

# Redfern Legal Centre

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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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9 May 2013

**Submission on the Housing Payments Deduction Scheme and the draft  
Social Security Legislation Amendment (Public Housing Tenants'  
Support) Bill 2013 including associated instruments**

Please find attached the Redfern Legal Centre submission on the Housing Payments Deduction Scheme and the draft *Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013*.

Yours faithfully,

Jo Shulman  
Chief Executive Officer  
REDFERN LEGAL CENTRE

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**Submission to Housing Policy Branch - Department of  
Families, Housing, Community Services and Indigenous  
Affairs**

Redfern Legal Centre

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# **Submission on the Housing Payments Deduction Scheme and the draft Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013 including associated instruments**

**May 2013**

## **1. Introduction**

Redfern Legal Centre (RLC), established in 1977, is an independent, non-profit, community based legal organisation. We provide free legal advice to people in Botany, Leichhardt and Sydney local government areas. RLC has a long history of providing legal advice to tenants, particularly public housing tenants, in the inner city area of Sydney. Since 1995 RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service. We also run a credit and debt service to assist clients struggling with financial management and debt.

## **2. RLC's work with tenants at risk of homelessness**

Redfern Legal Centre has been working with and advocating for tenants at risk of homelessness for over 20 years. Over that time we have assisted a large number of tenants who have fallen into arrears to successfully negotiate repayment plans with their landlords, keeping their tenancies on foot. We have also seen many matters where tenants were pursued erroneously for large amounts of money for arrears and other charges that they were never liable to pay.

Our position is that there are multiple causes and circumstances that might lead to a tenant falling into arrears, and that sustaining a public housing tenancy requires an individualised, flexible approach to address those causes. Public housing tenants are particularly vulnerable and particularly in need of support in challenging or disputing an alleged debt. A scheme that gives public housing tenants even less control over their rental payments and makes it even more difficult to contest their alleged liabilities is not an appropriate solution in the circumstances. The Housing Payments Deduction Scheme has the potential to prevent tenants from independently managing their financial situations and taking the necessary steps to avoid the risk of homelessness.

## **3. Our view in summary**

Redfern Legal Centre's submission is that the Housing Payments Deduction Scheme should **not** proceed. Our submission is that the scheme is not sufficiently flexible to provide a real solution for homelessness caused by arrears, has insufficient review mechanisms and poses a real risk of causing further hardship to the vulnerable people it is designed to protect.

## **4. Draft Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013**

Redfern Legal Centre has read the submission of the Tenants' Union of New South Wales and supports their position and recommendations. RLC opposes the power conferred in the legislation to a public housing landlord to request deductions from tenants' social security payments when there is an outstanding liability due and payable (cl 5(1)(a)) or even when the landlord considers that there is a 'risk' of non-payment of rent or liabilities by that tenant (cl 5(1)(b)).

This is an excessive power enabling a public housing landlord to deduct from a tenant's income without appropriate review.

The power is too broad because it:

- is based on the provider's assessment of the tenant's liability or risk of liability;
- does not require any determination by a court or tribunal to support that assessment; and
- puts the onus on the tenant to challenge the liability or the risk of liability to pay.

We submit that the requirement in cl 5(1)(a)(ii) that the public housing landlord have taken 'reasonable action' to recover the amount before requesting a deduction puts insufficient safeguards in place for a tenant to dispute the charges or in some cases even become aware of the charges before the deduction is authorised.

It is our submission that only requiring a public housing landlord to take 'reasonable action' before making a request does not ensure that the Scheme will be used as a last resort. There is a real risk that without a legislated procedure that a landlord must follow to recover the amount before requesting the deduction, the Scheme will be used without appropriate measures and timeframes to allow tenants to respond.

#### **a) Arrears and proving that an amount is payable**

The *Social Security (Public Housing Tenants' Support) Minimum Amount Specification (No. 1) 2013* specifies the minimum amount of arrears a tenant must have before a public housing landlord can request a welfare payment deduction.

They are:

- A minimum amount of \$100 that has remained due and payable for at least four weeks; or
- \$400 or more in arrears or other liability, regardless of how long the amount has been due and payable.

