

2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SERVICES LEGISLATION AMENDMENT
(HOUSING AFFORDABILITY) BILL 2017**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Social Services, the Hon Christian Porter MP)**

**SOCIAL SERVICES LEGISLATION AMENDMENT
(HOUSING AFFORDABILITY) BILL 2017**

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SOCIAL SERVICES LEGISLATION AMENDMENT (HOUSING AFFORDABILITY) BILL 2017

OUTLINE

The Bill introduces the following measures:

- **Automatic Rent Deduction Scheme**
- **National Rental Affordability Scheme Amendments**

Schedules 1 and 2 – Social security amendments and Family assistance amendments

The social security law and the family assistance law are amended to incorporate a scheme for the automatic deduction of rent and other household payments. The amendments provide that lessors of social (public and community) housing may request the Secretary to deduct payments of rent and household utilities, or tribunal or other authorised body -ordered or agreed costs relating to the occupancy of the premises, from the social security or family tax benefit payments of tenants and other adult household members who have entered into an agreement that contemplates deductions being made under this scheme.

Schedule 3 – National Rental Affordability Scheme Amendments

This Schedule clarifies and corrects certain ambiguous provisions in the *National Rental Affordability Scheme Act 2008* (NRAS Act), and provides further flexibility in the future administration of the National Rental Affordability Scheme so as to further the objects of the NRAS Act.

FINANCIAL IMPACT STATEMENT

MEASURE	FINANCIAL IMPACT OVER THE FORWARD ESTIMATES
Automatic Rent Deduction Scheme - Schedule 1 – Social Security Amendments and Schedule 1 – Family Assistance Amendments	Not for publication
Schedule 3 – National Rental Affordability Scheme Amendments	Nil

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

**SOCIAL SERVICES LEGISLATION AMENDMENT
(HOUSING AFFORDABILITY) BILL 2017**

NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **Social Security Act** means the *Social Security Act 1991*.
- **Social Security Administration Act** means the *Social Security (Administration) Act 1999*.
- **Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- **National Rental Affordability Scheme Act** means the *National Rental Affordability Scheme Act 2008*.

Clause 1 sets out how the new Act is to be cited – that is, as the *Social Services Legislation Amendment (Housing Affordability) Act 2017*

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Schedule 1 – Social Security Amendments

Summary

The social security law is amended to incorporate a scheme for the automatic deduction of rent and other household payments. The amendments provide that lessors of social (public and community) housing may request the Secretary to deduct payments of rent and household utilities, from the social security payments of tenants and other adult members of their households who have entered into an agreement with the lessor (however described) that authorises deductions being made under this scheme. Tribunal or other authorised body-ordered or agreed costs relating to the occupancy of the premises may also be deducted.

Background

The scheme enables a social housing lessor to request the Secretary make a deduction from a person's social security payments (subject to some exceptions), to pay for rent, utilities or for tribunal or other authorised or agreed body -ordered costs relating to loss of or damage to property arising as a result of the occupancy of the premises. In order to request a deduction, a lessor must be a social housing lessor (as defined) and the person in receipt of various social security payments must be a social housing tenant (as defined).

The scheme also provides for the recovery of overpayments made to social housing lessors, and enables the Secretary to charge a social housing lessor fees for various services associated with the scheme. Associated amendments are also made to Division 2 (Internal review) of Part 4 and Division 1 (Information gathering) of Part 5 of the Social Security Administration Act.

The amendments made by this Schedule commence on the later of the day after Royal Assent and 1 March 2018.

Explanation of the changes

Part 1 – Main amendments

Social Security (Administration) Act 1999

Inalienability

Social security payments are absolutely inalienable under section 60 of the Social Security Administration Act. **Item 1** amends paragraph 60(2)(aa) to provide that the inalienability of social security payments is subject to the new Part 3E of the Social Security Administration Act inserted by **item 8**.

Income management regime

Under Part 3B (income management regime), a person who is subject to income management will have part of their payments deducted in order to pay for the priority needs of that person, their partner, their children, and any other dependants. The

part of their payments available to be subject to income management will not include any amount deducted under new Part 3E or new Part 3A under the Family Assistance Administration Act in the case of family tax benefit. Income management only applies to the 'net amount' of a payment, after all deductions for other purposes under other Acts have occurred. This term is defined in section 123TC. **Items 2 and 3** amend this definition to include reference to deductions under new sections 124QG and 67E.

'Household utilities' is currently defined in section 123TH(1)(h). **Item 4** amends this definition to remove references to specific household utilities, as this definition is moved to Schedule 1 under **item 15**.

Trial of cashless welfare arrangements

Under Part 3D (Trial of cashless welfare arrangements), section 124PL provides for the manner of payment of a restrictable payment, where that payment is payable to a trial participant or voluntary participant. When a deduction is made from, or an amount is set off against the restrictable payment (for instance, under various provisions of the social security law or the Family Assistance Administration Act), the balance of the restricted portion that is to be paid to a restricted bank account is reduced by the amount deducted. **Items 5 and 6** insert references to include deductions under new section 124QG, and new section 67E of the Family Assistance Administration Act.

Item 7 repeals and substitutes section 124PM. The existing wording of the section relating to splitting a restrictable welfare payment into restricted and unrestricted portions implies that deductions for other purposes, including for payments of tax, other Commonwealth debts and now for automatic rent deduction, cannot be made from the unrestricted portion of a cashless debit card participant's payment. This is because paragraph 124PM(b) provides that the unrestricted portion may be used at the person's discretion. This item removes this part of the provision to allow such deductions to be made from the unrestricted portion of a cashless debit card participant's welfare payment, if necessary.

