# Submission on the proposed Housing Payments Deduction Scheme

# and the draft Social Security Legislation Amendment (Public Housing Tenants’ Support) Bill 2013 and associated instruments

**April 2013**

The Tenants’ Union of NSW is the State’s specialist community legal centre for residential tenancies law, and the primary resource agency for the State-wide network of Tenants Advice and Advocacy Services (TAASs). We make the present submission on our own behalf, and on behalf of the TAASs.

Before discussing the proposed scheme and the draft legislation, we regret that we must object to the way in which the present consultation process has been conducted. There has been no prior consultation on the scheme as a matter of policy. Furthermore, the present consultation process was not well publicised, and has allowed too little time for organisations to properly seek the view of their constituents and analyse the materials. We are aware of other community sector organisations that have concerns about the proposed scheme but that have been unable to make submissions within the timeframe of the consultation.

### General comments

The Housing Payment Deduction Scheme would allow, in two circumstances, public housing authorities (‘public housing lessors’) to request the deduction of monies from the social security payments of public housing tenants, with the deducted monies to be paid directly to the public housing authority. One of the circumstances is where the public housing lessor is of the view that there is an outstanding liability due and payable by the tenant (cl 5(1)(a)); the other is where there is no liability outstanding, but the public housing lessor is of the view that there is ‘a risk’ that the tenant will not pay rent and other liabilities in the future (cl 5(1)(b).

In effect, the request is much like a garnishee order (in the case of an outstanding liability), or a specific performance order (in the case of a liability in the future) made by a tribunal or court – except that it is made by an interested party. No independent determination of the question of the tenant’s liability or risk is required. The scheme and the legislation would allow a public housing authority to be the judge of its own cause. This is an extraordinary and objectionable departure from fundamental principles of natural justice.

We strongly recommend that the proposed scheme and the draft legislation not proceed.

### Questions of tenants’ liabilities due and payable (cl 5(1)(a))

In New South Wales, questions of a tenant’s liability to their landlord are determined primarily by the Consumer, Trader and Tenancy Tribunal (the CTTT). These questions may also be determined by the courts, particularly where the amount in question is in excess of the CTTT’s jurisdictional limit ($15 000), but in most cases, it is the CTTT that decides if a tenant owes money to their landlord, and the terms on which it will be paid.

In relation to public housing, questions of liability are complicated by the rent rebate system operated by Housing NSW. Under the *Housing Act 2001* (NSW), Housing NSW may grant rent rebates (s 56) – and vary and cancel rent rebates, including retrospectively (s 57). These decisions can affect tenants’ liabilities very substantially: the retrospective cancellation of a rent rebate can result in a debt of many tens of thousands of dollars.

Decisions by Housing NSW to grant, vary or cancel rent rebates may be reviewed internally by Housing NSW, and externally by the NSW Housing Appeals Committee (the HAC); the HAC, however, has no statutory basis and merely makes recommendations, not determinations that are binding on Housing NSW.

Decisions to grant, vary or cancel rent rebates are not subject to review by the CTTT: for example, if it finds that Housing NSW has in fact cancelled a rent rebate, the CTTT will determine the tenants’ liability accordingly, without regard to the merits of the decision to cancel. However, it is the CTTT that decides the terms on which the liability is to be discharged: for example, that a debt is to be paid by periodic instalments of a specified sum.

The CTTT, therefore, is a source of independent scrutiny in proceedings about tenants’ liabilities, and an important safeguard – though a limited one, where rent rebates are involved.

The proposed scheme would allow Housing NSW to avoid scrutiny altogether, by requesting a deduction on the basis of its own view as to a tenant’s liability. The proposed scheme would allow Housing NSW could do so where the liability is affected by Housing NSW’s own decision to vary or cancel a rent rebate, and where Housing NSW has declined to follow a contrary recommendation of the HAC.

The proposed scheme provides for no alternative safeguards. The only qualification it makes is that a public housing lessor must have ‘taken reasonable action to recover the amount from the person’ (cl 5(1)(a)(ii)); we submit that sending a letter of demand to the tenant may be sufficient to satisfy this qualification. This is utterly inadequate.

### Questions of ‘risk’ and payment of liabilities in the future (cl 5(1)(b))

In New South Wales, it is the CTTT that decides whether it is appropriate to make a specific performance order in relation to a tenant’s payment of rent and other liabilities in the future. The proposed scheme would allow Housing NSW to avoid independent scrutiny in this regard, too.

Ill-considered direct deductions have the potential to upset tenants’ financial arrangements badly. For example, we know of a public housing tenant who pays his rent only after a precisely organised process of payments to doctors and refunds from Medicare. A direct deduction of rent before paying the doctors would critically upset this process.

The proposed ‘risk’ criteria would allow a deduction where a tenant has paid the rent a week late, or paid short, three times in 12 months (draft Social Security (Public Housing Tenants’ Support) Risk of Non-Payment of Amounts Rules (No 1) 2013, cl 3). This sets the threshold of risk too low; it would allow deductions to be made, and tenants’ own financial arrangements to be interfered with and upset, without proper justification and possibly to the disadvantage of the tenant.

There is already concern amongst TAASs about the level of consideration and tact that Housing NSW brings to the management of irregular payments – see, for example, the attached report of the Illawarra and South Coast TAAS presented to Housing NSW in late 2012. We submit that allowing Housing NSW to request deductions, without also requiring a system of independent scrutiny and other safeguards, may further diminish the capacity of housing officers to deal thoughtfully with questions of irregular rent payments.

### Maximum amount of deduction (cl 7)

Clause 7(1) of the draft Bill provides:

The amount the Secretary may deduct, from a divertible welfare payment payable to a person, in accordance with a request cannot exceed…

(c) 35% of what would be the amount of the payment…

This means that 35 per cent of a tenant’s payment could be deducted for discharging an outstanding liability – without regard to the tenant’s present liability to pay rent going forward. This liability (which under Housing NSW’s rent rebate system amount to 25-30 per cent of a tenant’s income) would have to be paid by the tenant from what remains of their income. The result is that while the deduction is in place as much as 65 per cent of a tenant’s income would go to Housing NSW. Such a rate is untenable, and while it continued would cause great hardship to a tenant.

### Recommendations

We strongly recommend that the proposed scheme and the draft legislation not proceed.

Alternatively, if the proposed scheme and the draft legislation do proceed, we recommend:

* that the draft Bill provide that the Secretary may make the deductions requested only where the Secretary is satisfied that the relevant State or Territory provides for the review of social housing decisions by an independent tribunal with power to make binding determinations;
* that cl 3 of the draft Social Security (Public Housing Tenants’ Support) Risk of Non-Payment of Amounts Rules (No 1) 2013 be deleted;
* that cl 7 of the draft Bill be amended to provide that the total amount of the deduction and rent payments and other liabilities that become due must not exceed 35 per cent of the affected social security payment or payments.