

Social Housing Reform (Flexible Purchasing and Remedial Matters) Bill

Government Bill

Explanatory note

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 func-

tions 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.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=21>.

Regulatory impact statement

The Ministry of Social Development (in consultation with the Ministry of Business, Innovation, and Employment) and the Ministry of Business, Innovation, and Employment produced regulatory impact statements on 4 March 2015 and 25 March 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/shrp-legislation>
- <http://www.mbie.govt.nz/about-us/publications/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for most of the Bill to come into force on the day after the date on which it receives the Royal assent. The exception is that *subpart 3* of *Part 2* (which amends the KiwiSaver Act 2006) is to be treated as coming into force on 1 April 2015 (which is the same date that certain amendments to the KiwiSaver Act 2006 made by the Taxation (KiwiSaver HomeStart and Remedial Matters) Act 2015 came into force) to fix an anomaly.

Part 1

Amendments to Housing Restructuring and Tenancy Matters Act 1992

Clause 3 provides that *Part 1* amends the Housing Restructuring and Tenancy Matters Act 1992.

Clause 4 amends section 2 by inserting the definitions of reimbursement agreement and tailored agreement.

Clause 5 amends section 70 to enlarge the purpose of Parts 7 to 10 to take account of the amendments made in *Part 1*.

Clause 6 amends section 85. This section requires a set reimbursement amount to be paid to Housing New Zealand (**HNZ**) for providing housing and related services to tenants who pay income-related rents instead of market rents for the housing (**IRR housing and services**). The amendment recognises that IRR housing and services may now be purchased in a different way—under a tailored agreement (*clause 9* refers)—and ensures that if that happens, HNZ is not reimbursed twice.

Clause 7 amends section 98. This section permits the Crown to require registered community housing providers to enter into agreements under which the providers provide IRR housing and services in return for a set reimbursement amount by the Crown. The effect of the amendment is that this section does not apply to IRR housing and services purchased under a tailored agreement.

Clause 8 amends section 102, which relates to ministerial directions to the social housing agency (currently, the Ministry of Social Development) (**the agency**). The key amendments are that—

- references to the income-related rent subsidy are replaced with references to funding by way of payments under reimbursement agreements and tailored agreements. The effect of the amendment is that Ministers can give directions to the agency about the terms and conditions on which funding under these agreements may be made available;
- a new direction power is inserted. The direction power permits the Minister responsible for the agency, in consultation with other Ministers and for stated purposes, to give directions to the agency in accordance with which the agency may enter into tailored agreements with social housing providers.

Clause 9 inserts *new section 137A*. The new section permits the agency, for the purposes of and in accordance with a ministerial direction, to enter into tailored agreements with social housing providers, on terms and conditions agreed with providers. Subject to ministerial direction, tailored agreements may (but do not need to) relate to the provision of IRR housing and services, for a price agreed between the agency and the provider. Tailored agreements may also, subject to ministerial direction, relate to other social housing and any related services. This includes the provision of social housing in the future.

Clauses 10 to 14 replace references to income-related rent subsidies with references to funding by way of payments under reimbursement agreements and tailored agreements.

Clause 15 consequentially amends section 20B of the Housing Corporation Act 1974. The first part of the amendment essentially restates the requirement for the Crown to reimburse Housing New Zealand Corporation (HNZC) if HNZC is required to give effect to a policy of the Government by providing IRR housing and services. The substantial change is to the way in which that reimbursement may be calculated. Instead of a set reimbursement amount, being the difference between the amounts of market rent for the housing and the income-related rents charged, the amendment now permits the Crown and HNZC to agree to the payment of some other price for the IRR housing and services.

Clause 16 consequentially amends the Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014 to replace references to income-related rent subsidies with references to funding by way of payments under reimbursement agreements and tailored agreements.

Part 2

Remedial and other matters

Subpart 1—Goods and Services Tax Act 1985

Clause 17 provides that *subpart 1* amends the Goods and Services Tax Act 1985.

