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Office of the Minister for Housing

Cabinet Social Wellbeing Committee

Residential Tenancies (Healthy Homes Standards) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks to obtain a combined policy and legislation stage approval to make an urgent amendment to the Residential Tenancies Act 1986 (RTA) to extend the healthy homes standards final compliance date that can be prescribed under regulations.
- 2 This paper seeks:
 - 2.1 policy approval to change the compliance timeframes for the healthy homes standards for private landlords and public housing providers, to be implemented through a bill which simultaneously amends the RTA and the healthy homes standards. There is additionally a consequential amendment to the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016
 - 2.2 approval for the introduction of the Residential Tenancies (Healthy Homes Standards) Amendment Bill (the Bill) to extend the compliance timeframes for the healthy homes standards for private landlords and public housing landlords
 - 2.3 approval to adjust, if needed, the commencement date and to make consequent changes to the compliance timeframes. The commencement date is planned for 26 November 2022, the day after Royal assent. Royal assent is anticipated to occur on 25 November but could possibly change.

Relation to government priorities

- 3 One of the Government's priorities for housing is to make sure every New Zealander has a warm, dry, and safe place to call home. The healthy homes standards create minimum standards for heating, insulation, ventilation, draught stopping, moisture ingress and drainage in rental properties with specific timeframes for each type of tenancy. The proposed amendments in the compliance timeframes will ensure the policy intent of the healthy homes standards is achieved, while recognising the impact that COVID-19 has had on implementation. The amended timeframes will make the compliance burden more achievable, given the ongoing global supply chain and freight issues and trades constraints which have affected the construction industry following the impact of COVID-19.

Executive summary

- 4 Global supply chain and freight issues stemming from the impacts of COVID-19 have led to a reduction in supply and availability of a wide range of imported goods across the world and caused challenges for landlords seeking to comply with the healthy homes standards. Rental sector stakeholders have advised my officials that landlords, who are genuinely trying to comply, are at risk of breaching their

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obligations due to ongoing issues outside of their control. These issues are mainly present for properties entering the rental market for the first time. Access to trade capacity is another issue limiting landlords' ability to meet their compliance timelines.

- 5 Kāinga Ora-Homes and Communities (Kāinga Ora) are also impacted by supply issues and trade constraints, presenting a challenge in meeting its healthy homes standards compliance date of 1 July 2023. This is despite its efforts to increase delivery rates of upgraded properties.
- 6 Kāinga Ora expects that despite its accelerated work they will still be likely to have non-compliant homes due to complex situations in which tenants might deny access at any given point of the installation process. This means that the extension might still not translate into full compliance of their entire stock as achieving compliance in these properties will require more intensive management and extra time to resolve. Kāinga Ora estimates that by 1 July 2023, there may still be a persistent 5 to 10 percent of non-compliant homes due to access issues. The timeframe extension would certainly mitigate the impact of ongoing supply chain and trade constraints that landlords are experiencing but would only partially reduce the compliance risk for the homes with access issues. By the end of this timeframe, Kāinga Ora will need to rely on the regulatory response to proof their actions taken to comply by any case taken to the regulator.
- 7 I consider that the ongoing impacts of COVID-19 require a change to compliance dates for the healthy homes standards for private landlords and public housing providers who have not yet had to comply. While many of the supply side issues are likely to ease over the next 12 to 24 months, I consider that an extension in the timeframes for healthy homes standards compliance will address the immediate supply pressures and will enable landlords to continue with healthy homes implementation activities in a measured way.
- 8 Compliance timeframes for private landlords with the healthy homes standards are staggered so their compliance date is triggered once they enter into a new or renewed tenancy. Currently, private landlords must comply with the healthy homes standards within 90 days of any new or renewed tenancy since 1 July 2021. Any private landlords who have not had to comply by 1 July 2024 must comply by that date.
- 9 I recognise the risk that some rental properties will be living in non-compliant homes for longer than anticipated. However, I believe that the proposed extension is appropriate due to the unforeseen nature of the impacts of COVID-19, and the inability for landlords to control these factors. I am monitoring the compliance of Kāinga Ora in this area, and I expect the momentum on this work to be maintained to ensure homes are brought up to standard as soon as possible.
- 10 There is a legal constraint in a transitional provision in Schedule 1AA of the RTA in which the final compliance date for all landlords cannot be extended beyond 1 July 2024 by regulations.
- 11 Therefore, I am proposing that the Bill extends the compliance deadlines for both private landlords and public housing providers by one year. Giving both sectors a full year will mitigate any further potential issues if supply chain and trade constraints continue or worsen and allow time to continue to actively manage tenancies where there may be issues with access to homes.

