Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

22 December 2022

HUD2022-001051

s 9(2)(a)

Tēnā koe s 9(2)(a)

Thank you for your email of 19 October 2022 requesting information under the Official Information Act 1982 (the Act). Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (the Ministry) extended the time to respond to your request by ten working days on 7 November 2022. The Ministry subsequently provided you with a decision letter on 29 November 2022 noting that the Ministry would release the documents that you requested with some information withheld in December 2022.

On the 19 October 2022 you requested:

> *"...I would like copies of the following documents with their redactions removed. If the redactions cannot be removed could you please clearly indicate the specific justification for each redaction (rather than just the clause of the OIA that you have used to redact them).*
> - *BRF20/21120809*
> - *AMI20/21120425*
> - *BRF20/21010833*
> - *AMI20/21020448*
> - *DPMC-2020/21-583*
> - *AMI20/21020459*
> - *AMI21/22090623*
> - *BRF21/22081078*
> - *IREQ21/22021246*
> - *BRF20/21030899*
> - *BRF20/21040936*
> - *BRF21/22021232*
> - *BRF21/22081078*
> - *AMI21-22090623*
> - *CAB21/22090077*
> - *BFR20/21010833"*

Your request set out 16 individual documents. On further examination, three documents appear to be duplicated, these documents have the identifying numbers – AMI21-22090623, BRF21/22081078, and BRF20/21010833 – and have been repeated in your request. Therefore, there are 13 documents in scope of your request.

As previously noted, the Ministry believes that AMI21-22090623 is a reference to AMI21-22090632 (*Supporting material for Cabinet paper: Policy decisions for amending the Residential Tenancies Act in response to COVID-19 outbreaks*) and have treated it as such.

The Ministry has revised the redactions that were originally made to the seven documents under the Act. The revised versions of these documents are attached to this response. The decision to release further information from the previously withheld six documents and the previously redacted seven documents reflects the passage of time, which allowed for the development of policy and decisions to be made. Some information within the documents has been redacted and remains withheld under the following sections of the Act:

Section of Act	Reason to withhold
9(2)(a)	To protect the privacy of natural persons.
9(2)(ba)(i)	To protect information which is subject to an obligation of confidence.
9(2)(f)(iv)	To maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
9(2)(g)(i)	To maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.
9(2)(h)	To maintain legal professional privilege.

The document schedule details the documents for release and high-level justifications for the specific redactions. The Ministry cannot provide more detail on the justification for the redactions without prejudicing the interests that are protected by section 9 of the Act.

The Ministry considers that in withholding information under s9(1) of the Act it has given appropriate weight to the public interest in release and in doing so applied a balancing exercise. The revised information release upholds the public interests of procedural fairness and transparency whilst maintaining the need to withhold information for the reasons outlined above under section 9 of the Act. Where information has continued to be withheld this is because the s9 reason under the Act outweighs the public interest in release in each situation.

You have the right to make a complaint to the Ombudsman and seek investigation and review of the Ministry's decision to continue to withhold information, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website at: www.ombudsman.parliament.nz.

As part of our ongoing commitment to openness and transparency, the Ministry proactively releases information and documents that may be of interest to the public. As such, this response, with your personal details removed, may be published on our website.

Yours sincerely

Jeremy Steele
General Manager – Policy, and Legislation Design

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Annex 1: Document schedule

Documents released – HUD2022-001051				
	Date	**Document**	**Section of the Act applied**	**Redaction detail**
1	04/12/2020	Improving housing supply and affordability: Initial advice	9(2)(a) 9(2)(f)(iv)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. Initial policy decisions for this policy reform were made at Cabinet in March 2020. However, the specific information withheld is currently under consideration by Minister Woods.
2	21/01/2021	Options for rent indexation and further protection for tenants	9(2)(a) 9(2)(f)(iv) 9(2)(g)(i)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. This specific information withheld is currently under consideration by Minister Woods. This specific information consists of the free and frank expression of opinions related to market impacts and the reform of the legislative programme.
3	11/02/2021	Speaking points: options for protecting renters from the impacts of demand side measures	9(2)(a) 9(2)(f)(iv) 9(2)(g)(i)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. This specific information withheld is currently under consideration by Minister Woods. This specific information consists of the free and frank expression of opinions related to ongoing stakeholder engagement, market impacts, and the reform of the legislative programme.

4	26/02/2021	Findings from a literature scan on rent regulation	9(2)(a)	The mobile phone number of these staff members is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees.
5	22/12/2020	Potential impacts on existing landlords and tenants of proposed changes to the treatment of rental properties	9(2)(a)	The mobile phone number of these staff members is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees.
6	19/08/2021	Residential tenancies under COVID-19 Alert Level 4 - initial advice	9(2)(a) 9(2)(g)(i) 9(2)(h)	The mobile phone number of these staff members is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. This specific information consists of the free and frank expression of opinions related to the legislative programme. The information was bought into existence for the purpose of the Ministry receiving legal advice from its internal legal advisors on COVID-19 matters.
7	09/06/2021	Cabinet paper – Policy decisions for amending the Residential Tenancies Act 1986 in response to COVID-19 outbreaks	9(2)(g)(i)	This specific information consists of the free and frank expression of opinions related to the Minister's responsibility.
8	06/09/2021	Supporting material for Cabinet paper: Policy decisions for amending the Residential Tenancies Act in response to COVID-19 outbreaks	9(2)(a) 9(2)(h)	The mobile phone number of these staff members is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. The information was bought into existence for the purpose of the Ministry receiving legal advice from its internal legal advisors on COVID-19 matters.
9	Not listed	Geographical options for rent indexation	Nil	Nil
10	Not listed	High level options to address rent increases	9(2)(g)(i)	This specific information consists of the free and frank expression of opinions related to ongoing stakeholder engagement and the legislative programme.

11	26/03/2021	Indicative timeline and advice on potential legislative vehicles for proposal to limit rent increases per property	9(2)(a) 9(2)(f)(iv)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. Initial policy decisions for this policy reform were made at Cabinet in March 2020. However, the specific information withheld is currently under consideration by Minister Woods.
12	30/06/2021	Updated timeline for proposal to limit rent increase per property	9(2)(a) 9(2)(g)(i)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. This specific information withheld is currently under consideration by Minister Woods. This specific information consists of the free and frank expression of opinions related to ongoing stakeholder engagement, market impacts, and the reform of the legislative programme.
13	1/03/2022	Proposals for amending the rent-setting provisions in the Residential Tenancies Act 1986	9(2)(a) 9(2)(ba)(i) 9(2)(g)(i)	The mobile phone number of this staff member is withheld in line with the Ombudsman's guidance on names and contact details of public sector employees. This specific information withheld is currently under consideration by Minister Woods. This specific information consists of the free and frank expression of opinions related to ongoing stakeholder engagement, market impacts, and the reform of the legislative programme.

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Improving housing supply and affordability: initial high-level advice			
Date:	4 December 2020	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF20/21120809

Action sought		
	Action sought	**Deadline**
Hon Dr Megan Woods **Minister of Housing**	Discuss options at the officials' meeting on Monday, 7 December.	7 December

Contact for discussion				
Name	**Position**	**Telephone**		**1st contact**
Brad Ward	Deputy Chief Executive, Place-based Policy & Programmes	04 831 6035	s 9(2)(a)	✓
Helen Potiki	Deputy Chief Executive, Housing & Urban Settings	04 832 2554	s 9(2)(a)	
Hilary Eade	Kaiaki, Place-based Policy & Programmes	04 831 6032	s 9(2)(a)	

Other agencies consulted
We have consulted with the Treasury, Inland Revenue, and Kāinga Ora, and have informed the Department of Prime Minister and Cabinet.

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Improving housing supply and affordability: initial high-level advice

For:	Hon Dr Megan Woods, Minister of Housing		
Date:	4 December 2020	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF20/21120809

Purpose

1. This briefing attaches slides outlining a potential package to increase housing supply and improve affordability over the short-term, ahead of the impact of broader reforms.

Recommended actions

2. It is recommended that you:

    1. **Discuss** the potential package with officials, what options are in or out, and the nature of the advice you are expecting in February 2021. *Discuss*

    2. **Note** that we would like an indication from you now on areas you may wish to progress further, and those you do not, due to the need to prepare any associated Budget bids to be submitted by 29 January 2021.

Brad Ward
Deputy Chief Executive, Place-based Policy and Programmes

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Hon Dr Megan Woods
Minister of Housing

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Background

3. In November, we provided you with a briefing outlining our plan to provide you with a work programme by early February 2021 on increasing housing supply and improving housing affordability over the short-term (from 6 months to three years) [BRF20/21110795 refers].

4. You have since asked that we provide you with a package of high-level options before Christmas. This briefing attaches slides setting out a potential package of options to increase housing supply and improve affordability over the short-term.

5. The Treasury and Inland Revenue are also developing options to influence housing demand and increase housing supply, and will be reporting separately to the Minister of Finance on this. We have worked with them in developing our attached package. Our advice indicates which of the proposed the Treasury's demand options we support at the conceptual level, but does not provide detailed analysis on specific mechanisms.

Package of options to increase supply and improve housing affordability

Objectives

6. Proposed interventions are intended to:

    a. increase supply (across all types of housing tenures and price points);

    b. reduce the rate of property and rental price increases;

    c. improve outcomes for households who rent;

    d. enable first home buyers to better compete in the market

    e. have an initial impact in the next 12 – 18 months, particularly in terms of reducing expectations of significant future house price gains;

    f. appropriately target the specific barriers in different priority places (e.g. apply differently in main urban centres and regional centres).

Package of high-level options

7. The proposed options:

    a. include a mixture of supply and demand interventions, and measures intended to divert investors from existing housing to new builds (while also supporting first home buyers);

    b. will apply to main urban centres and regional centres where house prices and rents are particularly unaffordable. It will not apply to small towns or rural communities because the issues in those areas are different and will require more targeted and bespoke interventions;

    c. are intended to take the heat out of demand for existing properties, while diverting investment to new builds, which are essential to increasing supply. This would mean any changes to tax settings should apply differently to existing houses and new builds.

Key messages

8. **Increasing the overall supply of new build housing in the right places will have the greatest impact on affordability.** Consents are at their highest level since 1973, but due to population increase we are only building 7.5 new homes per 1000 people, compared to 13.4 homes per 1000 people in 1973. The Christchurch experience post-earthquake and rebuild demonstrated clearly how house prices and rents respond to supply, and how removing constraints on land and infrastructure can support a rapid increase in supply. More recently, in Queenstown, significant decreases in rents are a result of increased supply in the market and decreased demand, due to the impacts of Covid-19.

9. Sharing development risk through tools such as underwrites and deferred settlement on land, can help ensure that enough new build supply is **inherently affordable** (through modest design and density).

10. There is also a role for **more targeted interventions** to support secure, affordable rentals for people on lower incomes, and to support first home buyers. However, these types of interventions will be less effective without also acting to increase overall supply. The lower the income of the household, the higher the cost to support them.

11. **A coherent package of tools and interventions is necessary to have a meaningful impact on housing supply and affordability**. Picking and choosing individual interventions will not have a clear impact. For example, in order to deliver more affordable homes, we may need to secure land, finance infrastructure, and share some of the development and/or sales risk with the private sector.

12. To see change at scale and pace, the Government needs to play a key role. **There is a clear need for significant additional Government spending on land, infrastructure, and housing**.[1] It requires a mix of recyclable and non-recyclable funding.[2] While there are some existing funding sources which can be drawn on, or repurposed (e.g. unallocated KiwiBuild funding or remaining 'shovel ready' Infrastructure Reference Group funding), this will not be sufficient. We have provided your office with text on this to include in your Budget 2021 letter to the Minister of Finance in early December.

13. This does not mean the Government needs to do everything itself. Financial support can also **remove constraints for other parties (e.g. iwi and Māori groups, and private developers)** and provide opportunities to leverage their land and capital to deliver housing at greater pace and scale.

14. Even if all of the tools and interventions in the package are implemented, **we will not see a significant number of houses built immediately.** However, there will be visible progress along the way (e.g. land acquired, infrastructure completed and sod turnings)**.** Despite the lag, these interventions are necessary to start addressing the underlying causes of housing shortages and affordability pressures. Over time, the options in the package will help to ensure an ongoing pipeline of housing supply to meet a diverse range of needs and aspirations.

15. A comprehensive package is needed to send a clear signal the Government is serious about addressing the housing shortage and taking the heat out of asset prices. We would expect to see the market respond accordingly due to **reduced expectations of significant future house price gains**.

16. **This package is not a substitute for longer-term system and regulatory reforms** to address unnecessary costs, risks and delays. Options in the package complement HUD's existing work programme which is critical to maintaining momentum. That work programme includes:

    a. implementing existing urban development initiatives (including the Infrastructure Funding and Financing Act, the Urban Development Act, National Policy Statement on Urban Development, developing the Government Policy Statement on Housing and Urban Development, and progressing urban growth partnerships);

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[1] This investment and related infrastructure will also support delivery of the additional 8000 public and transitional houses (ideally as part of mixed tenure developments).