Automatic deductions of rent or other household payments

Item 8 inserts new Part 3E – automatic deductions of rent or other household payments, after existing Part 3D.

Division 1 – Introduction

Sections 124Q and 124QA set out the simplified outline and the objects of this Part.

Section 124QB defines a **divertible welfare payment** for the purposes of this Part as a social security payment or a payment under the ABSTUDY scheme that is payable (except as an advance), that is not an Australian Victim of Terrorism Overseas Payment, a Disaster Recovery Allowance, a student start-up loan, or an ABSTUDY student start up loan under the *Student Assistance Act 1973*. The

Minister may also determine, by legislative instrument, that one or more kinds of social security payments are not divertible welfare payments.

Subsection 124QC(1) defines a **social housing lessor** as an authority of a State or Territory that provides social housing, or a body that has been approved by a State or Territory to provide social housing (provided that the Chief Executive Centrelink has been notified of the approval in writing). In either case, the authority or body must have a written agreement with the Human Services Department relating to the body's ability to request deductions under this Part.

Subsection 124Q(2) enables the Minister, by written instrument, to determine that a specified authority or body may not be a social housing lessor for the purposes of this Part.

Subsection 124QC(3) provides that such a written instrument is not a legislative instrument. This provision is included to assist readers as the instrument is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

Section 124QD defines a **social housing tenant** as a person who is 18 or older, who pays, or is liable to pay rent in relation to premises let by a social housing lessor, whether or not the person is named in an agreement (however described) with the lessor for occupancy of the premises. State and Territory social housing schemes provide for rent to be calculated based upon the income of all members of a tenant's household, despite the fact not all members of the household may be party to the lease with the social housing lessor. This definition will allow deductions to be sought from the welfare payment of any of the adult occupants of the house.

A note alerts the reader that 'rent' is defined in section 13 of the Social Security Act. The definition is broad, and includes all amounts payable as a condition of occupancy of premises, which would generally include bond payments.

Section 124QE expressly provides that this Part binds the Crown in each of its capacities.

Division 2 – Deductions from divertible welfare payments

Subsection 124QF(1) provides the circumstances in which a social housing lessor may request the Secretary to deduct an amount from a social housing tenant's divertible welfare payment. If a social housing tenant has an ongoing or outstanding obligation to pay an amount for rent, household utilities or both, in relation to the tenant's occupancy of premises let by the lessor, and the tenant's agreement with the lessor for the occupancy of the premises, or another written agreement with the lessor, authorises the lessor to make requests under this Part, then the lessor may request a deduction. The lessor may also request a deduction if the tenant is to pay to the lessor an amount for loss or damage to the property as a result of their occupancy of premises, so as to comply with an order or a court, or of a tribunal or other body that has the power to make orders, and the order is not appealed within the period for appealing, or an appeal is finally determined or otherwise disposed of. A deduction may also be requested where the tenant agrees, in writing, to pay to the

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lessor an amount for loss of or damage to property, as a result of the occupancy of premises.

Subsection 124QF(2) provides that a deduction may be requested whether the obligation arose, or the order was made, before, on or after the commencement of this section.

Subsection 124QF(3) provides that the social housing lessor's request must specify the amount to be deducted, which must not be more than that required to satisfy rent, household utilities or both payable by the tenant, and any outstanding payment or rent, household utilities or both payable by the tenant, and an order as described in paragraph 124QF(1)(b), and any amount agreed as mentioned in paragraph 1(c). The lessor's request must also specify the date from which deductions are to be made.

Subsection 124QF(4) provides that the social housing lessor may amend the request to specify a different amount to be deducted. An amended request must satisfy the requirements of subsection (3).

Subsection 124QF(5) provides that the social housing lessor must give the request and any amendment of the request to the Secretary in a way approved by the Secretary, for the request or amendment to be effective. The Secretary may approve a way of giving requests and a way of giving amendments.

Under section 124QG, the Secretary has discretion to deduct an amount from a social housing tenant's divertible welfare payment, if a request has been made by a social housing lessor under section 124QF. However, the Secretary must not make a deduction if the social housing lessor's request is revoked, if the Secretary is notified under section 124QI that the social housing tenant ceases to be a social housing tenant in relation to the lessor, if the social housing lessor ceases to be a social housing lessor, or at any time the tenant is covered by a determination under subsection 124QG(3).

Subsection 124QG(3) enables the Minister, by legislative instrument, to determine that deductions must not be made from divertible welfare payments payable to specified social housing tenants. A note alerts the reader that subsection 13(3) of the *Legislation Act 2003* provides for specification by class.

If the Secretary does not make a deduction in accordance with a request made, including where the Secretary deducts less than was requested, the Secretary must give written notice to the lessor of that fact (subsection 124QG(4)).

If a divertible welfare payment payable to a social housing tenant is suspended under this Act, but subsequently resumes, the Secretary may deduct any amounts that would otherwise have been deducted under this Part during the period of suspension from payments paid to the tenant after the suspension ends (subsection 124QG(5)).

Section 124QH provides that the Secretary is to determine the amount of the deduction. The amount must not exceed the amount specified in a request made under section 124QF, or the amount of the divertible welfare payment remaining

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after all deductions specifically required by a law of the Commonwealth (other than Part 3E) are made.

