

# Supplementary Departmental Disclosure Statement

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Residential Tenancies Amendment Bill
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This disclosure statement applies to the Supplementary Order Paper (SOP) for the Residential Tenancies Amendment Bill 2020 (the Bill). The SOP adds the following changes to the Bill:

1. bringing forward the commencement date for provisions limiting rent increases to once within a 12-month period;
2. providing a new pathway for terminating a tenancy where the tenant has physically assaulted the landlord/owner, a member of the landlord or owner's family, or an agent of the landlord;
3. allowing victims of family violence to exit a tenancy at short notice without incurring future rent-related liabilities; and
4. extending the temporary provisions in the COVID-19 legislation, which provide the Tenancy Tribunal with operational flexibility, by a further six months after 25 September 2020.

The disclosure statement for the original Bill can be found at this link:

<http://disclosure.legislation.govt.nz/bill/government/2020/218/>

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.

30 July 2020

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## The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement pertaining to the supplementary order paper (SOP) for the Residential Tenancies Amendment Bill 2020 (the Bill).

A supplementary disclosure statement supplements the original disclosure statement for a Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill.

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

### **Commencement date changes**

The following provisions come into force the day after Royal assent: the exemption relating to transitional and emergency housing, and restrictions on rent increases to no more than once every 12 months. The transitional provisions provide that while rent increase notices must comply with the new 12 month rule from the day after Royal assent, no rent increases can occur until 26 September 2020, when the COVID-19 prohibition on rent increases lifts.

The Supplementary Order paper stipulates that provisions relating to family violence withdrawals and physical assault termination notices come into force by Order in Council, or 12 months after Royal assent. This is to allow time for associated regulations to be developed and promulgated.

The remaining provisions in the Bill come into force six months after the date of Royal assent

### **Termination of tenancy where physical assault has occurred**

The Residential Tenancies Act (RTA) currently has provision under section 55 for landlords to apply to the Tenancy Tribunal (the Tribunal) for a termination order in a range of circumstances, including if a tenant has assaulted (or threatened to assault) the landlord/owner, a family member of the landlord/owner, or an agent of the landlord (amongst other categories of person).

The SOP includes a further provision which allows landlords to issue a termination notice where the tenant has committed a physical assault on either the landlord or relevant party (i.e. owner, a family member of the landlord or owner, or an agent of the landlord). The notice has a minimum period of 14 days and needs to be accompanied by evidence of a Police charge having been laid.

A landlord would not need to apply to the Tribunal to serve this notice. However, the tenant would have the right to challenge the notice in the Tribunal if they dispute the alleged assault occurred. If they lodge an application with the Tenancy Tribunal within the 14 day notice period, the notice is of no effect until the Tribunal has heard the matter.

### **Withdrawal of a tenant experiencing family violence**

The SOP also includes provisions for reducing the financial impact on a tenant needing to exit a tenancy at urgently because of family violence. A victim of family violence in a tenancy will be able to serve a family violence withdrawal notice on a landlord. Rather than give 21 days' notice (extended to 28 days in the Bill) or break a fixed term tenancy, the victim need only give two days' notice in order to withdraw from the tenancy.

To help ensure that this provision is used only in genuine circumstances, the notice will need to be served with acceptable evidence. The forms of evidence supporting this notice will be prescribed in regulations. However, it could include Family Court documentation (e.g. a protection order) or a declaration from a refuge worker.

The SOP makes provision for protecting the privacy of parties to a family violence withdrawal notice in terms of making disclosure of the notice an unlawful act (with maximum exemplary damages of \$3,000). Automatic name suppression, private hearings and giving evidence remotely are also available in relation to Tenancy Tribunal hearings involving this type of notice.

To minimise the financial impact of any tenants remaining in the tenancy, a rent reduction formula will apply to them for a period of two weeks to provide some time to select another tenant. The SOP also makes provision for regulations allowing housing providers to apply their own rent reassessment policies to tenants remaining after a family violence termination notice has been served.

