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**RACP Submission:  
Residential Tenancies (Prohibiting Letting  
Fees) Amendment Bill**

May 2018

## Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback on the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill (the Bill).

The RACP works across more than 40 medical specialties to educate, innovate, and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients, and the broader community.

The RACP's **key points** are that:

- The RACP supports Bill as in line with our **Make it the Norm** campaign, which advocates for health equity through the Social Determinants of Health.
- The RACP has concerns about the tight timeframes surrounding the Bill.
- The RACP has concerns that landlords may increase rent and that the quality of particular services could reduce.

## The Bill

The Bill amends the Residential Tenancies Act 1986 to prohibit the charging of a letting fee, or any other fee to a tenant, by any person in relation to the:

- Grant, continuance, extension, variation, or renewal or any tenancy agreement; or
- Assignment of a tenant's interest under any tenancy agreement; or
- Subletting of the whole or any part of the premises by a tenant.

Landlords or their agents will remain able to seek reimbursement from a tenant for expenses reasonably incurred as a result of a tenant assigning, subletting, or parting with possession of their interest in a tenancy.

The Bill would make the charging of a letting fee unlawful, the penalty being exemplary damages to the amount of \$1000<sup>1</sup>. The Bill limits the Tenancy Tribunal's authority in that the Tribunal will not have jurisdiction to consent to a person requiring a tenant to pay a letting fee<sup>2</sup>.

## RACP Position

The RACP supports the intention of the Bill because it is in line with the RACP's **Make it the Norm** campaign. Our campaign advocates for health equity by addressing the Social Determinants of Health. We call for policymakers to make health equity the norm to improve health outcomes for the most vulnerable people in our communities. We call for immediate actions including:

- **Making Healthy Housing the norm** by introducing a regulation to mandate a Warrant of Fitness and Health for residential dwellings;
- **Making Good Work the norm**, by promoting the Living Wage to support the health and wellness of employees and their Whānau; and
- **Making Whānau Well-being** the norm by taking a child-centred approach to all legislation, policy, and regulation<sup>3</sup>.

As physicians and paediatricians, we care for children struggling with preventable illness every day. We know that unhealthy housing, insecure and precarious work, and poor mental health, directly impact on children and

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<sup>1</sup> Residential Tenancies (Prohibiting Letting Fees) Amendment Bill 2018. Explanatory Note [cited 10 May 2018]; Available from: <http://www.legislation.govt.nz/bill/government/2018/0036/latest/LMS24553.html>.

<sup>2</sup> Residential Tenancies (Prohibiting Letting Fees) Amendment Bill 2018. Explanatory Note [cited 10 May 2018]; Available from: <http://www.legislation.govt.nz/bill/government/2018/0036/latest/LMS24553.html>.

<sup>3</sup> The Royal Australasian College of Physicians. Make it the Norm: Equity Through the Social Determinants of Health. August 2017. Available from: <https://www.racp.edu.au/fellows/resources/new-zealand-resources/new-zealand-election-statement-2017>.

whānau health and well-being. Too often we treat illness knowing our child patients are returning to housing and social situations that will perpetuate poor health. The RACP wishes to challenge the current state, where unacceptable levels of child poverty and shocking housing conditions have become apparently 'normalised' in our society. Inequities in health outcomes will persist unless such stark social inequities are addressed. Taking action on the Social Determinants of Health needs a whole-of-society response led by Government. Such action is overwhelmingly supported by the evidence.

The Bill is a step towards healthier housing and healthier whānau. By lowering the initial cost for renters to move into rental homes it enables renters to better choose where they live and to save towards things that will improve the health of themselves and their whānau/family.

## Background: Health and Housing in New Zealand

Housing is a key part of the physical and social environment that contributes to the health and well-being of the individual and whānau. Higher costs of accessing a rental property could mean that tenants are pushed into living in dwellings that are inadequate for their own and their whānau health and well-being. Inadequate housing can lead to fuel poverty, homelessness, overcrowding, and health issues.

People living as temporary residents in a permanent private dwelling, often due to lack of access to minimally adequate housing, is a form of severe housing deprivation and homelessness which has increased in New Zealand since 2001. This has led to children, young people, and adults living in cars, garages, sheds, caravans, and tents. Whānau struggle to find accommodation in an environment of rising costs for rental properties, greater pressure on state and public housing, and higher costs of living<sup>4</sup>. Research using data from Statistics New Zealand and emergency housing providers shows that the number of people whose living situation was defined as "living as a temporary resident in a severely crowded, permanent dwelling due to a lack of access to minimally adequate housing" grew by nearly 10,000 people between 2001 and 2013<sup>5</sup>.

