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Report of the

# ATTORNEY-GENERAL

on the Housing Restructuring (Income-Related Rents) Amendment Bill

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*Presented to the House of Representatives pursuant to Section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 260 (2) of the Standing Orders of the House of Representatives*

I have considered the Housing Restructuring (Income-Related Rents) Amendment Bill (the "Bill") for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). I have concluded that clauses 2 and 3 of Schedule 1, and proposed new section 46 of the Bill appear to be inconsistent with section 19(1) of the Bill of Rights Act, and do not appear to be justified in terms of section 5 of the Bill of Rights Act. As required by section 7 of the Bill of Rights Act (and Standing Order 260) I draw this to the attention of the House of Representatives.

### **The Bill**

The Bill amends the Housing Restructuring Act 1992 to provide for the restoration of income-related rents for state houses. This is a further step in the Government's housing programme, and is designed to address the problems of those in serious housing need. It is intended that state housing be more affordable and responsive to individual household incomes and needs.

### **Policy's importance justifies its implementation now**

The implementation of income-related rents is administratively and technically complex. However, the Government has determined that its policy objectives relating to income-related rents are sufficiently important to justify proceeding with this Bill now, despite the apparent inconsistency with the Bill of Rights Act. To address this the Government has directed officials to undertake further work around the factors that are taken into account in the calculation of household income. This work is intended to preserve the social gains that will flow from income related rents, while mitigating the apparent inconsistency of the policy with the Bill of Rights Act.

### **The Bill of Rights Act issues**

Clauses 2 and 3 of Schedule 1 of the Bill provide the mechanism for the calculation of income-related rents that will apply until regulations for this purpose are made.

Clause 2 of Schedule 1 of the Bill provides two alternative methods for calculating income. The first, in clause 2(2), links rent to income and will apply to most tenants. Pursuant to this clause, where a tenant is single, only his or her income will be used to assess rent. Where a tenant has a "partner" both the tenant's and the partner's income will be used to assess rent. This is *prima facie* marital status discrimination, and it appears to me that the justification advanced for this in terms of the objectives of this Bill is unlikely to satisfy section 5 of the Bill of Rights Act.

Clause 2(3) of Schedule 1 provides an alternative mechanism for calculating rent, and will apply only to those tenants whose income (when compared with their partner's, if they have one) is less than the community wage. The clause links the rents paid by such tenants to the different rates of community wage (which vary according to the age, marital status and family status of the recipient). For example, the rent of an unmarried 25 year old who earns less than the community wage will be more than the rent of an unmarried 24 year old tenant who earns the same income. The linkage of rents calculated under clause 2(3) to the community wage causes *prima facie* age, marital and family status discrimination, and it

appears to me that the justification advanced for this in terms of the objectives of this Bill is unlikely to satisfy section 5 of the Bill of Rights Act.

Clause 3 of Schedule 1 of the Bill (which is relevant to income calculation under clause 2(2)) states that below a threshold, 25% of income goes towards rent, while above the threshold 50% of income goes towards rent. The clause sets different thresholds for tenants who live alone and all other tenants. For example, a tenant with no dependant children who lives alone can earn more than what a "partnered" tenant and his or her partner can earn individually, before a greater proportion of income is used to assess rent. This gives rise to *prima facie* indirect marital status and family status discrimination.

In my view, the first of these is justified on the basis that it follows from an assumption that tenants who live with others accrue economies of scale and, accordingly, should earn less income before a higher proportion of income goes in rent.

However, in my view, the family status discrimination is not justified sufficiently to satisfy section 5 of the Bill of Rights Act. Although the assumption on which it appears to be based is arguably fair (that tenants with dependants should be able to earn more than similar tenants with no dependants, before more of their income is taken in rent) it is not consistently incorporated into that mechanism. For example, tenants with partners and no dependants are subject to the same threshold as tenants with partners and dependants.

Finally, proposed section 46 creates a regulation making power. It is likely that regulations made under the Bill will incorporate the unjustifiably discriminatory mechanisms contained in the Bill. Accordingly, I have concluded that, to the extent that it implicitly permits the promulgation of regulations that are inconsistent with the Bill of Rights Act, the regulation making power in proposed section 46 of the Bill appears to be inconsistent with the Bill of Rights Act.

## Conclusion

I conclude that clauses 2 and 3 of Schedule 1 and proposed new section 46 of the Housing Restructuring (Income-Related Rents) Amendment Bill appear to be inconsistent with section 19(1) of the New Zealand Bill of Rights Act 1990, and do not appear to be justified in terms of section 5 of the Bill of Rights Act. I note that the Government has determined that the policy objectives of the Bill are sufficiently important to justify proceeding with this Bill now, but that further work will be undertaken on issues surrounding the calculation of income-related rents.



Hon Margaret Wilson  
Attorney-General