

Appendix A

Regulatory Impact Statement In Confidence

Housing Restructuring and Tenancy Matters Act 1992 – Proposed Amendments

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by Housing New Zealand Corporation (the Corporation).
- 2 It provides an analysis of options to: address inconsistencies in rent setting between state house tenants; gather better information about tenants and applicants to deter and detect fraud; improve the collection of Crown debt; and to support the introduction of reviewable tenancies.
- 3 The options, risks, costs, and benefits of various options have been considered. For each issue, there is no non-regulatory option except to maintain the status quo. The problems can be addressed only by a new or changed legislative setting.
- 4 The policy options in this paper will not impair private property rights, market competition, or the incentives on businesses to innovate and invest. The proposals regarding information gathering and deduction notices for debt collection will be implemented in consultation with employers to minimise additional costs to businesses. The options do not override fundamental common law principles.


Signature of person

Date 13 April 2011

Lisa Tipping – General Manager, Governance and Assurance

Status quo and problem definition

- 5 The Housing Restructuring and Tenancy Matters Act 1992 is the principal legislation under which the Corporation delivers state housing assistance. The HRTMA was revised and expanded in 2000 with the reintroduction of income-related rents (IRR). The HRTMA is complex and prescriptive.
- 6 IRR is a financial benefit conferred on about 61,000 state house tenants. The Corporation received just under \$530 million from the Crown in 2009/2010 for the difference between market rents and IRR received from these tenants. The remaining 4,800 state house tenants pay a market rent.
- 7 State housing is a limited resource and the unmet demand for state housing remains strong, as demonstrated by the 3,851 priority applicants on the Corporation's confirmed national waiting list as at 28 February 2011.
- 8 Since 2000, the operating environment for delivering state housing has changed. Demand pressures on the state housing stock, together with the need to achieve greater efficiency from housing assistance, drive the search for service delivery improvements.
- 9 The proposed amendments also support recent Cabinet decisions about the future direction of state housing, and has interdependencies with other initiatives under the Social Housing Reform Programme (SHRP): the high level policy framework for reviewable tenancies; the development of incentives to independence; and the review of the Social Allocation System.
- 10 Technical proposals on rent notice, other information gathering powers and sanctions, and to issue deduction notices for Crown debt, are also included in the Bill, as these are small but important steps in making the Corporation more efficient.

Proposed amendments

Information gathering

- 11 The Corporation is constrained in its ability to detect, deter, and investigate fraud and inappropriate assistance, because of its limited authority to gather information.
- 12 The proposed amendments to the HRTMA will give the Corporation additional legal authority to request or compel information from all prospective and existing tenants and other parties, and to establish appropriate offences and penalties for not supplying information or supplying false information.

Notice of IRR increases

- 13 The Residential Tenancies Act 1986 (RTA) requires 60 days notice of any rent increase, and prevents any increases within 180 days of the last increase.
- 14 It is proposed that the Corporation should not have to comply with the RTA notice requirements. A Corporation house has both a market rent (reflecting its location, condition and size) and an income-related rent (reflecting tenant's income and family situation). IRR increases are akin to adjustments to benefit entitlements, rather than the market-related rent increases regulated by the RTA.
- 15 Currently, the notice period starts once a tenant tells the Corporation, not from the date of the change of circumstances. This creates inequities between tenants and imposes unnecessary costs on tenants and the Crown and penalises tenants who

quickly inform the Corporation, and results in lags if circumstances change frequently.

- 16 It is proposed that the HRTMA be amended so that an IRR increase takes effect 61 days after the change, regardless of when the Corporation is notified.

Crown debt collection

- 17 The Corporation has limited ability to collect IRR debt owed to the Crown. The proposed amendments would give the Corporation the legislative authority to issue deduction notices to recover Crown debt.

Extension of section 61 of the HRTMA to apply to existing tenants

- 18 Under s.61 of the HRTMA, the Corporation is exempt from some clauses of the Human Rights Act 1993. This allows the Corporation to treat people differently on the basis of relationship status, disability or absence of disability, age, and/or family status, when assessing and allocating housing to *prospective* tenants. However, this exemption does not apply to *existing* tenants.
- 19 The proposed amendments would extend the Corporation's exemption from the Human Rights Act discrimination clauses to cover existing tenants. The extension would require the addition of the words "and existing tenants" to both s.61(2)(a) and (b) of the HRTMA.