Overcrowding increases risks of contracting infectious diseases. Household crowding has a positive association with infectious disease transmission, worsening chronic health conditions, and poorer educational outcomes<sup>6,7,8,9,10</sup>. It also significantly impacts on the mental health and well-being of residents of all ages. This is because there is reduced room for children and adults to play, study, do hobbies, sleep, and relax<sup>11,12</sup>. For children, growing up in crowded housing can have negative impacts on educational outcomes, internal behavioural issues (depression, withdrawal), external behaviour issues (aggression), and goes some way to

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<sup>4</sup> The Royal Australasian College of Physicians. Make it the Norm: Equity through the Social Determinants of Health. August 2017. Available from: <https://www.racp.edu.au/fellows/resources/new-zealand-resources/new-zealand-election-statement-2017>.

<sup>5</sup> Amore K. Severe Housing Deprivation in Aotearoa/New Zealand 2001-2013 [Internet]. 2016. Wellington: He Kainga Oranga/Housing & Health Research Programme, University of Otago.

<sup>6</sup> Baker, MG. Household Crowding: An Avoidable Health Risk. BUILD. 2007; 98:36-37 [cited 15 May 2018]; Available from: <https://www.buildmagazine.org.nz/assets/PDF/B98-36-HouseholdCrowding.pdf>.

<sup>7</sup> Amore K. Housing Affordability and Deprivation [Internet]. PHA Lens: Focussing on Public Health. 2(1): 10. Wellington, Public Health Association, 2017.

<sup>8</sup> Howden-Chapman P, Issacs N, Crane N, Chapman R. Housing and Health: The Relationship Between Research and Policy [Internet]; Environ Health Research 1996. 6(3): 173-185. 20 Sept 2008. [cited 15 May 2018].

<sup>9</sup> Powell-Hoyland V, Homer C, Cronin de Chavez A, Tod AM, Nelson P, Stocks AJ. Cold snaps – children's health in a cold, damp home: influencing policy and practice [Internet]. People Place and Policy 2016; 10(1): 57-76.

<sup>10</sup> Baker MG, Telfar-Barnard L, Kvalsvig A, Verrall A, Zhang J, Keall M et al. Increasing incidence of serious infectious diseases and inequalities in New Zealand: a national epidemiological study. Lancet [Internet] 2012; 379: 1112-19.

<sup>11</sup> Office of the Deputy of the Prime Minister. The impact of overcrowding on health and education: a review of the evidence and literature [Internet]. May 2004 [cited 16 May 2018]; London. Available at: <http://dera.ioe.ac.uk/5073/1/138631.pdf>.

<sup>12</sup> Baker MG. Crowded houses – a significant health issue. PHA Lens: Focussing on Public Health [Internet]. 2016 [cited 15 May 2018]; 2 (1): 8-9. Public Health Association, Wellington.

predict psychological health issues<sup>13,14</sup>. Adults living in crowded conditions report poorer mental health including: persistent low mood, higher stress and anxiety, lack of privacy, and poorer interpersonal relationships<sup>15,16,17</sup>.

Houses that are cold, mouldy, and damp, are costlier to heat and are less thermally-efficient. Occupants must spend more on energy to achieve a satisfactorily warm indoor environment<sup>18</sup>. Health conditions caused or exacerbated by exposure to cold, damp, and mouldy conditions include respiratory infections such as bronchiolitis and pneumonia, rheumatic fever, asthma, and chronic obstructive pulmonary disease<sup>19,20,21,22,23</sup>.

The Bill provides an opportunity to reduce the up-front costs that tenants face. Lower initial rental move-in costs are a step towards providing more choice for whānau/families to find more adequate housing, and is a step towards improved health outcomes for New Zealanders.

## RACP Comments on the Bill

### RACP supports the prohibition of letting fees

The RACP supports the abolition of letting fees. A reduction of up-front costs that tenants must pay when they move into a rental property will increase choice for whānau/families in finding adequate housing for their health needs, and will enable them to save money which they can spend on other costs.

Under the Residential Tenancies Act 1986, tenants can be required to pay a fee or other charge for services rendered by a solicitor or letting agent relating to the granting of a tenancy. Letting fees are commonly charged as an additional up-front cost to tenants. A letting fee is meant to cover the costs associated with advertising a rental property, conducting open homes, and vetting prospective tenants<sup>24</sup>. However, there is no cap on the amount charged for a letting fee. Common practise is to charge a week's rent plus GST. This

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<sup>13</sup> Evans GW, Saltzman H, Cooperman JL. Housing quality and children's socioemotional health [Internet]. *Environment and Behaviour*. 2001; 33: 389-99.

<sup>14</sup> Office of the Deputy of the Prime Minister. The impact of overcrowding on health and education: a review of the evidence and literature [Internet]. May 2004 [cited 16 May 2018]; London. Available at: <http://dera.ioe.ac.uk/5073/1/138631.pdf>.

