

Regulatory Impact Statement:

Residential tenancy abandonment

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.

It provides an analysis of options to reduce adverse supply effects in the rental housing market caused by the length of time it can take to re-let properties that have been abandoned by tenants.

There is uncertainty regarding some of the estimates contained in this Regulatory Impact Statement (RIS). This uncertainty arises particularly in relation to anticipated costs and benefits of operational changes to the Tenancy Tribunal.

Given the uncertainty surrounding many of the estimates in this RIS, the estimates should generally be treated with caution.

It is not possible to do a quantitative analysis of the costs and benefits of all aspects of the proposals.

Public consultation has been limited at this point. The Principal Tenancy Adjudicator along with three key groups representing landlords and tenants, have been consulted on a draft, high-level option and their views have informed policy decisions.

Further work is also required to fully explore the natural justice issues raised by the option of permitting a landlord to enter a tenancy to gather sufficient evidence that the premises have been abandoned. This work will be addressed during the drafting process.

Kevan Scott

Manager, Housing Policy Integration

Ministry of Business, Innovation and Employment

18 May 2015

Status quo and problem definition

Abandonment

- Of the 37,000 annual applications to the Tenancy Tribunal (the Tribunal) in the year ended November 2014, 884 were to terminate a tenancy because of abandonment (2.3% of the total). The number of abandonment applications as a percentage of the Tribunal’s total has remained consistent over the past 5 years. For perspective, abandonment cases comprise 0.2% of 450,000 residential tenancies nationally (2013 census data on housing tenure).
- Tribunal applications for abandonment show an even distribution nationally, and don’t appear to be a problem specific to one area.
- However, Tribunal applications may understate issues faced by landlords. We understand anecdotally from an example in one region that potentially, as many as 10% of landlords could be dealing with abandoned tenancies – as some landlords apparently choose not to enter what they perceive to be a slow and cumbersome Tribunal process to terminate an abandoned tenancy. Instead, they may use less formal methods.
- The Statistics NZ publication, *QuickStats – housing* identified 185,448 or 10.6% of all dwellings in the 2013 census as “unoccupied”. Unoccupied dwellings includes properties being renovated/repared and holiday homes, but potentially also includes some properties abandoned by tenants.
- Landlords have existing options to deal with lost rental income when a property has been abandoned, including ‘landlord insurance’ policies that typically pay up to six weeks lost rent in abandonment cases. For tenants who are disadvantaged in the housing market, the Ministry of Social Development will also pay landlords up to four weeks rent over and above the bond, to cover rent arrears.
- However, in addition to the costs to the landlord already identified, there are costs to tenants if rental properties are not available to the market. Although abandonment cases comprise only 2% of all Tribunal applications, MBIE is aware that landlords, Housing New Zealand, real estate and property investment companies have expressed concern that the length of time it takes to get a hearing with the Tribunal to declare a property abandoned does not enable abandoned properties to be returned to the market quickly. The rental market as a whole may be penalised by the RTA’s current slow process.

Current process

Activity/event	Estimated days taken	Comments
Tenant does not pay rent/abandons property	1-14 days	This period could be longer, depending on how actively landlord monitors rent/property
Landlord tries to contact tenant to pay unpaid rent	Up to 5 days	Landlord may be unable to contact tenant (who is not answering phone calls, emails)
Landlord drives by property, speaks with neighbours, tenant not responding to calls	1 day	Issue moves from rent arrears - landlord suspects abandonment

Landlord tries to contact tenant to enter property and gather evidence	Up to 28 days	Landlord is permitted one property inspection every 28 days – so entry depends on date of last inspection
Landlord applies to Tribunal	1 day	The RTA requires landlords to apply to the Tribunal within 2 months of a tenancy ending
Tribunal serves notice on both parties of hearing	4 days	Statutory requirement
Tribunal hears case and grants landlord possession	8.6 days	National average for all Tribunal cases is 20 days. The Tribunal already prioritises abandonment. Resolution times could be longer in the regions.
Landlord has possession of property – can re-let	10 days	Once Tribunal has awarded possession, issue is out of Government control – but landlord may need to clean up property before it can be re-let
	Total: up to 71.6 days	Outside of Tribunal times, the dates depend on active landlord management

