

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 – Te Tūāpapa Kura Kāinga.

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

1 May 2024.

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Part One: General Policy Statement

The private rental market in New Zealand has continued to grow in recent years, now numbering about 1.7 million renters. Over 80% of renting households rent from the private market. This trend is anticipated to increase, with more people coming to rely on the private rental market for longer and later in life. As demand for the private rental market has increased, supply has not kept pace. As a result, more households are struggling to find suitable accommodation in the private rental market and rent prices have increased.

The Residential Tenancies Act 1986 (the Act) has undergone several changes in recent years, including substantial reforms between 2018 and 2020. This Bill reverses some of the changes previously made to the Act with the aim of removing barriers to rental supply and incentivising property owners to rent their properties via the private rental market. Key examples of such changes included in the Bill are the reinstatement of 90-day no-cause terminations for periodic tenancies, returning landlords' notice period for periodic tenancies to 42 days for certain grounds, and allowing landlords to give notice to end a fixed-term tenancy at the end of the term without providing a specific reason. The Bill also decreases the amount of notice a tenant must give to end a periodic tenancy.

The Bill also introduces a range of changes related to tenants keeping pets in rental properties. Tenants with pets often struggle to find rental properties where pets are accepted. This is partly because some landlords refuse pets based on concerns about the damage pets can cause to rental properties and the difficulties relating to recovering costs from tenants in cases where damage costs exceed the current level of bond. In addition, the Act is silent about tenants keeping pets in rental properties, and this has given rise to a lack of clarity about the enforceability of clauses in tenancy agreements that prohibit pets.

In response to these issues and to incentivise landlords to accept pets in rental properties, the Bill—

- enables landlords to require a pet bond up to a maximum amount equivalent to 2 weeks' rent for the tenancy:
- provides that a tenant may only keep a pet in their rental property if permitted by their tenancy agreement or with the written consent of their landlord:
- provides that landlords must not prohibit pets in tenancy agreements unless they state reasonable grounds for the prohibition and must not impose unreasonable conditions on a tenant keeping a pet:
- provides, in relation to written requests from a tenant to their landlord to keep a pet, that landlords—
 - must respond to a tenant's written request within 21 days, stating whether they approve or refuse the request and any reasonable grounds they attach to a consent:
 - may only refuse a tenant's request to keep a pet on reasonable grounds and must state those grounds:
 - may include other details as part of the consent, for example the type and number of pets consented to:
- provides a list of reasonable grounds on which a landlord can refuse pets, for example due to a body corporate rule that prohibits pets being kept on the premises:
- makes tenants liable for the costs of all damage caused by pets that is not fair wear and tear:
- prescribes new unlawful acts and infringement offences to support compliance with pet-related rights and responsibilities.

The Bill also makes a range of changes to improve the clarity and efficiency of the Act. These changes include—

- clarifying that clauses in tenancy agreements prohibiting smoking inside a rental property are enforceable:
- facilitating the process for tenancy bonds to be lodged online:
- enabling a tenant to utilise family violence withdrawal provisions where their child, or a person who is dependent on them for care, lives at the property and is a victim of family violence:
- enabling some decisions in the Tenancy Tribunal to be made on the papers.

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
Two regulatory impact statements (RISs) were provided: <ul style="list-style-type: none">Residential Tenancies Act tenancy termination amendments, authored by HUD 21/02/2024. This can be accessed from: Proposed changes to the Residential Tenancies Act 1986: Termination of tenancies - Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (hud.govt.nz).Residential Tenancies Act 1986 amendments to introduce pet bonds and address other pet related matters, authored by HUD 21/02/2024. This can be accessed from: Residential Tenancies Act 1986 Amendments: Making it easier for tenants to keep pets - Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (hud.govt.nz)	
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 RIA Team in Treasury did identify the RISs as meeting the threshold for Treasury to provide a member to a joint HUD-Treasury QA panel. Through an administrative error, Treasury were not included on the QA panel.	
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?	YES
There are several minor and technical matters not covered in either RIS, that are proposed in the Bill. This is because the RIA team at Treasury assessed they did not require a RIS. These include the 'no smoking' provision, and other technical provisions such allowing the Tenancy Tribunal to make decisions on the papers.	

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:	
<ul style="list-style-type: none"> • the size of the potential costs and benefits? 	YES
<ul style="list-style-type: none"> • 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 pets RIS finds that overall costs are generally low-medium and overall benefits are medium compared to taking no action (pages 19-21; 29-31). The terminations RIS finds that, depending on the proposal, costs are generally medium or medium-high and overall benefits are low-medium compared to taking no action (pages 27-31).</p> <p>The impact on tenants of the proposed changes to terminations rules is high, due to the negative effect it will have on their security of tenure. Costs on the Regulator and other parties are likely to be low. The benefits for landlords, due to reduced risk and increased certainty around control over when tenancies can be ended, is medium. The benefit for tenants is low-medium or medium, due to possible:</p> <ul style="list-style-type: none"> • increases in rental supply; • less stringent vetting; and • downward pressure on rents. <p>The impact of introducing pet bonds, and a new consent regime will have some low-medium impacts and compliance costs on stakeholders. Landlords, property managers, and community housing providers will need to manage requests for pets and collect pet bonds. Tenants will need to raise extra funds to pay the pet bond, in addition to possible costs of paying for damage caused by pets. The regulator (MBIE) has quantifiable costs in the form of implementing a pet bond system in addition to the current bond system, and also including pet bonds and consent into its investigatory and compliance work.</p> <p>Tenants may experience a high beneficial impact, of having more choice of rental properties where they can keep pets if they wish to. Landlords will be able to refuse pets on reasonable grounds, may require pet bonds and have assurance over tenants' liability for pet related damage.</p>	
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
<ul style="list-style-type: none"> • the level of effective compliance or non-compliance with applicable obligations or standards? 	YES
<ul style="list-style-type: none"> • the nature and level of regulator effort put into encouraging or securing compliance? 	YES
<p>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 primarily self-regulating with tenants and landlords enforcing their rights in the Tenancy Tribunal.</p> <p>There may be an increase in Tenancy Tribunal applications over pet related matters. These could include applications regarding the costs of pet damage, refunds of pet bonds, and whether refusal of consent to keep a pet in a rental property is reasonable under the reasons set out in the Bill. Applications are likely to be higher in the earlier days of the law coming into effect, as the provisions are tested.</p> <p>The changes to terminations rules will not incur any significant regulatory costs. There will likely be a decrease in the number of Tribunal applications relating to the termination of tenancies, as landlords will be able to issue 90 day no-cause termination notices once again. The Regulator also plays a role in enforcing the obligations. The Regulator can take cases on</p>	

