

Departmental Disclosure Statement

Residential Tenancies Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Housing and Urban Development.

The Ministry of Housing and Urban Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

05/02/20

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Part One: General Policy Statement

The Residential Tenancies Act 1986 (the Act) came into force over 30 years ago to govern a rental market very different from the market today. Since the Act came into force, home ownership rates have declined and the proportion of households living in rental properties has increased. More people, including families and older people, are renting for longer, or for life. Some people are having difficulty finding or maintaining tenancies, which can lead to people using government emergency or transitional housing. Insecure tenure can have negative impacts on health, education, and employment. People who are renting should have stable housing, have the ability to feel at home, and be able to assert their legal rights.

The Bill makes a range of changes to make the Act fit for modern renting situations in New Zealand. The Bill aims to modernise the Act while appropriately balancing the rights and obligations of tenants and landlords.

The changes include-

- increasing security of tenure for tenants who are meeting their obligations; and
- promoting good-faith relationships in the renting environment; and
- modernising and clarifying the Act to reflect the modern renting market and environment; and
- enhancing powers and tools for the chief executive of the department responsible for the administration of the Act (the regulator); and
- supporting tenants' ability to assert their legal rights.

In respect of security of tenure, the Bill removes the ability for landlords to end a periodic tenancy agreement for any reason and without a requirement to tell the tenant why. The Bill provides for a range of justified reasons to end a periodic tenancy (with the required notice period). Those reasons include new provisions to respond to frequent anti-social behaviour that is more than minor, and frequent late rent payments. The Bill also strengthens the provision for fixed-term tenancy agreements to become periodic agreements. Fixed-term tenancies will become periodic when they expire unless both parties agree otherwise, the tenant gives notice, or the landlord gives notice in accordance with the range of new reasons for ending a periodic tenancy. The Bill increases the notice period for both landlords and tenants ending a periodic tenancy.

The Bill clarifies the rules about minor changes to the premises, ensuring that tenants can make minor changes such as fitting brackets to secure furniture and appliances against earthquake risk, baby-proofing the property, installing visual fire alarms and doorbells, and hanging pictures.

The Bill makes other changes, including-

- prohibiting the solicitation of rental bids by landlords:
- limiting rent increases to once every 12 months:
- improving a tenant's ability to assign their tenancy when that is reasonable:
- allowing for identifying details to be suppressed in situations where a party has been wholly or substantially successful in taking a case to the Tenancy Tribunal:

- clarifying the Tenancy Tribunal's power to suppress names and identifying particulars of any witness or party, and any part of the evidence given, if that it is in the interests of the parties and the public interest:
- require landlords to permit and facilitate for the installation of ultra-fast broadband, subject to specific triggers and exemptions:
- increasing financial penalties:
- giving the regulator new tools to take direct action against parties who are not meeting their obligations. The tools include an infringement offences regime, the ability to enter into enforceable undertakings, the power to issue infringement notices, and the ability to seek pecuniary penalties against landlords with 6 or more tenancies who fail to meet key obligations:
- other administrative changes.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Two regulatory impact statements were provided:</p> <ul style="list-style-type: none">▪ Residential Tenancies Act 1986 Reform – Pets, Minor Fittings, Rent Setting and Access to Justice, authored by HUD 10/10/19.▪ Residential Tenancies Act 1986 Reform – Improving Fairness in the Act, authored by HUD 20/09/19. <p>These can both be accessed from: https://www.hud.govt.nz/residential-housing/tenancy-and-rentals/changes-to-the-residential-tenancies-act-1986/cabinet-papers-and-related-documents/</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The opinion was provided on 25/09/19 for the RIS “Improving Fairness in the Act” alongside the Cabinet Paper “Reform of the Residential Tenancies Act – Improving Fairness in the Act”. It states:</p> <p>The Regulatory Impact Analysis requirements apply to the proposals in this paper. A cross-agency Quality Assurance Panel with representatives from the Treasury and HUD has reviewed the Regulatory Impact Assessment (RIA) “Reform of the Residential Tenancies Act” dated September 2019, produced by HUD. The panel considers that the RIA partially meets the Quality Assurance criteria. The RIA does not meet the convincing criteria due to gaps in the problem definition, performance measures for success and risk mitigation.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The size of the potential costs and benefits to stakeholders is analysed in both regulatory impact statements. The statements find that overall costs are low and overall benefits are medium compared to taking no action.</p> <p>Landlords will not be subjected to direct costs as a result of the Residential Tenancies Act Reform. However, landlords and property managers are likely to face additional administrative costs in relation to new processes around minor fittings, assignment of fixed-term tenancies and the provision of healthy homes compliance information.</p> <p>In addition, costs may fall to landlords in situations when:</p> <ul style="list-style-type: none"> landlords need to collect more information to withstand the challenge of a tenancy ending in response to a specified termination ground including time spent at the Tribunal in defence of this. For landlords this is a deterioration relative to the status quo which enables periodic tenancies to be ended unilaterally, for any reason, and generally without evidence. The potential for lost revenue for landlords if following an initial fixed-term agreement a tenant can no longer be incentivised to sign up for a further fixed term. This may expose landlords to risk should tenants subsequently leave the tenancy at a time of the cycle where there is low demand to replace them. The potential for lost revenue for landlords if they are required to provide tenants with 63 or 90 days' notice to end a tenancy, a tenant subsequently serves 28 days' notice to leave, and an alternative tenant cannot be found to meet the shortfall. <p>Some landlords may generally consider that the package of tenancy initiatives will increase the risk to their business and this could affect landlord willingness to rent, and the amount of rent charged, which may increase costs for tenants. However, noting that there are a wide number of factors that affect rent it would be difficult to attribute any change in market rent to the reforms alone and any impacts on rents may be muted by other factors that reduce costs for landlords, such as lower interest rates.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