Current legislative framework

- The Residential Tenancies Act 1986 (the Act) defines the rights and obligations of landlords and tenants of residential properties.
- The Act also established the Tribunal to determine disputes arising between landlords and tenants.
- On application of the landlord, the Tribunal may make an order terminating a tenancy where it is satisfied that the tenant has abandoned the premises and the rent is in arrear.
- If a tenant abandons the premises when the rent is in arrear and without reasonable excuse, the Tribunal can also determine the tenant has committed an unlawful act and impose a penalty of \$1,000.
- To ensure that natural justice issues are protected, the Act retains the requirement for a Tribunal Adjudicator to test the landlord's evidence that the property has been abandoned.
- In the great majority of cases, the Adjudicator confirms that the tenancy has been abandoned, terminates the tenancy and awards possession back to the landlord. MBIE reviewed a random sample of 100 abandonment cases during the 2013 calendar year, which found that just two applications were declined. In the two cases, the Adjudicator tested the landlord's evidence to support termination on the grounds of abandonment and the rent in arrear, and determined that in one case the tenant was on holiday and in the other the tenant had been hospitalised.

Landlord's right of entry

- Section 48 of the Act provides guidance on when a landlord may enter the premises during the term of the tenancy agreement to ensure the tenant's right of privacy during the tenancy.
- The Act states that the landlord may inspect the premises not more frequently than once in any 4 week period. The landlord cannot enter the premises during the term of the tenancy agreement, except with the agreement of the tenant, or in a prescribed set of circumstances (for example to remedy some fault to the property identified by the tenant).
- Landlords who actively manage their rented property do not need to wait 4 weeks to enter and prove abandonment. Section 61(1) of the Act makes rent arrears a pre-requisite for termination due to abandonment, so landlords can take action as soon as a tenant is in arrears with their rent. Section 56 of the Act allows a landlord to issue the tenant with a 14 day notice to remedy rent arrears. Should the tenant not remedy the rent arrears within the 14 day period, the landlord is able to apply to the Tribunal to terminate the tenancy.

Act requires service of notice on both parties

- The Act requires a 4 working day period for service (section 136(6)). Natural justice provides that both parties must be served notice of a forthcoming Tribunal hearing, and be given sufficient time to prepare a defence.

Dispute resolution

- The Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Justice jointly provide Tribunal services. MBIE provides advice, information and education, case management of applications to the Tribunal and mediation services. The Ministry of Justice provides adjudication services.
- Where the Tribunal makes an order to terminate a tenancy, it must determine, as best it can on the evidence before it, the date on which the landlord became aware, or ought reasonably to have become aware, that the tenant had abandoned the premises, and specify that date in the order.
- Tenants who abandon the premises are liable to pay the rent up to and including the termination date specified by the Tribunal. Depending on the type of rental agreement tenants have agreed to, their rent liabilities are (in addition to the cost of any repairs for damages they caused during the tenancy) :
 - i. for periodic tenancies, the date of expiry of the period of 21 days after the termination date specified by the Tribunal, or the date of commencement of a new tenancy of the premises (whichever is the earlier).
 - ii. for fixed-term tenancies, it is the date of the expiry of the term, or the date of commencement of a new tenancy of the premises (whichever is the earlier).

Current programme of Tribunal business enhancements

- MBIE and the Ministry of Justice are working on wider system changes to Tribunal processes as part of the Government's Better Public Services work programme. These operational changes do not require legislation. Both agencies are committed to improved case management designed to address delays in hearing Tribunal applications.