A public housing tenant can be exposed to sudden changes in their subsidised rent, which can result in substantial arrears. Under the *Housing Act 2001* in NSW, Housing NSW can cancel a tenant's rent rebate retrospectively. Essentially, a tenant could be subjected to a liability sufficient to warrant a deduction under the scheme instantaneously upon the cancelling or varying of their subsidy.

RLC has encountered a number of cases in which a public housing provider has requested an amount from a tenant in error, or has provided insufficient information

for the tenant to determine whether or not they owed the amount. The prospect of termination, which often accompanies warning letters, is a strong incentive for tenants to acquiesce to a request to pay even when the charge is disputed or unsubstantiated. The proposed Housing Payments Deduction Scheme will further disadvantage tenants in this situation by permitting deductions when the provider, rightly or wrongly, forms the view that an amount is due and payable. There will be no need to prove that the money is owed before an independent assessor, such as a tribunal.

#### **CASE STUDY: Proving that an amount is payable**

Michael lives in a Housing NSW property in Waterloo. About 9 years ago he was charged \$7,500 for repairs to his property. Michael didn't think he was responsible for the charges, but he arranged a repayment plan that was manageable for him, \$10 per fortnight on top of his usual rent.

Around Christmas last year he received a letter from Housing NSW that read 'FINAL WARNING' and stated that he owed \$1,100 for repairs. The letter contained no information about why the amount was due, and Michael couldn't work out whether it was for the same debt he was already paying off.

Michael later received a letter from Housing NSW saying that the original letter was sent in error. He then received another 4 letters over a three-month period seeking payment of the debt and threatening termination, but he was unable to get any information from Housing NSW about what the debt was for.

When Michael finally got details about the alleged debt it was revealed that Housing NSW had no evidence of his liability to pay the outstanding amount. In fact, substantial charges for repairs had been mistakenly added onto his original debt. He was refunded a significant portion of the instalments he had been making for nine years. Despite tight financial circumstances, Michael had insisted on paying the instalments because he was concerned that otherwise his tenancy was at risk.

In our experience, challenging a debt is a complex and time-consuming process for Housing NSW tenants. There is no provision under the Housing Payments Deduction Scheme for an authorisation to be suspended while a review is taking place. Indeed, there is no clear procedure in the legislation for challenging a deduction. Housing NSW current policy is that a review of a decision will be completed within 20 days of Housing NSW receiving the request to review the decision. It is our clients' experience that this 20 day deadline is rarely complied with and, in practice, it can take months for Housing NSW to complete a review. Our submission is that public housing landlords should have to prove that a debt is payable *before* a deduction can be authorised.

The scheme gives a public housing landlord the ability to recoup a debt beyond that given to any other creditor. To broaden this power to include alleged debts, without

a need for Tribunal orders or consideration by other forums that address issues of procedural fairness, goes too far.

If the scheme goes ahead, debts for maintenance costs and arrears from a former tenancy should be excluded. These liabilities are often more contentious than current arrears and can involve large amounts going back in time, often many years. Particularly in the case of such debts, proper review mechanisms and appropriate, flexible repayment plans will better safeguard against homelessness than standardised indiscriminate welfare payment deductions.

## b) 'A risk'

RLC is particularly concerned that the scheme will allow a public housing landlord to request a deduction where the landlord considers that there is 'a risk' that not all of the amounts due and payable will be paid by the tenant. What will be relevant for determining whether a person is a risk is set out in the *Social Security (Public Housing Tenants' Support) Risk of Non-Payment of Amount Rules (No 1) 2013* section 4.

A person who has:

- been evicted,
- had a lease terminated or not renewed, or
- abandoned a property

with arrears outstanding will satisfy the requirements of the section.

So too will a tenant who, at least three times in one year, has paid insufficient rent or paid rent more than one week late.

RLC submits that these factors are too broad.

Examples of cases we have assisted with that would be sufficient to trigger this section are:

1. A tenant who fled a violent relationship and left her tenancy in the control of the perpetrator;
2. A tenant with emergency and unexpected medical costs;
3. A tenant who has school costs for children four times a year and falls behind in rent to meet those costs; and
4. A tenant who had to pay for their parents' medical and funeral costs.