Section 124QI sets out the requirements for notifications by social housing lessors. Subsection 124QI(1) provides that a social housing lessor may revoke a request made under section 124QF by giving notice to the Secretary in a way approved by the Secretary. If a request has been made under section 124QF in relation to a person and the person ceases to be a social housing tenant in relation to that social housing tenant lessor, the lessor must notify the Secretary as soon as practicable (subsection 124QI(2)). Similarly, if the social housing lessor ceases to be a social housing lessor (other than because of section 124QC(2)), the authority or body must notify the Secretary as soon as practicable after ceasing to be a social housing lessor (subsection 124QI(3)). A notification under subsection 124QI(2) or (3) must be given in a way approved by the Secretary (subsection 124QI(4)).

Division 3 – Treatment of amounts deducted

Under section 124QJ, Division 3 will apply when the Secretary deducts an amount under Division 2 from a divertible welfare payment payable to a social housing tenant.

Section 124QK requires the Secretary to pay the amount deducted to the social housing lessor.

Section 124QL provides that if the Secretary pays the amount to the social housing lessor and the amount, or a part of the amount relates to a particular liability, then the liability is discharged to the extent of the amount, or part of the amount paid to the social housing lessor. In other words, if a deduction was sought for combined amounts representing rent and utilities, and a deduction is made, the amount paid to the lessor extinguishes each of the liabilities for rent and utilities, to the extent that part of the deduction relates to that liability. The liability is extinguished even if the liability is not yet due and payable (subsection 124QL(2)). However, this section does not reduce a liability in respect of an amount paid to the lessor that gives rise to a debt due to the Commonwealth by the lessor (subsection 124QL(3)).

Section 124QM provides that for the purposes of all laws of the Commonwealth (except any law specified under subsection 124QM(4)), the social housing tenant is taken to have been paid the amount deducted, at the time the divertible welfare payment was paid, or would have been paid but for the deduction, whether or not the Secretary paid the amount to the social housing lessor (subsections 124QM(1) to (3)). This provision is subject to new section 124QO and any law of the Commonwealth specified in an instrument under subsection 124QM(4). Subsection 124QM(4) provides that the Minister may, by legislative instrument, make a determination specifying a law of the Commonwealth for the purposes of subsection 124QM(2).

Division 4 – Overpayments to social housing lessors

Section 124QN applies where a payment to a lessor purportedly made under Division 3 is made in connection with a deduction properly made under Division 2. If

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the amount paid to the social housing lessor exceeds the deduction, the excess is a debt due to the Commonwealth by the social housing lessor. A note under subsection 124QN(2) directs the reader to section 124QP for debt recovery.

Section 124QO applies where a payment of a deduction has been made to a social housing lessor under Division 3 and the deduction exceeded the amount (which may be nil) determined by the Secretary under section 124QH (subsection 124QO(1)). In such cases, the amount a social housing tenant is taken to have been paid under subsection 124QM(1) is reduced by the excess (subsection 124QO(2)). Subsection 124QO(3) provides that the excess is a debt due to the Commonwealth by the social housing lessor. A note under subsection 124QN(2) directs the reader to section 124QP for debt recovery.

Subsection 124QO(4) provides that the Secretary must pay the social housing tenant an amount equal to the excess that was deducted, whether or not the Commonwealth recovers the debt, and that amount will be taken to be a payment of the divertible welfare payment. Subsection 124QO(5) provides that the Secretary must not pay an amount under subsection 124QO(4) to the extent that the sum of that amount, and the amount that should have been deducted, would exceed the amount of the divertible welfare payment that would have been payable to the tenant apart from Part 3E. Subsection 124QO(6) provides that subsection 124QO(4) has effect for the purposes of all laws of the Commonwealth, except any law specified by the Minister by legislative instrument under subsection 124QO(7).

Section 124QP allows the Secretary to set off amounts payable to a social housing lessor under Division 3 against debts due to the Commonwealth by the lessor under Division 4 (subsection 124QP(1)). Subsection 124QP(2) provides that the Commonwealth may recover a debt due to it under Division 4 in a court of competent jurisdiction. A note directs the reader to Part 5.4 of the Social Security Act for other recovery action in relation to debts.

Section 124QQ provides that there is no time limit for the commencing legal proceedings or taking any action under Part 3E for the recovery of a debt or overpayment.

Division 5 – Fees

Section 124QR enables the Secretary to charge social housing lessors fees, on the Commonwealth's behalf, for deducting amounts under Division 2, paying amounts to the lessor under Division 3, and for services provided to the lessor in the administration of Part 3E.

Item 9 is a consequential amendment.

Review of decisions

Item 10 inserts new subsection 127(3A), which provides that a decision to make a determination under subsection 124QC(2) is not reviewable by the Secretary.

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Item 11 inserts new paragraph 129(4)(daa) into section 129. It provides that a person may not apply under subsection 129(1) for review of a decision to make a determination under subsection 124QC(2).

Information management

Paragraph 192(db) is amended by **item 12** to include a reference to Part 3E in the Secretary's general information-gathering powers.

Item 13 inserts new paragraph 195(1)(cd) to enable the Secretary to require a person to give information about a class of persons to the Department to facilitate the administration of Part 3E.

Item 14 inserts new paragraph 195(2)(m) to enable the Secretary to require, about each person in the class of persons, for the purposes of Part 3E, evidence to support a request made by the social housing lessor under section 124QF.

Definitions

Item 15 inserts new definitions into subclause 1(1) of Schedule 1, for ***divertible welfare payment, household utilities, social housing lessor*** and ***social housing tenant***.

Part 2 – Consequential amendments

Social Security Act

Item 16 inserts new paragraph 1235(ca) into the Social Security Act to extend the definition of ***debt***, for the purposes of Part 5 of that Act, to a debt due by a social housing lessor under Division 4 of Part 3E of the Social Security Administration Act.