<sup>15</sup> Solari CD, Mare RD. Household crowding effects on children's wellbeing. *Soc Sci Res* 2012; 41(2): 464-72.

<sup>16</sup> Marmot Review team. The Health Impacts of Cold Homes and Fuel Poverty. London: Friends of the Earth England, Wales and Northern Ireland [Internet]. 2011 [cited 21 May 2018]. Available from: [https://friendsoftheearth.uk/sites/default/files/downloads/cold\\_homes\\_health.pdf](https://friendsoftheearth.uk/sites/default/files/downloads/cold_homes_health.pdf).

<sup>17</sup> Evans GW, Lepore SJ, Shejwal BR, MN Palsane. Chronic residential crowding and children's wellbeing: an ecological perspective. *Child Dev*. 1998; 69(6): 1514-23.

<sup>18</sup> Howden-Chapman P, Viggers H, Chapman R, O'Sullivan K, Telfar-Barnard L, Lloyd B. Tackling cold housing and fuel poverty in New Zealand: a review of policies, research and health impacts. *Energy Policy* 2011.

<sup>19</sup> Powell-Hoyland V, Homer C, Cronin de Chavez A, Tod AM, Nelson P, Stocks AJ. Cold snaps – children's health in a cold, damp home: influencing policy and practice [Internet]. *People Place and Policy* 2016; 10(1): 57-76.

<sup>20</sup> Grimes A, Denne T, Howden-Chapman P, Arnold R, Telfar-Barnard L, Preval N et al. Cost Benefit Analysis of the Warm Up New Zealand: Heat Smart Programme. 2012; Wellington: Motu Research.

<sup>21</sup> Marmot Review team. The Health Impacts of Cold Homes and Fuel Poverty. London: Friends of the Earth England, Wales and Northern Ireland [Internet]. 2011 [cited 21 May 2018]. Available from: [https://friendsoftheearth.uk/sites/default/files/downloads/cold\\_homes\\_health.pdf](https://friendsoftheearth.uk/sites/default/files/downloads/cold_homes_health.pdf).

<sup>22</sup> Mendell M, Mirer M, Cheung K, Douwes J, Torben S, Bønløkke J et al. Health effects associated with dampness and mould. *World Health Organisation Guidelines for Indoor Air Quality: Dampness and Mould* [Internet]. 2009 [cited 21 May 2018]; Geneva, Switzerland: World Health Organization. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK143940/>.

<sup>23</sup> Telfar-Barnard L, Zhang J. The impact of respiratory disease in New Zealand: 2016 update [Internet]. 2016 [accessed 21 May 2018]; Wellington: The Asthma Foundation. Available from: <https://www.asthmafoundation.org.nz/research/the-impact-of-respiratory-disease-in-new-zealand-2016-update>.

<sup>24</sup> Regulatory Impact Statement. Prohibiting Letting Fees under the Residential Tenancies Act 1986 [Internet]; [cited 15 May 2018]. Available from: <https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-prohibiting-letting-fees-under-residential-tenancies-act-1986>.

means that tenants face considerable up-front costs when moving into a new rental property. These costs can include up to four weeks' bond, two weeks' rent in advance, moving costs, and a letting fee.

There is little justification for the additional burden of a letting fee on tenants. The main beneficiary is the landlord, yet the fee is charged to the incoming tenant. In a rental market with fewer rental homes than potential tenants, renters have very little bargaining power to refuse to pay a letting fee. Since the landlord chooses the letting agent, the tenant has no choice over whether they pay a letting fee, or exercise consumer choice over the cost of the fee.

As competition for rental properties grows, the ability of tenants to choose where they live decreases. Tenants can be forced to move away from their communities and social networks due to high initial payments. Children may be forced to change schools on multiple occasions, which puts them at risk of poor educational and health outcomes. An unpredictable or precarious housing situation can lead to homelessness. This includes people forced to live in cars; attempts to fit several families in one small house; or people forced to live in emergency or temporary accommodation, including tents, motels, caravans, and sleepouts. As noted above, additional costs may also cause whānau to choose accommodation that is unhealthy. This can cause multiple health issues for themselves and their whānau.

The most vulnerable groups are often those who are the most affected by these additional costs. According to the 2013 census 36.3% of New Zealanders live in rental accommodation<sup>25</sup>. Those most likely to rent are Māori, families with children, people on low incomes, and people with disabilities<sup>26,27,28,29,30,31</sup>. Tenants who landlords see as 'desirable' find it easier to secure tenancies and so can pick properties that don't offer letting fees. Less 'desirable' tenants, who generally have lower incomes, have less choice in rental properties and so are more likely to settle for a property with a letting fee.

