



**St Vincent de Paul Society**  
NATIONAL COUNCIL *good works*

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## Submission on the Housing Payment Deduction Scheme

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The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members, volunteers, and employees. Our people are deeply committed to our work of social assistance and social justice, and we run a wide variety of programs around Australia which assist over 2 million people each year. Our work seeks to provide help for those who are marginalised by structures of exclusion and injustice, and our programs target (among other groups) people who are homeless and insecurely housed, migrants and refugees, people living with mental illness, and people experiencing poverty.

On 9 April 2013, the Department of Families, Housing, Communities and Indigenous Affairs invited the Society to a meeting to discuss the Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013, which introduces the Housing Payment Deduction Scheme. The Society very much appreciated the chance to meet with the Department on 18 April 2013, and we now welcome the opportunity to contribute this submission formalising our view.

## **1. Introduction**

The Society believes that every Australian has the right to “a place to live”. This right is enshrined in Article 25 of the *Universal Declaration of Human Rights*, and Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*. The latter recognises “the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. As a signatory to this Convention, the Australian government has a duty to its citizens to both increase the accessibility, and decrease the cost, of adequate housing to all Australians.

The Society is also actively engaged in the fulfilment of the right to housing for all Australians, through our programs and advocacy. For example, all around Australia St Vincent de Paul runs many free services for people experiencing housing stress, particularly those who are sleeping rough; we provide accommodation for families experiencing housing deprivation; the Society manages long-term housing to people living with chronic mental illness; and we also provide crisis accommodation services.

The Society is therefore pleased that the Australian Government and states and territories are coming together to tackle the issues of homelessness, under the National Affordable Housing Agreement.

This submission now addresses the Society's specific comments on the proposed legislation.

## **2. Background: A Balance of Rights**

As above, the Society believes that all Australians have a right to housing. The rights of individuals to housing are obviously compromised when people are evicted. The primary purpose of the Bill is to protect individual tenants' rights to housing, by reducing the chance that they will be evicted due to non-payment of rent, and thus reduce homelessness. However, public housing authorities also have rights to receive income under lease contracts. The legislation strikes a balance that also reinforces the right of the housing authority to receive payment: deductions can be made from divertible welfare payments to ensure that rent is paid.

The Society also believes there is another right at stake under the Bill: the right of public housing tenants to live free from arbitrary interference and discrimination by the state. Autonomy and liberty are core elements of participation in a liberal democracy. We believe that forcibly reducing people's autonomy, by restricting how they spend their income, will only decrease self-determination and resilience, and increase social exclusion. Compulsory quarantining of income is vastly different to voluntary repayment schemes, such as the Rent Deduction Scheme, or Centrepay, which support individual decision-making and empowerment.

The Society has vehemently opposed all forms of compulsory income management as being overly intrusive, and without an adequate evidence base to support the purported outcomes.

### 3. The Scheme

On a plain reading of the Bill, the compulsory payment scheme could apply to two groups:

- 1) All people 'at risk' of not paying rent: specifically, anyone who has ever left a property (by choice, by eviction, or by having the lease not renewed) with money outstanding, or anyone who has not paid the full rent under their current lease by the rent due date three or more times in the past 12 months;<sup>1</sup> and
- 2) Some people with current rent owing: specifically, anyone who has had \$100 owing for 4 weeks, or anyone who has \$400 owing for any period of time,<sup>2</sup> and from whom the lessor has taken 'reasonable action' to recover that amount.<sup>3</sup>

For the first group, 'at risk', the scheme diverting their income to pay their rent lasts for 12 months, and for the 'rent owing' group the diversion of income lasts for as long as it takes for rent owing to be fully paid.

### 4. Our View

The Society believes that the proposed scheme's application, to 'at risk' and to 'rent owing' individuals, is highly problematic.

#### Proposed Schedule 6, s 5(1)(b): The 'at risk' group

The scheme discriminates against the group of people deemed 'at risk'. It discriminates by stopping these individuals exercising their right to freely control their own assets, merely on the basis that, at some point in the past, they have left a property – under any circumstances – with money outstanding, or that they have recently failed to pay full rent on three occasions. There are several significant problems with this approach.

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<sup>1</sup> Social Security (Public Housing Tenants' Support) Risk of Non-Payment of Amounts Rules (No. 1) 2013 s 4

<sup>2</sup> Social Security (Public Housing Tenants' Support) Minimum Amount Specification (No. 1) 2013 s 4.

<sup>3</sup> Social Security (Public Housing Tenants' Support) Bill 2013 Item 7, proposed s 5(1)(a)(ii)

First, it is all too easy to imagine a situation where a single parent, an older Australian, a migrant family, someone living with severe or chronic mental illness or disability, or a young person, is confronted with a crisis and must leave their accommodation without being able to pay out their rent. On the other hand, while remaining in the property, a disadvantaged person may not have the ability to pay rent, due to crisis, poor understanding of the terms of their lease, inability to deal with banks, or social pressure to give away their benefit or pension to others. It is deeply unjust to assume that, if a person leaves a property without having paid the full amount of money owing, or hasn't paid their full rent on time in the last year, that person must automatically be 'at risk' of being evicted from a future property. It is even more troubling to use this as an excuse to limit their control over their own income.

Secondly, there is no temporal link between when a person is required to have left their previous property with money owing, and the time of the request that their current income be re-directed. Circumstances change, times of crisis pass, and people gain the skills needed to manage their finances and their responsibilities. Tenants should not remain perpetually at risk of having their income taken away because at some point in the past they left a property with some rent unpaid.