These are all examples where a tenant could fall behind in rent sufficiently to meet the 'risk' categorisation. Classifying tenants as 'a risk' has the potential to penalise tenants who have made positive steps in their independent financial management, or who simply have occasional unforeseen costs that they try to manage.

Public housing tenants with low incomes often have difficulty meeting unexpected costs and expenses, which would only be worsened by automatic deductions from their income payments without reference to circumstances. There are any number

of reasons why a tenant may have fallen into arrears, and solutions and assistance that address the root causes of a tenant's inability to make rent payments are needed.

If the scheme is to go ahead, RLC submits that the power to request a deduction from a tenant who a public housing landlord perceives is at risk should be removed. The factors listed in the *Social Security (Public Housing Tenants' Support) Risk of Non-Payment of Amount Rules (No 1) 2013* do not necessarily indicate that a tenant is at higher risk of homelessness in the future. Instead, they grant a significant power to the landlord based on a tenant's rental history rather than a current liability, and potentially further reduce the capacity of low income households to deal with unexpected costs.

#### **CASE STUDY: What is a risk?**

Nadia lives with her three children in Potts Point. Her middle child suffers from an intellectual disability. Ten years ago she lived in a Housing NSW property with her partner, who was abusive towards her. Her partner took complete control of her finances and subjected her to physical and mental abuse. She was not even permitted to open her own mail. She fled the relationship and went to live with her mother. Her ex-partner continued to live in her property after she left but stopped paying rent. By the time he left the property, she had incurred a \$3,000 debt.

Many years later Nadia wanted to move into a property on her own again, and needed space for her children, but still had an outstanding debt to Housing NSW. The debt was no longer legally enforceable, and had been cleared six years earlier, but Housing still sought to enforce it. Her situation was vastly different from when she first fled her tenancy, yet Housing NSW tried to deny her access to housing because of her rental history.

Appealing the decision to charge her the debt from her former tenancy took over ten months. During that time, Nadia was still paying off the arrears, on top of her regular rent, while caring for her three children, one of whom had a disability. This put a significant strain on her finances and her ability to independently manage her affairs for almost a year, not to mention the stress and emotional distress caused to the family during this time.

#### **c) Amount of deduction**

The maximum amount of deduction under the Scheme, specified in clause 7 of the draft bill's amendments to the *Social Security (Administration) Act 1999*, is '35% of what would be the amount of the payment', being a divertible welfare payment covered by the Scheme. This represents a significant proportion of the income of public housing tenants whose income derives solely from government benefits.

In studies on rental affordability, a household that is in the bottom 40% of income distribution and must pay 30% of income or more is considered to be in housing

stress.<sup>1</sup> The recent Anglicare rental affordability snapshot noted, quoting the findings of the Australian Institute of Health and Welfare (AIHW), that the number of households in housing stress has increased markedly in the 15 years to 2010.<sup>2</sup> The Anglicare study identified as major contributing factor that benefits, including Commonwealth rental assistance and the Newstart allowance, are not adequate to meet housing needs.

Further, there has been a significant increase in the last ten years in the uptake of high cost short-term loans or payday loans. These loans are often for small amounts, with short repayment periods, and interest rates that can equate to up to 400% per annum. Research published by the Consumer Action Law Centre indicates that 85% of high cost short-term loan borrowers earn less than \$33,000 per year, and at least 20-30% of payday loan borrowers are on Centrelink benefits.<sup>3</sup> The overwhelming purpose of the loans recorded in that survey (over 53%) was to meet everyday expenses and to pay bills. Short-term high cost loans are both an indication of and a contributor to extreme financial stress. These marginalised lenders are often excluded from mainstream lending, which has more robust protections in place. Allowing deductions from statutory income to meet arrears has the potential to push even more low-income earners towards unsustainable high-cost loans.

Authorising a public housing landlord to request a deduction from a welfare payment will not address the systemic causes of tenants' inability to consistently meet rent payments. RLC has seen a large number of clients who are struggling to meet rental payments who need individualised support and assistance to identify strategies to meet their rental liabilities. The Housing Payments Deduction Scheme would put further pressures on tenants already struggling to meet basic needs through welfare payments, without due regard to the individual circumstances and needs that may have put the household into arrears.