Item 17 adds a reference to Part 3E of the Social Security Administration Act into subsection 1237AB(1), enabling the Secretary, on behalf of the Commonwealth, to decide to waive the Commonwealth's right to recover debts arising under Part 3E.

Schedule 2 – Family Assistance Amendments

Summary

The Family Assistance Administration Act is amended to incorporate a scheme for the automatic deduction of rent and other household payments. The amendments provide that lessors of social (public and community) housing may request the Secretary to deduct payments of rent and household utilities, from the family tax benefit payments of tenants and other adult members of their households who have entered into an agreement with the lessor (however described) that authorises deductions being made under this scheme. Tribunal or other authorised body-ordered or agreed costs relating to the occupancy of the premises may also be deducted.

Background

The scheme enables a social housing lessor to request the Secretary make a deduction from a person's family tax benefit payments (other than family tax benefit advances), to pay for rent, utilities or for tribunal or other authorised body-ordered costs or agreed relating to loss of or damage to property arising as a result of the occupancy of the premises. In order to request a deduction, a lessor must be a social housing lessor (as defined in Part 3E of the Social Security Administration Act) and the person in receipt of family tax benefit payments must be a social housing tenant (as defined in Part 3E of the Social Security Administration Act).

The scheme also provides for the recovery of overpayments made to social housing lessors, and enables the Secretary to charge a social housing lessor fees for various services associated with the scheme. Associated amendments are also made to Division 1 (Information gathering) of Part 6 of the Family Assistance Administration Act.

The amendments made by this Schedule commence on the later of the day after Royal Assent and 1 March 2018.

Explanation of the changes

Family Assistance Administration Act

Definitions

Item 1 inserts definitions of ***household utilities***, ***social housing lessor*** and ***social housing tenant***. which are given the same meanings as they have in the Social Security Administration Act. Any determination made by the Minister for the purposes of subsection 124QC(2) will also apply for the purposes of the family assistance law.

Payment of family tax benefit

Item 2 adds references to new Part 3A into subsections 23(6), 24(4) and 24A(2), which relate to the payment of family tax benefit.

Inalienability

Family tax benefit payments are absolutely inalienable under section 66 of the Family Assistance Administration Act. **Item 3** adds new paragraph 66(2)(ac) to provide that the inalienability of family tax benefit payments is subject to the new Part 3A of the Family Assistance Administration Act inserted by **item 5**. **Item 4** provides similarly in relation to Part 3E of the Social Security Administration Act.

Automatic deductions of rent or other household payments

Item 5 inserts new Part 3A into the Family Assistance Administration Act.

Division 1 – Introduction

Sections 67A and 67B set out the simplified outline and the objects of this Part.

Section 67C expressly provides that this Part binds the Crown in each of its capacities.

Division 2 – Deductions from family tax benefit payments

Subsection 67D(1) provides the circumstances in which a social housing lessor may request the Secretary to deduct an amount from a social housing tenant's family tax benefit payment (other than family tax benefit advance). If a social housing tenant has an ongoing obligation to pay an amount for rent, household utilities or both, and the tenant's agreement with the lessor for the occupancy of the premises, or another written agreement with the lessor, authorises the lessor to make requests under this Part, then the lessor may request a deduction. The lessor may also request a deduction if an amount for loss or damage to the property as a result of their occupancy of premises let by the lessor, so as to comply with an order of a court, or of a tribunal or other body that has the power to make orders, and the order is not appealed within the period for appealing, or an appeal is finally determined or otherwise disposed of. A deduction may also be requested where the tenant agrees, in writing, to pay to the lessor an amount for loss of or damage to property, as a result of the occupancy of premises.

Subsection 67D(2) provides that a deduction may be requested whether the obligation arose, or the order was made, before, on or after the commencement of this section.

Subsection 67D(3) provides that the social housing lessor's request must specify the amount to be deducted, which must not be more than that required to satisfy rent, household utilities or both payable by the tenant, and any outstanding payment or rent, household utilities or both payable by the tenant, and an order as described in

paragraph 67D(1)(b). The lessor's request must also specify the date from which deductions are to be made.

Subsection 67D(4) provides that the social housing lessor may amend the request to specify a different amount to be deducted. An amended request must satisfy the requirements of subsection (3).

Subsection 67D(5) provides that the social housing lessor must give the request and any amendment of the request to the Secretary in a way approved by the Secretary, for the request or amendment to be effective. The Secretary may approve a way of giving requests and a way of giving amendments.

Under section 67E, the Secretary has discretion to deduct an amount from a social housing tenant's family tax benefit payment, if a request has been made by a social housing lessor under section 67D. However, the Secretary must not make a deduction if the social housing lessor's request is revoked, if the Secretary is notified under section 67G that the social housing tenant ceases to be a social housing tenant in relation to the lessor, if the social housing lessor ceases to be a social housing lessor, or at any time the tenant is covered by a determination under subsection 67E(3).

Subsection 67E(3) enables the Minister, by legislative instrument, to determine that deductions must not be made from family tax benefit payments payable to specified social housing tenants. A note alerts the reader that subsection 13(3) of the *Legislation Act 2003* provides for specification by class.

If the Secretary does not make a deduction in accordance with a request made, including where the Secretary deducts less than was requested, the Secretary must give written notice to the lessor of that fact (subsection 67E(4)).

Section 67F provides that the Secretary is to determine the amount of the deduction. The amount must not exceed the amount specified in a request made under section 67D, or the amount of family tax benefit remaining after all deductions specifically required by a law of the Commonwealth (other than Part 3A) are made.

