing authorities to ‘request’ deductions from social security payments. This can occur in two circumstances:

1. where the public housing authority considers that there is outstanding rent due and payable by the tenant and,

2. where there is no outstanding debt, but the public housing lessor is of the view that there is ‘a risk’ that the public housing tenant will not pay rent and other liabilities in the future.

Clause 5 of the Bill sets out the grounds on which the public housing authority may request the Secretary to make a deduction from a person’s Social Security payments for rent and other charges (eg water, repairs, maintenance and arrears from a previous tenancy if under the tenancy agreement).

The two grounds are as follows:

* where an amount exceeding the specified amount for the period is due and payable under the tenancy agreement and the lessor has taken *reasonable action* to recover the amount;
* the specified minima are set out in the *Social Security (Public Housing Tenants’ Support) Minimum Amount Specification (No. 1) 2013* legislative instrument as:
	+ Arrears or debt for at least four (4) weeks and a minimum of $100 is owing; or
	+ Arrears or debt of $400 or more.

Under the proposal, tenants deemed to be ‘at risk would be placed on the Housing Deduction Payments Scheme (or compulsory rent deductions)where a tenant has paid the rent a week late, or paid short, three times in 12 months. This sets the threshold extremely low and would allow deductions from a potentially large group. Individual tenants’ financial arrangements will be disrupted and reordered without reasonable justification. The result may be possible disadvantage to the tenant.

Once a tenants debts are paid off, deductions will cease and after 12 months as a tenant ‘at risk’, the request ends and there will be a re-assessment of the tenants circumstances every twelve months.

The form that the assessment will take is unclear, as are what criteria and guidelines will be used to assess if a person can exit the scheme. FaHCSIA should ensure that any guidelines are included in the enabling legislation, and that they are consistent across all jurisdictions.

**Major concerns**

The *Public Housing Tenants’ Support) Bill 2013*, with six legislative instruments setting out the parameters of how some aspects of the system will introduce seems to be a very elaborate and complex scheme for only 600 public housing tenants who FaHCSIA claims have been evicted each year. Those evictions would also include public nuisance related matters. The scheme places a great deal of control in the hands of the public housing authorities and it extends beyond just rent payments and allows the public housing authorities to recover maintenance debt, etc.

The Bill looks like more of a debt recovery scheme to make collection much easier for public housing authorities rather than one seeking to prevent evictions and reduce homelessness. Additionally it is not at all clear how the HPDS will manage disputes and what evidence from public housing authorities will be required to support the claims alleging the existence of a debt.

NWRN considers that there are adequate mechanisms in existence to reduce the risk of public housing tenants who receive Centrelink payments being evicted for rent arrears, such as the use of Centrepay deductions, the funding and availability of tenancy client support and advocacy programs, and the use of the notice provisions of various state and territory based residency tenancy Acts.

It is deeply troubling that the Federal Government sees that it has a responsibility to facilitate the introduction of what is essentially a garnishee arrangement for alleged housing debts through sponsoring a scheme that will be used by be used to collect unproven and unsubstantiated debts by public housing lessors.

Of significant concern is that this scheme will further undermine the legislated inalienability of social security payments. It will place a significant degree of control in the hands of public housing lessors in each state or territory, where there is inadequate and patchy access to fair and transparent and accessible housing appeals rights across the various jurisdictions.

We are further concerned about the dispute resolution mechanisms available for public housing tenants made subject to the proposed Scheme. In some locations, such the Northern Territory, there is no meaningful access to independent review when problems and disputes arise.

NWRN considers that the responsibility for the efficient management of public housing is the province of State and Territory governments. The cost of addressing inefficiencies should not be borne by the tenants of public housing, who are recognised as being among the most marginalised groups in the community.

NWRN opposes the introduction of the scheme as outlined in the Bill and legislative instruments. However, should the Government proceed there should be major changes to the Bill and the Instruments to provide greater safeguards for tenants.

The proposed scheme provides insufficient safeguards. The only qualification is that a public housing lessor must have ‘taken reasonable action to recover the amount from the person’. The legislation should set out the range of acceptable activities that would be deemed to be ‘reasonable action’. Just sending a letter of demand to the tenant may be sufficient to satisfy this qualification. This is clearly inadequate, given the consequences of being placed on mandatory rental deductions.

It is claimed that-the scheme will operate as a ‘last resort’, though this is not at all clear from the guidelines and instruments attached to the legislation.

Tenants who may have difficulty paying their rent may have significant problems of ill health, addiction or disability, in addition to the problems that arise as a result of living on a low social security payments for long periods of time.

We would argue that there are other factors such as the inability to find employment and inadequate rates of many social security payments which may cause loss of tenancy and eviction, as opposed to problems with arrears. There is no evidence that state and territory governments have taken steps to address these serious matters as an alternative to imposing controls over people’s financial affairs.

Over 70 per cent of people in public housing are voluntarily paying rent to public housing authorities via Centrepay, the voluntary scheme for paying bills and other expenses that is free and operated through Centrelink. This option should be promoted to tenants currently outside of the scheme.

The Bills describe the income support payments that will be subject to garnishee and debt recovery arrangements with state and territory housing authorities. NWRN notes that it is proposed for Bereavement Allowance to be included among the payments to be included.

The Bereavement Allowance is paid for up to 14 weeks after the death a partner. According to the Department of Human Services, Bereavement Allowance is paid ‘to assist you with adjusting to your changed financial circumstances, such as settling financial affairs and arranging ongoing financial support’. Further assessment should be made on the impact of including the Bereavement Allowance in the legislation.

**Human Rights implications and assessment of the Bill**

All Bills before the Australian Parliament are now required to assess and report on the impact they will have in either enhancing or impeding human rights instruments, including international covenants such and the right to social security, for example.

The human rights arguments related to the right to social security is found in the universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and a number of other treaties to which Australia is a party. It is disappointing that the exposure draft did not include an assessment of the human rights implications flowing from the HPDS.

Should the Bill proceed, we urge the Parliamentary Joint Human Rights Committee to initiate a public inquiry into the *Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013.*

**Recommendations**

The National Welfare Rights Network opposes the Bill in its entirety. There is no need for the Federal Government to facilitate what is likely to an expensive, intrusive and administratively complex compulsory rent deductions scheme. The serious problem of evictions where some people placed at risk of homelessness requires a different approach.

In the alternative, should the proposed legislation proceed NWRN recommends:

* that the 35 per cent cap be reduced to 30 per cent of a person’s income;
* that amounts specified in the legislative instrument to trigger the scheme – $100 for rent arrears and $400 for debts – should be doubled;
* that only debts under the current tenancy should be recoverable;.
* only debts that are proven to exist, after independent review, be recoverable under the scheme;
* that the ‘at risk’ criteria be abandoned;
* the list of payments excluded from the scheme include the Telephone Allowance;
* that the Bereavement Allowance be removed from list of payments available for deduction under the scheme;
* that the scheme’s design be consistent with the stated ‘last resort’ approach and that this be mirrored in the legislation, and
* the Parliamentary Joint Human Rights Committee should initiate a public inquiry into the *Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013.*
1. Department of Families, Housing, Community Services and Indigenous Affairs, *Fact sheet 3 – Operating the Housing Payment Deduction Scheme.*  [↑](#footnote-ref-1)