- Operational changes address improvements to case management of the Tribunal as a whole, identifying what cases are presenting and what is the most appropriate method of resolution. A new *Fasttrack* process has been implemented to deal with the majority of Tribunal applications (approximately 76%) that are about rent arrears, where the quantum of debt is rarely disputed and can be resolved by mediation.
- Better case management will remove from the Tribunal those cases that can be mediated, and result in considerable reductions in delays of all applications to the Tribunal. It is anticipated that the removal of cases that can be mediated will result in faster resolution times as Adjudicators can focus on more complex cases that require adjudication.
- As at November 2014, business improvement changes now allow the Tribunal to consider an application for tenancy abandonment in an average of 8.6 business days – a significant improvement on the 22.4 business days these applications took for the period January–November 2013. The Tribunal gives priority to abandonment applications. By contrast, it takes it an average of 23.0 business days to hear all Tribunal applications.

Problem definition

- The major issues faced by landlords when tenancies are abandoned are essentially about gaining access to the property, the time required to get possession and lost rental income.
- Once a tenant has abandoned the property, it can take a landlord up to four weeks to confirm the property has been abandoned (current RTA requirements permit only one landlord inspection every four weeks), and then an average of 8.6 working days to get a Tribunal hearing for a possession order (including serving notice on the tenant of the hearing).
- Other jurisdictions deal with abandonment differently. For example, in Australia, the Victoria Civil and Administrative Tribunal is required to schedule hearings to declare a property abandoned within 5 working days of receipt of application. In addition, the Victoria Residential Tenancies Act permits a landlord who has reasonable grounds to believe a tenant has abandoned the property to enter the premises after 24 hours' notice.

Table 1 shows the problem definition:

Table 1: Abandonment, problem definition		
Discovery & confirmation of abandonment	Tribunal process	Consequences
<p>Reasons why tenant may abandon property</p> <ul style="list-style-type: none"> -premises poorly maintained, tenant does not know how to rectify issue -tenant can't afford rent -health (including mental health) issues -tenant chosen to leave without notice 	<ul style="list-style-type: none"> -900 abandonment applications annually -average of 8.6 days to hear application -but, longer delay of 13 days to hear applications in regions where courts sit less frequently and hear a small number of abandonment cases. 	<ul style="list-style-type: none"> -landlord may not be able to pay mortgage, insurance or rates; bank may wish to repossess -if landlord is retired or dependent on rental income, lack of rental income affects their standard of living -other tenants are unable to rent and live in the property until the previous tenancy has been terminated.

<p>Current problem:</p> <p>Delay in time to gain access to property to get evidence of abandonment</p>	<p>Current problem:</p> <p>Time to get a Tribunal hearing</p>	<p>Result:</p> <p>Impacts on supply of rental housing</p>
---	--	--

Objective

- The objective is to shorten the time it takes to get an abandoned rental property back onto the market, while retaining proper process and natural justice.

Criteria

- Four criteria were developed to test the cost/benefit analysis used to consider a range of policy options.

Cost/benefit analysis

- In order to assist with options to address the problem, we have identified two separate parts to the issue of abandoned tenancies to enable options development:
 - i. enable the landlord to confirm more quickly that the property has been abandoned
 - ii. reduce the time taken to officially regain possession of the property, for clean-up and reletting.
- The **options** are:
 1. *Enabling the landlord to confirm more quickly that the property has been abandoned*
 - A. **Targeted information to landlords and tenants to prevent abandonment**
- This option involves MBIE providing:
 - i. Targeted information to landlords encouraging them to regularly check rent payments. Regular checking of rent payments allows landlords to act quickly when rent is in arrears and potentially prevent abandonment
 - ii. Information to tenants (potentially on the model tenancy agreement form) about what abandonment is, the consequences, and the importance of good communication with the landlord, particularly if the tenant is having problems paying the rent, or needs to urgently vacate the property.
 - B. **Legislative change – allow landlords 24 hours’ notice of entry on suspicion of abandonment**
- Currently, landlords can only inspect a property monthly, after giving 48 hours’ notice of inspection.
- This option would amend section 48(2) of the Act to allow landlords to enter a rental property 24 hours after giving notice, regardless of whether the landlord has already inspected the property within the last four weeks.

