

Departmental Disclosure Statement

Social Housing Reform (Flexible Purchasing and Remedial Matters) 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.

May 2015

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Part One: General Policy Statement

This Bill amends the Housing Restructuring and Tenancy Matters Act 1992 to allow the social housing agency (the agency) (currently the Ministry of Social Development) to enter into more flexible and innovative purchasing arrangements for social housing. It creates a ministerial direction power for the Minister responsible for the agency (the Minister for Social Housing) that enables the agency to enter into tailored agreements with social housing providers (Housing New Zealand and registered community housing providers). Among other things, ministerial directions could allow the agency to purchase social housing places into the future, to fund vacant social housing that may be under repair or awaiting an urgent placement, to pay more or less than the income-related rent subsidy, and generally to enable arrangements that respond effectively to social housing need. These changes will not affect the way in which a tenant's rent is calculated. The changes are intended to benefit tenants by allowing social housing providers to negotiate more flexibly with the Crown to provide services that support people who are eligible for social housing.

The Bill also addresses remedial matters related to housing, including by—

- amending the Goods and Services Tax Act 1985 to ensure that payments under reimbursement agreements and tailored agreements with social housing providers are GST-exempt to the extent that they relate to the provision of accommodation in social housing. This is consistent with the current treatment of rent or income-related rent subsidies for residential properties:
- amending the Housing Corporation Act 1974 to remove the Corporation's role in providing housing policy advice to the Minister of Housing. This is a function currently undertaken by the Ministry of Business, Innovation, and Employment. In this regard, the Bill aims to better align the objectives and functions of the Corporation as a Crown agent with the roles of other government agencies. The Corporation will retain its operational policy capability to support its business activities, but will no longer be required to ensure that the Minister of Housing receives appropriate policy advice, other advice, and information on housing and services related to housing. In addition, the Corporation will no longer be expected to undertake research and evaluation activities for the purpose of advising the Minister of Housing on housing and services related to housing:
- amending the KiwiSaver Act 2006 to clarify that prior years of membership in a complying superannuation fund count towards the 3-year eligibility period for a first home withdrawal if a complying superannuation fund member transfers to KiwiSaver.

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

It is intended that this Bill be divided into the following 4 separate Bills at the committee of the whole House stage:

- a Housing Restructuring and Tenancy Matters (Social Housing Reform) Amendment Bill,
- a Taxation (Social Housing Reform) Bill,
- a Housing Corporation (Social Housing Reform) Amendment Bill, and
- a KiwiSaver (HomeStart) Amendment Bill.

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>The following regulatory impact statements (RISs) were prepared to inform the policy decisions of this Bill:</p> <ol style="list-style-type: none">1. Legislation to support the Social Housing Reform Programme. Ministry of Social Development, 4 March 2015.2. Assessment of options to amend the KiwiSaver Act rules for first home withdrawals to remove uncertainty and unintended consequences. Ministry of Business, Innovation and Employment, 25 March 2015. <p>RIS 1 above (dated 4 March 2015) is not publicly available under section 18(d) of the Official Information Act 1982.</p> <p>RIS 2 above (dated 25 March 2015) can be accessed at http://www.mbie.govt.nz/about-us/publications/ris and can also be found and downloaded at http://www.treasury.govt.nz/publications/informationreleases/ris.</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?	NO
<p>Although neither of the RISs identified in Question 2.3 met the threshold for receiving an independent opinion on quality, the RIA Team did consider the information and analysis summarised in the Legislation to support the Social Housing Reform Programme RIS and confirmed that it met the quality assurance criteria.</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

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
RIS 1 referenced in Question 2.3 above contains information about the size of the potential costs and benefits.	

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?

The policy of this Bill does not impact on New Zealand's international 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?

The policy of this Bill does not impact on the principles of the Treaty of Waitangi.

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

The Attorney-General has been advised that there are no substantive issues in the Bill which limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

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)?

NO

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

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

On 26 February 2015, officials talked through the proposed changes to the Housing Restructuring and Tenancy Matters Act 1992 with the Housing Assistance Reform Feedback Group, who were generally supportive of the proposals.

The Housing Assistance Reform Feedback Group comprises of social housing experts, including provider representatives, sector experts and representatives from Housing New Zealand and Community Housing Aotearoa.

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
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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
The Bill does not affect rights, freedoms, or impose obligations retrospectively. However, the amendment relating to KiwiSaver does commence on 1 April 2015 to allow KiwiSaver members to avail themselves of the benefit of the amendment. This commencement date also aligns with other changes that were made to KiwiSaver that commenced on 1 April 2015.	

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

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
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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
Refer to Appendix One	

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 Four

Powers to make delegated legislation- question 4.8

Clause 8(2) provides that Ministers may create delegated legislation by way of Ministerial Directions if the purpose of the Direction is “to enable flexible purchasing approaches by the agency and to promote social housing outcomes that reflect the diverse needs of tenants and the diverse range of existing social housing providers and potential providers”. Application of the Directions is outlined in clause 9, which provides that the social housing agency (the agency) (currently Ministry of Social Development) may enter into tailored agreements with social housing providers in accordance with a Ministerial Direction.

Clause 8(1) makes some amendments to the existing direction power in section 102(1) of the Housing Restructuring and Tenancy Matters Act 1992, empowering joint Ministers (defined in section 2 of that Act) to give the agency directions setting out the terms and conditions on which the funding by way of payments under reimbursement and tailored agreements must be made available to registered community housing providers and Housing New Zealand.

Ministerial Directions to enter into tailored agreements may be made by the Minister responsible for the agency in consultation with joint Ministers. Directions may be general or specific in nature, and set the parameters by which the agency may enter into tailored agreements with social housing providers.

Ministerial Directions are necessary so that the agency as purchaser of social housing can contract more flexibly with registered community housing providers and Housing New Zealand. The current legislation only provides one mechanism by which the agency can purchase housing places and services from social housing providers. This lack of flexibility has constrained the agency, which has been limited in its ability to negotiate with social housing providers on purchasing arrangements.

Ministerial Directions will enable the agency to have a wider range of purchasing options as well as the flexibility to tailor its contracts with social housing providers to reflect the changing demands for social housing. This will give the agency a new ability to negotiate prices with providers to cover diverse situations, including (but not limited to):

- tenant needs resulting in higher or lower tenancy management costs;
- payment for vacant properties to guarantee a provider’s income stream;
- offers for long term, fixed price tenancies at prices that diverge from market rent but benefit the Crown, the provider and the tenant (e.g. long-term contracts which reduce uncertainty for all parties); and
- lower payments for places where there is little on-going demand.

In general, the agency and social housing providers will be able to contract in ways that respond to market signals, allowing for the development of a responsive and efficient social housing market. This type of negotiation has not been possible under the current legislation.

Ministerial Directions will be notified in the Gazette and drafted by the Ministry of Social Development and the Ministry of Business, Innovation, and Employment. They will also be presented to the House. The Directions may not come into force until at least 28 days after their making.