[2] Some of the money will be returned to the Crown over time (e.g. where money is used to buy land that is subsequently on sold); some of the investment will generate a profit (e.g. where the Crown invests in a development on the basis of a profit share); some of the money will not be returned, and while being an expense for Vote Housing, will deliver broader wellbeing benefits and potential cost savings to other portfolios (e.g. better health through improved housing quality and addressing child poverty).

b. being actively involved in Resource Management Act reform to enable urban areas to grow and change, improve housing affordability through enabling greater supply, and making it easier to build;

c. addressing infrastructure funding and financing constraints;

d. investigating ways to address high construction costs; and

e. addressing unnecessary land use constraints.

f. Establishing the **Progressive Home Ownership Fund**, to support 1,500 to 4,000 households into home ownership.

g. Delivery of **18,000 public and transitional houses** by 2024/2025.

17. **Capacity constraints in the construction sector** are re-emerging and risk constraining delivery of additional housing supply and increasing costs.[3] Transformation and workforce training initiatives under the Construction Sector Accord will be important to address constraints, alongside creating a sustainable pipeline of demand for off-site manufacturing. However, additional measures may be necessary (for example potentially bringing in additional workers from overseas, similar to the Christchurch rebuild).

Consultation

18. We have consulted with the Treasury and Inland Revenue on these options, and we have informed the Department of Prime Minister and Cabinet.

Next steps

19. Following a discussion with you at the officials' meeting on Monday, 7 December, we will:

    a. provide more detailed policy work in February on the recommended package of options. This will include confirming priority places we should focus on, and specific interventions from the package that we would propose using in those places. This will include land sites for potential acquisition, and infrastructure needs for sites;

    b. prepare any associated Budget bids to be submitted by 29 January 2021.

Annexes

- Annex A: "Improving housing supply and affordability: initial high-level advice" slide package.

[3]Indicative figures from MBIE indicate that border closures are not a significant contributor to current workforce constraints: in most construction sector subcategories, the number of temporary workers in New Zealand in September 2020 is similar to September 2019.

Annex A: “Increasing housing supply and addressing affordability” slide package

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Improving housing supply and affordability: initial high-level advice

BRF20/21120809 Annex A; 4 December 2020
In confidence

Objectives

- Increase supply (across all types of housing tenures and price points)
- Reduce the rate of property and rental price increases
- Improve outcomes for households who rent
- Enable first home buyers to better compete in the market
- Have an initial impact in the next 12 – 18 months, particularly in terms of reducing expectations of significant future house price gains
- Appropriately target the specific constraints and impediments in different priority places (e.g. there are differences between main urban centres and regional centres, and between different places)

Key messages

- **Increasing the overall supply of new build housing delivered by the market (in the right places) will have the greatest impact on affordability.** Consents are at their highest level since 1973, but due to population increase we are only building 7.5 new homes per 1000 people, compared to 13.4 homes per 1000 people in 1973.
- Sharing development risk can help ensure that enough new build supply is **inherently affordable** (through modest design and density).
- There is a need for more **targeted interventions** in some places (particularly the regions) and to help some groups of people, particularly renters on lower incomes and first home buyers, noting that these are more costly on a per household basis. However, these types of interventions will be less effective without also acting to increase overall supply.
- **A coherent package of tools and interventions is necessary to have a meaningful impact on housing supply and affordability.**
- To see change at scale and pace, the Government needs to play a key role. **There is a clear need for significant additional Government spending on land, infrastructure, and housing.**
- This does not mean the Government needs to do everything itself. Financial support can also **remove constraints for other parties (e.g. iwi and Māori groups, and private developers**) and provide opportunities to leverage their land and capital to deliver housing at greater pace and scale.
- Even if all of the tools and interventions in the package are implemented, **we will not see a significant number of houses built immediately.** However, there will be visible progress along the way.
- We would expect to see the market respond to **reduced expectations of significant future house price gains**. A comprehensive package is needed to send a clear signal that the Government is serious about addressing the housing shortage and taking the heat out of asset prices.
- **Capacity constraints in the construction sector** are re-emerging. Transformation and workforce training initiatives under the Construction Sector Accord are important, alongside creating a sustainable pipeline of demand for off-site manufacturing. However, additional measures may be necessary (for example potentially bringing in additional workers from overseas, similar to the Christchurch rebuild).

Short-term work would complement HUD's wider work programme

This proposed package is in addition to the work HUD has underway:

- Implementing existing urban development initiatives (including the **Infrastructure Funding and Financing Act**, the **Urban Development Act**, **National Policy Statement on Urban Development**, developing the **Government Policy Statement on Housing and Urban Development**, supporting applications for projects proposed to be fast-tracked through the **COVID-19 Recovery (Fast-track Consenting) Act** and progressing **urban growth partnerships**).
- Progressing **Resource Management Act reform** to enable urban areas to grow and change, improve housing affordability through enabling greater supply, and making it easier to build.
- Exploring **ways to reduce building and construction costs** with MBIE and through the Commerce Commission inquiry.
- Working across portfolios to address **remaining legislative barriers adding unnecessary costs, risks and delays to development**, with a particular focus on land use constraints, such as restrictive covenants.
- Establishing the **Progressive Home Ownership Fund**, to support 1,500 to 4,000 households into home ownership.
- Delivery of **18,000 public and transitional houses** by 2024/2025.

Summary: Package to increase housing supply and address affordability in the short-term

The following slides provide more detail on each proposed element of the package.

Increase supply

- Fund infrastructure shortfall in the existing **Large-Scale Projects** in Budget 2021 (in Tāmaki, Māngere, Mt Roskill, Eastern Porirua, Northcote, Oranga) – you received separate advice on 3 December
- Introduce an **Infrastructure Fund**
- Fund Kāinga Ora for **strategic land purchases**
- Support **Build-to-Rent** – you will receive separate advice on 17 December
- Review and expand **KiwiBuild** settings – you will receive separate advice on 17 December
- **Refocus the Residential Development Response Fund** – you received separate advice on 17 November
- Consider the Treasury's **tax proposals** to increase supply – advice is being provided to the Minister of Finance on 7 December

Assist first home buyers to purchase new builds

- Increase the $ amount of the First Home Grant for new properties only (not existing properties)
- Consider increasing First Home Grant price caps and KiwiBuild price caps in some places for new properties only (subject to further analysis)

Divert investment demand from existing properties to new stock

- Implement the Treasury's tax or macro-economic proposals – Detailed design will be important to guard against perverse effects which may push up rents and increase pressure on the Housing Register or dampen demand for new builds.

Increase housing supply

- Fund the existing **Large-Scale Projects**. You received a separate briefing on 3 December 2020 advising the scale of funding required is up to s 9(2)(f)(iv) The LSPs are expected to deliver a combined number of 36,000 new houses over 20 years.
- Introduce a targeted **Infrastructure Fund.** We have identified a small number of key projects (via Urban Growth partnerships and spatial plans) in or near main urban areas ready to be delivered if the necessary infrastructure was funded. As well as these projects, this infrastructure fund could pay for strategic infrastructure in other priority places in main urban areas, in both cases in exchange for councils or developers increasing the pace at which they deliver, the scale of development, and/or proportion of affordable houses delivered. This new fund could be a grant or a low or no interest loan – more analysis is needed on the design and how to best leverage outcomes.
- Funding for **strategic land purchases, including by Kāinga Ora.** Land purchase opportunities are being considered in key areas and we can provide further advice on opportunities in priority places in February. Kāinga Ora has limited funding it can use for land acquisition now, whereas this would provide an opportunity to be more strategic and provide for more scale and flexibility regarding the build tenure (e.g. build to rent). A condition of the funding would be the land is developed at pace and delivers housing at scale, and with a mix of housing types and price points.
- **Land for Housing's mandate** could be made more flexible to allow for a broader range of affordable housing options to be delivered (e.g. allowing build to rent, rather than being limited to KiwiBuild and public housing only).
- Support **Build-to-Rent** – to divert investment away from speculation on existing homes, provide tenants with increased tenure stability and certainty on rent levels, and start to divert the ever increasing spend on Accommodation Supplement over time. There may be opportunities to reduce upfront costs, for example through offering deferred settlement or leasehold arrangements on Government owned land: s 9(2)(f)(iv) s 9(2)(f)(iv)

Increase housing supply (continued)

- Increase **KiwiBuild scale and pace of delivery** – by embedding and potentially expanding the buyer eligibility and risk tolerance changes made in response to Covid-19, increasing price caps in some areas (outside of Auckland), and relaxing the four-bedroom restriction.
- Refocus the **Residential Development Response Fund** – to support the delivery of affordable housing. A separate briefing was provided to you on 17 November 2020. s 9(2)(f)(iv) .
- Consider the **Treasury's tax proposals** to increase supply. The Treasury is providing advice to the Minster of Finance which includes options to increase supply via tax (for example reintroducing depreciation for multi-unit residential buildings which may help with build to rent), or changing local government rating bases from capital value to land value to incentive construction.

Assist first home buyers

- Increase the **$ amount** of the First Home Grant for **new builds only** - to stimulate demand for new builds, particularly in regional centres, where development economics mean few modest new builds are happening (this would be most effective alongside greater use of KiwiBuild underwrites in regional centres).
- Consider increasing First Home Grant price caps and KiwiBuild price caps in some places for **new builds only** (subject to further analysis).
- In some places such as Dunedin, there are limited numbers of existing properties under the price cap. However, we **do not recommend increasing the price caps for existing properties**, as this would inflate prices further, and only provide temporary relief for first home buyers. In these places, a supply response is needed (eg stimulating first home buyer demand for new builds via a higher grant/KiwiBuild).
- We do not recommend increasing the **income caps** for First Home Grants as this would primarily assist households who are already close to being able to buy and may result in prices being bid up higher.

Other measures considered

- **Rent control or rent freezes**
  - Recent research indicates significant rent increases are not widespread - 9% of renters are paying more rent than in early May.
  - The strongest factor influencing rents is the level of supply relative to demand.
  - International experience shows long-term rent controls impact the supply of rentals and incentives to invest in the quality of their properties. While rent control may lead to more homes being owner-occupied it could affect landlords' willingness to build new supply for rental.
  - In an environment of constrained supply, rent controls have been shown to lead to discrimination by landlords on factors other than price, or could encourage tenants and landlords to make/accept illegal additional payments. Once in place, rent controls are difficult to remove as the removal leads to a price correction, which is greater the longer controls are in place.
  - We consider other options addressed in this package would be more effective in addressing the key drivers of rental increases, namely supply, and without creating unintended consequences.

Other measures considered

- **Capitalizing Accommodation Supplement or Working for Families payments for use as a deposit** – in the same way as the Universal Family Benefit was able to be capitalized. Providing expected future payments as a capital grant now and not paying the entitlement in the future will not affect overall affordability. The increase in deposit will be offset by lower future income and ability to service a mortgage. Some of these recipients will be at greater risk of future hardship, particularly if their circumstances change.
- **First home deposits based on Accommodation Supplement or Working for Families eligibility** – would use current AS or WFF entitlement to calculate a deposit grant – for example 10 times current entitlement. AS and WFF would continue to be paid as well. Even with a higher deposit, households receiving AS or WFF will still find it difficult to service a mortgage. In places like Auckland the income required to service a mortgage for a lower quartile home would be too high to qualify for WFF. The approach might work in some regional centers. Progressive Home Ownership which deals directly with the ability to service a mortgage would be more effective.
- Provide a **mechanism for would-be-investors to join up to invest in new properties**. "Clubs" already exist, joining would-be-investors up to co-invest in a range of assets, including property. We would support this investment demand going to new builds rather than existing housing as this supports new supply and maintains construction sector jobs. It is not clear whether Government support is needed to achieve this, particularly if the measures in the package are implemented.
- **Changes to land covenants** – to enable greater development capacity. We intend to progress this work with the Ministry of Justice, but it is not likely to have impacts in the short-term
- Requiring councils to introduce **inclusionary zoning** to ensure a certain percentage of housing in new developments were delivered at affordable levels. There are different forms of inclusionary zoning and the design and implementation would need to be tailored to fully consider the context, impact on developer behaviour, and outcomes sought within a specific place.

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

time

Briefing

Options for rent indexation and further protections for tenants			
Date:	21 January 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21010833

Action sought		
	Action sought	**Deadline**
Hon Dr Megan Woods **Minister of Housing**	**Note** the recommendations **Indicate** if you wish officials to undertake further analysis	29 January 2021
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Discuss** this paper with the Minister of Housing **Note** that the proposals in this paper would require changes to the Residential Tenancies Act 1986	29 January 2021

Contact for discussion				
Name	**Position**	**Telephone**		**1st contact**
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a)	✓
Naomi Stephen-Smith	Principal Analyst, Tenures and Housing Quality	04 832 2433	s 9(2)(a)	

Other agencies consulted
Department of Prime Minister and Cabinet, Kāinga Ora, Ministry of Business, Innovation and Employment, Ministry of Social Development, The Treasury

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

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Comments

Date returned to HUD:

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Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Options for rent indexation and further protections for tenants

For:	Hon Dr Megan Woods, Minister of Housing Hon Poto Williams, Associate Minister of Housing (Public Housing)		
Date:	21 January 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21010833

Purpose

1. This paper provides advice on options for rent indexation and further protections for tenants, to ensure tenants are protected if the Government takes steps to reduce demand from investors. This paper is a companion paper to BRF20/21010838.