- Under this option rent must be at least 14 days in arrears (consistent with existing provisions) and the landlord must have reasonable grounds to support their subsequent application to the Tribunal for suspecting abandonment, for example
 - i. Tenant not responding to usual forms of communication
 - ii. Landlord's view of property from the street indicates house is empty and tenant has abandoned
 - iii. Neighbours do not know where tenant is/provide evidence tenants have left.
- Abuse of this power by a landlord will constitute a breach of tenant privacy (see section 38 of the RTA), which is an unlawful act under the Act, with a penalty of up to \$2,000.
- We considered an alternative first step proposed by the Principal Tenancy Adjudicator of requiring the landlord to apply for leave to enter the property to confirm abandonment after 24 hours' notice. On balance, it was considered that in most cases this option imposes additional requirements on a landlord relative to the status quo, with additional costs for landlords and Government. The potential for abuse by landlords can be managed through an existing penalty of up to \$2000 for a landlord breach of tenant's privacy.

Criteria	Option A: provide targeted information to landlords	Option B: allow 24 hours' notice of entry
Rental property can be re-let quickly	Unlikely to have significant impact – MBIE already provides this type of information to landlords. Tenants whose circumstances mean they are most likely to abandon a tenancy are typically difficult to reach with information.	Potentially reduces re-let time by up to 4 weeks if a landlord had just done a regular inspection.
Natural justice and tenants' right to privacy are protected	Not applicable.	Requirement for a landlord to provide supporting evidence to the Tribunal addresses potential natural justice issues. The Tribunal can also request further information if required. Proposed penalty for abuse of the entry power mitigates risks of tenant privacy being breached where a landlord does not have reasonable grounds for suspecting abandonment.
Process is convenient and low cost for landlords and tenants	Website information or information on a tenancy form is convenient and low-cost for landlords and tenants.	Landlords can make an application online and attach supporting evidence, for example photos of the property.

Costs and legal risk to the Crown	No additional cost to Government.	No additional cost to Government.
--	-----------------------------------	-----------------------------------

2. Reducing the time taken to officially regain possession of the property, for clean-up and reletting

C. Allow the landlord to take possession on suspicion of abandonment and to relet, without going to the Tenancy Tribunal

- This option would amend the RTA to remove the need for an abandoned tenancy to be officially terminated by the Tenancy Tribunal. A landlord who suspects that a tenancy has been abandoned would be able to take possession of the property and re-let it immediately.

D. Legislative change to enable the Tenancy Tribunal to hear abandonment cases ‘on the papers’

- This option would amend the RTA to make the default process for abandonment (possession) hearings as follows:
 - i. Hearing ‘on the papers’, which do not need to be heard in person in the Tribunal, unless the Adjudicator decides that the evidence is insufficient (note – would need changes to processes to require evidence to be submitted – not currently required)
 - ii. If further evidence is required, a hearing by phone (from a courtroom or other approved venue), unless either the tenant indicates that they want to participate (noting that 90% of tenants in possession cases do not currently show up for a hearing), and/or the Adjudicator considers that a hearing in person is required
 - iii. The Adjudicator retains the ability to conduct an in-person hearing, especially where the tenant wants to defend the application.
- It is possible to enable hearings ‘on the papers’ without amending the RTA, but parties will be less likely to challenge this power if it is stated in legislation. The RTA contains requirements that may have links with this power, such as section 93 (right of audience) and section 95 (proceedings usually to be in public) and an expedited service to hear abandonment cases ‘on the papers’ would be an exception to these provisions.