The Bill introduces and strengthens a number of obligations relating to tenancies, and effective compliance with these will impact the costs and benefits. The effective compliance of the tenancy system is somewhat self-regulating with tenants and landlords enforcing their rights in the Tribunal, and the Bill incentivises better effective compliance with obligations by introducing and increasing penalties.

The Regulator also plays a role in enforcing the obligations. The Regulator can take cases on behalf of a party, including when a landlord misuses a termination ground. The Bill also provides the Regulator with a general function to monitor and assess landlord compliance. The Regulator can issue improvement notices and enter into enforceable undertakings, both of which carry a penalty if not complied with. The Regulator can also encourage effective compliance through educating individuals by providing information online, advertising, and providing templates that parties can use that comply with the law.

The two regulatory impact statements expect this policy will produce largely low or low / medium administrative or operational costs for MBIE and the Tribunal (pages 81-82 of “Minor Fittings, Rent Setting and Access to Justice” and page 69 of “Improving Fairness in the Act”). The Bill also allows the Regulator to take a single application to the Tribunal which covers multiple breaches in order to enable efficiency.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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HUD considered the Bill's consistency with New Zealand's obligations under art. 11(1) of ICESCR. These obligations include the progressive realisation of the rights to an adequate standard of housing and to improvement of living conditions. These proposals are consistent with those obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