Executive summary

2. On 22 December 2020, we provided advice to Minister Woods on the potential impacts on the rental market of proposals to dampen demand for housing (particularly demand from investors) (AMI20-21120425 refers).
3. That paper noted that while the proposals may potentially reduce the rate of property price increases and benefit some first home buyers, they may not necessarily increase new supply and could have a negative impact on renters (particularly those on lower incomes) who are forced to move due to the sale of a property, or face higher rents due to additional costs to property investors.
4. The Government may wish to take action to reduce any potential negative impact on renters from demand side measures, such as indexing rents or prohibiting landlords from terminating tenancies when they sell a property.
5. You have asked for advice on:
   a. indexing rents so that investors cannot impose large rent increases on renters as a result of increased costs from demand side measures[1] or because tenants are competing with others to secure a property due to constrained housing supply, and
   b. further protections for renters through the Residential Tenancies Act 1986 (RTA), in response to possible responses by investors to demand side measures.

Rent indexation

6. Rent indexation is a form of rent control and would be a substantial change to how our rental market currently operates. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) has previously advised against rent controls, as evidence from overseas shows that there are significant adverse consequences in the housing market, such as disincentivising supply, driving up prices in parts of the market where rents are not controlled, and reducing incentives for landlords to maintain their properties.
7. However, if the Government chose to introduce rent indexation, we would recommend that the index be:

[1] Recent data demonstrates that rents have been increasing more than incomes for some regions.

a. time limited, to reduce size of any market readjustment once indexation is lifted and limit the risk that new supply is disincentivised

b. a percentage increase that limits rent increases during a tenancy and continues to apply to the rental property when tenants change, to avoid landlords being incentivised to move existing tenants on in order to get a higher rent

c. applied nationally, to avoid complex administration and avoid higher price rises in non-rent indexed areas

d. include a means to apply an increase above the index for landlord improvements to rental properties, to ensure landlords retain incentives to maintain and improve properties.

8. An initial analysis has identified possible tools for indexation including the consumer price index (CPI), a modified CPI (less rent costs), wage growth index, or developing a new index based on a "basket of goods" that reflect landlord costs.

9. Further work would be required to advise on:

a. the impact on Kāinga Ora and social and community housing tenancies:

b. the implementation implications of the preferred option.

Other amendments to the RTA that could be considered

10. If large numbers of landlords sell properties in response to the demand side measures, there will be increased "churn" in the market. The most effective measure to reduce this type of churn would be to amend the RTA so that landlords cannot evict tenants if they are intending to sell or have sold the property.

11. This change was considered as part of the recent RTA reforms but ruled out as landlords were strongly concerned that it would reduce the sale price, and it was considered that it would unreasonably infringe on the rights of the new owners.

12. While this option would assist with short term churn, any increase to security of tenure is likely to lead to more stringent vetting on tenants. Consequently, there could be negative impacts on security of tenure for some tenants and, at the margin, a potential increased need for public housing.

13. Two other options for strengthening protections in the RTA have been identified but are not recommended for progressing at this stage:

a. The RTA could be amended to require a landlord to indicate if rent will be increased during a fixed-term tenancy (not recommended as we do not have evidence that this is a significant problem).

b. Introducing a new legislative framework to encourage landlords and tenants to enter long-term tenancies (not recommended as it would be significant reform programme that would not address the short-term goal of responding to the negative impacts of demand side measures).

14. s 9(2)(g)(i) [redacted]

Recommended actions

15. It is recommended that you:

1. **Note** the options in this paper seek to address the potential negative impact on renters of the demand side measures being considered by the Minister of Finance. *Noted*

2. **Note** that HUD recommends that any rent indexation be:

   2.1 Time limited
   2.2 Applied within and between tenancies.
   2.3 Applied nationally
   2.4 Include a way for landlords to increase rent above the index where a property is substantially improved. *Noted*

3. **Indicate** if you wish officials to undertake further analysis on the rent indexation including tools for indexation, the impact on Kāinga Ora and community housing providers, and implementation and financial implications. *Agree / Disagree*

4. s 9(2)(g)(i) *Noted*

5. **Indicate** if you wish officials to provide further advice on amending the Residential Tenancies Act 1986 so that landlords cannot evict tenants if they are intending to sell or have sold the property. *Agree / Disagree*

C.D. Leadbetter

Claire Leadbetter
Manager, Tenures and Housing Quality

21/01/2021

Hon Dr Megan Woods
Minister of Housing

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Background

16. We understand that Minister of Finance is considering some options to moderate house price growth, especially that driven by speculative investors (demand side measures).

We have provided advice that dampening demand could help first home buyers, but may negatively impact renters

17. On 22 December, we provided advice to Minister Woods on the potential impacts on the rental market of proposals to dampen demand for housing (particularly demand from investors) (AMI20-21120425 refers).

18. The potential impacts of demand side measures noted in that paper were:

    a. rental stock at the lower end of the market may be reduced, as first home buyers are more likely to buy homes in the bottom half of the market

    b. where existing landlords choose to sell, the existing tenants are likely to be displaced, either immediately if the landlord gives notice prior to the sale, or subsequently if the sale is to an owner occupier

    c. where tenants are displaced due to the sale of a property, they face substantial direct costs (e.g. moving costs, new bond, rent in advance), and may face indirect costs such as impacts on wellbeing

    d. at the lower end of the market, the “churn” increases the risk that households may need to rely on transitional housing or emergency housing special needs grants, or increase the numbers on the public housing register.

19. In the paper we noted that it is unlikely that investors will be able to fully pass on additional costs through increased rents. At a national level, median rents generally track in line with median wage increases. However, in some regions, rents are increasing faster than incomes.

20. Where renters are already in rent stress, they are already at the limit of what they can pay and may respond through sharing housing costs and crowding. Rising rents can also lead to more well-off renters opting to buy, subject to being able to raise a deposit, or paying higher rent to secure properties. At a national level, these factors limit the extent to which rents can be increased, however we acknowledge there is variation in some regions or segments of the rental market.

You have asked for advice on indexing rents and improving protections for renters through the RTA

21. You have asked for advice on:

    a. indexing rents so that investors cannot impose large rent increases on renters as a result of increased costs from demand side measures or because tenants are competing with others to secure a property due to a housing shortage

    b. further protections for renters through the Residential Tenancies Act 1986 (RTA), in response to possible responses by investors to demand side measures.

22. This paper presents options for you to consider.

Context

23. Existing provisions under the RTA limit the level of rent landlords can charge as well as the frequency of rent increases. Since August 2020, as part of the recent reforms to the RTA, rent increases are limited to once every 12 months.

24. Section 25 of the RTA allows tenants to challenge the rent they pay at the Tenancy Tribunal. If the amount of rent payable substantially exceeds market rent, the Tribunal will make an order reducing rent to an amount that is in line with market rent. The RTA describes market rent as the amount a landlord might reasonably expect to receive, and a willing tenant might

reasonably expect to pay with reference given to comparable prices in the same or similar locality.[2]

Recent reforms to rental legislation

25. Any options proposed need to be considered in the context of the current RTA reforms. These reforms will mostly take effect from 11 Feb 2021 and will significantly improve security of tenure for renters.

26. The impact on the rental market of these reforms will be progressively evaluated. We note that those reforms may lead to some investor exit, but that there are other strong incentives for investors to retain rental properties, such as low interest rates and capital gains. ‘

27. Despite the provisions in place under the RTA, supply of rental properties continues to be constrained, leaving the rental market to be dictated by what tenants can pay rather than the cost of provision.

Options for rent indexation

Definition of rent indexation

28. One option to further regulate rent increases is rent indexation. Rent indexation is when rent price increases are limited by law to be no more than a certain amount or percent per year. For example, rent increases could be required to not exceed the linked to an economic index such as the Consumer Price Index (CPI).

29. Indexing rent would reduce uncertainty for tenants while at the same time providing assurance to landlords that rents could continue to increase if they needed to pass on increasing costs.

Rent indexation design should take into account the adverse consequences observed overseas

30. HUD has previously advised against rent controls, as evidence from overseas indicates that they have significant adverse consequences on the housing market. These include:

    a. loss of potential housing supply to other uses such as Airbnb

    b. the allocation of accommodation through non price methods (more potential for discrimination) and incentives for tenants to offer and landlords to accept illegal payments to secure a tenancy (e.g. offering to pay bond or rent in advance that is higher that the legal limit, or a fee to secure a property. These behaviours have been observed in New York)

    c. significant fiscal costs in implementing, administering and maintaining rent control systems (e.g. the estimated costs to administer the rent control in Cambridge, Navarro totalled $40 per dwelling subject to the control)[3]

    d. landlords not investing in maintenance because they cannot recoup their investment by raising rents[4]

    e. significant rent increases once rent controls have been removed.[5]

31. Where rent control has been applied regionally overseas, the following consequences have been observed:

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[2] In the last three years, 20 out of 102 tenants challenging rent increases in the Tenancy Tribunal under the market rent provisions of the RTA (section 25) were successful.

[3] https://www.nmhc.org/research-insight/research-report/the-impacts-of-rent-control-a-research-review-and-synthesis/

[4] https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/

[5] ibid

a. gentrification of previously predominantly rental areas and displacement of renters as landlords sell rent-controlled properties in favour of non-rent controlled properties[6]

b. generally higher rents in the uncontrolled portion of the market[7]

c. a 'mis-match' between tenants and rental units (as tenants choose to 'stay put' to retain their rent control, even if their housing needs change, or if the property is poor quality).[8]

Market consequences of indexation

32. Price signals can be useful in certain circumstances where demand exceeds supply. When housing gets tight, rents may need to rise so that the market will address the underlying problem of undersupply (not just by building, but also renting out vacant houses, rooms and so on). Rent controls, such as rent indexation may suppress this.

If rent indexation is introduced, it should be designed to moderate the potential adverse consequences

33. Given what we know about rent controls from overseas, we recommend that any rent indexation introduced in Aotearoa New Zealand be designed to minimise the adverse impacts seen overseas.

Rent indexation should be time limited

34. Economic evidence suggests that while rent control appears to help current tenants in the short run, in the long run it decreases affordability.[9] For example, when San Francisco expanded rent control in 1994, many tenants were able to access affordable rental properties, particularly older renters, and these tenants stayed long-term in those properties. However, for tenants who came later, rents were higher and supply diminished, due to gentrification of the area. Because new construction was exempt from rent control, some landlords demolished their old rent-controlled housing and built new high-end apartments in its place. Converting rental units to owner-occupied apartments resulted in a shift from a mix of residents towards higher income neighbourhoods.[10]

35. Given the evidence that long term rental controls decrease affordability, we recommend that any rent indexation be time-limited. Imposing a time limit would reduce any large market correction once controls are lifted, and would reduce the risk that investors may be less inclined to invest in the housing market.

Rent indexation should be applied nationally

36. We recommend that rent indexation should be applied nationally, to avoid price distortion between indexed and non-indexed locations.

37. Evidence from Scotland indicates that application of rent indexation regionally would be cumbersome to administer as regular advice on which regions the index should apply to would be needed. It would also result in issues where homes just outside the rent controlled areas could have relatively higher prices, as tenants could offer higher rents for these properties in order to secure a home in the current supply constrained market.

38. Each change to which areas are indexed would also require information and education to be proactively provided to landlords and tenants.

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[6] ibid

[7] ibid

[8] ibid

[9] ibid

[10] https://www.gsb.stanford.edu/insights/rent-controls-winners-losers

Rent indexation should not disincentivise maintaining or upgrading properties

39. Landlords are required to comply with all obligations under the RTA as to rental quality, including keeping rental properties in a reasonably state of repair and ensuring they meet specified healthy homes standards (for heating, insulation, ventilation, moisture ingress and drainage, and draught stopping) by upcoming compliance dates.

40. While many landlords will have factored additional costs related to maintenance of their rentals into their rent prices, many may be relying on future rent increases to cover deferred or upcoming upgrades.

41. We therefore recommend there be a means for landlords to increase rent above the index, where they have made major improvements to the property.

Rent indexation should apply both during a tenancy and between tenancies, should the tenants change

42. The rent indexation should be applied both within and between tenancies.

43. If landlords were able to reset the rent, then they would be incentivised to find ways to end tenancies and to relist rental properties at a higher base rent rate.

44. We note that regulating base rents across tenancies would be difficult to enforce, and potentially detrimental to prospective tenants who may be willing to pay a marginally higher rent for a rental property in order to secure the tenancy (e.g. those with previously bad credit ratings, those wanting to keep a pet, or those with larger families).

Further work will be required on detailed design and implementation implications

45. Further detailed policy work will be required to determine other key design elements of rent indexation including the tool for indexation, the impact on Kāinga Ora and community housing providers, and implementation implications.

The tool for indexation

46. We have identified four options that rent indexation could be tied to:

    a. CPI

    b. an adjusted CPI (excluding rent costs)

    c. a “new basket of goods”

    d. a wage growth index such as the labour cost index.

47. A preliminary analysis of the options is attached in Annex A.

Rent increases indexed to the CPI

48. This option limits rent increases of residential properties to the CPI. The CPI is a measure of inflation produced by Statistics NZ, recording the changes in the price of an average consumer’s basket of goods and services. Between 2010 and 2020 the annual change in CPI as taken at the December quarter has ranged between 0.1 percent and 4.0 percent. If rent increases are indexed to the CPI, the rise in rent prices will be no higher than inflation.