E. Legislative change to enable the Tenancy Tribunal to hear abandonment cases ‘on the papers’ and require cases to be heard within a statutory timeframe

- This option would amend the RTA as in option D above, but would also provide that tenancy abandonment (possession) cases must be heard within ten working days of the application being received by MBIE, providing that:
 - i. the application is complete, and

- ii. the landlord has a valid email address for the tenant, to allow expedited notice of service, and
 - iii. the tenant does not indicate that they want to participate in the hearing, and
 - iv. the Adjudicator is satisfied that a hearing on the papers and/or by phone is sufficient to establish grounds for possession. Where any of these conditions do not apply, the statutory timeframe would not apply.
- The ten working day timeframe would commence from the date MBIE receives the landlord's application (after having used the 24 hour notice of entry provision to provide firm evidence (including photographic) of abandonment, to a hearing on the papers).
 - Introducing a statutory time frame does create a risk that if the timeframe cannot be met in some cases due to circumstances beyond the Government's control, Tribunal decisions could be legally challenged. The Crown could also be subject to legal challenge if statutory timeframes are placed on the administrative aspects of the hearing (carried out by MBIE and the Ministry of Justice) and are not met. To address this concern, the duty to hear cases within the timeframe, where reasonably practical, would apply to the Chief Executives of the Ministry of Business, Innovation and Employment and the Ministry of Justice, which share responsibility for Tribunal administration, and to the Tribunal itself.
 - A statutory time frame could reduce flexibility for scheduling other urgent applications. A further risk in setting a ten day working time period may lead to requests from landlords that all cases be heard within prescribed timeframes. This would substantially change the RTA's intent and require further significant changes and cost implications for the Tribunal.
 - On balance, it is considered that these risks are outweighed by the benefits of returning rental properties to the market more quickly.

G: Status quo – continue non-legislative operational changes to Tribunal processes

- MBIE has underway a programme of non-legislative operational changes to improve service for all applications to the Tenancy Tribunal.
- Operational changes involve improving case management for the Tribunal as a whole, by identifying what cases are presenting and what is the most appropriate method of resolution. A new *Fasttrack* process has been implemented to deal with the majority of Tribunal applications (approximately 76%) that are about rent arrears, where the quantum of debt is rarely disputed and can be resolved by mediation.
- Better case management will remove from the Tribunal those cases that can be mediated, and result in reductions in delays of all applications to the Tribunal. It is anticipated that removal of cases that can be mediated will result in faster resolution times as Adjudicators can focus on more complex cases that require adjudication. MBIE could further focus on prioritising abandonment cases with the Ministry of Justice with a view to applications being heard more quickly than the current average of 8.6 working days, without any legislative change being required.

