

# Supplementary Departmental Disclosure Statement

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Residential Tenancies Amendment Bill (No 2)
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A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Residential Tenancies Amendment Bill (No 2), dated 9 May 2017, can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2017/258/>.

This supplementary 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.

20 June 2019

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## The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Residential Tenancies Amendment Bill (No 2).

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

### *Changes to the tenant liability provisions of the Bill*

- Tenants will no longer be fully liable for damage where any insurance money that would otherwise have been payable because of the destruction or damage are irrecoverable because of an act or omission of the tenant.
- The Supplementary Order Paper to the Bill now reduces the amount of insurance information to be included in tenancy agreements. For tenancies entered into after the amendments commence, landlords will be required to include in new tenancy agreements:
  - if the premises are uninsured, a statement to that effect; and
  - if the premises are insured, a statement setting out the amount of each relevant excess and informing the tenant that a copy of the policy is available upon request.
- A tenant may request a copy of the relevant insurance policy, or policies, and the landlord must provide it within a reasonable time of that request.
- The Supplementary Order Paper includes a transitional provision which disapplies the application of the insurance disclosure requirements for Housing New Zealand and registered Community Housing Providers for the duration of certain leases, because the lessees will not be able to comply.

### *Changes to the contaminant provisions of the Bill*

- The Bill no longer refers to methamphetamine contamination but to contaminants more generally. This was a change made at Select Committee in response to submissions received.
- The Supplementary Order Paper creates new landlord obligations to:
  - comply with all requirements imposed on the landlord by regulations;
  - not provide or continue to provide premises to a tenant if the landlord knows that tests carried out in accordance with prescribed methods

have established that the premises are contaminated, and the premises have not been, or are not being, decontaminated in accordance with the relevant prescribed decontamination process; and

- The Bill now ensures that where a landlord has complied with the relevant contaminant regulations, they will not be liable in respect of not having provided clean or habitable premises to the tenant on the basis of the presence of the contaminant in the premises.
- The Bill now contains a specific right of entry for non-boarding house landlords for the purpose of undertaking decontamination work; the landlord must give the tenant 24 hours' notice and enter between 8 am and 7 pm.
- The Bill now clarifies that, following the making of relevant regulations, premises which are highly contaminated will be treated as being uninhabitable, meaning shorter termination notice periods will apply where the premises are highly contaminated.
- The Bill has been amended through the Supplementary Order Paper to now allow for:
  - the prescribing of levels at which premises become contaminated and different testing methods and decontamination processes for different level of contamination;
  - instances where remote and/or confined parts of a property are able to be decontaminated without terminating the tenancy, because it is still safe for the tenant to inhabit the main part of the property;
  - the highest level of contamination found through prescribed testing, to be the reference level for the property;
  - landlords to deal with contaminated goods without disposing of them.

## Part One: General Policy Statement

The Bill amends the Residential Tenancies Act 1986 in order to address issues relating to -

- tenant liability for damage to rental properties; and
- unlawful residential premises; and
- contamination of rental properties.

The original Departmental Disclosure Statement can be found here: <http://disclosure.legislation.govt.nz/bill/government/2017/258/>.

### Tenant liability for damage to rental properties

Please refer to the original Departmental Disclosure Statement for the Residential Tenancies Amendment Bill (No 2).

The main change from the initial general policy statement is that tenants will no longer be fully liable for damage where insurance money that would have been payable in respect of the damage is irrecoverable because of the tenant's act or omission.

### Unlawful residential premises

Please refer to the original Departmental Disclosure Statement for the Residential Tenancies Amendment Bill (No 2).

### Contamination of rental properties

The main change from the original disclosure statement is that the third group of amendments now no longer refer to methamphetamine contamination specifically but to contaminants generally, in order to contemplate a future need to address other potentially toxic substances in rental properties. The changes mean that the regulations under the Bill will be able to identify substances as contaminants for the purposes of this Bill. It is expected that the first set of regulations to be made under the Bill will relate to methamphetamine contamination of rental properties.

The Bill has changed to now allow for:

- different processes in regards to testing, decontamination etc. for different levels of decontamination;
- the Bill clarifies that, following the making of relevant regulations, premises which are highly contaminated will be treated as being uninhabitable, meaning shorter termination notice periods will apply where the premises are highly contaminated;
- instances where remote and/or confined parts of a property are able to be decontaminated without terminating the tenancy, because it is still safe for the tenant to inhabit the main part of the property;
- the highest level of contamination found through prescribed testing, to be the reference level for the property;
- landlords to deal with contaminated goods without disposing of them.

The Bill also creates new landlord obligations to:

- comply with all requirements imposed on the landlord by regulations;
- not provide or continue to provide premises to a tenant if the landlord knows that tests carried out in accordance with prescribed methods have established that

the premises are contaminated, and the premises have not been, or are not being, decontaminated in accordance with the relevant prescribed decontamination process; and

- not commence a new tenancy, where a premises is contaminated, until the premises have been decontaminated.