CPI minus rent costs

49. A component of the CPI used in option a is housing utilities including rent costs. The inclusion of rents as a component of the index which is being used to regulate rent prices makes the index less effective at aligning with other costs. Therefore, a further option is to remove rent costs from the CPI and reweight the index. This approach would draw on the work and resources already invested in the CPI with a slight adjustment.

Rent increases indexed to the annual growth rate of a “new basket of goods”

50. This option proposes the creation of a new index with reference to the average annual expenses of landlords. The new “basket of goods” would include costs common to all landlords such as house insurance, rates and ongoing maintenance.

Wage growth index

51. Nationally, 27.9 percent of renters in New Zealand spent over 40 percent of their income on housing costs in 2019.[11] This percentage is higher for lower income households. Between the years 2011 to 2018, around one in four of the lowest quintile households reported spending more than half their income on accommodation.[12]

52. Indexing rents to a measure that reflects wages or income would ensure rent increases do not exceed median wage increases. Rent increases could be tied to the Labour Cost index (LCI) or the Quarterly Employment Survey (QES).

53. The LCI measures the change in wages and salaries. Between 2010 and 2020, the annual change in the LCI as taken at the December quarter has ranged between 1.5 and 2.6 percent.

54. The QES provides a short-term indicator of employment and earnings. The after-tax Gross Average Ordinary Time Weekly Wage (from the QES) is used for the annual adjustment of rates of New Zealand Superannuation and main social security benefits. Between 2018 and 2020, the annual change in the QES as taken at the March quarter has ranged between 1.7 to 2.1 percent.

Impact on Kāinga Ora, and social and community housing tenants

55. In the time available, we have not been able to undertake a full consultation with Kāinga Ora and the Ministry of Social Development on the rent index proposals and to consider the impact and possible unintended consequences of the proposals on social and community housing tenants.

56. Rent indexation could reduce forecast demand for the Accommodation Supplement, Temporary Additional Support, and other housing-related emergency grants, given unaffordability is a driver of homelessness. It could also lower the forecast cost of the Income Related Rent Subsidy.

57. However, the different options would have a range of potentially significant operational, systems and financial implications for Kāinga Ora and MSD and an estimation of the financial implications would depend on a full cost-benefit analysis of a particular option.

Mitigations to the risk that annual rent increases become standard practice

58. Many landlords do not increase rents annually as a matter of practice and keep the rent constant for years, where they have a good relationship with a tenant. Some may only increase the rent when a new tenancy begins. Indexing rents to CPI (or other measure) risks creating a standard expectation of regular rent increases and make annual rent increases common practice.

59. Additionally, consideration should be given as to what the rent indexation rules should be in a situation where CPI was negative.

Potential impact on rental supply (new builds and build to rent developments)

60. We would need to consider the impact of rent indexation on build to rent developments and new rentals generally. Limits on future rental returns and the ability to control those returns for build to rent developments could add to an already complex and uncertain regulatory and investment environment, further reducing the attractiveness of what is already a marginal investment class. Similarly, applying rent indexation to new build rentals could disincentivise investment in much needed stock of rentals generally.

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[11] https://www.stats.govt.nz/information-releases/household-income-and-housing-cost-statistics-year-ended-june-2019

[12] https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/household-incomes-1982-to-2018.html

61. The costs and benefits of an exemption of the rent index proposals for build to rent developments and new rentals generally could be assessed.

Potential financial implications

62. While we have not had time to assess these implications thoroughly or estimate the scale of financial impacts, the following impacts would need to be explored in further advice:

    a. how changes to market rent would affect Income Related Rent Subsidy payment and as a result Kainga Ora's expected revenue stream

    b. how changes to market rent would affect the Accommodation Supplement.

Other options considered but discarded

63. Another option that was considered, but previously discarded was to include guidance in the RTA on what constitutes "substantially exceeding market rent". This option was considered as part of the recent reforms but discarded as it appears from Tribunal cases that the main issue is confusion on what evidence is required to prove a case at the Tribunal. Therefore, ensuring applicants have sufficient information on what evidence is required, was considered a more appropriate response to this problem.

Options for increasing protections for renters under the Residential Tenancies Act 1986

64. We have identified three options that could increase protections for renters under the RTA if demand side measures targeting property investors are introduced. These options are to:

    a. give tenants the right to continue their tenancy if the property is sold or intended to be sold

    b. provide certainty on future rent increases for tenants in fixed-term tenancies

    c. create a new framework to support tenants and landlords to enter long-term tenancies.

Option 1: give tenants the right to continue their tenancy if the property is sold or intended to be sold

65. At present, tenants can have their tenancy terminated if their landlord wants to put the property on the market or has sold it with vacant possession. When the majority of the Residential Tenancies Amendment Act 2020 comes into force on 11 February 2021, landlords will still be able to terminate a tenancy if the premises are to be put on the market (90 days' notice), or if the property has been sold with vacant possession (90 days' notice).

Data indicates that between 19 percent and 30 percent of renters who move do so because their house is being or had been sold

66. Data on the number of renters who are required to move due to premises being put on the market or sold is not routinely collected, but two recent surveys can provide indicative data:

    a. In a 2015 survey, it was found that 46 percent of tenants had moved in the past two years, and of those 30 percent moved because the landlord sold the house (36 percent in Auckland).

    b. More recently, a survey of impacts on landlords and tenants due to Covid-19 found that 11 percent of landlords had sold a property over the six months following the end of lockdown. Over the same period, 15 percent of renters had moved, and of these, 19 percent had moved because the landlord wanted to sell the house.

67. Of those renters who move due to a house being put on the market or sold we can assume they were either:

    a. required to move before the property was put on the market so the landlord could prepare the property for sale

b. required to move as the new owner wanted vacant possession or wished to occupy the property

c. chose to move for reasons such as avoiding the disruption or uncertainty of the sale process.

68. It is possible that demand side measures targeting investors may lead to some existing landlords selling their rental properties.

69. Moving between rental properties is costly for tenants and therefore it could be desirable to minimise unnecessary moves, particularly for those who are paying high rents relative to incomes.

The RTA could be amended to remove a landlord's ability to remove the intention to sell a property or the sale with vacant possession as a ground for terminating a tenancy

70. The Government could reduce the impact on tenants of property sale by giving tenants the right to continue their tenancy if the property is going to be put on the market or has been sold to another property investor who intends to rent out the property. This change could be put into effect through an amendment to the RTA to remove the intention to sell a property or the sale with vacant possession as a ground for terminating a tenancy.

71. This change would reduce the times where tenants are incurring the cost and inconvenience of having to move house when the property is sold to another landlord.

72. This change would not mean all tenants can remain in their home following a sale as they may still have their tenancy terminated by the new owner on other grounds (eg, if the owner wished to move in, undertake extensive alterations, or convert the property to commercial use).

There are some risks associated with this proposal

73. s 9(2)(g)(i)

s 9(2) s 9(2)(g)(i)

Option 2: require a landlord to indicate if rent will be increased during a fixed-term tenancy

74. At present, if a landlord and tenant enter or renew a fixed term tenancy, it is possible for the rent to be increased during the term of that tenancy if the agreement allows it, subject to complying with other relevant rules in the RTA (such as not increasing rents more than once a year).

75. In the 2018 General Social Survey, just under 30 percent of tenants were on a fixed term tenancy. Data is not held on the proportion of fixed term tenancies that are new or a renewal of a previous fixed term. It is also not known how often rent is increased during a fixed term tenancy – we are aware of only one case recently.

The RTA could be amended to require a landlord to specify if, when, and how much the rent will be increased during a fixed-term tenancy

76. If the Government wished to provide greater certainty around rent for tenants on fixed term agreements, the RTA could be amended to require a landlord to indicate if, when and how much the rent will be increased during a fixed-term tenancy.

77. The interplay between this proposal and any rent indexation measures would need to be considered to ensure that, for example, a landlord could revise a planned future rent increase if it exceeded the allowable increase under indexation rules.

There are some risks associated with this proposal

78. There are some risks associated with this proposal.

79. s 9(2)(g)(i) [redacted]

80. In addition, before committing to this change, we would recommend that further work or consultation be undertaken to ascertain the scale of this problem.

Option 3: further significant reform to provide conditions that better support longer-term tenancies

81. New Zealand's rental laws are being substantially reformed at present, including changes to increase security of tenure for renters. It will take some time for these changes to "bed in", and we will be able to begin to evaluate the impact of those changes in the next 12 to 24 months.

82. If the Government wished to work towards further reforms in the meantime, these could focus on providing even greater security of tenure for tenants by adopting or modifying elements of a more "European model" of renting. These options would primarily benefit renters in the intermediate market, who can afford their rent, but cannot easily save a deposit for a house. These measures are also a longer-term response to the potential impacts of demand side measures and would not immediately address any cost or tenure implications of those measures.

83. Analysis undertaken in 2008 indicated that while some European countries have legislation which provides all tenants with a very-high degree of tenure security, the ownership composition of these rental markets was not comparable, with over fifty percent of rental housing provision by social (including third sector) landlords, many of whom have been established with significant government funding. An updated analysis of the comparability of these systems could be undertaken if the Government wished to pursue this type of reform.

84. Two sub-options have been identified that may achieve the Government's objective. These options would both be major reforms to the RTA and would not immediately address the impacts on tenants of any demand side measures. They are therefore only outlined below at a high level in this paper, and are not recommended for progression at this stage.

Option 3a: Allowing trade-offs of certain rights and obligations under the Residential Tenancies Act 1986, in return for greater tenure security

85. Landlords and tenants could be enabled to trade off certain rights and obligations prescribed by the RTA contractually, on the condition the tenancy agreement provides the tenant with increased security of tenure.

86. For example, landlords could offer a longer tenancy agreement, perhaps at a lower rent, in return for tenants taking responsibility for specific maintenance, outgoings (e.g. rates and insurance), or paying a higher bond.

87. In the 2019 consultation on the current RTA reforms, tenants and their representatives had varying views on whether they favoured fixed or long-term leases. Some tenants shied away from longer-term tenancies as they were too hard to exit if circumstances changed.

88. If the Government wished to pursue this type of reform, further work would be required to consider how flexibility for tenants could be retained, without unfairly compromising certainty for landlords.

Option 3b – long leases that can be traded

89. Legislative amendments could be made to enable long-term leases of rental accommodation, that can be on-sold. These have been used in England in the past, with the following features:

    a. the tenant pays the landlord a lump sum as consideration for granting the lease

    b. low ongoing rent is payable

    c. the tenant is generally responsible for maintenance

    d. the tenant may sublet

    e. the tenant can sell (assign) the remainder of the lease term (and acquire any capital gain)

    f. the tenant may have the right to buy the premises.

90. This type of lease could comprise either a completed dwelling or a bare shell which the tenant can fit-out. The tenant could be compensated for the fit-out, either at or before the end of the lease term. For example, in New York lofts the tenant can sell any improvements to an incoming tenant, with the landlord being given the first right of refusal.

91. The ability to charge a lump sum for granting the lease (and, if applicable, purchase option) would enable developers to partially fund the construction of new leasehold dwellings and manage the uncertainty of generating long-term returns via capital appreciation.

92. Where the lease gives the tenant the right to buy the premises, the terms of the lease would determine the offer price or valuation method and whether the right is particular to the lessee or is tradable.

93. This type of lease would be most likely to attract people who are renting or wish to rent and who have some savings, but are unable to raise a deposit to purchase a property outright. Low income families would be unlikely to be able to afford to enter these longer-term arrangements.

Timing and implementation

94. All the options in this paper would require primary legislative change. In general, we recommend consultation on any substantive changes to landlords' or tenants' rights, to ensure the range of perspectives and expertise can be incorporated into policy decisions.

95. s 9(2)(g)(i) [redacted]

96. The timing of any legislative changes would, however, depend on Government legislative priorities.

97. We also note that HUD and MBIE are currently in the process of:

    a. implementing the 2020 RTA reforms (due to be fully implemented by mid-August 2021)

    b. progressing regulations of methamphetamine following the 2019 RTA reform

    c. progressively implementing the Healthy Homes Standards 2019 (final compliance deadline of July 2024)

    d. working towards introducing Property Managers regulation

e. working towards a reform of the Unit Titles Act.

98. s 9(2)(g)(i) [redacted]

Risks

99. The risks associated with the individual options in this paper have been outlined throughout the paper.

Communications risk

100. The introduction of rent indexation would be highly controversial and would get a high level of media coverage. Property owners, investors, and the real estate industry are likely to consider such regulation to be a draconian intervention in the market. Property owners and investors are likely to comment on the cumulative impact that recent reforms are having on costs and risk of running their businesses. Tenant groups and social sector commentators are likely to be positive about rental indexation and other increases in tenant rights.

101. s 9(2)(g)(i) [redacted]

Consultation

102. The Department of Prime Minister and Cabinet, Kāinga Ora, Ministry of Business, Innovation and Employment, Ministry of Social Development, and the Treasury have been consulted on this paper. HUD notes that the agencies consulted had a very limited time to comment on the proposals in this paper.

Next steps

103. Officials are available to meet with you to discuss this advice and receive your feedback on whether you would like further work on the options explored in this paper. Further detailed analysis and legal drafting would be required before the options explored in this paper could be implemented.