Policy objectives

Overarching objective

- 20 The overarching policy objective of the proposed amendments to the HRTMA is the efficient and effective provision of state housing for those most in need, for their time of need, using the right products and services. The changes will protect the integrity of the state housing system against abuse so that there is trust and confidence in how the Corporation administers state housing.
- 21 The proposals have important interdependencies with other initiatives under way as part of the Social Housing Reform Programme. In particular, the policy framework for reviewable tenancies, Development of Incentives to Independence and the Review of the Social Allocation System.

Contributing objectives

- 22 Other policy objectives contributing to the proposed amendments include:
- improved delivery and targeting of state housing assistance to meet current housing need and financial circumstances
 - protecting the integrity of the state housing system against abuse and improving trust and confidence in the Corporation
 - increased recovery of debt
 - greater consistency and certainty in the provisions of the HRTMA.

Policy options

- 23 The main policy options to meet the objectives are either through voluntary compliance and the Corporation's administrative processes, or by amending the HRTMA.

Information gathering

- 24 Currently, the supply of certain information by tenants is voluntary. The Corporation cannot independently verify this information. The continuation of this arrangement will not achieve the desired policy objectives.
- 25 The Corporation needs the ability to gather accurate information, a change that can only be authorised by legislation.

IRR increase notices

- 26 The notice periods for increased IRR are set out under the HRTMA. Administrative changes cannot remove the anomalies around the way IRR is set. Therefore, a legislative change is required to achieve the policy objective.

Crown debt collection

- 27 The status quo in regard to Crown IRR subsidy debt collection from tenants will not achieve the desired objectives because pursuing debt through the courts is a costly process that makes collection of smaller debts infeasible.

Extend section 61 of the HRTMA to existing tenants

- 28 Under s.61 of the HRTMA, the Corporation is exempt from some clauses of the Human Rights Act 1993. This allows the Corporation to treat people differently on the basis of relationship status, disability or absence of disability, age, and/or family status, when assessing and allocating housing to *prospective* tenants. However, this exemption does not apply to *existing* tenants.
- 29 From July 2011 reviewable tenancies will be introduced for new state house tenants. However, the Corporation currently has no legislative certainty that it will be able to reassess the needs and allocate housing to these tenants in the same way it does for prospective tenants. The only way to provide this certainty is through legislative change.

Specific issues and policy options

Issue 1 – Information gathering

Current situation and problem

- 30 The Corporation cannot compel the supply of information needed to more effectively manage housing and to reduce dishonesty and fraud. It also has limited power to penalise those who refuse to supply information, or who supply false information.
- 31 While the types of dishonesty and fraud cases are similar, the Corporation does not have the same legislative authority as MSD or other equivalent agencies.
- 32 There are no specified housing fraud or dishonesty-related offences on which the Corporation can base legally mandated administrative action. The Corporation also lacks substantive legal powers to require the supply of relevant information about potential offences. This contrasts with the legal powers of agencies with comparable responsibilities, such as MSD and the Accident Compensation Corporation.
- 33 Furthermore, while the Corporation has clear authority to request tenants who pay an IRR to disclose relevant information (although it cannot compel them to) it is unclear whether this power extends to all tenants paying a market rent.

- 34 As a result, the Corporation is unable to efficiently safeguard and administer the provision of IRR, or to efficiently obtain information that may indicate tenancy fraud. In addition, the Corporation is unable to identify those market renters who are entitled to IRR, or who are able to support a tenancy in the private market or access home ownership.
- 35 False or misleading representations, mistakes, or non-disclosures by clients may lead the Corporation to:
- provide state housing to people who are not eligible
 - charge incorrect IRR
 - continue to provide IRR to tenants who no longer require assistance
 - charging market rents to some tenants who are eligible for IRR.

Objectives

- 36 The objective is for the Corporation to be able to:
- obtain information from all state housing tenants, including those who pay market rents
 - compel prospective and existing tenants and other parties to provide requested information
 - apply penalties for non-supply or the supply of false information
 - extend the circumstances under which an investigation can be carried out, and individuals or agencies can be asked for information
 - impose appropriate sanctions for the abuse of state housing assistance to complement options of tenancy termination or court action.

Options

- 37 Option 1 (status quo): Voluntary disclosure of information that the Corporation has no means to verify. Court action will continue to be used to establish fraud and obtain remedies.
- 38 Option 2: HRTMA amended to give the Corporation legal authority to require tenants to supply certain information, including income information from market renters. This option would also require amendments to the HRTMA to:
- establish appropriate housing assistance dishonesty and fraud offences and penalties
 - provide authorities for the Corporation to obtain information
 - establish offences and penalties for non-supply or the supply of false information on income, assets, and relationships
 - set out the need and principles for using the above powers.