behalf of a party, where it is in the public interest to do so. The Regulator can also encourage effective compliance through educating the sector by providing information online, engaging with the sector and responding to public queries.

The pets RIS expects the pets policy will produce largely low-medium or medium administrative or operational costs for MBIE and the Tenancy Tribunal. The terminations policy will produce largely low administrative or operational costs for MBIE and the Tribunal.

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.

Some of the termination related changes will reverse measures taken to improve security of tenure and could be seen as a regressive measure under the ICESCR. However, the ICESCR is not binding because New Zealand has not incorporated the Covenant into domestic legislation.

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 impact of the proposed Bill through a Treaty of Waitangi lens, including discussions with HUD's legal team and Māori policy team. HUD also consulted Te Puni Kōkiri during policy development.

Evidence suggests that the termination related proposals will negatively impact on actual and perceived security of tenure for many tenants compared to the status quo. These negative impacts are likely to disproportionately affect Māori, as Māori are more likely to live in rented accommodation, have a lower overall median income, and are more likely to experience discrimination than the general population.

There is also potential for positive impacts if the changes result in increased rental supply and consequent downward pressure on rents.

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
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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:	
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| <ul style="list-style-type: none">• offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | YES |
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| <ul style="list-style-type: none">• the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | YES |
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The Bill will create the following new unlawful acts:

- A landlord requiring a pet bond greater than the amount permitted, or from a tenant who is not keeping, or doesn't intend to keep a pet.
- A landlord including a prohibition on a tenant keeping a pet in a tenancy agreement

without providing reasonable grounds in the agreement for the prohibition.

- A landlord failing, without reasonable excuse, to provide a written response to a tenant's request for consent to keep a pet within 21 days of receiving the request.
- A landlord refusing consent for a tenant to keep a pet without reasonable grounds.
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- Each of these unlawful acts has a maximum amount of exemplary damages set at \$1,500.
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- The following will also be a new infringement offence:
- A landlord requiring a pet bond greater than the two weeks' rent permitted or from a tenant who is not keeping or does not intend to keep a pet.
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- The fees and fines for the new infringement offence are the same as those already in the RTA for similar infringement offences:
- Maximum fine for landlords who have six or more tenancies and boarding house landlords: \$3,000.
- Maximum fine for all other landlords: \$1,500.
- Fee for landlords who have six or more tenancies and boarding house landlords: \$1,000.
- Fee for all other landlords: \$500.
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- The RTA already provides that it is an unlawful act and infringement offence for a landlord to breach their duties on receipt of bond. The pet bond will be treated the same way. Breaching duties on receipt of pet bond will fall under the existing unlawful act and infringement offence.
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- The Bill will provide that the Tenancy Tribunal has jurisdiction to order the payment of the pet bond where any money owing to the landlord exceeds the general bond.
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- The Bill will give the Tenancy Tribunal the ability to hear matters on the papers, instead of requiring a hearing, where it considers it appropriate to do so, except in cases that involve an application to terminate a tenancy, or a landlord seeking access a property. The Bill also provides the jurisdictional limit for the Tenancy Tribunal is \$100,000 per tenancy for consolidated applications by the Regulator (instead of \$100,000 per application).
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- The RTA already provides that the Tenancy Tribunal does not have jurisdiction to determine disputes over whether a tenant has been a victim of family violence while a tenant of the premises. The Bill extends this to provide the Tenancy Tribunal also does not have jurisdiction to determine whether a person dependent on the tenant has been a victim of family violence whilst residing with the tenant.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted during the policy development process. It broadly supported the provisions and any issues it raised were resolved.

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
3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner has no comments on the proposals in the Cabinet paper, or on the Regulatory Impact Statement.	

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
Public consultation was not undertaken on proposals due to limited timeframes. Stakeholder opinions on many of the termination related changes are well established following public consultation on reforms of the Residential Tenancies Act 1986 in 2018, and submissions to the Residential Tenancies Amendment Bill in 2020 and engagement with stakeholders since then. Stakeholders also provided opinions on pet related matters in public consultation in 2018.	

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
Agency consultation has been undertaken on all stages of policy and Bill development, noting that timeframes for this have been limited. This includes consultation with MBIE, which acts as the Regulator under the Act, and Ministry of Justice which administers the Tenancy Tribunal as part of the court system. HUD also consulted with the Principal and Deputy Principal Tenancy Adjudicators during policy and Bill development.	

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:	
• create or amend a strict or absolute liability offence?	YES
• reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
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.	

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?	YES
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 powers.	

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
The Bill provides that the Bill will commence by Order in Council.	

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?	YES
<p>The Bill will make a consequential amendment to the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022.</p> <p>This will allow the amendment to the primary legislation to come into force without separately making the consequential amendment to the regulations.</p>	