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- 12 Given the staged approach and the fact that private landlords and public housing providers have different compliance timeframes, I propose to proceed with an urgent introduction and passing of the Bill to provide certainty and relief to all types of landlords in a timely manner.
- 13 The Bill will:
- 13.1 change the RTA to extend the final compliance date that can be prescribed under regulations for all landlords to 1 July 2025 (currently 1 July 2024)
 - 13.2 commence on 26 November 2022 or the day after Royal assent
 - 13.3 amend the healthy homes standards:
 - 13.3.1 to extend the final compliance date for Kāinga Ora and community housing providers to 1 July 2024 (currently 1 July 2023), and
 - 13.3.2 for private landlords, to extend the timeframe to comply from the start of a new or renewed tenancy from 90 to 120 days, but no later than 1 July 2025 (currently 1 July 2024).

Policy

Design of the current compliance timeframes

- 14 A primary consideration when the healthy homes standards were designed in 2018 was ensuring that landlords did not compete for building materials and tradespeople and that there would be sufficient capacity in the building sector. This is proving relevant with the current high volumes of work needing to be undertaken by Kāinga Ora resulting in installer shortfalls for EECA's insulation programme. Furthermore, there was a desire from the Government that public rentals, such as properties managed by Kāinga Ora and Community Housing Providers (CHPs), should comply ahead of privately owned rental properties. Therefore, the compliance dates differ depending on the type of tenancy a landlord manages.
- 15 As a result, private landlords have a rolling compliance date of between 1 July 2021 and 1 July 2024. Their compliance date is triggered on the day a new tenancy is entered, or the tenancy is renewed, and the healthy homes standards must be complied with within 90 days of that date.
- 16 Public housing landlords were given a fixed compliance date of 1 July 2023, rather than a rolling date. Because of the volume of properties they manage, having a fixed date is intended to help them to undertake this work in an efficient manner. They can plan ahead to manage the work. All boarding house tenancies needed to comply by 1 July 2021.
- 17 When the compliance dates were being designed, tenancies lasted around 20 months on average. However, the length of tenancies has increased since 2018, to an average of 26.73 months in 2021. The number of tenancies ending each year is also decreasing (from 151,072 in 2018 to 140,166 in 2021).
- 18 Average tenancy length is relevant as the original compliance dates assumed there would be at least one rotation of tenants, allowing landlords to undertake the healthy homes standards work while the houses were vacant, without imposing on tenants. Although some private landlords and most Kāinga Ora homes have met the healthy

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homes standards while houses were occupied, the extended period in which tenants are currently staying may have also deterred landlords from bringing their properties up to the healthy homes standards.

Impacts of COVID-19 on compliance timeframes

- 19 Since early 2021, I have been regularly briefed on the impacts that COVID-19 has had on supply chain issues. The COVID-19 pandemic has contributed to a loss of approximately 240,000 direct labour hours for Kāinga Ora and has set the Kāinga Ora compliance programme back by approximately six months.
- 20 After the second national lockdown (Alert Level 4) in 2021, officials tested with a range of stakeholders whether they would still be able to meet the compliance dates. Based on the information received, landlords were facing several barriers, including product supply issues and difficulty in accessing tradespeople. There is regional variation in the supply and trade constraints which means that forecasted completion dates will differ geographically and some may face sustained constraints for longer than others.
- 21 Officials are continuing to monitor the data and evidence emerging from the ongoing constraints of the construction sector. The issues with global supply and freight chains stemming from the impacts of COVID-19 have led to a reduction in the supply of a wide range of imported goods across the world. This is being acutely felt in New Zealand given our location and the size of our market.
- 22 One of the main issues for private landlords is the delay in the supply chain for suitable heat-pumps. Medium and small heat pump installers usually order the devices as needed, meaning that if there are supply chain delays at any stage, it could significantly affect the landlord's ability to install them on time. Stakeholders from the rental sector have consistently reported that trying to buy a suitable heat pump and get it installed within 90 days is very ambitious in the current environment.