Preferred option

- 39 Option 2 above.

Alternative option

- 40 The status quo option will not achieve the desired levels of disclosure, detection, or deterrence.

Risks

- 41 The information gathering powers sought need to balance responsible use of taxpayer funds against tenant needs and the right to due legal process. The proposed legislative change would provide for the development and implementation of protocols to ensure that the Corporation uses its powers responsibly and fairly. One such protocol would be a new Code of Conduct for Obtaining Information.

Costs and benefits of preferred option

Government

Benefit	Cost
<ul style="list-style-type: none"> Fiscal savings through IRR subsidy savings Reduced housing assistance fraud and abuse 	<ul style="list-style-type: none"> Market renters exiting state housing will be replaced with tenants subsidised through income-related rent Increased Accommodation Supplement payments to tenants moving from state to private housing

Sector: Corporation, clients, housing sector

Benefit	Cost
<ul style="list-style-type: none"> Better utilisation of housing stock Improved quality assurance of IRR levels Improved compliance 	<ul style="list-style-type: none"> Increased administrative costs Costs to client of complying with information requirements

Society

Benefit	Cost
<ul style="list-style-type: none"> Increased assurance about the quality of state housing services and taxpayer funds Improved needs-based access to state housing Perceived fairness of state housing allocation 	<ul style="list-style-type: none"> Cost to those other than tenants who are asked to provide information

Results and evaluation

- 42 Results will be apparent soon after implementation, measured through increases in cases investigated and resolved, property recovered and debt established.

Implementation

- 43 The new legislative authority will enable the Corporation's Investigation Unit to streamline and reorganise work to achieve efficiencies in its existing business. A Code of Conduct for Obtaining Information will be developed as a key mechanism for ensuring the fairness of all investigative work.

Issue 2 – Notice of IRR increases

Current situation and problem

- 44 The HRTMA requires tenants to promptly notify the Corporation of a change in circumstances. Many tenants delay advising the Corporation or wait for the Corporation to discover the change, while others report the change promptly.
- 45 When it becomes aware of a change in a tenant's circumstances, the Corporation reassesses the IRR payable and, where appropriate, issues the tenant with a rent increase notice.
- 46 The HRTMA states that notice of an IRR rent increase must be issued in accordance with section 24 of the RTA, which requires 60 days notice of an increase and cannot be within 180 days of the commencement of the tenancy or a previous rent increase.
- 47 If a tenant delays telling the Corporation of a change in circumstances, the RTA requirement increases the amount of debt that accumulates before the tenant begins paying the revised IRR.

Objectives

- 48 The objectives are to:
- ensure that all tenants are paying an IRR that accurately reflects their circumstances
 - set a clear and standard notice period for increased IRR payments
 - reduce the debt burden on tenants for underpaid IRR.

Options

- 49 Option 1 (status quo): the status quo will result in time lags in setting or changing IRR, resulting in IRR levels that do not reflect a tenant's circumstances and imposing unnecessary costs on both tenants and the Government.
- 50 Option 2: Amend HRTMA to give the Corporation legislative authority to apply a standard start date for all IRR increases that result from a change of circumstance that increase a tenant's income. The standard start date would be 61 days after the change of circumstance occurred; and to enable increases in a tenant's IRR within 180 days of entering the tenancy, or their last IRR increase.

Preferred option

- 51 Option 2 above

Alternative option

- 52 The status quo option will not achieve the desired objectives because notice periods cannot be changed without legislative change.

Risks

- 53 There is a risk that the Corporation may be perceived as receiving preferential status for increasing rents. Any communications will need to emphasise that IRR is simply the tenant's contribution to overall total rent, and that this total rent remains unchanged.

Costs and benefits of preferred option

Government

Benefit	Cost
<ul style="list-style-type: none">Fiscal savings through earlier increases to IRR	None identified

Sector: Corporation, clients, housing sector

Benefit	Cost
<ul style="list-style-type: none">Increased incentive for clients to report change of circumstance in a timely mannerGreater clarity for clients about the rent arrangement and responsibilities	

Society

Benefit	Cost
<ul style="list-style-type: none">Better assurance about value obtained for taxpayers' money	None identified

Results and evaluation

- 54 It is expected that the results of the changes will be identifiable soon after implementation.