Breaching any of these obligations is an unlawful act with a maximum level of exemplary damages of \$4,000.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>
N/A	

### Relevant international treaties

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

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
N/A	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>A further impact assessment was completed, <i>Impact Summary: Residential Tenancies Amendment Bill (No 2) Supplementary Order Paper</i>.</p> <p>This will be published on the Treasury and Ministry of Housing and Urban Development websites once the Supplementary Order Paper has been released.</p> <p>Please refer to the original Departmental Disclosure Statement which lists the Regulatory Impact Assessments on tenant liability for damage, unlawful residential premises and methamphetamine contamination of rental properties.</p>	

<b>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?</b>	<b>NO</b>
The Regulatory Impact Summary 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.	

<b>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?</b>	<b>NO</b>
N/A	

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
N/A	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
N/A	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
N/A	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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The Supplementary Order Paper to the Bill makes changes to New Zealand's 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) Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child, to which this legislation has a particularly important effect due to the positive impacts on the health and wellbeing of children in low-income families.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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Te Puni Kōkiri was consulted on the Supplementary Order Paper to the Bill. Their comments did not indicate that any of the proposals in the Supplementary Order Paper to the Residential Tenancies Amendment Bill (No 2) are inconsistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	
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	<b>YES</b>
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See original Disclosure Statement.
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Supplementary Order Paper to the Bill creates the following new unlawful acts in the Residential Tenancies Act 1986:</p> <ul style="list-style-type: none"> <li>• a landlord not complying with all requirements imposed on the landlord by regulations, for which the maximum level of damages is \$4,000;</li> <li>• a landlord providing, or continuing to provide premises to a tenant if the landlord knows that tests carried out in accordance with prescribed methods have established that the premises are contaminated, and the premises have not been, or are not being, decontaminated in accordance with the relevant prescribed decontamination process, for which the maximum level of damages is \$4,000</li> <li>• failure by a landlord to comply with any of the landlord insurance disclosure requirements, for which the maximum level of damages is \$500. These now include: <ul style="list-style-type: none"> <li>○ if the premises are uninsured, the landlord must include a statement to that effect in new tenancy agreements; and</li> <li>○ if the premises are insured, the landlord must include a statement setting out, for each insurance policy relevant to the tenant's damage liability, the amount of each excess relevant (if any) to that liability; and informing the tenant that a copy of the policy is available to the tenant on request (unless the landlord has already provided the insurance policy) in new tenancy agreements;</li> <li>○ a landlord must provide a tenant who requests it with a copy of the relevant insurance policy (or policies), within a reasonable time. Where this information changes, the landlord will be required to provide the tenant with updated insurance information, or a statement that the premises are no longer insured, within a reasonable time.</li> </ul> </li> </ul>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted on the Supplementary Order Paper to the Bill. They did not have any concerns on the proposals in the Bill.	

## Privacy issues

<b>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?</b>	<b>NO</b>
N/A	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
N/A	

## External consultation

<b>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?</b>	<b>YES</b>
<p>A public consultation process was undertaken while the Bill was being considered by the Governance and Administration Committee in 2017. The Committee received 32 written submissions on the Bill and heard 15 oral submissions in Wellington and Auckland. Submissions were received from various groups and individuals including landlords, tenant advocacy groups, property managers and community groups. The Insurance Council of New Zealand, Hawke's Bay District Health Board, Auckland Regional Public Health Service, Auckland District Law Society, two student associations and four charities also submitted on the Bill. Officials prepared a departmental report in response to the submissions received which can be found here: <a href="https://www.parliament.nz/resource/en-NZ/52SCGA_ADV_74126_493/5835e59d0bdd6dfbad6f19310aa89eb0b4f8592f">https://www.parliament.nz/resource/en-NZ/52SCGA_ADV_74126_493/5835e59d0bdd6dfbad6f19310aa89eb0b4f8592f</a></p> <p>The Principal Tenancy Adjudicator was consulted on the Supplementary Order Paper.</p> <p>No other external consultation was undertaken with other stakeholders on the proposals.</p>	

## Other testing of proposals

<b>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?</b>	<b>NO</b>
N/A	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
N/A	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
N/A	

### Retrospective effect

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

### Strict liability or reversal of the burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
N/A	

### Civil or criminal immunity

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

### Significant decision-making powers

<b>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?</b>	<b>NO</b>
Please refer to the original Departmental Disclosure Statement on the Bill.	

## Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
Clause 138C of the Bill creates a regulation-making power to make regulations prescribing substances, or classes of substances, as contaminants for the purposes of the Bill.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
Clause 138C of the Bill creates a regulation-making power to: <ul style="list-style-type: none"><li>• prescribe maximum acceptable levels, or a means of calculating maximum acceptable levels, of contaminants in a premises for the purposes of the definition of contaminated;</li><li>• prescribe maximum inhabitable levels of contaminants</li><li>• impose on landlords requirements in respect of contaminants</li><li>• prescribe methods for testing</li><li>• prescribe decontamination processes</li><li>• prescribe rules processes and duties for how to deal with abandoned goods on contaminated premises.</li></ul>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
N/A	