The RACP supports the abolition of the letting fee as a step towards healthier housing policy in New Zealand. The extra money saved by tenants from not paying letting fees could be used to pay towards things like school activities, medical expenses, extra food, or saving towards home ownership. This will contribute towards a healthier community and is a step towards improving health outcomes for the most vulnerable populations in our communities.

## Insufficient Consultation

The RACP is concerned about the accelerated legislative time frame of the Bill. The RACP is concerned that these tight time constraints mean that there has been insufficient analysis and consultation<sup>32</sup>. The Regulatory Impact Statement (RIS) notes that "the time frame for decision making has limited meaningful analysis of alternative options, including non-regulatory options, has been limited". It notes there was not, "sufficient

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<sup>25</sup> Statistics New Zealand. 2013 Census QuickStats about Housing [Internet] 18 March 2014. 30 Updated April 2014 [cited 21 May 2018]; Available from: <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-housing.aspx>.

<sup>26</sup> Statistics New Zealand. 2013 Census QuickStats about Housing. Households Who Rent [Internet] 18 March 2014 [cited 21 May 2018].; Available from: <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-housing/households-who-rent.aspx>.

<sup>27</sup> Statistics New Zealand. Disability and Housing Conditions: 2013 Report [Internet] March 2017 [cited 21 May 2018]; Available at: <https://www.stats.govt.nz/reports/disability-and-housing-conditions-2013>.

<sup>28</sup> Statistics New Zealand. 2013 Census. Ethnic Group Profiles: Māori [Internet]; [cited 16 May 2018].

<sup>29</sup> Statistics New Zealand. Changes in Home-Ownership Patterns 1986-2013: Focus on Māori and Pacific people [Internet]. Wellington. June 2016 [cited 16 May 2018].

<sup>30</sup> Howden-Chapman P, Viggers H, Chapman R, et al. Tackling Cold Housing and Fuel Poverty in New Zealand: A Review of Policies, Research, and Health Impacts. Energy Policy. Volume 49. October 2012.

<sup>31</sup> Statistics New Zealand. NZGSS. Perceptions of Housing Quality in 2014/15 [Internet] Published 15 October 2015. Available from: [http://archive.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/housing/perceptions-housing-quality-2014-15.aspx](http://archive.stats.govt.nz/browse_for_stats/people_and_communities/housing/perceptions-housing-quality-2014-15.aspx).

<sup>32</sup> Regulatory Impact Statement. Prohibiting Letting Fees under the Residential Tenancies Act 1986 [Internet] [cited 15 May 2018]. Available from: <https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-prohibiting-letting-fees-under-residential-tenancies-act-1986>.

information or time available to fully consider the impacts of prohibiting letting fees or what, if any impacts, it may have on other initiatives”<sup>33</sup>. The RACP note that more thorough consultation would have been preferable.

### Concerns about response of letting agents and landlords

The RACP is concerned that the cost of letting fees will be charged to tenants through increased weekly rent fees over the term of the tenancy. If this occurs, then the tenant will end up paying more overall through the course of the term of tenancy than they would have if they paid one upfront letting fee. The RACP advocates for a body to be set up to monitor the effects of the changes created by this Bill. The monitoring body could be set up under the Ministry of Business, Innovation and Employment’s existing structures.

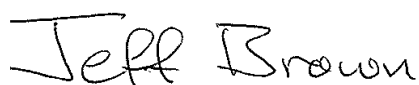
The RACP is concerned that letting agents may react to the changes by reducing the quality of service that they offer to property owners. This may affect potential tenants who may then be unaware that the property is available. It may also reduce the likelihood of landlords finding the most suitable tenant.

### Summary

- The RACP supports the Bill as in line with our **Make it the Norm** campaign, which advocates for making healthy housing and whānau well-being the norm.
- The RACP supports abolition of letting fees as a way to make healthier housing and healthier whānau the norm.
- The RACP has concerns around the tight timeframes and the resulting lack of consultation and hasty analysis as discussed in the RIS.
- The RACP has concerns about the potential for landlords to increase the rent to tenants.
- The RACP is concerned about the possible reduction in quality of services either by landlords or letting agents in response to the changes.

The RACP thanks Social Services and Community Committee for the opportunity to provide feedback on the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill. To discuss this submission further, please contact the NZ Policy and Advocacy Unit at [policy@racp.org.nz](mailto:policy@racp.org.nz).

Yours Sincerely



Dr Jeff Brown  
New Zealand President  
**The Royal Australasian College of Physicians**

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<sup>33</sup> Regulatory Impact Statement. Prohibiting Letting Fees under the Residential Tenancies Act 1986 [Internet] [cited 15 May 2018]. Available from: <https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-prohibiting-letting-fees-under-residential-tenancies-act-1986>.