Annexes

104. Annex A: comparative assessment of rent indexation options

Annex A: Comparative assessment of rent indexation options

Annex A: comparative assessment of rent indexation options

	Effectiveness at keeping rents affordable for tenants	The impact on landlords (including impact on building new properties as well as continuing maintenance)	Time constraints
Option a: Rent increases indexed to the CPI	Rent will rise no more than other common household goods.	Provides certainty that rental increases can occur at a rate consistent with inflation. If landlord costs increase at a rate greater than CPI then rental return decreases, this may disincentive landlords from leasing properties, further reducing supply.	There is already an effective system of collating information for the CPI. No time is required to create a new model.
Option b: Rent increases indexed to the CPI minus rental costs that are component of the CPI	Rent will rise no more than other common household goods.	If landlord costs increase at a rate greater than wage growth then rental return decreases, this may disincentive landlords from leasing properties, further reducing supply	Removing the cost of housing from the Consumer Price Index should be able to be completed in a timely manner by Statistics New Zealand.
Option c: Rent increases indexed to the annual growth rate of a "new basket of goods"	Tenants will have confidence that rental increases will be aligned with market costs, and the rate of increase will be consistent between properties.	A model considering the unique cost pressures of landlords better represent the appropriate value of rental increases, accommodate the cost of improvements and incentivise landlords to remain in the rental market.	A new model will take time to build. Consultation with all relevant stakeholders will be required to determine the different types of landlords and their associated costs.
Option d: Rent increases indexed to wage growth	Rent does not become an excessive proportion of income. More likely to ensure affordability for tenants in times of high inflation as it is linked to a measure of incomes	If landlord costs increase at a rate greater than wage growth then rental return decreases, this may disincentive landlords from leasing properties, further reducing supply.	There is already an effective system of collecting wage growth information, the LCI as well as the QES. No time will be required to create a new index.

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Aide-memoire

Speaking points: options for protecting renters from the impacts of demand side measures			
Date:	11 February 2021	**Security level:**	Sensitive
Priority:	High	**Report number:**	AMI20/21020448

Information for Minister(s)	
Hon Dr Megan Woods **Minister of Housing**	For information
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	For information

Contact for discussion

Name	**Position**	**Telephone**		**1st contact**
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Claire Leadbetter	Manager, Tenures and Housing Quality, Housing and Urban Systems	04 832 2431	s 9(2)(a)	✓

Other agencies consulted
N/A

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ See Minister's notes
- ☐ Needs change
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Aide-memoire

Speaking points: options for protecting renters from the impacts of demand side measures

For:	Hon Dr Megan Woods, Minister of Housing Hon Poto Williams, Associate Minister of Housing (Public Housing)		
Date:	11 February 2021	**Security level:**	Sensitive
Priority:	High	**Report number:**	AMI20/21020448

Purpose

1. This aide memoire provides you with further information on how best to protect renters from the potential negative impacts of the proposed demand side measure to moderate house price growth, and includes speaking points (**Annex A**) for Cabinet on Monday 15 February to assist you with the discussion.

Executive Summary

2. We have undertaken further analysis of the impacts of the proposed demand side measures on renters. We expect the bright line test extension will have minimal direct impacts on existing renters in the short term, if only applied to future purchases ("grandparented") as recommended.

3. The impact of the interest deductibility changes on renters will depend on which option is progressed. If these changes are grandparented, then the impacts on existing renters will be minimal. If the changes are phased in for existing housing stock, landlords who have significant debt may increase rents to cover costs, reduce other outgoings such as maintenance, or sell their investment properties.

4. All these responses by landlords directly impact on renters as they face either increased rent, poorer quality housing, or are forced to move out of their home (which is costly, time consuming, and can affect health and wellbeing). This could also increase spending on the accommodation supplement and homelessness, with a resulting impact on the public housing waiting list.

5. Rent indexation could address the increasing rents, but would not prevent the other impacts, and may, in fact worsen them, such as more landlords exiting the markets and displacing tenants.

6. Te Tūāpapa Kura Kainga Ministry of Housing and Urban Development (HUD) considers the best way of protecting tenants is to grandparent the interest deductibility changes for existing properties and monitor the rental market to consider rent indexation if needed.

7. If Cabinet decides to proceed with rent indexation, we recommend it be:

   - time limited, to reduce size of any market readjustment once indexation is lifted and limit the risk that new supply is disincentivised

- a percentage increase that limits rent increases during a tenancy based on an appropriate metric, such as CPI minus rent costs (refer Annex B for options)
- applied nationally, to avoid complex administration and avoid higher price rises in non-rent indexed areas
- include a means to apply an increase above the index for landlord improvements to rental properties, to ensure landlords retain incentives to maintain and improve properties
- limited to market rent (that is, not apply to social housing, for which tenants receive Income Related Rent Subsidies and other forms of housing support).

8. We do, however, recommend that at a minimum some confidential consultation is undertaken with a few key stakeholders.

9. s 9(2)(g)(i)

Background

11. On 21 January officials provided you with advice on rent indexation and possible further protections for tenants, to ensure tenants are protected if the Government takes steps to reduce demand from investors [BRF20/21010833 refers].

12. On Monday 15 February you, along with the Ministers of Finance and Revenue are presenting a paper to Cabinet proposing measures aimed to reduce investor demand for houses and thereby support first home buyers to enter the market through moderating price increases.

13. The measures being proposed for consideration by Cabinet are:

- Increasing the bright line test to 20 years for properties bought after the announcement date, with an exclusion for new builds and
- Options for limiting the interest deductions available for income earned from residential property, including an option for an exclusion for new builds.

14. You have asked officials to provide you with:

- speaking points to take to Cabinet, including options for rent indexation
- an indication of what work might need to be reprioritised to enable work on rent indexation to be undertaken
- an outline of an engagement approach, primarily with key tenant advocate stakeholders.

Protecting renters from the (negative) impacts of demand side measures

15. Where property investors are faced with additional costs, they will weigh up the costs against other benefits of the investment. Landlords who face significant costs may increase rents to cover costs, reduce other outgoings such as maintenance, or sell their investment properties.

16. All these responses by landlords directly impact on renters as they face either increased rent, poorer quality housing, or are forced to move out of their home (which is costly, time consuming, and can affect health and wellbeing). This could also increase spending on the accommodation supplement and homelessness, with a resulting impact on the public housing waiting list.

17. We have undertaken further analysis of the likely impacts of the demand side measures which may be useful for your discussion at Cabinet.

We expect the bright line test extension will have minimal impacts on renters in the short term

18. As the extension of the bright line test is proposed for prospective purchases only, and has an exclusion for new builds, existing property investors will not face additional costs on their properties. This means they are unlikely to increase rents or sell those properties in response to the bright line extension. Further, those investors who still wish to grow their portfolios will be able to do so under the existing five year bright line if they purchase new builds**.**

19. Over time there may be fewer investors entering the rental market or buying additional properties as the reduced incentive to purchase existing houses will not be fully offset by purchases of new houses. Over time this may place upward pressures on rents.

The impact of the interest deductibility changes on renters will depend on which option is progressed

20. The Cabinet paper proposes a series of options for interest deductibility, including an option to exclude existing investment properties. If existing properties are excluded ("grandparented") from the interest deductibility limitations, landlords of existing rental properties would not face additional costs and so would be unlikely to increase rents or sell their rental properties resulting in tenants being displaced or under further rental stress.

21. If interest deductibility limitations are phased in for existing housing stock, landlords who have significant debt may increase rents to cover costs, reduce other outgoings such as maintenance, or sell their investment properties. The greater the level of debt on a property, the greater the increased cost on a landlord and the more likely they will respond in these ways. All these responses by landlords directly impact on renters as they face either increased rent, poorer quality housing, or are forced to move out of their home (which is costly, time consuming, and can affect health and wellbeing). This could also increase the accommodation supplement and homelessness, with a resulting impact on the public housing waiting list.

22. Landlords may be reluctant to pass on costs to existing tenants but are more likely to be willing to increase the rent when advertising for a new tenant. The higher rent for new tenancies will affect tenants where landlords sell properties in response to the demand side changes, and the tenants are unable to buy a home (at least 75% of renters, based on the housing affordability measure).

HUD can monitor rents and other indicators to assess impacts

23. Te Tūāpapa Kura Kainga Ministry of Housing and Urban Development (HUD) can closely monitor rents and other indicators across the rental market to assess impacts. The earliest that any meaningful data would be available is three months after the measures are announced.

24. We note it will be difficult to directly attribute changes in rents or sales of rental properties to the demand side changes as landlords are already facing increased costs due to compliance with the healthy homes standards, and increased risk due to the recent reforms to the Residential Tenancies Act 1986 (RTA).

25. Some of these changes may be already flowing through to rents, particularly for new tenancies:

- Rents for existing tenancies rose on average 3.2% in the year to December 2020[1],
- Median rents for new tenancies[2] rose by 7% nationwide and over 10% in a number of regions in the year to October 2020.

Rent indexation

Indexing would moderate rent increases, but will potentially lead to other adverse consequences

26. Rent indexation could be introduced in response to rising rents. Rent indexation is a form of rent control and would be a substantial change to how our rental market currently operates. Evidence from overseas shows that rent control leads to adverse consequences in the housing market, such as reducing incentives for landlords to maintain their properties.

27. In the New Zealand context, rent indexation would lead to landlords being less able to cover the additional costs, and so we expect this would lead to more properties being sold and renters being displaced. HUD considers grandparenting existing rental properties from the interest deductibility changes would be far more effective than rent indexation at protecting renters from the risk of displacement and the costs they incur.

Design recommendations for rent indexation

28. Currently, landlords can increase rent once every 12 months by any amount, and must give at least 60 days' notice of an upcoming rent increase. The only option a tenant has for challenging an increase is to take a case to the Tenancy Tribunal on the basis that the rent substantially exceeds market rent.

29. Introducing rent indexation would require detailed amendments to the RTA limiting rent increases to a certain amount or percent per year to rents going forward, and providing for associated aspects of the regime.

30. If Cabinet decides to proceed with rent indexation, we recommend it be:

- time limited, to reduce size of any market readjustment once indexation is lifted and limit the risk that new supply is disincentivised
- a percentage increase that limits rent increases during a tenancy based on an appropriate metric, such as CPI minus rent costs (refer Annex B for example indexes in comparison with rents).
- applied nationally, to avoid complex administration and avoid higher price rises in non-rent indexed areas
- include a means to apply an increase above the index for landlord improvements to rental properties, to ensure landlords retain incentives to maintain and improve properties
- limited to market rent (that is, not apply to social housing, for which tenants receive Income Related Rent Subsidies and other forms of housing support).

[1] Statistics New Zealand data, referenced in: Annual inflation almost three times higher for beneficiaries | Stats NZ
[2] MBIE bond data

Options and considerations for rent indexation regime

31. We have identified the following elements of rent indexing and possible options, which would need further consideration and analysis. We have not had time to consult on these with wider government agencies.

Table 2: Elements of rent indexing, possible options and considerations

Element		Possible options	Comment
1.	How long to limit rent indexation for	• Two years • Five years • 10 years • Linked to a rental supply metric	Keeping the time limit shorter reduces the risk that rental supply and quality of supply is decreased. How the indexing is terminated would need consideration. It would be inappropriate to delegate an end date to regulations. However, transitional provisions may be appropriate if legislation is to automatically revoke, to manage the change from an embedded regime to revert back to a market rent regime. At whatever point indexing is 'switched off', there is likely to be a rent increase spike.
2.	Rent index measure (refer Annex B for a graph comparing rent prices with CPI, Labour Cost Index, and Average Weekly Earnings)	• CPI minus rental costs (common household goods minus average rental costs) • Wage growth (e.g., the Labour Cost Index or the Average Ordinary Time Weekly Wage from the Quarterly Engagement Survey)	Stats NZ already has published data on these metrics (no time needed to create new model). More time is needed to determine the most appropriate measure. As examples: • Between 2018 and 2020, annual percentage changes to CPI excluding rent costs were between 1.2 and 2.4% (calculated quarterly). • Between 2018 and 2020, annual percentage changes to combined salary and wage rates were between 1.6 and 2.6% (calculated quarterly) There is a risk that if landlord costs increase at a rate greater than CPI/wage growth then rental return decreases, this may disincentive renting as a business, further reducing rental supply.
3.	Whether rent increases can be aggregated across multiple years	• Landlords can only increase rent at rent index for most recent year, even if no increases have been made for previous year • Landlords can aggregate multiple years' worth of indexes for one rent increase	If aggregation is not allowed there may be an unintended consequence that annual rent increases become standardised.
4.	Exemption for significant upgrades	• Allow landlords to increase rent beyond index • Allow landlords and tenants to agree to rent increases beyond rent	With no exemption, there is a risk that landlords do not invest in properties and rental quality deteriorates. Rental housing quality is a significant issue in New Zealand. Any exemption would need to be carefully designed, administered and enforced, so that

Element		Possible options	Comment
		indexation, based on existing provisions in the RTA, with recourse to the Tenancy Tribunal if parties cannot agree	landlords do not use it as a 'loophole' for rent increases. For example, would landlords be able to increase rents prior to the upgrade or at the end of the upgrade? What recourse would a tenant have if the landlord did not make the upgrade?
5.	New tenancies	• Allow landlord to 'reset' rent when new tenants move in • Carry over rent indexing to new tenancy	Under first option landlords may be incentivised to find ways to end tenancies in order to relist properties at a higher rent. However, under the second option, enforcing rent indexing between tenancies would be difficult.
6.	Change of ownership of rental properties	• Allow new landlords set rent with new/existing tenants • Carry over rent indexing to new/existing tenants	Similar considerations to those above. If the law is changed to require new owners to take on existing tenants (unless moving in themselves), then new owners and tenants could be allowed a 'grace period' after change of ownership before permitting landlords to increase rent beyond indexing.
7.	Implementation, enforcement and administration	Regime could have Tenancy Tribunal oversight and be monitored and enforced by the Regulator (MBIE)	Design, costings and implementation would require careful consideration. If introduced quickly, public education campaign would need to be undertaken at pace.