Criteria	Option C: remove need for Tenancy Tribunal to terminate an abandoned tenancy	Option D: Legislative change to enable abandonment hearings 'on the papers'	Option E: legislative change to enable hearings 'on the papers' and introduce a statutory timeframe	Option F: continue operational changes, without legislative change
Rental property can be re-let quickly	Reduces time to relet by approximately 9 working days in main centres (i.e. the average waiting time for an abandonment hearing) from when the landlord discovers the abandonment. Reduction may be greater in regional areas where the Tribunal sits less frequently.	Potential to reduce time to re-let marginally in main centres and by up to 2 weeks in regional areas where the Tribunal sits less frequently.	Potential to reduce time to re-let marginally in main centres and by up to 2 weeks in regional areas where the Tribunal sits less frequently. Main benefit in the main centres is to provide certainty for landlords.	Potential to reduce time to re-let in regional areas, for example by enabling hearings in other centres or by phone. Unlikely to have a significant impact in main centres, as abandonment cases are already prioritised by the Tribunal.
Natural justice and tenants' rights to privacy are protected	Significant risk to natural justice for tenants, as landlords are not required to provide any evidence. Abandonment applications have been declined in a small number of cases, due to evidence being obtained that the property was not actually abandoned (for example one tenant was in hospital). These cases highlight the need to ensure adequate checks and balances.	In most abandonment cases, the tenant has clearly absconded and does not wish to be contacted. The process is dependent on the Adjudicator being satisfied that the test of a high evidence threshold has been met. If the Adjudicator determines the test has not been met, the expedited process would not apply and the case would proceed to either mediation or a standard hearing within normal timeframes. Exercise of this discretion by the Adjudicator would ensure procedural fairness.	As for option D. Notice of a hearing served by email (a condition for the statutory timeframe to apply) is more likely to reach the tenant than notice served by mail to the abandoned property (status quo).	No significant impact anticipated.
Process is convenient and low cost for landlords and tenants	High convenience for landlords as no process requirements to follow. No process requirements for tenants.	High convenience for landlord, who does not have the time (and potentially travel) cost of appearing in front of the Tribunal in person. No change to the current process for tenants who wish to appear to defend the case.	As for option D. The statutory timeframe would provide greater certainty for landlords, but could impose additional costs on the Crown if the process is legally challenged.	Improved case management is likely to improve resolution times for tenants and landlords for all tribunal cases.
Costs and legal risk to Crown	Risk that there are not adequate checks and balances, which may impose unintended costs on the Crown from displaced tenants. Risk of legal challenge from a tenant.	Addresses risk to the Crown by providing legislative clarity on procedure.	Addresses risk to the Crown by providing legislative clarity on procedure. But, legal risk to Crown if: <ul style="list-style-type: none"> • it doesn't meet 10 day timeframe • Tribunal decisions being overturned if not made within timeframe. 	No significant impact anticipated.

Additional proposal: modernise service provisions

- Natural justice provides that both parties must be served notice of a forthcoming Tribunal hearing, and be given sufficient time to prepare a defence to the allegations. The RTA requires a 4 working day period for service by mail.
- In addition to the options proposed above for the resolution of tenancy abandonment cases, Government also proposes to modernise service provisions in the RTA by:
 - i. Require tenants and landlords to provide a valid email address and mobile phone number in the tenancy agreement, unless either party does not have one or both. Currently a tenant must provide a physical address, and may provide an email address as well, but is not obliged to
 - ii. Explicitly allow 'substituted service' under the RTA in line with District Court Rules. Substituted service can include serving the notice on a relative or partner of the tenant (who is known to be in contact with the party) or serving notice to the other party at their workplace. It can also include service by email, Facebook, or a published advertisement in a newspaper. The form of the substituted service will depend on the circumstances and what mode of service the judicial officer determining the application for substituted service believes is most appropriate. Currently, substituted service for the Tenancy Tribunal occurs in some locations, but this is not explicitly allowed for under the RTA, and there is not a nationally consistent approach.

Consultation

- MBIE consulted with the following external stakeholders: the Auckland and Christchurch branches of the Tenants Protection Association (the TPA) and the New Zealand Property Investors Federation (NZPIF).
- Other agencies consulted included the Ministry of Justice, Housing New Zealand Corporation, Te Puni Kokiri, the Treasury, the Ministry of Health, the Children's Commissioner and the Ministry of Education.
- The Principal Tenancy Adjudicator (PTA) has been consulted. She appreciates that the abandonment issue causes significant frustration to landlords, particularly as once gone, it is unlikely that the tenant is unlikely to deliver any rent owed or damages awarded. The PTA identified three main issues:
 - i. a high evidence threshold needs to be provided to ensure the landlord provides good evidence of abandonment to the Adjudicator
 - ii. notice to the tenant could be difficult where the tenant has left and the landlord is only able to serve notice at the property
 - iii. a statutory provision for resolving abandonment applications will have resource implications for the Tribunal's operation (in order to schedule abandonment cases, other scheduled hearings could be "bumped" and rescheduled to a later date - would be detrimental for the parties being

rescheduled and detrimental to the Tribunal's reputation and efficiency).