Thirdly, the unacceptable broadness of the scheme is worsened by the low thresholds that give rise to a 'risk' under the legislation. For example, if someone pays their rent in full, but one week late, three times within 12 months, then they may find themselves on the scheme. If someone pays 80% of their rent on time, and the remaining 20% a few days late, three times in 12 months, then they would seem to be in the 'at risk' category. If someone is forced to leave a property due to violence against them, a family emergency interstate, or the house being in poor condition, and they fail to pay the full rent owing, then they are eligible under this legislation. If someone leaves a property and has a dispute with the landlord over rent or bond, and does not pay the full rent due under the lease, then that tenant will qualify for the compulsory scheme.

In conclusion, the proposed scheme seems to be trying to predict future homelessness based on a small range of 'risky' behaviours, some of which may be historic, and quarantine income on this basis. The Society believes that such an approach is discriminatory, particularly given the broad categories of situation that give rise to 'risk', many of which may not have any meaningful link with future eviction prospects. As such, we disagree with the ability to deduct payments from any group of people merely on the basis proposed by Schedule 1, s 5(1)(b).

### **Proposed Schedule 6, s 5(1)(a): The 'rent owing' group**

The ability to compulsorily deduct payments from the 'rent owing' group under the Bill is limited by the fact that the lessor has to have taken reasonable action to recover the money. This suggests that tenants in this group are more likely to be at a real risk of eviction unless they begin to make payments.

However, the preliminary criterion for a request, to have a certain amount owing in rent, is too wide. It covers anyone who has had \$100 owing for 4 weeks, or \$400 owing for any length of time. This is not a large amount of money, and could be all too easy to overlook if the tenant is in a time of crisis, or doesn't have the skills to manage repayments. Again, a single parent, working 2 jobs, with a severely disabled or ill child may have other priorities which lead him to underpay his rent for a period of 4 weeks, or someone living with mental illness may experience an episode that means she does not manage to pay a higher rent on one occasion. And yet, if 'reasonable measures' have been

taken to recoup the money, both of these already marginalised people will have their income taken away, when in fact what is needed is a richer social security system, that nurtures and supports those in need instead of punishing them.

To take away these already disadvantaged Australians' freedom over their financial resources, it is not enough to say that the lessor has taken 'reasonable action' to recover the amount from the person. This is open to interpretation, and possible manipulation. Even if 'reasonable action' is taken, the person may be in financial crisis and unable to pay their rent. There may be a legitimate dispute about the amount of rent, which is why they are not paying it. The person may be experiencing a severe health episode, and be unable to respond to the 'reasonable action' in a suitable way.

## **5. The length of the deductions**

As discussed above, not paying rent can be a sign that people are experiencing a crisis, or are having problems negotiating the rent repayment systems. If someone is on the Housing Payment Deduction Scheme, then the 'red flag' of not paying rent will disappear. In reality, when community services are thin on the ground, without this 'red flag' we believe that some of the community's most excluded will fall between the gaps.

## **6. Conclusion: Linking the scheme to homelessness**

We believe that the right to determine how one's income is to be spent free from discrimination can and should only be abrogated by the state as a last resort when that person's right to housing is at severe risk of being compromised. Compulsory deductions from income should not be able to be made merely if someone has paid rent late or not at all in the past, and neither should deductions be compulsory merely if a person has some small amount of rent owing at the present time. Instead, the scheme should reflect the true intent of the White Paper and the National Affordable Housing Agreement: to reduce evictions from public housing into homelessness. In other words, the scheme should kick in as a 'last resort' only.

The Society believes that the scheme could be modified to reflect this by removing the 'at risk' category (s 5 (1)(b)), and restructuring the 'rent owing' definition (s 5 (1)(a)) so that it only captures people whose rent owing has led to the situation where they are at high risk of being evicted into homelessness. For example, we believe a better balancing of rights would be in a section 5 that reads:

A public housing lessor may request the Secretary to make a deduction from a divertible welfare payment payable to a person who leases accommodation for the person from the lessor, if all of the following apply:

- (i) an amount exceeding the minimum specified under subclause (2) for the person is due and payable by the person to the lessor under the lease;
- (ii) the person has been offered, and has refused, to participate in the Rent Deduction Scheme;

- (iii) the lessor has taken all reasonable action to recover the amount from the person, including communicating face-to-face with the person that the money is owing, and how to repay it;
- (iv) the only reasonable action left open to the lessor is to evict the person, or to make a request under this section;
- (v) if evicted, the person will most likely become homeless.

The Secretary would need to be satisfied that all of these conditions have been met to engage their jurisdiction to make a deduction under proposed section 6.

To prevent “churn”, where the same tenant cycles through order after order against them, the ‘at risk’ category could be reintroduced as a category of people who have, in the last 12 months, been put onto the scheme three or more times. Under this approach, if someone has failed to pay their rent, and the Secretary has been satisfied on multiple occasions that they are at imminent risk of homelessness, then it may be acceptable to quarantine their payments not only until their rent has been repaid but for a future period. This would be a far more stringent test, and far less discriminatory, than the current ‘at risk’ category. However, as foreshadowed above, we believe that this would still run the risk of failing to throw up the ‘red flag’ of unpaid rent if that person does enter a time of crisis.

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The Society is pleased that Parliament is considering methods to protect people’s right to housing, by legislation attempting to limit evictions from public housing and into homelessness. However, we believe that any compulsory income management regime is, prima facie, a restriction of an individual’s right to autonomy, which can lead to increased social exclusion.

We believe that the appropriate way to balance the rights is by using the compulsory payment scheme as a means of ‘last resort’ only, and legislatively enshrining the fact that deductions will not be made until there is a real risk of eviction and homelessness.

We look forward to continuing the discussion on this important issue.

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**Chief Executive Officer**