Section 67G sets out the requirements for notifications by social housing lessors. Subsection 67G(1) provides that a social housing lessor may revoke a request made under section 67D by giving notice to the Secretary in a way approved by the Secretary. If a request has been made under section 67D in relation to a person and the person ceases to be a social housing tenant in relation to that social housing tenant lessor, the lessor must notify the Secretary as soon as practicable (subsection 67G(2)). Similarly, if the social housing lessor ceases to be a social housing lessor (other than because of section 124QC(2) of the Social Security Administration Act), the authority or body must notify the Secretary as soon as practicable after ceasing to be a social housing lessor (subsection 67G(3)). A notification under subsection 67G(2) or (3) must be given in a way approved by the Secretary (subsection 67G(4)).

Division 3 – Treatment of amounts deducted

Under section 67H, Division 3 will apply when the Secretary deducts an amount under Division 2 from family tax benefit payable to a social housing tenant.

Section 67J requires the Secretary to pay the amount deducted to the social housing lessor.

Section 67K provides that if the Secretary pays the amount to the social housing lessor and the amount, or a part of the amount relates to a particular liability, then the liability is discharged to the extent of the amount paid to the social housing lessor, even if the liability is not yet due and payable. In other words, if a deduction was requested for combined amounts representing rent and utilities, and a deduction is made, the amount paid to the lessor extinguishes each of the liabilities for rent and utilities to the extent that part of the deduction relates to that liability. However, this section does not reduce a social housing tenant's liability in respect of an amount paid to the lessor that gives rise to a debt due to the Commonwealth by the lessor (subsection 67K(3)).

Section 67L provides that for the purposes of all laws of the Commonwealth (except any law specified under subsection 67L(4)), the social housing tenant is taken to have been paid the amount deducted, at the time the family tax benefit payment was paid, or would have been paid but for the deduction, whether or not the Secretary paid the amount to the social housing lessor (subsections 67L(1) to (3)). This provision is subject to new section 67N and any law of the Commonwealth specified in an instrument under subsection 67L(4). Subsection 67L(4) provides that the Minister may, by legislative instrument, make a determination specifying a law of the Commonwealth for the purposes of subsection 67L(2).

Division 4 – Overpayments to social housing lessors

Section 67M applies where a payment to a lessor purportedly made under Division 3 is made in connection with a deduction properly made under Division 2. If the amount paid to the lessor exceeds the deduction, the excess is a debt due to the Commonwealth by the social housing lessor. A note under subsection 67M(2) directs the reader to section 67P for debt recovery.

Section 67N applies where a payment of a deduction has been made to a social housing lessor under Division 3 and the deduction exceeded the amount (which may be nil) determined by the Secretary under section 67F (subsection 67N(1)). In such cases, the amount a social housing tenant is taken to have been paid under subsection 67L(1) is reduced by the excess (subsection 67N(2)). Subsection 67N(3) provides that the excess is a debt due to the Commonwealth by the social housing lessor. A note under subsection 67N(2) directs the reader to section 67P for debt recovery.

Subsection 67N(4) provides that the Secretary must pay the social housing tenant an amount equal to the excess that was deducted, whether or not the Commonwealth recovers the debt, and that amount will be taken to be a payment of family tax benefit. Subsection 67N(5) provides that the Secretary must not pay an amount

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under subsection 67N(4) to the extent that the sum of that amount, and the amount that should have been deducted, would exceed the amount of family tax benefit that would have been payable to the tenant apart from Part 3A. Subsection 67N(6) provides that subsection 67N(4) has effect for the purposes of all laws of the Commonwealth, except any law specified by the Minister by legislative instrument under subsection 67N(7).

Section 67P allows the Secretary to set off amounts payable to a social housing lessor under Division 3 against debts due to the Commonwealth by the lessor under Division 4 (subsection 67P(1)). Subsection 67P(2) provides that the Commonwealth may recover a debt due to it under Division 4 in a court of competent jurisdiction. Subsection 67P(3) provides that Part 4 of the Family Assistance Administration Act does not apply to a debt due by a social housing lessor to the Commonwealth under Division 4.

Section 67Q provides that there is no time limit for the commencing legal proceedings or taking any action under Part 3E for the recovery of a debt or overpayment.

Division 5 – Fees

Section 67R enables the Secretary to charge social housing lessors fees, on the Commonwealth's behalf, for deducting amounts under Division 2, paying amounts to the lessor under Division 3, and for services provided to the lessor in the administration of Part 3A.

Information gathering

Item 6 and 7 inserts new paragraph 154(1)(c) to enable the Secretary to require a person to give information or produce a document to a specified agency if the Secretary considers that the information or document may be relevant to the operation of Part 3A.

Item 8 and 9 inserts new paragraph 157(1)(c) to enable the Secretary to require a person to give information about a class of persons to a specified agency to facilitate the administration of Part 3A.

Item 10 inserts new paragraph 157(2)(m) enabling the Secretary to require, about each person in the class of persons, for the purposes of Part 3A, evidence to support a request made by the social housing lessor under section 67D.

Schedule 3 – National Rental Affordability Scheme Amendments

Summary

The purpose of this Schedule is to clarify and correct certain ambiguous provisions in the *National Rental Affordability Scheme Act 2008* (NRAS Act), and to provide further flexibility in the future administration of the National Rental Affordability Scheme (the Scheme) so as to further the objects of the NRAS Act.

Background

The Scheme has been in operation since 2008 and is established by section 5 of the NRAS Act.