### **Extension of Tenancy Tribunal provisions**

The COVID-19 Response (Urgent Management Measures) Legislation Act 2020 provided the Tenancy Tribunal with the ability to hold its proceedings as it sees fit, including by telephone or video conference, or on the papers.

The provisions were due to expire on 25 September 2020. The Tribunal has been finding these provisions useful to reschedule hearings that were adjourned due to COVID-19 and reduce overall waiting times. The SOP extends these provisions for a further six months, until 25 March 2021.

## Part One: General Policy Statement

The SOP addresses issues relating to:

- the application of the 12 month minimum period for rent increases following the lifting of COVID-19 rent increase restrictions on 26 September 2020;
- termination grounds for physical assaults on landlords and relevant parties;
- the exit from tenancies at short notice by victims of family violence; and
- the temporary provisions in the COVID-19 legislation, which provide the Tenancy Tribunal with operational flexibility

The original Departmental Disclosure Statement can be found here:

<http://disclosure.legislation.govt.nz/bill/government/2020/218/>.

### **Commencement date for the 12 month minimum period for rent increases**

Please refer to the original Departmental Disclosure Statement for the Residential Tenancies Amendment Bill.

The change from the original Statement is that the provisions for restricting rent increases to no more than once every 12 months will commence on the day after Royal assent. Rent increases can take effect from 26 September 2020, when the rent increase freeze lifts.

### **Termination grounds for physical assault on landlords and relevant parties**

These are new provisions which allow a landlord to terminate a tenancy at a minimum of 14 days' notice to the tenant on grounds of assault, without needing to apply to the Tenancy Tribunal. The SOP also includes regulation-making powers for prescribing the type of information to be included in a notice as evidence of the charge laid in respect of the physical assault, and the persons or classes of people who can make a declaration as evidence of this.

### **Withdrawal of a tenant because of family violence**

These are new provisions which allow a tenant to withdraw from a tenancy at a minimum of 2 days' notice due to family violence. The SOP also includes regulation-making powers for:

- circumstances under which a family violence withdrawal notice and associated evidence may be disclosed
- information to be included on a family violence withdrawal notice to landlords and remaining co-tenants
- the type of information to be included in a notice as evidence of family violence
- the persons or classes of people who can make a declaration as evidence of family violence
- excluding some classes of landlords from the rent reduction formula associated for remaining co-tenants after a family violence withdrawal notice has been served

The SOP also defines the unauthorised disclosure of a family violence withdrawal notice to be an unlawful act with maximum exemplary damages of \$3,000.

### **Extending Tenancy Tribunal flexible operations**

This is a new provision which extends temporary measures brought in under the COVID-19 Response (Urgent Management Measures) Legislation Act 2020. The Tenancy

Tribunal can hold its proceedings as it sees fit, including by telephone or video conference, or on the papers.

The provisions were due to expire on 25 September 2020. The SOP extends these provisions for a further six months, until 25 March 2021.

## 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>Two further impact assessments were completed:</p> <p><i>Impact Summary: Residential Tenancies Amendment Bill Supplementary Order Paper [victims of family violence]</i></p> <p><i>Impact Summary: Termination of tenancy for assault on landlord</i></p> <p>These 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 provides the Regulatory Impact Assessments on improving fairness in the Act (security of tenure and enforcement) and on minor fittings, rent setting, and access to justice.</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 Summaries 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>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>For the termination grounds for physical assaults on landlords and relevant parties, the costs and benefits to landlords are likely to be low, while the potential costs to tenants are likely to be high.</p> <p>For the provisions relating to family violence withdrawal provisions, the financial costs to landlords and financial benefits to tenants are likely to be low. However, in the event where a tenant departs a tenancy earlier than would otherwise be the case because of this policy, the safety benefits are likely to be high.</p>	

<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>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
<p>Landlords could insist that a tenant serving a family violence withdrawal notice keep paying rent, and not refund rent paid beyond the two day notice period. They could also not notify or refuse to apply the rent reduction formula for any co-tenants remaining after a family violence withdrawal notice had been served. These matters would need to be resolved via the Tenancy Tribunal.</p>	

## 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 Supplementary Order Paper to the Bill makes changes to New Zealand's domestic residential rental market, however, the amendment is consistent with the right to enjoy adequate housing.