HUD considered the Bill's consistency with the principles of the Treaty of Waitangi during policy development.
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Te Puni Kōkiri was consulted during policy development and did not identify any inconsistency with the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Clause 73 replaces Schedule 1A of the Act to increase the civil penalties for existing unlawful acts and to detail the penalties for new ones. Clause 74 inserts Schedule 1B which details the fees and fines for infringement offences. Clauses 30(3), 42, 46, 47, 49, 54, 56, 58, 62 and 67(4) increase the fines of existing offences.</p> <p>The Bill creates new unlawful acts which are subject to exemplary damages and infringement offences which are subject to infringement fees or fines. These are detailed in Appendix 1.</p> <p>The Bill amends s 133 of the Act to clarify a landlord's obligation to provide all relevant tenancy agreements to the Regulator on request. Failure to comply will continue to be an offence.</p> <p>The Bill creates an offence subject to a fine:</p> <ul style="list-style-type: none"> Clause 52 amends s 108 and makes it an offence for a person to intentionally fail to comply with a work order under the existing s 78 or s 78A and in doing so creates a health or safety risk for any person living at the premises. <p>The Bill enables pecuniary penalties:</p> <ul style="list-style-type: none"> Clause 55 inserts ss 109B – 109E to enable the Tribunal to make pecuniary penalty orders if a landlord has 6 or more tenancies and intentionally commits an unlawful act under ss 45(1A), 66(4), 45(1AB), 66(5), 54(3), 60AA or 137(2). The maximum pecuniary penalty is \$50,000. <p>Clause 47 amends the jurisdiction of the Tenancy Tribunal in the following ways:</p> <ul style="list-style-type: none"> Increases the upper monetary limit of the Tribunal's jurisdiction to \$100,000. Expands the Tribunal's jurisdiction to include fibre connections, objections to improvement notices, and applications for pecuniary penalties. <p>The following new provisions in the Bill will apply to the jurisdiction of the Tenancy Tribunal in regard to the Unit Titles Act 2010:</p> <ul style="list-style-type: none"> Section 90, increases to the penalty if a Tribunal Mediator breaches confidentiality. Section 95, clarifying the Tenancy Tribunal's power to suppress names and identifying particulars of any witness or party, and any part of the evidence given, if that is in the interests of the parties and the public interest. Section 111A, clarifying that the offence of breaching a suppression order applies to the new clarified suppression powers. Section 110, increases to in the maximum penalty for the offence of failing to answer witness summons. Section 114, increases to the maximum penalty for the offence of obstructing or hindering a Tenancy Mediator. 	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy development process. It broadly supported the provisions and any issues it raised were resolved.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clause 51 clarifies the extent of the Tenancy Tribunal's ability to suppress information and provides that it may make an order prohibiting the publication of the name or identifying details of a party. The Tribunal must make such an order if the applying party has been wholly or substantially successful in the proceedings unless there is a public interest in the publication of the party's name.</p> <p>The Tribunal may also suppress information if it considers it in the interests of the parties and the public, for example sensitive evidence or commercially sensitive information.</p> <p>Clause 7 strengthens individuals' rights to access their information through the infringement offence provision for landlords who fail to provide tenants with a copy of the tenancy agreement.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner was consulted during the development process. It supports the proposed amendments detailed in 3.5.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Government sought submissions from the public on proposed reform of the RTA. It received submissions from diverse stakeholders including tenants and landlords. 4,787 perspectives were received. Sapere Research Group analysed 4,391 submissions:</p> <p>Residential Tenancy Act review: Consultation submissions analysis, 5 February 2019, accessible from:</p> <p>https://www.hud.govt.nz/news-and-resources/consultations/consultation-submission-analysis/</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Other agencies, in particular MBIE which acts as the Regulator under the Act, have assessed the Bill's provisions during the policy development and Bill drafting process.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill 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

4.2. Does this Bill 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

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Infringement offences are used for minor strict liability offences and do not result in a criminal conviction. The nature of the behaviour and the penalty is sufficiently minor so as to not require a mens rea element.</p> <p>Some amendments have been made to existing criminal offences in the Act. Some of these offences could be interpreted as strict liability offences. The Bill does not alter the nature of these offences.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill 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
<p>The Tenancy Tribunal has the existing power to make determinations about obligations and rights relating to tenancies. The new obligations and rights established in this Bill are in line with the Tribunal's existing powers and do not significantly extend its decision-making power.</p> <p>The Bill creates new enforcement powers for MBIE to issue improvement notices which carries a penalty if not complied with. This aims to encourage people to comply with their obligations under the Act. Improvement notices can be challenged in the Tribunal.</p>	

Powers to make delegated legislation

4.7. Does this Bill 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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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 70 amends the existing section 140 to enable regulations to be made specifying offences that are infringement offences and prescribing fees not exceeding \$500. It also enables regulations to be made specifying offences in regulations made under the Act that are infringement offences and prescribe fees not exceeding \$500. The regulations may prescribe different fees in respect of different classes of person.</p> <p>This power is consistent with the existing regulation-making powers under the Act to prescribe offences, fees and fines. The delegated legislation relates to matters of detail such as fees which should not require Parliamentary time. The power to prescribe fees is limited to fees not exceeding \$500.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Three