The object of the Scheme is to encourage large-scale investment in housing so as to increase the supply of affordable rental dwellings and reduce rental costs for low and moderate income households. To accomplish this, the Scheme provides approved participants with a financial incentive for a period of 10 years (the incentive period) to rent dwellings to eligible tenants (being low to middle income earners) at a rate of at least 20 per cent below market rates.

In order to receive an incentive, approved participants must comply with a number of additional conditions of allocation provided for in section 7 of the NRAS Act, including that the dwelling must be rented to eligible tenants, and must not be vacant for longer than a period prescribed by the *National Rental Affordability Scheme Regulations 2008* (NRAS Regulations). Further conditions of allocation are set out in the NRAS Regulations.

Approved participants who satisfy the conditions of allocation receive a financial incentive each NRAS year (1 May to 30 April).

Ambiguous provisions

The Scheme has been in operation since 2008. During that time, several provisions have been identified that are ambiguous in their application. In order to address this ambiguity, this Schedule amends the NRAS Act to provide clarity to approved participants and other relevant stakeholders.

Rent charged

One of the conditions of allocation provided for in the NRAS Act is that eligible tenants must be charged rent that is at least 20 per cent lower than the market value rent for the dwelling.

Specifically, sub-paragraph 7(2)(b)(ii) of the NRAS Act provides that one of the conditions of an allocation that must be prescribed in the Scheme is ‘that to the extent that the rental dwelling is rented during an NRAS year that falls within the incentive period... the rent that is charged for the rental dwelling is, at all times during the year, at least 20 per cent less than the market value rent for the dwelling’.

The intent of this provision is that each time that rent is charged, the amount charged (and subsequently paid) must be at least 20 per cent below the market value rent. Consequently, the approved participant cannot charge a higher rent for part of the year, and then a lower rent for other parts of the year to compensate. This is to protect eligible tenants from being subject to a higher rent at any time during the year.

There is some ambiguity in the provision, in that it could be interpreted to require that the rent charged must be at least 20 per cent below the market value rent for the dwelling when averaged over the course of the whole year. Such an interpretation would leave eligible tenants open to circumstances where an approved participant requires a higher rent be paid for a portion of the year, potentially leading to financial hardship and uncertainty. In order to deal with this ambiguity, it is necessary to amend the NRAS Act.

Transfer of allocations to other dwellings

As set out in the explanatory memorandum for the National Rental Affordability Scheme Bill 2008, from the inception of the Scheme it was predicted that allocations may need to be transferred from one dwelling to another. Requests to transfer an allocation to another dwelling, come, for example, where a dwelling has been sold or where an owner of a dwelling no longer wishes to take part in the Scheme. Rather than losing the allocation from the Scheme, the allocation may be transferred to a different dwelling, generally while remaining with the same approved participant.

The ability to transfer allocations from one dwelling to another is crucial to achieving the objects of the Scheme. Without this discretion, numerous allocations would fall out of the Scheme where the owners of the dwellings no longer wish to participate. This would lead to a significant reduction in the stock of affordable housing provided for under the Scheme. An amendment to the NRAS Act will provide clarity by giving express legislative authority for the NRAS Regulations to provide for the transfer of an allocation to another rental dwelling in certain circumstances.

Increased flexibility

The intention of the NRAS Act has always been to include most of the administrative details of the Scheme's operation in the NRAS Regulations rather than in the NRAS Act to provide the flexibility required to address changing circumstances. The initial intent in designing the Scheme (as outlined in the explanatory memorandum to the NRAS Act) was to allow for greater flexibility for the administration of the Scheme to respond to changes in determining market rent, tenant eligibility criteria, acceptable periods of vacancy and reporting requirements in support of eligibility for incentives.

Vacancy periods

One of the conditions of allocation in the NRAS Act is that a dwelling must not be vacant for longer than a period prescribed by the NRAS Regulations. Paragraph 7(2)(c) is highly prescriptive in the way in which vacancy periods must be prescribed. Currently, the Regulations must prescribe two specific types of maximum vacancy periods. The first is a period within one NRAS year, and the second is a continuous

period that crosses two NRAS years. The highly prescriptive nature of this section is particularly notable when viewed in the context of the other provisions in the NRAS Act that provide for significant flexibility in the establishment and administration of the Scheme.

The prescriptiveness of paragraph 7(2)(c) limits the Scheme's ability to adapt and develop in response to emerging issues and demands and is contrary to the initial intent in relation to how the Scheme should be administered. Greater flexibility is required to ensure that the Scheme can continue to operate effectively.

Conditions of allocation

Allocations are made subject to certain conditions. Some conditions are specifically set out in subsection 7(2) of the NRAS Act. Paragraph 7(1)(c) provides that the NRAS Regulations can prescribe other conditions of allocation not specifically provided for in the NRAS Act. The NRAS Regulations currently set out several further conditions of allocation, including conditions in relation to calculating the market value rent for a dwelling, and a condition that a rental dwelling must not have been lived in before the first day of an incentive period.

There is currently no express legislative authority to vary conditions of allocation that are prescribed by the NRAS Regulations. Amendments are made to ensure there is a clear legislative basis for varying conditions of allocation to enable the Scheme to continue to respond to emerging issues that arise from time to time.

The amendments made by this Schedule, other than item 3 and its application provision, commence on 1 May 2018, which is the beginning of the next 'NRAS year'. An NRAS year begins on 1 May and ends on 30 April of the following year. This commencement date will reduce the administrative burden associated with implementing these amendments and will also promote consistency in the operation of the Scheme following implementation from the next NRAS year. The amendments made by item 3 and its application provision commence on the day after the Royal Assent. These amendments promote clarity and certainty and are included for the avoidance of doubt.