### 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?**

Te Puni Kōkiri was consulted on the SOP. Their comments did not indicate that any of the proposals in the Supplementary Order Paper are inconsistent with 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

See original Disclosure Statement.

### 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

The Supplementary Order Paper to the Bill creates the following new unlawful act in the Residential Tenancies Act 1986:

Disclosing notice of withdrawal or accompanying qualifying evidence of family violence, for which the maximum level of exemplary damages is \$3,000

The Supplementary Order Paper amends the Tenancy Tribunal's jurisdiction in respect of a family violence withdrawal notice. If a landlord challenges a notice in the Tenancy Tribunal, the Tribunal is only required to rule on whether the formal requirements of the notice were observed. A declaration made by a competent person may only be reviewed by the Tenancy Tribunal to assess whether the requirements of the declaration have been met and not to look into the evidence or justification that family violence has occurred.

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

YES

The Ministry of Justice was consulted on the Supplementary Order Paper to the Bill. They did not have any concerns about these provisions in the Supplementary Order Paper.

## 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>YES</b>
Requires a victim of family violence to provide evidence of family violence to a landlord. Unauthorised disclosure of this information by the landlord or anyone making a declaration as evidence of family violence, has been defined in the SOP as an unlawful act.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
However, this issue was raised with the Ministry of Justice who advised on, and supported, the privacy provisions for victims of family violence both in terms of making disclosure an unlawful act, and in relation to a range of special provisions (e.g. private hearings, automatic name suppression) that apply where the Tenancy Tribunal hears an application involving a family violence withdrawal notice.	

## 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>NO</b>
While the policy in the Supplementary Order Paper was not made publicly available for feedback, limited consultation on the family violence proposal was undertaken with the following submitters on the Bill: the National Collective of Independent Women's Refuges, the New Zealand Property Investors Federation, and Community Law Centres o Aotearoa.	
The Principal Tenancy Adjudicator was consulted on the proposals in the Supplementary Order Paper.	

## 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>Yes</b>
Consultation occurred across a broad range of government departments including the Ministry of Justice, Ministry of Social Development, the Joint Venture Business Unit, Ministry of Business, Innovation and Employment, the Police, Te Puni Kōkiri, Ministry of Defence, Ministry of Education, Kāinga Ora-Homes and Communities, Ministry for Pacific Peoples, Ministry for Women, Oranga Tamariki, Land Information New Zealand, the Treasury and the Department of the Prime Minister and Cabinet.	

## 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>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The SOP has the following regulation making powers:</p> <p>138E Regulations relating to termination of tenancy for physical assault by tenant, which allows regulations for:</p> <ul style="list-style-type: none"> <li>• information to be included in the notice to a tenant</li> <li>• the persons, or kinds or classes of persons, whose declarations are qualifying evidence for the purposes of serving this notice.</li> </ul> <p>138F Regulations relating to withdrawal from tenancy following family violence, which allows regulations for:</p> <ul style="list-style-type: none"> <li>• information to be included in a notice to a landlord and any remaining co-tenants</li> <li>• persons, or kinds or classes of persons, whose declarations are qualifying evidence for this notice</li> <li>• types of evidence that can be used for the notice</li> <li>• kinds and classes of tenancies and landlords that are excluded from the rent reduction formula for tenants remaining after a family violence withdrawal notice has been served</li> <li>• types of permitted disclosure or circumstance when disclosure of the withdrawal notice and accompanying evidence are permitted.</li> </ul>	

## Provisions that are unusual or call for special comment

<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	