Offences and penalties – question 3.4(a)

The Bill creates new unlawful acts (non-criminal) which are subject to a civil penalty (exemplary damages) and infringement offences (criminal penalty but no conviction is entered) which are subject to infringement fees and fines:

- Clause 7 makes it an unlawful act and an infringement offence for a landlord to fail to put a tenancy agreement in writing or to fail to provide a copy to the tenant.
- Clause 8 makes it an infringement offence for a landlord to fail to comply with the requirements existing in ss 13A(1A), (1C), (1CB), or (2) which relate to insulation and the healthy homes standards.
- Clause 9 makes it an unlawful act and an infringement offence for a landlord or tenant to fail to comply with the existing s 15 which requires that, where a landlord's or tenants interest passes to some other person, that other person shall notify the other party to the tenancy of their name and address.
- Clause 10 makes it an unlawful act and an infringement offence for a landlord or tenant to fail to comply with the existing s 16 which requires that one party must notify the other party of the particulars when their contact details change.
- Clause 11 makes it an infringement offence for a landlord to fail to comply with the requirements existing in s 16A which relate to the appointment of an agent when the landlord is out of New Zealand.
- Clause 12 makes it an infringement offence for a landlord to require key money in contravention of the existing s 17.
- Clause 13 makes it an infringement offence for a landlord to require a letting fee in contravention of the existing s 17A.
- Clause 14 makes it an infringement offence for a landlord to require a payment of bond of an amount greater than 4 weeks' rent in contravention of the existing s 18.
- Clause 15 makes it an infringement offence for a landlord to require security other than a permitted bond in contravention of s 18A.
- Clause 16 makes it an infringement offence for a landlord to fail to provide a receipt for bond.
- Clause 17 makes it an unlawful act and an infringement offence for a landlord to advertise a tenancy without stating the amount of rent. This does not apply in relation to a social housing tenancy. Clause 17 also makes it an unlawful act for a landlord to invite bids for rent.
- Clause 18 makes it an infringement offence for a landlord to fail to comply with the existing s 23 which relates to payment of rent in advance.
- Clause 20 makes it an infringement offence for a landlord to fail to give a receipt for rent in contravention of the existing s 29.
- Clause 21 makes it an infringement offence for a landlord to fail to keep records in contravention of the existing s 30.
- Clause 23 makes it an unlawful act for a landlord to unreasonably withhold consent for a tenant's fixtures or to withhold consent for a tenant's minor changes. A tenant commits an unlawful act where they fail to comply with the requirements to return the premises to a condition reasonably similar to that before the minor changes were made.
- Clause 24 makes it an unlawful act for a tenant to assign a tenancy without consent from the landlord or, if the tenancy is for social housing, in contravention of an agreement provision prohibiting assignment.

- Clause 26 makes it an unlawful act and an infringement offence for a landlord to seek to recover expenses relating to assignment, subletting, parting with possession or termination without providing an itemised account of the expenses.
- Clauses 27 and 44 make it an unlawful act and an infringement offence for a landlord to fail to, on request, provide information to the tenant relating to the healthy homes standards.
- Clause 28 makes it an unlawful act for a landlord to fail to permit installation of fibre if required by the new s 45B.
- Clause 29 and 45(2B) make it an unlawful act for a landlord to fail to notify a tenant of the premises being put on the market as soon as reasonably practicable. The Bill also provides that it is an unlawful act and an infringement offence for a landlord to fail to notify a prospective tenant that the premises are on the market.
- Clauses 30 and 45(4) and 46 makes it an unlawful act and an infringement offence for a landlord to fail to provide results of contamination testing to the tenant.
- Clause 38 makes it an unlawful act for a landlord to terminate a tenancy knowing that the landlord is not entitled to give notice or apply to the Tenancy Tribunal to terminate the tenancy.
- Clause 61 makes it an infringement offence for a landlord to fail to retain and produce documents for the chief executive if required. The full list of documents that must be retained is expanded.
- Clause 66 sets up the infringement offence regime. Clause 66 also makes it an unlawful act for a person to fail to comply with an improvement notice or to contravene an enforceable undertaking.