Kāinga Ora has worked hard to meet the compliance timeframe, but it is a challenge

- 23 Kāinga Ora are facing two separate challenges in meeting their delivery targets: supply and trade constraints and access issues. The supply of materials such as insulation, and the availability of carpenters and heat pump installers is an ongoing constraint. Despite this, Kāinga Ora has increased delivery rates from 180 homes per week in June 2021, to over 610 homes per week in the last quarter (July-September 2022). Kāinga Ora needs to complete 600-700 properties every week to meet the current compliance timeframes. However, continued supply chain and trades constraints or any other unforeseen capacity constraints may mean that delivery will not reach or sustain the increase needed to meet that target. If the compliance timeframes are extended, sufficient buffer should be included to account for this.
- 24 Access issues are a combination of either not being able to contact the tenants, or the tenant declining access to undertake one or more of the required works. The access for healthy homes is particularly complex because it involves multiple trades and visits over several weeks. Around 5-10 percent of the Kāinga Ora portfolio (3,400+ homes) will be affected. There can be a variety of reasons for access difficulties, including COVID-related stress or disruptive behaviours.
- 25 As part of the healthy homes implementation programme, Kāinga Ora is undertaking an education programme to help tenants better understand the benefits of the work and how to keep their home healthy. As part of their latest reset in April, they have

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developed new processes to do regular follow-ups where their programme team have not managed to secure access after multiple attempts.

- 26 Kāinga Ora has reported that it has put steps in place to manage some of its issues around the supply of heat-pumps. However, Kāinga Ora continues to experience issues around supply of other materials, such as insulation, and the availability of carpenters and heat pump installers. Pressures on materials and trade vary in different parts of the country and depend on suppliers.
- 27 While many of the supply side issues are likely to ease over the next 12 to 24 months, officials consider that an extension in the timeframes for healthy homes standards compliance will address the immediate supply pressures and will enable landlords to continue with healthy homes implementation activities in a measured way.

Consequential amendments and transitional issues

- 28 Changes in the compliance timeframes will only be available for landlords whose healthy homes standards compliance date has not yet passed (as at the date the amendments come into force). This is consistent with the presumption that all laws apply prospectively.
- 29 As a result of the changes to the compliance dates for the healthy homes standards there are consequential amendments to be made to the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 (smoke alarm regulations).
- 30 The smoke alarm regulations were in place prior to the healthy homes standards. They require a level of insulation for rental properties that ceases to apply once the healthy homes standards have been complied with. Therefore, the transitional provisions in the smoke alarm regulations need to be changed to reflect the new compliance dates.
- 31 One of the exemptions to the healthy homes standards is if the landlord applied for consent to demolish or substantially rebuild their home. Currently, if this exemption ceases to apply, then the landlord must comply within 90 days. This date needs to be consistent with the compliance timeframe for new or renewed tenancies and be extended from 90 to 120 days.
- 32 It is likely that aspects of the Bill will be contentious for relevant stakeholders. Tenant groups may address the issue that the new compliance timeframe may impact on the health and wellbeing of the most vulnerable groups living in non-compliant homes; landlord groups may also argue that these changes could have been made sooner to address the COVID-19 disruptions.

Impact analysis

- 33 A regulatory impact statement was prepared in accordance with the necessary requirements by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development.
- 34 The regulatory impact assessment is attached as it has not previously been submitted to Cabinet or a Cabinet committee at the policy approval stage. I am seeking approval for the introduction of the Bill.

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- 35 The regulatory impact statement was reviewed by an internal panel at Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development and the panel considers that it meets the Quality Assurance criteria. The panel acknowledges that consultation has been targeted and there are gaps in its reach, particularly regarding the perspectives of tenants. However, it considers that a targeted approach to consultation is commensurate with the scale of regulatory change proposed and that additional consultation would not have meaningfully changed the analysis or the conclusions reached.

Compliance

- 36 The Bill complies with each of the following:
- 36.1 the principles of the Treaty of Waitangi;
 - 36.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions;
 - 36.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 36.4 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper [to attach]);
 - 36.5 the principles and guidelines set out in the Privacy Act 2020;
 - 36.6 relevant international standards and obligations;
 - 36.7 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 37 This paper has been prepared by HUD. The following agencies have been consulted: The Ministry of Business, Innovation and Employment, Kāinga Ora, the Energy Efficiency and Conservation Authority, Land Information New Zealand, The Treasury, the Ministry of Education, The New Zealand Defence Force, the Department of the Prime Minister and Cabinet, the Ministry of Health, the Ministry of Social Development, Department of Corrections, and Te Puni Kōkiri.
- 38 Targeted conversations have occurred with private sector organisations about the pressures present in the current market. These have included landlord advocacy and property manager groups.
- 39 The Green Party was consulted on this paper and does not support the proposed approach. The Green Party would prefer to see the current timeframe maintained. The Green Party notes the Healthy Homes Standards were established in 2019, with a five-year lead in time for full compliance. This has provided a lengthy notice period for landlords to comply, despite interruptions in freight due to Covid-19. The Green Party is concerned that delaying these standards for a further year will leave many whānau living in inadequate housing for another winter. Alternatives such as bulk procurement by the Crown and incentives for early compliance do not appear to have been fully considered.

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- 40 The Green Party is also concerned at the message sent that compliance timeframes for regulations will be delayed if it appears they are unlikely to be comprehensively met. This undermines regulatory certainty and reduces the likelihood that compliance will be achieved promptly in the future. The Green Party also remains concerned that there is no systematic checking of compliance, such as through a rental warrant of fitness.
- 41 If Cabinet agrees to extend the compliance deadline, the Green Party's view is that properties which do not meet the standards by 1 July 2023 or 1 July 2024, whichever applies to the property type, should be subject to a mandatory 20 percent rent reduction and until they meet the standards. This would reflect the fact that the properties do not meet acceptable quality and safety standards.

Binding on the Crown

- 42 The RTA is binding on the Crown.

Allocation of decision-making powers

- 43 The RTA allocates decision-making powers between the executive, the courts, and tribunals and the Bill does not affect them.

Associated regulations

- 44 There are no associated regulations. However, the Bill will amend the existing regulations directly.
- 45 The 28-day rule will not be applicable given that the amendments to the regulations are being made through a Bill rather than through amendments in the regulations.
- 46 The size of the drafting involved to develop the amendments is considered small.
- 47 Given the time constraints, I sought and obtained agreement from the Attorney-General for the Parliamentary Counsel Office (PCO) to begin drafting legislation in anticipation of Cabinet approval of the policy

Other instruments

- 48 The Bill does not include any provision empowering the making of instruments that are secondary legislation under the Legislation Act 2019.

Commencement of legislation

- 49 The Bill will come into force on the day after the date of Royal Assent.

Parliamentary stages

- 50 The Bill should be introduced and passed through all stages under urgency in November 2022. This is due to the need to provide certainty and relief to all types of landlords who are currently having to comply with insufficient time. Furthermore, public housing providers' final possible compliance date is coming up on 1 July 2023, and I am intending to provide an equitable solution to all types of landlords at the same time.

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Proactive Release

51 I propose to release the paper proactively, in full, within 30 business days. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

In relation to policy matters, I recommend that the Cabinet Social Wellbeing Committee:

- 1 Agree to proceed with an urgent amendment to the RTA, which:
 - 1.1 changes primary legislation to extend the final compliance date that can be prescribed under regulations for all landlords to 1 July 2025 (currently 1 July 2024); and
 - 1.2 sets the commencement date of the Bill as 26 November 2022; and
 - 1.3 amends the healthy homes standards:
 - 1.3.1 to extend the final compliance date for Kāinga Ora and community housing providers to 1 July 2024 (currently 1 July 2023); and
 - 1.3.2 for private landlords, to extend the timeframe to comply from the start of a new or renewed tenancy from 90 to 120 days, but no later than 1 July 2025 (currently 1 July 2024);
- 2 Agree that the extension to the compliance timeframes will only be available to landlords whose healthy homes compliance date has not yet passed (if signed a new or renewed tenancy on or after 28 August but before 3 March 2025), based on a commencement date of 26 November;
- 3 Agree to extend the healthy homes standards compliance timeframe from 90 to 120 days for landlords granted an exemption after applying for consent to demolish or substantially rebuild the home, and whose circumstances have changed meaning the exemption no longer applies;
- 4 Agree that consequential amendments will be made to the smoke alarms regulations, to reflect the new compliance dates;
- 5 Note that the Bill's commencement date of 26 November 2022 is premised on this being the day after the likely date of Royal assent;
- 6 Agree that if the likely date of Royal assent changes, the Minister of Housing may adjust the commencement date to the day after Royal assent, and make any consequential amendments in the Bill that relate to the commencement date;

In relation to legislation proceedings, I recommend that the Cabinet Social Wellbeing Committee:

- 7 Agree to the inclusion of the Bill in the 2022 Legislation Programme, with a category 2 (must be passed this year), so the Government can provide certainty on the new compliance dates for healthy homes standards and adjust the compliance dates promptly;

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I N C O N F I D E N C E

- 8 Note that the Bill will provide private landlords and public housing providers sufficient time to comply with the healthy homes standards given the current access issues, trades constraints and supply chain issues for some building products;
- 9 Approve the Residential Tenancies (Healthy Homes Standards) Amendment Bill for introduction and passing, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 10 Agree that the Bill be introduced on 22 November 2022;
- 11 Agree that the Government propose that the Bill be:
 - 11.1 referred to the House of Representatives for consideration;
 - 11.2 enacted by the end of November 2022.
- 12 Note that the Green Party was consulted on the proposals in this paper and does not support them.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Housing