Clause 18 amends section 5 so that amounts payable by the Crown or the social housing agency under reimbursement agreements and tailored agreements under the Housing Restructuring and Tenancy Matters Act 1992 for the provision of accommodation in social housing are treated as consideration for the supply of accommodation in a dwelling by way of hire. The effect of this amendment is that these amounts will be exempt from goods and services tax.

Subpart 2—Housing Corporation Act 1974

Clause 19 provides that *subpart 2* amends the Housing Corporation Act 1974.

Clause 20 repeals section 3B(b). The effect of the repeal is that HNZC no longer has an objective to provide advice and information on housing to the Minister of Housing.

Clause 21 amends section 18(2) by making clear that HNZC's research and monitoring function described in section 18(2)(j) does not include research and monitoring for the purpose of advising the Minister of Housing on those matters. It also repeals section 18(2)(k) since HNZC's function of advising the Minister on housing falls away.

Subpart 3—KiwiSaver Act 2006

Clause 22 provides that *subpart 3* amends the KiwiSaver Act 2006.

Clause 23 replaces clause 8(1)(ab) and (b) of Schedule 1 to ensure that membership of a complying superannuation fund counts appropriately towards the 3-year membership rule for first home withdrawals under the KiwiSaver scheme rules.

Hon Paula Bennett

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The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the Social Housing Reform (Flexible Purchasing and Remedial Matters) Act **2015**.
- 2 Commencement** 5
- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section.
- (2) **Subpart 3 of Part 2** is treated as coming into force on 1 April 2015.

Part 1

Amendments to Housing Restructuring and Tenancy Matters Act 1992 10

- 3 Principal Act**
- This **Part** amends the Housing Restructuring and Tenancy Matters Act 1992 (the **principal Act**).
- 4 Section 2 amended (Interpretation)** 15
- In section 2(1), insert in their appropriate alphabetical order:
- reimbursement agreement** means an agreement referred to in **section 85(1)** or an agreement under **section 98(1)**
- tailored agreement** means an agreement under **section 137A**

5 Section 70 amended (Purpose of this Part and Parts 8 to 10)

After section 70(2)(c), insert:

- (ca) provide flexibility for the social housing agency and social housing providers to enter into tailored agreements for the provision of social housing and any related services, subject to ministerial direction:

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6 Section 85 amended (Reimbursement of HNZ)

- (1) In the heading to section 85, replace “of” with “agreements with”.
- (2) In section 85, insert as subsection (2):
- (2) However, **subsection (1)** does not apply to the extent (if any) that a tailored agreement covers the provision by HNZ of housing and related services to persons who pay income-related rents rather than market rents for the housing. (See **section 137A**.)

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7 Section 98 amended (Reimbursement of registered community housing providers)

- (1) In the heading to section 98, replace “of” with “agreements with”.
- (2) In section 98, insert as subsection (2):
- (2) However, **subsection (1)** does not apply to the extent (if any) that a tailored agreement covers the provision by the registered community housing provider of social housing and related services to any persons paying income-related rents. (See **section 137A**.)

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8 Section 102 amended (Ministerial directions to agency)

- (1) In section 102(1),—
 - (a) replace “the income-related rent subsidy” with “the funding by way of payments under reimbursement agreements and tailored agreements”; and
 - (b) delete “using the subsidy” in each place.
- (2) After section 102(1), insert:
 - (1A) The Minister responsible for the agency may, in consultation with the joint Ministers and for the following purposes, give to the agency directions in accordance with which the agency may enter into a tailored agreement under **section 137A**.
 - (1B) The purposes of a direction under **subsection (1A)** are 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.
 - (1C) Without limiting the generality of **subsection (1A)**, a direction under that subsection may—