32. Full regulatory impact analysis would be required to fully assess all aspects of a proposed rent index regime, particularly any flow on costs and implications for the social housing sector.

Passing rent indexation legislation quickly would allow limited, or no, opportunity for engagement with stakeholders

33. Implementing changes to the way in which landlords can increase rent would need to be made through changes to the Residential Tenancies Act 1986.

34. The standard time frame for making legislation changes of a complex nature is around 18 months, due to the need to undertake a thorough policy development process across government, assess options, impacts and unintended consequences, consult with stakeholders, obtain Cabinet decisions, draft a Bill, allow for select committee consideration and House time. However, because of the housing crisis and the need to act quickly, you may want to consider a truncated process.

35. s 9(2)(g)(i)

- s 9(2)(g)(i) [redacted]

Additional option to protect tenants from displacement

37. If large numbers of landlords sell properties in response to the demand side measures, there will be increased "churn" in the market. Moving house is costly and time consuming for renters, and tenure insecurity is associated with poor health and wellbeing outcomes.

38. To reduce this type of churn, the RTA could be amended so that landlords cannot evict tenants if they are intending to sell or have sold the property. However, if the Government's objective of making more homes available to first home buyers is achieved, renters will still be displaced if their rental home is bought by a first home buyer.

39. This change was considered as part of the recent RTA reforms but ruled out as landlords were strongly concerned that it would reduce the sale price, and it was considered that it would unreasonably infringe on the rights of the new owners.

40. While this option would assist with short term churn, any increase to security of tenure is likely to lead to more stringent vetting on tenants. Consequently, there could be negative impacts on security of tenure for some tenants and, at the margin, a potential increased need for public housing.

41. As noted in paragraph 23, officials will monitor rents and other indicators to identify the impacts of the changes to see if this amendment may be warranted.

Reprioritisation of work programme

42. s 9(2)(g)(i) [redacted]

Stakeholder engagement

44. s 9(2)(g)(i) [redacted]

Next steps

47. Officials are available to discuss this advice and any feedback you have, once Cabinet has met to discuss the proposed demand-side measures on Monday.

Annexes

Annex A: speaking points for Cabinet

Annex B: Rent indexation graph of potential indexes against rent increases

Annex A: Speaking points for Cabinet on Monday 15 February 2021

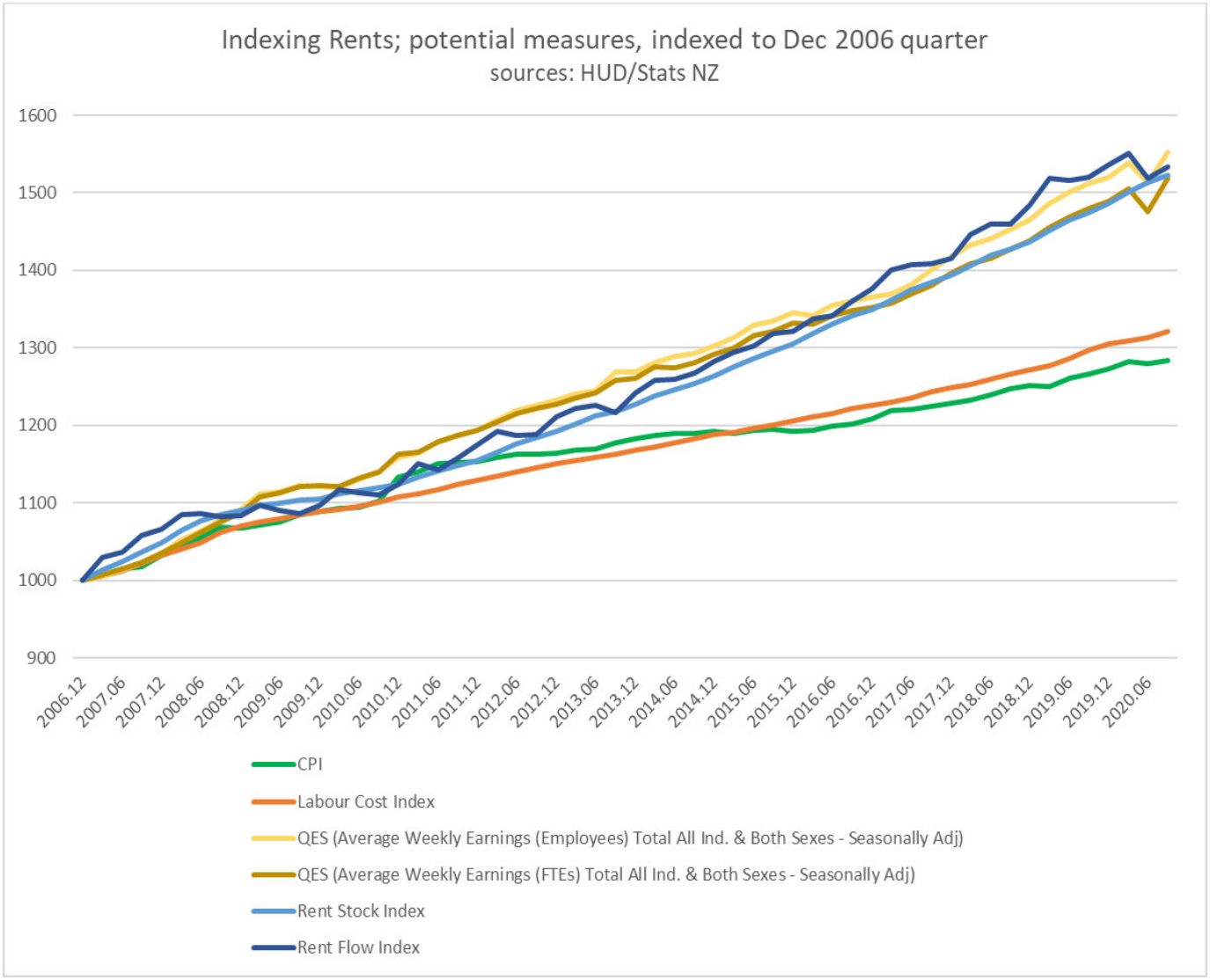
- The impacts on renters need to be considered when taking these decisions.
- At least 75% of renters are not able to afford mortgage repayments, according to the housing affordability measure. The remaining 25% still need to be able to save a deposit to enter the market.
- Renters in private rentals, especially those at the lower end of the market are the most vulnerable people in our housing system, and have few options when rents rise or landlords end their tenancies if they are selling a property.
- Moving properties is costly for tenants, both one off costs of moving, new bonds and rent in advance, and ongoing costs, with rents for new tenancies sitting on average $50 per week higher than for existing tenancies. Frequent moves are also associated with poorer health and wellbeing outcomes.
- Grandparenting existing investment properties from the interest deductibility measure will provide the greatest protection for current renters as existing investors will not face additional costs.
- Without grandparenting, the investors that will face the greatest costs will be those with high debt. Those who cannot afford those costs will likely either look to pass on costs to renters, or sell.
- Te Tūāpapa Kura Kainga Ministry of Housing and Urban Development (HUD) could monitor rents and other indicators across the rental market to assess impacts, with the earliest data being available three months after any announcement.
- Rent indexation could be introduced to moderate rent increases, but it will potentially lead to other adverse consequences, such as more investors selling and displacing renters, and reduced incentive for landlords to maintain properties.
- Rent indexation is a complex change and would require legislation (amendments to the Residential Tenancies Act 1986 (RTA)).
- If rent indexation is favoured, officials recommend it is:
    - time limited, to reduce size of any market readjustment once indexation is lifted and limit the risk that new supply is disincentivised

- a percentage increase that limits rent increases during a tenancy and continues to apply to the rental property when tenants change, to avoid landlords being incentivised to move existing tenants on in order to get a higher rent
- applied nationally, to avoid complex administration and avoid higher price rises in non-rent indexed areas
- include a means to apply an increase above the index for landlord improvements to rental properties, to ensure landlords retain incentives to maintain and improve properties
- apply to market rents only (not to social housing).

- There are a number of detailed design elements that would need to be worked through, such as which index to use, how to impose a time limit, the process for exempting significant upgrades, what rules apply when properties change ownership, and enforcement and administration considerations.
- As noted, rent indexation would also not address any rental "churn" caused by landlords terminating tenancies due to sale. This could be partly addressed by amending the RTA so that landlords cannot evict tenants if they are intending to sell or have sold the property. However, if the Government's objective of making more homes available to first home buyers is achieved, renters will still be displaced if their rental home is bought by a first home buyer.
- s 9(2)(g)(i)

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Annex B: Rent indexation graph of potential indexes against rent increases



DEPARTMENT OF THE PRIME MINISTER AND CABINET
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

Briefing

FINDINGS FROM A LITERATURE SCAN ON RENT REGULATION

To: Rt Hon Jacinda Ardern
Prime Minister

Date	26/02/2021	**Priority**	Medium
Deadline	12/03/2021	**Briefing Number**	DPMC-2020/21-583

Purpose

This report provides an update on the Strategy Unit's literature scan on rent regulation.

Recommendations

1. **Note** the attached slide pack summarising the Strategy Unit's literature scan on rent regulation.

Anneliese Parkin **Deputy Chief Executive, Policy**	Rt Hon Jacinda Ardern **Prime Minister**
...../...../2021	...../...../2021

Contact for telephone discussion if required:

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Paul O'Connell	Director, Strategy Unit	s 9(2)(a)	

Minister's office comments:

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to

FINDINGS FROM A LITERATURE SCAN ON RENT REGULATION

Purpose

1. This briefing provides you with an update on the Strategy Unit's work on rent regulation.

Background

2. We have carried out a review of international literature on rent regulations, focusing on the different approaches to rent regulation, what can be determined about impact and outcomes, and offering some selected international comparisons. Findings are set out in slides at Attachment A.

3. We shared these findings with officials at the Ministry of Housing and Urban Development, the Treasury, and the Ministry of Social Development on 25 February 2021.

Summary of key findings

4. "Rent control" covers a subset of wider regulation of rental contracts, ranging from rent freezes through to different types of limits on rent increases.

5. Important factors are the distinction between regulation of rent levels and regulation of rent increases, and between regimes that apply to all tenancies or just to sitting tenancies.

6. Approaches that set a ceiling and aim to keep rents below the market rate are associated with significant negative outcomes over the long-term, including a decrease in affordability and quality of housing, lower mobility and less diversity in communities. This form of rent regulation is usually called "rent control" and is less common today. The impact of this type of regulation on the availability of housing and levels of homelessness is ambiguous.

7. Rent regulation and tenure protection need to be closely linked. Without tenure protection, landlords may choose to evict sitting tenants who would be eligible for rent regulation in order to take on a new tenant who is prepared to pay a higher rent.

8. There is limited empirical evidence that softer regulation of rent increases (that still allows for a return on investment and annual increases to rent levels, and exempts new construction) has negative effects. This type of rent regulation is one tool to deal with sharp increases in rent, with less negative effects than price ceiling rent control, and can promote resident stability.

9. Outcomes vary considerably based on the characteristics of individual markets, so any measures would need careful monitoring.

10. Rent regulation is more common in countries with a large private rental sector (compared to countries with higher home ownership rates). As the proportion of the population living in rented accommodation increases, this may increase calls for rent regulation.

Next Steps

11. No further Strategy Unit work on rent regulation is planned at this stage.

12. You will receive an update on the Strategy Unit's overall work programme on 26 February which also updates you on progress on other work we have underway on housing, including:

    a) Commissioning research and modelling on housing affordability in Christchurch, intended to increase our understanding of the contributions that different policy interventions made to housing affordability in Christchurch and their broader applicability.

    b) Background work on housing subsidies.

Attachments:	Title
Attachment A:	**Rent regulation: Findings from a literature scan**

DEPARTMENT OF THE PRIME MINISTER AND CABINET
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

Rent regulation: Findings from a literature scan

February 2021

[SENSITIVE]

Defining rent control / regulation

- "Rent control" covers a subset of wider regulation of rental contracts, from rent freezes through to different types of limits on rent increases.
- Rent regulations may apply to all tenancy agreements (new and existing) or just to sitting tenants.
- Broader rental regulation includes general contract law, and regulation of other matters such as notice periods and valid reasons for terminating a tenancy agreement.
- A key distinction exists between regulation of rent levels and regulation of rent increases.