Implementation

- 55 As at present, tenants will be able to seek a review of their new IRR and appeal decisions through the State Housing Appeals Authority.

Issue 3 – Crown debt collection

Current situation and problem

- 56 The Corporation has three types of debt owed by tenants:
- IRR debt owed to the Crown (tenants who received more IRR than entitled to)
 - rent debt owed to the Corporation
 - damages debt owed to the Corporation.
- 57 The first step for the Corporation in recovering any debt is to attempt to set up a repayment arrangement with the tenant.
- 58 In the case of rent arrears or damages debt, the Corporation can seek a Tenancy Tribunal Order confirming that the tenant has responsibility for the debt and the amount of the debt. If this does not result in payment, the collection of debt can be enforced through the District Court.

- 59 IRR debt owed to the Crown cannot be recovered through the Tenancy Tribunal. If an arrangement for repayment cannot be made the Corporation refers the debt to Baycorp. Baycorp visits the tenant but cannot collect IRR debt owed to the Crown. If no arrangement is made, the Corporation will decide if legal action is appropriate to recover the debt. This decision is based on the circumstances of the debt being incurred, and whether the size of the debt justifies the cost of taking legal action.
- 60 IRR Crown debt accounts for about 84 percent of all tenant debt, and totals \$24.13 million. There are 5,534 current or previous tenants with IRR debt, and 2,657 of these tenants are not repaying the debt in accordance with their repayment arrangement, or no payment arrangement has been set up. This equates to \$15.192m (63 percent) of Crown IRR debt that is not being collected.
- 61 Agencies such as the MSD and IRD have the legislative ability to issue a deduction order to recover debt owed to the Crown. Debt is recovered directly from an individual's earnings or benefit. Legislation provides a "debt safety net" to ensure the state does not collect more money than an individual can reasonably afford to pay - the Protected Earnings Rate (PER)⁵.
- 62 If government agencies collectively seek to recover debt in excess of a person's PER, then a combination of statutes together provide a debt prioritisation order. This order decides which agency's recover rate will be reduced.
- 63 Housing debt by way of Tenancy Tribunal Orders is the lowest rank priority and IRR debt owed to the Crown is not listed in the prioritisation order.
- 64 In addition, there is a discrepancy between s.43 and s.60 of the HRTMA. S.43(1)(b) states the Corporation can calculate an IRR if it is satisfied it has the information reasonably needed and that this information is accurate. S.60 states, however, that the Corporation needs reasonable grounds to establish a Crown debt.

Objectives

- 65 The objective is to ensure increased recovery of IRR debt from tenants.

Options

- 66 Option 1 (status quo): The Corporation would need to take legal action to recover much IRR debt.
- 67 Option 2: Amend the HRTMA to provide the Corporation with the legislative authority to issue deduction notices for recovery of debt.
- 68 For purposes of consistency it is proposed that s.43(1)(b) of the HRTMA is amended to replace "satisfied" with "reasonable grounds to believe".

Preferred option

- 69 Option 2 above.

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⁵ PER varies between Acts. The Social Security Act 1964 and the Child Support Act 1991 uses a set PER. The PER ensures that the repayments of debts under these Acts do not reduce an individual's income so they would receive less than 60% of net income. The Summary Proceeding Act 1957 requires the (Deputy) Registrar of the court to individually set a PER for each defendant based on their ability to pay.

Alternative option

- 70 The status quo will not achieve the desired objectives because pursuing debt through the courts is costly and makes the collection of smaller debts infeasible.

Risks

- 71 Collection of debt via a deduction order will need to comply with existing legislation to ensure the debt collection does not exceed an individual's PER.

Costs and benefits of preferred option

Government

Benefit	Cost
<ul style="list-style-type: none">Fiscal savings from increased Crown IRR debt recovery	<ul style="list-style-type: none">Administrative costs of implementing deduction order

Sector: Corporation, clients, housing sector

Benefit	Cost
<ul style="list-style-type: none">Improved tool for recovering IRR debtConsistency when establishing debt	<ul style="list-style-type: none">Some additional compliance and enforcement costs

Society

Benefit	Cost
<ul style="list-style-type: none">Greater value-for-money for taxpayers	<ul style="list-style-type: none">None identified

Results and evaluation

- 72 It is expected that the results of the changes will be identifiable soon after implementation.