Explanation of the changes

Item 1 repeals and substitutes subparagraph 7(2)(b)(ii) of the NRAS Act. The new subparagraph inserted by this item clarifies that the NRAS Regulations must provide that a condition of allocation is that each and every time rent is charged for a dwelling (whether that be on a weekly, fortnightly, monthly or other basis), that rent must be at least 20 per cent below the market value rent.

This amendment is made for the sake of clarity to remove any ambiguity about the operation of subparagraph 7(2)(b)(ii), and to protect eligible tenants from being subject to higher rent at any time during the year.

Item 2 repeals and substitutes paragraph 7(2)(c) of the NRAS Act. Vacancy periods will continue to be prescribed by the NRAS Regulations, but the substituted provision

provides greater flexibility in how maximum vacancy periods are prescribed, including how the vacancy periods may be calculated, or what form they may take. This is necessary to ensure that approved participants are not subject to excessive penalties as a result of vacancy periods, while ensuring that the Scheme continues to meet its objective of increasing the stock of affordable rental dwellings.

Item 3 adds new subsections (4) and (5) to section 7 of the NRAS Act.

New subsection 7(4) allows the Scheme to provide for the variation of a condition of allocation. Paragraph 7(1)(c) of the NRAS Act allows the Scheme to provide for conditions of allocation not prescribed by the NRAS Act, however there is no express legislative authority to vary conditions of allocation. New subsection 7(4) makes this clear and ensures there is a clear legislative basis for varying conditions of allocation to enable the Scheme to continue to respond to emerging issues that arise from time to time. Conditions of allocation may be varied where it is necessary or appropriate to give effect to the objects of the Scheme.

The power to vary conditions of allocation cannot be used to vary the conditions specifically provided for in the NRAS Act under paragraph 7(2)(a) and subparagraph 7(2)(b)(ii). This ensures that the NRAS Regulations cannot override the operation of the NRAS Act. Subparagraph 7(2)(b)(i) and paragraph 7(2)(c) have not been specifically excluded as the conditions mentioned in those provisions have operation only if certain matters are set out in the NRAS Regulations.

New subsection 7(5) clarifies that a condition provided for by the Scheme may be imposed on an allocation after it is made. A condition prescribed by the Scheme includes new or varied conditions of allocation. New conditions of allocation may be imposed to deal with emerging issues and circumstances.

The ability to implement new and varied conditions of allocations are important to further the objects of the Scheme, and to protect eligible tenants and ensure the safety and viability of dwellings. For example, new conditions of allocation may be imposed to deal with certain safety issues, such as a requirement to use certain non-flammable materials, or replace existing dangerous materials.

Item 5 inserts a new paragraph 8(ba). This provision puts beyond doubt that the NRAS Regulations may provide for the circumstances in which an allocation can be transferred from one rental dwelling to another rental dwelling. For example, an allocation may be transferred to a different dwelling where a dwelling is sold and the new owner does not wish to participate in NRAS. The ability to transfer allocations between dwellings is crucial to achieving the objects of the Scheme.

Without this discretion, numerous allocations would fall out of the Scheme where the owners of the dwellings no longer wish to participate. This would lead to a significant reduction in the stock of affordable housing provided for under the Scheme.

Item 6 is an application provision providing that subsection 7(4) as inserted by item 3 applies to all allocations, including those made before, on or after the day the Schedule commences. New subsection 7(4) provides that subject to some exceptions, the NRAS Regulations can vary conditions of allocation from time to

Schedule 3 – National Rental Affordability Scheme Amendments

time. The purpose of this application provision is to ensure that any future variation of conditions of allocation will apply to conditions that were in effect before, on or after the commencement of this Schedule which will mean that different allocations cannot be subject to different conditions.

Item 7 confirms that the NRAS Regulations that are made in relation to maximum vacancy periods for the purposes of paragraph 7(2)(c) of the NRAS Act and are in force for immediately before the commencement of this Schedule, remain in force despite the fact that amendments are made by item 2 of this Schedule to paragraph 7(2)(c).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

SCHEDULE 1 – SOCIAL SECURITY AMENDMENTS SCHEDULE 2 – FAMILY ASSISTANCE AMENDMENTS

These Schedules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of Schedules 1 and 2

Schedules 1 and 2 of the Bill establish the Automatic Rent Deduction Scheme (ARDS). ARDS will enable rent and other social housing tenancy costs to be deducted from social housing tenants' social security payments, (other than a student start-up loan or an advance), a payment under the ABSTUDY scheme (other than an ABSTUDY student start up loan or an advance) and family tax benefit. Deductions will then be able to be changed or ceased only by agreement with the tenant's social housing provider.

ARDS recognises that social welfare payments should be used towards a person's and their family's basic needs and is intended to support security of tenure in housing. It also recognises that a person's home is an important precondition to their ability to exercise their human rights and their economic, social and cultural rights in particular.

ARDS aims to:

1. reduce the risk that social housing tenants will accumulate rental arrears and other housing debt risking their tenancies,
2. reduce the cost of managing social housing arrears and debt, and
3. better secure the income stream associated with housing assets.

It is a condition of lease in most jurisdictions that public housing tenants use the Department of Human Services provided (voluntary) Rent Deduction Scheme (RDS) to pay their public housing tenancy costs. In addition, tenancy tribunals often order defaulting tenants to use RDS to pay for rent, rental arrears and property damage. Similarly, community housing and Indigenous community housing tenants are expected to use the Department of Human Services (DHS) provided Centrepay service to pay their tenancy costs.

