

15 March 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

1. We have considered whether the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (PCO 21248/1.6). We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.
3. The Bill amends the Residential Tenancies Act 1986 ('the principal Act') to prohibit a letting agent or other person from requiring a tenant to pay a letting fee in relation to the:
 - a. grant, continuance, extension, variation, or renewal of any tenancy agreement;
 - b. assignment of a tenant's interest under any tenancy agreement; or
 - c. subletting of the whole or any part of the premises by a tenant.
4. The Bill clarifies that the prohibition does not apply to the recovery of any expenses reasonably incurred by the landlord following a tenant assigning, subletting or parting with possession of the premises. This affirms existing s 44(5) of the principal Act.
5. The Bill provides that a requirement to pay a letting fee is an unlawful act, and prescribes \$1,000 as the maximum amount of exemplary damages that the Tenancy Tribunal may order a person to pay in respect of that unlawful act.
6. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel