

Short-Form Departmental Disclosure Statement

Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill
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Supplementary Order Paper No 390

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment, in consultation with the Ministry of Social Development.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 November 2013.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	YES
<p>Section 92(2) outlines the grounds for reasonable cause for HNZ to make an information requirement on a person. Following an amendment during the Select Committee process this section now defines reasonable cause as including cause to suspect that a person:</p> <ul style="list-style-type: none"> <i>i) has committed an offence under this Act; or</i> <i>ii) has obtained by fraud any income-related rent or HNZ housing; or</i> <i>iii) as a result of committing fraud, pays or continues to pay in income-related rent or remains a tenant of HNZ housing or particular HNZ housing.</i> <p>The Supplementary Order Paper deletes the current wording in 92(2)(a)(ii) and (iii) and replaces (ii) with “obtained by fraud any financial product”. In effect, it limits the grounds on which Housing New Zealand can make an information request of a person. This is a technical change to correct a reference based on HNZ’s continuing functions under this part. It reverts to the wording in the introduction version of the Bill that better reflects the policy intent that HNZ’s functions in relation to assessment of housing need and eligibility are transferred to the social housing agency.</p>	

2.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner was informed about these changes, though feedback was not sought given that the SOP <i>reduces</i> the grounds on which Housing New Zealand can make an information requirement. It is considered that these changes are of a technical nature and therefore did not warrant the need for feedback.</p> <p>It is of note that the Bill itself does enable (and in some places compels) increased information sharing across and within agencies, in order to support the operation of the new social housing environment. In giving effect to the new arrangements, MSD and HNZ intend to formalise the new information sharing arrangement that relate to the transfer of functions from HNZ to MSD, prior to MSD commencing its new functions. Initially these arrangements will be detailed in a Memorandum of Understanding (MOU) or similar document, with similar provisions also to be included in contractual arrangements with Community Housing Providers. These agencies will work with the Office of the Privacy Commissioner in the preparation of this document, including on developing the necessary safeguards. It may be appropriate in the future to consider a more formal Code, or an Approved Information Sharing Agreement between MSD, CHPs and HNZ.</p>	

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill provides that where a person has obtained or received in excess of the amount to which the person has underpaid their income related rent then the Ministry of Social Development (MSD) can recover that amount using its debt recovery powers in the Social Security Act 1964. The SOP amends the Bill clarifies that these powers apply no matter whether the lesser amount of IRR was paid before or after the commencement of the Bill or the transfer of functions.</p> <p>This amendment contains a limited element of retrospective application in that the recovery powers in the Social Security Act 1964, including the ability to deduct debt from a person's benefit, apply for overpayments of IRRS that occurred before the Bill came into force but were calculated after the transfer of functions. This means that a person who underpaid their income-related rent (such as because of a failure to notify of a change in circumstances) would have operated in this manner at the time based on the expectation that HNZ would be responsible for recovering the debt, and would have the existing legislative tools at their disposal.</p> <p>Though this amendment contains a limited element of retrospective application, we believe that this move provides for administrative efficiencies. If the power to make deductions from benefits was not provided, MSD would need to issue a deduction notices to itself as the Social Housing Agency and the effect of the notice on the existing or former tenant's benefit will be the same as an automatic deduction; they would be required to negotiate an amount to be deducted from their benefit by MSD. The amendment to the Bill removes this administrative anomaly. Officials consider that any such retrospective effect would not lead to unfairness.</p> <p>It ensures that, from the point at which MSD becomes the social housing agency, MSD has recourse to use the debt recovery powers under the Social Security Act 1964. This provides fairness for social housing tenants by ensuring that all tenants are subject to the same debt recovery powers.</p> <p>Those tenants subject to the new debt recovery provisions outlined in the Social Security Act 1964 will be protected by a number of debt recovery safeguards. These include:</p> <ul style="list-style-type: none"> • Tenants can negotiate repayment terms according to their circumstances. • Sections 86(9A) that relate to protection from debt being created if there was an administrative error from agency. • MSD has the power to write off debt • Section 150 of the Bill (along with section 86G of the Social Security Act) outline a protected earnings rate, that caps the maximum deductions from a tenants pay (the current protected earnings rate is 60% of the net ordinary weekly pay). <p>Both HNZ and MSD will work closely to ensure that tenants remained informed over the transfer of functions, and that the changes that affect them are clearly communicated.</p>	

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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