[SENSITIVE]

Types of rent regulation

Basis for regulation	Approaches to regulation
Regulation of rent levels	Often referred to as 'first generation' or 'hard' rent control, this approach creates a price ceiling or freeze on nominal rents for areas that have become more popular and seen significant increases in demand. It **keeps rents in a certain area below market rent** and is often aimed at ensuring 'popular' areas remain affordable for a wider range of people.
	A more limited approach to regulating the level of rent is **protection against 'excessive' rents**. This recognises that landlords may have monopoly-like power that they can use to demand rent that exceeds market rent in some circumstances.
Regulation of rent increases	'Second generation', 'soft' or 'modern' rent regulation restricts increases to rents, preventing certain types of increases. **Rent increases are limited, e.g. to improvements or cost increases** and aim to protect tenants from rent increases because of demand or to smooth out sudden spikes in rent. Cost increases may be capped at or above the CPI. A cap that is a percentage above the CPI smoothes increases in rent, but does not act to supress market rent levels over the longer term.

[SENSITIVE]

Rent regulation in New Zealand

- New Zealand's Residential Tenancies Act 1986 currently incorporates protection against rent that "exceeds the market rent by a substantial amount" (clause 25).

- To use this provision, tenants must apply to the Tenancy Tribunal. The 'market rent' the Tribunal considers is defined as what a "willing landlord might reasonably expect to receive and a willing tenant might reasonably expect to pay for the tenancy, taking into consideration the general level of rents (other than income-related rents […]) for comparable tenancies of comparable premises in the locality or in similar localities and such other matters as the Tribunal considers relevant".

- The Tribunal is not allowed to consider the personal circumstances of the landlord or the tenant in this determination.

[SENSITIVE]

Tenure security and rent regulation are interlinked

- If rent regulation aims to keep rents below market rents, or if regulations only apply to sitting tenants, tenure protection is necessary for it to be effective.
- Without tenure security, landlords may choose to evict sitting tenants who would be eligible for rent regulation in order to take on a new tenant who is prepared to pay a higher rent.
- OECD research has found that, because of this risk, rent regulation without tenure security can lead to rents that are higher than in unregulated rental markets.
- Monitoring and enforcement is also critical. If this is weak or inconsistent it can undermine the operation of regulations.

[SENSITIVE]

‘Price ceiling’ rent control has negative outcomes over the long-term

- Price ceiling rent control – which attempts to keep rents below a market level for some properties or tenancies – is associated with short-run improvements to affordability, but tends to benefit one set of tenants at the expense of others, so there is limited overall increase in well-being.

- Research finds a range of negative long-term impacts, including:
  - A decrease in affordability over time.
  - Lower mobility: people stay in housing that does not meet their needs for longer and are less likely to move for employment or higher paid employment.
  - A decrease in housing quality over time, as landlords have a reduced incentive to maintain their properties. This is based on several studies that have shown improved housing quality when rent controls are lifted.
  - Reducing the diversity of communities: because rent control encourages long tenure, those in rent-controlled areas are more likely to be older and less likely to have children.

[SENSITIVE]

The impact on housing availability and homelessness is ambiguous

- The effect of rent regulation on housing availability is not clear cut. In theory there is an assumption that it will decrease supply, because it is less financially rewarding to build new properties for rent, but conflicting factors make it hard to determine the overall impact. For example, it may lead to geographic differences because the drive for more supply shifts to non-controlled areas but is not necessarily dampened overall.

- Exemptions from rent regulation for new supply can also mitigate the tendency to discourage new supply.

- Although rent regulation may not have a clear effect on new construction, there is some evidence that it can reduce rental housing supply through conversion into owner occupancy (rather than accept a regulated rent, landlords choose to sell).

- The literature does not support a clear conclusion on whether and how rent regulation affects rates of homelessness.

[SENSITIVE]

The literature is light on the effect of 'modern' (second generation) rent regulation

- Assumptions about negative outcomes for this type of rent regulation are not supported by strong empirical evidence.
- Outcomes from modern rent controls vary markedly based on market conditions. Most of the existing empirical studies into the effects of rent regulation are typically country specific and based on one regional market, which makes it difficult to draw general conclusions.
- It can be said that modern rent regulation (that allows landlords to receive a return on investment, exempts new construction, and allows for annual adjustments) has little impact on the amount of investment in rental housing and succeeds in limiting extreme rent increases.
- However, it does not tend to generate significant relief from high rents in most cities. An OECD comparison of rent control in 2009 (rent regulation and tenure security) found no clear evidence that comparative average rent levels (when considering differences in dwelling quality) were lower in countries with stricter rent controls.

[SENSITIVE]

Selected international comparisons

Reference rents – similar dwellings are compared to set rent levels

- **Germany** has regulations preventing excessive rents for all tenancies, including new rental contracts. Sitting tenancies' rents cannot be increased by more than 20% over three years. Increases for sitting tenants in the private market can be set based on:
  - the rents of three similar rental dwellings
  - a database of local reference rents (Mietspiegel).
- In Germany, this approach appears to dampen increases in rents when rents are rising overall.

- **France** also uses reference dwellings to set initial rents (same region and comparable characteristics). Rent increases are then indexed to the CPI and reasons for landlords to end or not renew a tenancy are limited (e.g. occupation or sale).

[SENSITIVE]

Selected international comparisons (cont).

Smoothing significant rent increases – designating 'rent pressure zones'

- Since 2016, local councils in **Scotland** can apply to Scottish Ministers to have an area designated as a 'rent pressure zone' (RPZ) if rents in the area are rising too much, causing problems for tenants, and putting pressure on the council to subsidise or provide housing.
- Following consultation, if an area is designated as an RPZ, a cap is set on annual rent increases for existing tenants. Any cap set is at least the CPI plus 1% and lasts up to five years.
- Limited outcome information is available given the short timeframes it has been in place, but concerns have been raised about evictions because the restrictions only apply to sitting tenancies.
- In **Ireland**, a Rent Pressure Zone is a designated area where rents cannot be increased by more than 4% per annum, for new and existing tenancies. Located in parts of the country where rents are highest and rising, and where households have the greatest difficulty finding affordable accommodation, the zones are intended to moderate the rise in rents in these areas and create a stable and sustainable rental market that allows landlord and tenants to plan financially for their future.

[SENSITIVE]

Selected international comparisons (cont).

Indexation to the CPI

- As noted above, rent increases for sitting tenancies in **France** are indexed to the CPI (after they are set based on reference rents).

- In **Spain**, rent increases are indexed to the CPI for the first five years of any tenancy agreement. Following this, the rent can be renegotiated.

COVID-19 Response

- In response to the economic impact of COVID-19, some countries have responded with some combination of rent freezes and moratoria on evictions for private tenants, including Australia, Ireland, Slovak Republic and Austria.

- Other countries have provided additional financial support for housing.

[SENSITIVE]

Conclusions

- Important factors are the distinction between regulation of rent levels and regulation of rent increases, and between regimes that apply to all tenancies or just to sitting tenancies.
- Approaches that set a ceiling and aim to keep rents below the market rate are associated with significant negative outcomes over the long-term, including a decrease in affordability and quality of housing, lower mobility and less diversity in communities.
- The impact on availability of housing and homelessness is ambiguous.
- Rent regulation and tenure protection need to be closely linked.
- There is limited empirical evidence that softer regulation of rent increases (that still allows for a return on investment and annual increases to rent levels, and exempts new construction) has negative effects. This type of rent regulation is one tool to deal with sharp increases in rent, with less negative effects than are often imagined, and can promote resident stability.
- Outcomes vary considerably based on the characteristics of individual markets, so any measures would need careful monitoring.
- Rent regulation is more common in countries with a large private rental sector (compared to countries with higher home ownership rates). As the proportion of the population living in rented accommodation increases, this may increase calls for rent regulation.

[SENSITIVE]

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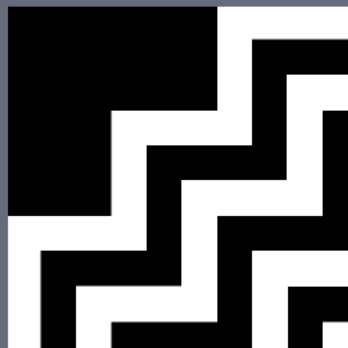
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[SENSITIVE]



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Aide-memoire

Potential impacts on existing landlords and tenants of proposed changes to the treatment of rental properties			
Date:	22 December 2020	**Security level:**	Sensitive
Priority:	Medium	**Report number:**	AMI20/21120425

Information for Minister(s)	
Hon Dr Megan Woods **Minister of Housing**	For information

Contact for discussion

Name	**Position**	**Telephone**		**1st contact**
Brad Ward	Deputy Chief Executive, Place-based policy and programmes	04 831 6035	s 9(2)(a)	✓
Naomi Stephen-Smith	Principal Analyst, Tenures and Housing Quality, Housing and Urban Systems	04 832 2433	s 9(2)(a)	

Other agencies consulted
N/A

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ See Minister's notes
- ☐ Needs change
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Aide-memoire

Heading

For:	Hon Dr Megan Woods, Minister of Housing		
Date:	22 December 2020	**Security level:**	Sensitive
Priority:	High	**Report number:**	AMI20/21120425

Purpose

1. We understand that the Minister of Finance is considering a range of options to moderate house price growth while enabling higher levels of home ownership and improving rental outcomes. Speculative investor activity has been identified as a concern, and some of these options include changing tax settings to disincentivise property investment.

2. You have asked for advice on the possible impacts on existing housing stock and tenants of potential changes to the treatment of rental properties for investors, namely:

    a. **Extending the bright line period:** disincentivise short-term property speculation

    b. **Limiting interest-only mortgages:** increase the level of repayments for investors (i.e. require principal repayments)

    c. **Removing deductibility of mortgage interest:** increase investors' tax liability (or reduce losses)

    d. **Temporary rent control:** reduce flow on impact to renters of any increased costs or decreased returns to property investors (measures which could be implemented "if needed" to mitigate impacts on rents from a.- c. above).

3. At this point we understand that Ministers have not made decisions about whether all of the above measures would be implemented as a package (with a cumulative impact), or whether individual measures would be selected. Decisions on detailed design (for example the extent of grandparenting) have also not yet been taken but will be significant even if only a limited number of individual measures are implemented.

Executive Summary

4. On 4 December we provided you with a potential package of options to increase housing supply and improve affordability over the short-term. The options focused on:

    a. Increasing supply (across all types of housing tenures and price points)

    b. Reducing the rate of property and rental price increases

    c. Improving outcomes for households who rent

    d. Enabling first home buyers to better compete in the market

    e. Having an initial impact in the next 12 – 18 months, particularly in terms of reducing expectations of significant future house price gains

f. Appropriately targeting the specific constraints and impediments in different priority places (e.g. there are differences between main urban centres and regional centres, and between different places)

5. We note that while the measures being considered by the Minister of Finance will potentially reduce the rate of property price increases (including by avoiding further speculation on existing properties), and could benefit first home buyers, they would not increase supply. In addition, if these measures apply to existing housing stock, they could have a negative impact on the households who rent these properties, particularly those on lower incomes.

6. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) supports measures that:

    a. act as a deterrent to investors buying current housing stock, and

    b. that channel housing investment towards new rental supply.

7. This paper focuses on the potential impacts of the proposed changes if they were to apply to existing landlords, and by extension, tenants. We are particularly focused on the impacts on lower-income tenants who are not in a position to purchase a property. At least 75% of current tenants cannot afford to buy a home and this is unlikely to change even with a 10-20% price drop given the increase in the last 12 months.

8. The potential changes to the treatment of rental properties could impose additional costs on existing property investors. This may result in some of these property investors choosing to sell. Investors may also make other choices to offset the costs, such as raising rents (but this would be moderated by the ability of renters to pay and any potential rent controls), lowering maintenance costs, or moving the property to the short-term rental market (e.g. AirBnB).

9. If investors choose to sell, sales to first home buyers could increase. We note, however, that only some current renters are in a position to become first home buyers. Based on the Housing Affordability Measure, a generous estimate is that up to 25% of renters could afford mortgage repayments, however many of this cohort may not be able to save a deposit. There are also regional variations in affordability.

10. Evidence shows that first home buyers are more likely to buy homes in the bottom half of the market, which may further reduce rental stock at the lower end of the market.

11. Where an existing landlord chooses to sell, the existing tenants are likely to be displaced, either immediately if the landlord gives notice prior to the sale, or subsequently if the sale is to an owner occupier. This risk could be partly mitigated if the Residential Tenancies Act 1986 was amended to prohibit termination of a tenancy if a landlord intends to sell, but would only be a temporary reprieve if the sale is to an owner-occupier.

12. Rental “churn” imposes substantial costs on renters (e.g. moving costs, new bond, rent in advance), particularly those who are not currently capable of becoming homeowners. At the lower end of the market, the churn increases the risk that households may need to rely on transitional housing or emergency housing special needs grants, or increase the numbers of the public housing register. Moving costs also negatively impact the finances of those that are saving for a deposit.

13. If Ministers choose to proceed with one or more of these options, HUD recommends that extending the bright line test will have the fewest consequences on tenants, as it focuses on disincentivising future short term speculation, rather than causing potential churn in the existing rental market.