If the scheme is to go ahead, RLC submits that the maximum amount of the deduction should be decreased so that the potential of the Scheme to push tenants into housing stress is lessened. The Scheme should recognise the difficulty that public housing tenants face in meeting their rent payment obligations, and not impose a standard that will further disadvantage those on the lowest incomes.

RLC supports the exemption of lump sum, short-term and supplement payments from the Scheme.

#### **d) Mechanisms for review**

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<sup>1</sup> Anglicare Australia, 2013, *Anglicare Australia Rental Affordability Snapshot*, Canberra, p 8; Australian Bureau of Statistics, 2001, *Measuring Wellbeing: Frameworks for Australian Social Statistics*, 2001, Canberra, cat No. 4160.0; Harding, A., Phillips, B., & Kelly, S *Trends in Housing Stress*, NATSEM, Paper Presented at the National Summit on Housing Affordability, Canberra 2004.

<sup>2</sup> Anglicare Australia, 2013, *Anglicare Australia Rental Affordability Snapshot*, Canberra, p 17; AIHW (2011), *Australia's Welfare 2011*. Cat. no. AUS 142. Canberra: AIHW

<sup>3</sup> Consumer Action Law Centre 'Payday Loans: Helping Hand or Quicksand?' Examining the growth of high-cost-short-term lending in Australia, 2002-2010', published September 2010.



RLC submits that if the scheme is to go ahead, CTTT orders should be sought for money owed. In the alternative, processes must be put in place that specify:

1. The minimum steps a public housing provider must go through before requesting a deduction, which should include at least:
  - a. A letter of demand with particulars, and
  - b. A mandatory interview with the client.
2. The proof of the debt or liability that must be put to the client, and a reasonable minimum period for them to respond.

Authorising a deduction directly from someone's income is a serious step and it should be accompanied by extra procedures on top of those in place for a tenant to appeal the decision of a public housing provider. The considerations put forward to enable a public housing provider to request a deduction should not outweigh a tenant's right to know what debt they are allegedly liable for and to have the opportunity to respond.

This legislation has the potential to affect the most marginalised and disadvantaged tenants in public housing. These tenants are the ones who will most struggle to use review mechanisms and to challenge the assertion that they owe rent arrears or other charges.

In attempting to save tenancies, potentially forcing vulnerable people to either accept that a debt is payable, or to engage in a possibly lengthy review of the validity of the authorisation is unduly onerous and unfair.

## 5. Recommendations

RLC's recommendations on the Housing Payments Deduction Scheme are:

1. That the proposed Housing Payments Deduction Scheme not go ahead. That the resources to be devoted to the scheme go towards preventative social measures that actually "tackl[e] the structural drivers of homelessness"<sup>4</sup>, including support towards tenancy services and welfare rights advice services.
2. If the scheme is to go ahead:
  - a. That CTTT orders must be obtained before a deduction is authorised;
  - b. Alternatively, that the legislation specify the 'reasonable' measures that a public housing landlord must take before requesting a deduction, at minimum:
    - i. a letter of demand;
    - ii. an interview with the tenant;

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<sup>4</sup> The Road Home - The Australian Government White Paper on Homelessness, 2008.

- iii. a minimum period for the tenant to respond.
- c. That the amount of arrears or debt that must accumulate before a deduction can be requested be increased;
- d. That debts from former tenancies be excluded, so that tenants at risk of homelessness can deal with the immediate issue of retaining their tenancies;
- e. That debts for repairs costs be excluded from the scheme;
- f. That cl 5(1)(b) be deleted, so that a public housing landlord is not able to request a deduction when there is a 'risk' that amounts that become due and payable will be paid;
- g. Alternatively, if cl 5(1)(b) remains, that the criteria in the *Social Security (Public Housing Tenants' Support) Risk of Non-Payment of Amounts Rules* be amended so that the threshold for a 'risk' assessment is higher.

## 6. Conclusion

Redfern Legal Centre's submission is that the Housing Payments Deduction Scheme should **not** proceed. Our submission is that the scheme is insufficiently flexible to provide a real solution for homelessness caused by arrears, has insufficient review mechanisms and poses a real risk of causing further hardship to the vulnerable people it is designed to protect.