

Departmental Disclosure Statement

Residential Tenancies (Prohibiting Letting Fees) 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 Business, Innovation and Employment.

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.

15 March 2018

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	8

Part One: General Policy Statement

This Bill amends the Residential Tenancies Act 1986 (the *principal Act*) to prohibit the charging of a letting fee, or any other fee charged to a tenant in respect of charges for services rendered by a letting agent, solicitor, or any person in relation to a tenancy.

Under the principal Act, letting agents (including property managers), and solicitors, are able to charge letting fees to tenants to cover the administrative costs of listing and advertising a rental property, conducting open-homes, and vetting prospective tenants at the beginning of a tenancy.

By paying a letting fee, tenants are bearing the costs associated with letting a rental property, where the benefit predominantly rests with the landlord.

The amendments made by this Bill aim to ensure that costs associated with letting a property rest with the beneficiary of the service, and to reduce the up-front costs that some tenants can face in renting a new rental property. The Bill also ensures that other fees cannot be charged to tenants in place of a letting fee.

To achieve this, the Bill prohibits the charging of a letting fee, or any other fee to a tenant, by any person in relation to the:

- grant, continuance, extension, variation, or renewal of any tenancy agreement; or
- assignment of a tenant's interest under any tenancy agreement; or
- subletting of the whole or any part of the premises by a tenant.

Landlords, or their agent, will remain able to seek reimbursement from a tenant for expenses reasonably incurred as a result of a tenant assigning, sub-letting, or parting with possession of their interest in a tenancy.

The Bill creates a new unlawful act for charging a tenant a letting fee (with a maximum level of exemplary damages of \$1,000). The new unlawful act is based on the current unlawful act of charging a tenant key money due to the similarity in harm caused. The Bill also limits the Tribunal's authority, in that it will not have jurisdiction to consent to a person requiring a tenant to pay a letting fee.

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
N/A	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
N/A	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Impact Statement: Prohibiting letting fees under the Residential Tenancies Act 1986. 16 March 2018 This is available at: www.mbie.govt.nz/info-services/housing-property/residential-tenancies/letting-fees	

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?	NO
The Impact Statement above did not meet the threshold for needing an independent opinion on the quality of the regulatory impact assessment from the Regulatory Impact Assessment Team in the Treasury.	

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
N/A	

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
N/A	

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
N/A	

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
N/A	

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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The Bill's effect is localised to the New Zealand domestic residential rental market; however, the amendment is consistent with New Zealand's international obligation to protect the right of people in New Zealand to enjoy adequate housing. This obligation can be found in a number of ratified international treaties, including article 25(1) of the Universal Declaration of Human Rights.

New Zealand has also committed to working towards the United Nation's Sustainable Development Goal 11 to make cities inclusive, safe, resilient and sustainable. Part of this goal is to ensure universal access to adequate, safe and affordable housing by 2030.

Prohibiting the charging of letting fees is the first step this Government can take to improving access to affordable housing by reducing the price barriers faced by tenants when moving into a rental property.

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?

The proposals in the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill are not considered to be inconsistent with the principles of the Treaty of Waitangi.

Consideration has been given as to whether the policy impacts any rights or interests of iwi/Maori, or obligations or commitments of the Crown to iwi/Maori under the Treaty of Waitangi, included as set out in legislation. The policy is intended to remove barriers to tenants choosing rental accommodation, by removing the ability of landlords and letting agents to charge letting fees. Therefore our assessment is that, although this will impact iwi/Maori who are landlords, property managers, and tenants, it will not impact them in a way which engages their particular rights or interests under the Treaty of Waitangi, or the Crown's obligations or commitments.

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, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES

The Bill creates the new unlawful act in the Residential Tenancies Act 1986 for situations where any person charges a tenant a letting fee, for which the maximum level of damages is \$1,000.

The Bill states that the Tribunal will not have jurisdiction to consent to any person requiring a tenant to pay a letting fee.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted on the policy proposals being considered in this Bill.	

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?	NO
N/A	

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?	NO
No external consultation was undertaken with other stakeholders on the proposals in this Bill.	

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?	NO
N/A	

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
N/A	

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
N/A	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
N/A	

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?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
N/A	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
N/A	

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
N/A	

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
N/A	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
N/A	

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
N/A	