Under social security and family assistance law, social security payments and Family Tax Benefit are 'absolutely inalienable'. This enables tenants to bypass their social housing provider and cancel their authorised or tenancy tribunal ordered voluntary rent deductions directly with DHS.

This Bill will amend the *Social Security (Administration) Act 1999*, *Social Security Act 1999* and *A New Tax System (Family Assistance) (Administration) Act 1999* to

provide that social housing tenants will need to negotiate changes to deduction amounts with their social housing provider, which will advise DHS of any changes.

To the extent that the Bill may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of preventing evictions due to arrears and debt which may force a person, and their children, into homelessness.

Human rights implications

The Bill engages the following Human Rights.

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises *'the right of everyone to social security, including social insurance'*. The ICESCR requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

People subject to ARDS will benefit by way of a reduction of their liability to a social housing lessor. As such, ARDS will be compatible with the right to social security as expressed in the ICESCR.

Although a person's ability to choose how to spend social welfare payments may be limited, ARDS is designed to ensure persons continue to enjoy an adequate standard of living by reducing the risk of arrears build-up which may lead to eviction and possible homelessness. ARDS also ensures that a deduction can only be made in relation to actual amounts owing, and safeguards are built into ARDS to prevent a deduction that exceeds the amount specified.

Article 26 of the Convention on the Rights of the Child (CRC) also recognises *'for every child the right to benefit from social security'* and that *'benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child'*.

Article 3 of the CRC provides that in all actions concerning children, the best interests of the child must be a primary consideration. ARDS will work to support this by ensuring that rent is paid on time and in full for households living in social housing, including families with children to prevent rental arrears and potential eviction.

The Bill recognises that recipients of a range of social security payments and family tax benefit have children and that the best interests of children are served when parents responsibly ensure that their welfare benefits are directed towards housing as a primary and basic need. The Bill also aims to reduce pressure on child protection services by maintaining continuity of accommodation through ARDS.

The right to an adequate standard of living including housing

Article 11.1 of the ICESCR states that everyone has the right to *'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'* and that *'appropriate steps'* be taken to *'ensure the realization of this right'*.

Under ARDS, amounts will be deducted from their social security payments, ABSTUDY or instalments of family tax benefit and directed to their social housing provider to pay rent and other tenancy costs payable under the rental agreement. This will protect people's social housing tenancies by preventing arrears build-up and reducing the risk of eviction due to arrears or debt. As such, ARDS is designed to operate to reduce the likelihood of a person becoming homeless and is compatible with and enhancing the right to an adequate standard of living including housing.

Article 10 of the ICESCR recognises the rights of the family and child to protection and assistance. The introduction of an ARDS seeks to support this objective through ensuring rental payments are made seamlessly and regularly. This will prevent rental arrears, possible eviction, and will assist with a person's capacity to meet the basic needs of his or her family.

Article 27 of the CRC also recognises *'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'*. The Article also states that *'States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'*.

By ensuring social housing rent is paid, the Bill is compatible with children's rights to an adequate standard of living by ensuring children of social welfare payment recipients affected by ARDS are at lower risk of being without a home.

Article 18.2 of the CRC places an obligation on States to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities. ARDS will work alongside other available support services, to ensure that tenants continue to be housed safely and affordably while they get the help they need to sustain their tenancies.

The right to self-determination

Article 1 of the ICESCR states that *'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*. ARDS will be compatible with a person's right to freely pursue their economic, social or cultural development because ARDS is intended to protect the tenancies of persons affected in recognition of the important role housing plays in a person's ability to economically, socially and culturally develop.

Statements of compatibility with human rights

The right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Privacy guarantees a right to secrecy from the public of personal information. For interference with privacy not to be arbitrary, it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness in this context incorporates notions of proportionality to the end sought and necessity in the circumstances.

To operate, ARDS will only require limited information to be provided about a person. The Secretary will be able to act on a request to make a deduction without requiring sensitive information about a person's tenancy and circumstances being disclosed.

Conclusion

Schedules 1 and 2 are compatible with human rights. ARDS will limit people's capacity to withdraw from their social housing deductions to meet their obligations under their leases.

To the extent that this may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of preventing evictions due to arrears and debt which may force a person, and their children, into homelessness.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

SCHEDULE 3 – NATIONAL RENTAL AFFORDABILITY SCHEME AMENDMENTS

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Schedule

The purpose of this Schedule is to clarify and correct certain ambiguous provisions in the *National Rental Affordability Scheme Act 2008* (NRAS Act), and to provide further flexibility in the future administration of the National Rental Affordability Scheme (the Scheme) so as to further the objects of the NRAS Act. This Schedule provides the Secretary with explicit legislative authority to transfer allocations to alternate dwellings to ensure that the allocations do not fall out of the Scheme; provides greater flexibility in prescribing maximum vacancy periods; clarifies the Scheme's ability to vary conditions of allocation; and clarifies provisions to ensure that eligible tenants cannot be forced to pay a higher rent at any time, even if that is only for a portion of a year.

Human rights implications

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Of the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, this Schedule engages the right to an adequate standard of living, including housing, as referred to in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (done at New York on 16 December 1966 ([1976] ATS 5)).

This Schedule supports the right to adequate housing, as it addresses areas of the NRAS Act that lack clarity. This is a beneficial measure as it will enable improvements to be made to the Scheme that can only be realised through changes to the NRAS Act, thereby providing a clear legislative framework for approved participants in the Scheme to continue to deliver more affordable rental accommodation to tenants.

Conclusion

This Schedule is compatible with human rights because it supports the protection of the right to adequate housing.

**[Circulated by the authority of the Minister for Social Services,
the Hon Christian Porter MP]**