Implementation

- 73 Deduction notices can be issued as soon as legislation is commenced, ensuring they comply with existing legislation to ensure the debt collection does not exceed an individual's PER.

Issue 4 – Extending section 61 of the HRTMA to apply to existing tenants

Current situation and problem

- 74 Under the HRTMA, the Corporation has an exemption from some parts the Human Rights Act 1993, allowing it to treat people differently on the basis of characteristics like relationship status, disability and family status when assessing need and allocating housing to *prospective* tenants. This is a long standing provision under the HRTMA which the Corporation has applied only when necessary for determining need (i.e. through Social Allocation System criteria), and in a responsible manner. It only applies to prospective tenants (i.e. applicants for state housing).

- 75 In December 2010, Cabinet agreed to introduce reviewable tenancies for new tenants. Reviewable tenancies will require the assessment of the ongoing need of *prospective* tenants who are allocated state housing, becoming *existing* tenants, from July 2011. Extending the exemption to existing tenants will strengthen the Corporation's ability to appropriately assess the ongoing needs of these tenants and implement reviewable tenancies.
- 76 Not applying the exemption to existing tenants means assessment and allocation of state housing is inconsistent and inequitable between prospective and existing tenants, and resources to address housing needs are not being used as efficiently as they could be. In turn, some high need prospective tenants are kept waiting for a state house, while those with less need remain in state housing.

Objective

- 77 An improved, equitable and consistent approach to assessment of need and provision of housing assistance for both prospective and existing tenants.

Options

- 78 Option 1 (status quo): The Corporation has no legislative certainty that it can reassess the needs and allocate housing to existing tenants in the same way it does for prospective tenants.
- 79 Option 2: An amendment to the HRTMA 1992 to extend the discrimination exemption to existing tenants. This would require the addition of the words 'and existing tenants' to both s.61(2)(a) and (b) HRTMA. This would strengthen the Corporation's position in the face of unsettled law.

Preferred option

- 80 Option 2 above.

Alternative option

- 81 The status quo option would be relying on unsettled law. In particular, the Corporation would need to use a narrow definition of discrimination to be able to reassess and allocate housing to existing tenants in the same way as prospective tenants. In using this narrow definition it must be acknowledged that this approach differs from that of the Human Rights Review Tribunal. That is, if a claim were brought against the Corporation under current law, the risk is that the Corporation would lose at Tribunal, necessitating an appeal to the High Court. There is also no guarantee that the High Court would find in the Corporation's favour.

Risks

- 82 The Corporation will apply the exemption only as relevant for establishing housing need under Social Allocation System criteria and determining IRR.

Costs and benefits of preferred option

Government

Benefit	Cost
<ul style="list-style-type: none"> The Corporation will have increased ability to implement the reviewable tenancies policy 	<ul style="list-style-type: none"> Some market rent tenants exiting state housing will be replaced with tenants subsidised through income-related rent Additional Accommodation Supplement cost possible

Sector: Corporation, clients, housing sector

Benefit	Cost
<ul style="list-style-type: none"> More people who need housing assistance will receive it 	<ul style="list-style-type: none"> Tenants whose circumstances have improved may be required to find housing elsewhere

Society

Benefit	Cost
<ul style="list-style-type: none"> Better assurance about value obtained for taxpayers' money 	<ul style="list-style-type: none"> None identified

Results and evaluation

83 Results would be identifiable after change is implemented.

Implementation

84 The changes would be implemented as part of the implementation of the Government's reviewable tenancies policy.

Consultation

85 The following Government agencies have been consulted on the proposals: Department of the Prime Minister and Cabinet, the Parliamentary Counsel Office, Department of Building and Housing, Inland Revenue Department, Ministry of Health, Ministry of Justice, Ministry of Pacific Island Affairs, Ministry of Social Development, Ministry of Women's Affairs, Te Puni Kokiri, The Treasury, The Office of the Privacy Commissioner and the Human Rights Commission.

Human Rights Implications

86 The proposals in this paper raise issues under the New Zealand Bill of Rights Act 1990, Human Rights Act 1993 and the Privacy Act 1993. In particular, the proposals may affect the right to be free from unreasonable searches (s.21 of the Bill of Rights Act) and the right to be free from discrimination (s.21(1) of the Human Rights Act).

87 Corporation officials will work with the Ministry of Justice, Human Rights Commission and the Office of the Privacy Commissioner on these issues during the drafting of the legislation. A final view as to the consistency of these proposals will be possible once the legislation has been drafted.