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(a)	relate to any 1 or more social housing providers or to any particular social housing provider or providers:	
(b)	relate to all social housing and related services, or state the social housing and related services to which it relates (for example, by type or number or location):	5
(c)	relate to the provision of social housing now and into the future whether or not the social housing services sought relate to existing or anticipated premises or to premises currently owned by the social housing provider.	
(3)	In section 102(4), replace “under this section” with “under subsection (1), (2), or (3)”.	10
(4)	Replace section 102(6) with:	
(6)	The agency must, in carrying out functions under this Act, give effect to any directions that are given to it under this section and that are signed by the Minister or Ministers who may give the directions.	
9	New section 137A and cross-heading inserted	15
	After section 137, insert:	
	<i>Flexible purchasing</i>	
137A	Tailored agreements with social housing providers	
	The agency may, for the purposes of and in accordance with a direction under section 102(1A) , enter into 1 or more agreements with a social housing provider for the provision, by that provider, of social housing and any related services, for the price and on the terms and conditions agreed between the agency and the provider.	20
10	Section 162 amended (Ministerial directions to authority)	
	In section 162(1)(a),—	25
(a)	replace “the income-related rent subsidy” with “the funding by way of payments under reimbursement agreements and tailored agreements”;	
	and	
(b)	delete “through the subsidy” in each place.	
11	Section 166 amended (Approval of registration)	30
	Replace section 166(4)(a) with:	
(a)	funding by way of payments under reimbursement agreements and tailored agreements:	
12	Section 169 amended (Suspension of registration)	
	Replace section 169(3)(b) with:	35

(b) the provider may be paid under a reimbursement agreement or a tailored agreement, subject to the terms of the agreement:

13 Section 171 amended (Procedure for revocation)

In section 171(3), replace “income-related rent subsidies” with “payments under reimbursement agreements or tailored agreements”.

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14 Section 190 amended (Regulations relating to community housing providers)

(1) Replace section 190(1)(b)(i) with:

(i) funding by way of payments under reimbursement agreements and tailored agreements:

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(2) In section 190(1)(i), replace “the income-related subsidy” with “funding by way of payments under reimbursement agreements and tailored agreements”.

Consequential amendments

15 Consequential amendment to Housing Corporation Act 1974

(1) This section amends the Housing Corporation Act 1974.

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(2) Replace section 20B(1)(b) with:

(b) if the policy is for the Corporation to provide housing and related services to persons who are to be required to pay income-related rents rather than market rents for the housing, the notice or agreement concerned must state that the housing and related services are to be provided in return for the payment by the Crown to the Corporation of either—

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(i) the difference between the amounts of market rents for the housing and the income-related rents charged; or

(ii) an alternative price, set out in that notice or agreement, that has been agreed to by the Corporation.

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16 Consequential amendments to Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014

(1) This section amends the Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014.

(2) In regulation 4(1), replace “income-related rent subsidies” with “funding by way of payments under reimbursement agreements and tailored agreements”.

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(3) In regulation 6(2)(c), replace “the income-related rent subsidy” with “funding by way of payments under reimbursement agreements and tailored agreements”.

Part 2 Remedial and other matters

Subpart 1—Goods and Services Tax Act 1985

- 17 Principal Act** 5
This **subpart** amends the Goods and Services Tax Act 1985 (the **principal Act**).
- 18 Section 5 amended (Meaning of term supply)**
After section 5(6E), insert:
- (6F) For the purposes of this Act, the amount payable by the Crown or the agency under the Housing Restructuring and Tenancy Matters Act 1992 under a reimbursement agreement or a tailored agreement under that Act for the provision of accommodation in social housing is treated as consideration for the supply of accommodation in a dwelling by way of hire. 10

Subpart 2—Housing Corporation Act 1974

- 19 Principal Act** 15
This **subpart** amends the Housing Corporation Act 1974 (the **principal Act**).
- 20 Section 3B amended (Objectives of Corporation)**
- (1) In section 3B(a)(iii), delete “; and”.
- (2) Repeal section 3B(b).
- 21 Section 18 amended (Functions of Corporation)** 20
- (1) In section 18(2)(j), after “related to housing”, insert “(but not for the purpose of advising the Minister of Housing on those matters)”.
- (2) Repeal section 18(2)(k).

Subpart 3—KiwiSaver Act 2006

- 22 Principal Act** 25
This **subpart** amends the KiwiSaver Act 2006 (the **principal Act**).
- 23 Schedule 1 amended**
- In Schedule 1, replace clause 8(1)(ab) and (b) with:
- (b) the person has been a member of 1 or more KiwiSaver schemes or complying superannuation funds for a combined total period of 3 years or more. 30

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Wellington, New Zealand:

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