- The Auckland Tenants Protection Association (ATPA) considered that the issue of abandonment is a high priority one, and reasons to why tenants abandon a tenancy are complex. The ATPA noted that every abandonment case could possibly lead to homelessness. The ATPA considered a cause is poor communication and failure of landlords and tenants to provide contact details for each other. This would help landlords to know whether a tenant is on holiday or has abandoned the premises. MBIE does provide detailed information to assist landlords and tenants to resolve problems, including the need for better communication, but MBIE's information is dependent on landlords and tenants implementing the suggestions. The ATPA suggested that abandonment could be mentioned in the Tenancy Agreement form provided by MBIE, with an explanation provided on what abandonment is and possible consequences, plus the importance of providing current contact details. MBIE proposes to address this suggestion by inclusion in Option A of the proposed package of amendments to the RTA.
- The Tenants Protection Association (Christchurch) Inc. also suggested improvements to MBIE's advice, information and education for both tenants and landlords. The TPA recommended that a statement be included in the tenancy agreement at the commencement of the tenancy that if the landlord suspects the tenants are not occupying the property, the landlord may enter and secure the property. The TPA also suggested abandonment applications be given a higher priority and processed expeditiously by the Tribunal.
- The NZPIF was concerned about the loss of landlord income arising from rent arrears and abandonment, which they identify as \$1,939.00 per application to the Tribunal (it has been noted that insurance is available to offset this loss). The NZPIF's feedback was provided before the introduction of MBIE's operational changes, including the new *Fasttrack* service, which are aimed at speeding up the process of getting agreement between parties on payment of rent arrears.
- The Ministry of Justice considers that the current timeframes for hearing abandonment cases (an average of 8.6 working days) do not justify regulatory intervention. A statutory requirement to hear abandonment cases within ten working days would impinge the principle that courts should be able to regulate their own practice and procedure, and is likely to have unintended consequences such as displacing other cases. The Ministry of Justice considers implementation of the operational changes is preferable.

Conclusions and recommendations

- MBIE recommends a package of options A, B and E as the most preferable to:
 - i. enable a landlord to confirm more quickly that the property has been abandoned, and
 - ii. reduce the time taken to officially regain possession of the property, for clean-up and reletting.
- Analysis shows that the proposed package will enable a landlord to confirm abandonment more quickly and reduce the time to officially regain possession. The proposed package

seeks to balance the landlord's need to return the property to the market as fast as possible, while having regard to natural justice rights of the tenant.

- Although provision of a statutory timeframe to hear abandonment cases could entail some risk to the Crown, it would ensure that a property can be returned to the market as fast as possible. The landlord's new power to enter the property on 24 hours' notice to gather evidence of abandonment will be balanced by the Principal Tenancy Adjudicator's requirement for a high evidence threshold when the landlord applies to the Tribunal for an order for possession. The provision ensures the natural justice rights of the tenant are protected.
- The package should facilitate the return abandoned properties to the market more quickly, while reducing risk to the Crown that it may not meet the timeframe to hear applications. The process includes a high-evidence threshold to ensure that the rights of the tenant are safeguarded. The two-step process is shown below:

Expedited process for possession hearings within a statutory timeframe	
<p>1. Give landlord permission to enter property to confirm abandonment after 24 hours' notice</p>	<p>2. Tenancy Tribunal hearing for possession of the property within ten working days</p>
<p>Amend s 48(2) of Residential Tenancies Act to permit a landlord to enter the property to confirm abandonment after 24 hours' notice, regardless of whether the landlord has already inspected the property within the last four weeks.</p> <p>Rent must be at least 14 days in arrears (consistent with existing provisions) and the landlord must have reasonable grounds for suspecting abandonment, for example:</p> <ul style="list-style-type: none"> • Tenant not responding to usual forms of communication • Landlord's view of property from the street indicates tenant has abandoned • Neighbour's advice that tenant has moved out. <p>Abuse of this power by a landlord will constitute a breach of tenant privacy, which is an existing unlawful act under the RTA, with a penalty of up to \$2,000.</p>	<p>As part of their application, the landlord provides firm evidence of abandonment following inspection of the property:</p> <ul style="list-style-type: none"> • Photos of property's interior • Evidence of rent arrears • Other applicable evidence <p>The Tribunal hears the application 'on the papers' within ten working days of receipt of application (providing that the application is complete, and the landlord has a valid email address for the tenant, to allow expedited notice of service)*. ¹</p> <p>the RTA would specify a statutory timeframe for scheduling of abandonment (possession) hearings of 'ten working days from receipt of application where reasonably applicable' (using the definition of 'working day' in the District Court Rules 2014).</p> <p>MBIE would also text the tenant where a mobile number is provided by the landlord, advising that the tenant check their email.</p> <p>The 10 working days expedited process would not apply:</p> <ul style="list-style-type: none"> • if the Adjudicator requires more information following submission of all evidence • if a tenant indicates they want to contest the application. <p>In these cases, the expedited process would not apply and the case would proceed to either mediation or a standard hearing within normal timeframes. (This would be rare, but ensures procedural fairness.)</p>

¹ It is the tenant's responsibility to inform the landlord if they change their email address. If an email 'bounces back', the address would be regarded as not valid. Otherwise MBIE has to assume that an address supplied by the tenant is still valid. Currently notice is typically served by mail to the abandoned property, so many tenants do not receive notice of a hearing – service by email is likely to increase the chance of a tenant receiving the notice, particularly when accompanied by a text message. 90% of abandonment cases are not contested by the tenant.

*Where the landlord does not have a valid email address, notice will be served on the tenant by mail (standard process), with notice deemed to have been served after four working days (RTA s136). The application can then be heard 'on the papers', but not within the ten-day statutory timeframe.

Implementation plan

- Operational changes are currently being implemented. As discussed, there may be further issues in implementing an expedited service, including costs and perhaps also allocation of resources. While we have identified costs, further work needs to be done on impacts on resources.
- Some of the changes require amending the RTA. The Minister for Building and Housing intends to address this issue through a Residential Tenancies Amendment Bill, which has category 2 on the 2015 Government Legislative Programme. The Residential Tenancies Amendment Bill will primarily address regulatory issues around a proposed minimum standards regime for rental tenancies. Implementation requires:
 - i. training of MBIE case coordinators, Contact Centre and other staff, and the Ministry of Justice's Tribunal Adjudicators and their staff
 - ii. new information material to be provided to landlords and tenants to explain the changes and new procedures, complemented by a series of seminars or workshops to guide landlords and tenants through the new procedures and how they use them
 - iii. information material to include the consequences of abuse of the new expedited system by landlords, and that a new penalty is available to Tribunal Adjudicators should a landlord provide insufficient evidence of abandonment.
- MBIE's Advice, Information and Education (AIE) to tenants and landlords, delivered online and through seminar, will be updated as changes are implemented.

Monitoring, evaluation and review

- MBIE currently monitors delivery of Tribunal services. Monitoring of the proposed amendments will leverage off existing monitoring activity to inform the effects of new legislative and non-legislative changes. Other avenues for monitoring the effectiveness of the proposals include monitoring the number of contact centre calls and Tribunal applications about tenancy abandonment, and seeking feedback from stakeholder groups such as tenancy advocates and landlord representatives.
- MBIE will continue to work with the Ministry of Justice to evaluate the effectiveness of legislative and operational changes, to ensure they meet policy intent. MBIE will adjust its monitoring programme to ensure that issues involving landlords and tenants understanding of and responsibly applying the new requirements are captured using current performance indicators. The indicators will be modified where necessary to ensure the necessary data is collected.
- The changes need time to bed in. MBIE will review the RTA 12-18 months after full implementation of all changes.