14. HUD would also recommend that any other changes (e.g. limiting interest-only loans, removing deductibility of mortgage interest) do not apply to investment in new builds, or to currently owned rental properties. We would recommend, however that they apply to short-term holiday

accommodation, to disincentivise shifting property from long-term to short-term rental e.g. AirBnB.

15. The Treasury have also recommended further advice be provided to Ministers on other measures to reduce demand in the housing market, including a deemed rate of return method for taxing investment properties and a stamp duty. We note that the impact of these measures on current and future property investment should be assessed, given the potential downstream impacts on existing renters and new supply.

16. We will be reporting to you on HUD's recommended package of measures in more detail in January 2021, including further advice that you have requested on rent control.

Property investors vary in their portfolio size, length of investment and levels of equity or debt

17. Property investors vary in the number of properties they own, the length of time properties have been held and the levels of equity or debt. Depending on their circumstances, proposed changes will affect property investors differently.

18. Purchasers owning multiple properties have made up between 35%-40% of property purchases over the last decade (by comparison first home buyers have bought 24% of properties in 2020). Multiple property owners with between 2-4 properties (which normally includes their main home) make up more than half of these purchases, with fewer than 15% of purchasers owning 10 properties or more.[1]

19. Approximately 20% of current private rentals have been purchased in the last two years.

20. We do not have detailed information on investor portfolios and levels of equity or debt but do know that:

    a. Longer term investors are unlikely to have high debt and may have significant cashflow from their properties:

        i. Our analysis of rental bonds and residential sales suggests the median holding time for investors is around 7 years, which is comparable to owner occupiers. Long-term investors will also have earned significant capital gains.

        ii. Loan to value restrictions will have limited debt in recent years.

        iii. The 63% of property investors (182,219 taxpayers) reporting rental profits to IRD have an average profit of $14,000.

    b. Some investors will have substantial debt and will be in a negative cashflow position:

        i. The 37% of property investors (107,530 taxpayers) reporting rental losses to IRD have an average loss of almost $9,000. Most allowable deductions reflect real cash costs to investors e.g. insurance, body corporate fees, maintenance.

        ii. New borrowing by investors has trended up over the last 5 years.

    c. The greatest change in behaviour is likely to come from investors who are less able to absorb additional costs, although we expect most landlords may consider increasing rents (discussed further in paragraph 24). These investors are likely to have entered the market recently, and/or be in a tax loss position, and/or have a smaller number of properties.

[1] Information on buyer classification from Core Logic. Note that Core Logic's classification of multiple property owners includes property investors and people owning holiday or second homes and properties on Airbnb.

21. For illustrative purposes removing the deductibility of mortgage interest and/or limiting interest-only mortgages could affect a recent investor in the following ways:

    a. **Denial of interest deduction**: assuming a mortgage of $500,000, which is around 70% of the national median sale price[2], at an interest rate of 2.5% would have interest costs of $12,500 per annum. Denying all interest deductions would add a cost of $4,125 at a marginal tax rate of 33%[3].

    b. **Limiting interest only mortgage:** assuming the same mortgage, moving from an interest only mortgage would add principal repayments of $11,200 per annum. By comparison the median rent for new bonds lodged over the last 12 months was $470 per week, or $24,440 per annum.[4]

22. The number of investors who might be impacted by these potential changes includes:

    a. Approximately 20% of current private rentals have been purchased in the last two years. Half have been bought by small investors (less than 4 properties).

    b. Just over one third of investors are in a tax loss position and may need to meet increased costs from other income sources.

There are a number of actions investors might take in response to these changes

23. Depending on their circumstances, proposed changes will affect property investors differently. Possible responses include:

    a. Increasing rent to cover additional costs

    b. Taking their property out of the rental market

    c. Reducing costs by lowering maintenance

    d. Selling one or more properties.

Increasing the rent to cover additional costs

24. Property investors will weigh up their willingness and ability to pay for any increased up-front costs against the returns to the investment, including rents and untaxed capital gains. It is unlikely that investors will be able to fully pass on additional costs through increased rents. Stressed renters are already at the limit of what they pay and may respond through sharing housing costs and crowding. Rising rents can also lead to more well-off renters opting to buy, subject to being able to raise a deposit, or paying higher rent to secure properties. Both factors would limit the extent rents can be increased.

Investors may take their properties out of the rental market

25. Prior to COVID-19 in many holiday location investors had strong incentives to shift properties to the short-term holiday accommodation market. The extent of the impact is unclear, but certainly contributed to an underlying shortage of rental accommodation in some locations (for example Rotorua, Queenstown and Hastings).

26. Listings on short term holiday accommodation platforms have declined this year and revenues remain low compared to the same time last year. While the risk of leakage to the holiday rental market is low at this point, this risk will increase once borders reopen and tourism levels

[2] The Real Estate Institute of New Zealand report median sale price of $749,000 for November 2020.
[3] Allowable expenses are deducted from gross rental income to determine taxable income, then tax is payable at the investor's marginal tax rate.
[4] This takes the average of the monthly median rent for new bonds lodged between December 2019 and November 2020. The median rent for new tenancies in November 2020 was $500 per week

recover. For this reason, proposed changes should also apply to short-term holiday accommodation, if they apply to rentals, to ensure landlords are not incentivised to take properties out of the rental market. In practice, however, it may be difficult to amend the law to clearly distinguish between AirBnB-type properties and some other more traditional holiday accommodation (e.g. traditional B&Bs or motels).

27. We do not believe there is a high risk that properties will be left vacant. Forgone rent would exceed costs of the proposed changes.

Investors could look to save costs by lowering maintenance costs

28. A further potential unintended consequence of increasing the costs to property investors is that they reduce expenditure on maintaining their properties. It is difficult to quantify this risk, and we note that this is more likely on the margins, and with landlords who are unaware, or unconcerned about compliance.

29. A baseline survey that will track compliance with the healthy homes standards found that 93% of landlords had heard of the standards, and 77% had done some things to prepare their properties to meet the standards. Around 40% displayed strong commitment to meet the standards. Eight percent were described as “difficult” or in “denial”.

30. Compliance activity by Tenancy Services could address this, but remains a small function relative to the size of the rental market.

Investors could sell one or more properties

31. Lower expected returns and higher costs will reduce investor demand for housing. This will reduce what investors are willing to pay for properties and lead to some divestment. Investors who are unable to cover increased costs from other income sources are more likely to sell.

Some landlords are currently considering selling one or more properties

32. Two recent surveys of landlords have found around 20% are seriously considering selling one or more rental properties in the next 12 months. Key reasons for wanting to sell include recent house price rises, freeing up money for their own financial situation, compliance costs or Government policy changes, changes to rental laws or new requirements for landlords.

Would sales of investment properties increase first home buyers into the market?

33. Only some current renters are in a position to become first home buyers. Based on the Housing Affordability Measure, we estimate that up to 25% of renters could buy, subject to the ability to save a deposit, and with variations depending on location.

34. We expect that those investors most likely to exit the market are those with high debt related to their investment properties, whether they are investors with one or multiple properties.

35. However, we won’t see a significant fall in prices if demand from investors with higher levels of equity and first home buyers (with deposits) remains strong. The underlying demand drivers for these purchasers – low interest rates and high rents are likely to remain unchanged.

36. Analysis of property sales and current rental bonds suggests that most homes bought by investors would be considered by first home buyers. Apartments are the exception, with only 3% of first home buyers purchasing apartments since January 2019, while they make up around 10% of rentals. First home buyers are also more likely to buy homes in the bottom half of the market compared to multiple property owners who tend to purchase across all price points. First home buyers are also more likely to purchase stand-alone homes (80%) compared to investors (67% of rental properties).

How are tenants impacted when their landlords sells?

Renters in the private market have variable ability to pay rent and/or move into home ownership[5]

37. The proportion of New Zealand households that rent has increased from 22.9% in 1991 to 31.9% in 2018, and just over 1.4 million people make up these households. Most of these households (83.5%) rent privately.

38. Renters are more likely than homeowners to be on lower incomes, and non-partnered. People of Pacific, Māori or Asian ethnicity are more likely to be renters than homeowners.

39. The proportion of households that rent varies across the country, with the highest proportions in Gisborne and Auckland (around 40%), and the lowest in Tasman and Marlborough (around 24-28%).

40. Housing costs are a greater burden for renters than for homeowners, when looking at proportion of income spent on housing costs.

41. Renters in the private rental market can be categorised into the following groups[6]:

    a. **Potential first home buyers:** This group of renters can afford their rent, and have been able to save a deposit. *Housing in Aotearoa: 2020* reported that in 2018, one fifth of renters who had moved in the past five years had become homeowners.

    b. I**ntermediate housing market:** This group of renters can comfortably afford their rent, but do not have sufficient disposable income to be able to save a deposit. A report by the Building Research Association of New Zealand (BRANZ) in 2015 identified that there were 181,500 intermediate households nationally, with 85,400 of these located in Auckland.[7]

    c. **"Price takers" and stressed renters:** This group of renters (a sub-set of the intermediate market) are those who do not qualify for public housing (or qualify but would be relatively low priority), but have high rental costs relative to their income. As a general indicator, based on the housing cost to income ratio, between 25% and 30% of renters paid 40% or more of their income on housing costs over the past ten years, and around 45% paid 30% or more. At the lower end of this group are "price takers", who rent at the lower end of the market and "take" the lowest price offered, which may or may not be affordable. Rental unaffordability is generally greater in places in New Zealand where rents are high (eg, Tauranga, Thames-Coromandel, Rotorua, parts of Auckland).

If a number of landlords choose to sell, the associated "churn" in the rental market can impose significant costs on renters

42. Frequent moves and insecure tenure can affect a household's wellbeing. Renters in New Zealand move more frequently than non-renters and evidence shows that frequent moves can be detrimental to health and wellbeing. Research from the Growing Up in New Zealand study found that between birth and nine months, "children born into families residing in private rental accommodation were the most likely to have experienced early [residential] mobility, with nearly

[5] Data for this section is taken from Statistics New Zealand, *Housing in Aotearoa 2020,* December 2020 unless otherwise referenced.
[6] We note that there are also sizeable populations who are either in public housing (around 63,000 households at the time of the 2018 census; approximately 12% of renter households), on the housing register (21,415 households as at September 2020), and either homeless or in transitional housing (almost 9,000 across Special Needs Grants, COVID-related transitional housing, and other transitional housing).
[7] BRANZ, *Can Work, Cannot Afford to Buy the Intermediate Housing Market,* April 2015, https://d39d3mj7qio96p.cloudfront.net/media/documents/ER5s_Summary_of_can_work_cannot_afford_to_buy_the_intermediate_housing_market.pdf

1 in 2 (49 percent) having moved at least once, compared to fewer than 1 in 5 experiencing mobility if their families were home owners".[8]

Direct costs to renters

43. From 11 February 2021, landlords who are terminating a tenancy due to the sale of the rental property will be required to give 90 days' notice (for a periodic tenancy).

44. In the 2018 General Social Survey, just under 30% of tenants were on a fixed term tenancy, which cannot be terminated early due to a property sale – although the tenant may have to move after the fixed term ends. Other landlords choose to sell a property with their tenants in place, even if they are on a periodic tenancy. In those cases, the new owner can either continue the tenancy, or give notice if they intend to the move into the property.

45. The risks to tenants of having to move when a landlord sells could be partly managed by amending the Residential Tenancies Act 1986 to remove the ability of a landlord to terminate a tenancy when selling. However, this would only give the tenant security of tenure if the property sold to another investor, which is not the intention of these proposed tax changes.

46. For the affected tenants, the search for a new property incurs a number of upfront costs. Significant one-off payments include:

    a. payment of advance rent and bond: this can be several thousand dollars comprising up to four weeks of rent in advance, plus four weeks rent for a bond payment

    b. moving costs: these will depend on the ability to call on family or friends to help, and size and composition of the household.

47. A tenant's existing bond can be transferred to a new tenancy, if the new landlord agrees. Tenancy Bond services data indicates that around 700 out of 11,000 bonds are transferred between tenancies each month. However where this is not possible, renters can wait up to three weeks for their bond to be returned after their tenancy ends.

48. In addition, for an average rental there is likely to be an ongoing increased rent of approximately $50 per week. A comparison of weekly rents in Census and Household Economic Survey data with Tenancy Bond data indicated an approximate difference of $50 per week, indicating the price of new tenancies is set higher than the price for those in existing rentals.

A number of tenancies ending at once causes prices to spike

49. While the number of houses in the market doesn't change, evidence shows that a number of tenancies changing over at the same time causes spikes in prices. Tenancy Services bond data shows that in markets where there are significant numbers of tenancies ending at the same time, prices spike over that period (for example in Wellington, where many tenancies change over during the summer months).

50. Consequently, if a significant number of property investors choose to sell, and give notice to their tenants, this could increase costs to displaced tenants.

Some stressed renters may have difficulty finding a property

51. There is a risk that for some renters in the lower-priced parts of the rental market, that they will not be able to find a new rental property at a price they can afford. This could lead to either further pressure on emergency special needs grants, transitional and public housing, or to overcrowding to enable rent to be affordable.

52. This risk is greater in the current supply-constrained market, and has much more significant long-term costs, both for the individual and for the Government. For example, in the September

2020 quarter 9,823 households received one or more Emergency Housing Special Needs Grants (EHSNG). These households were temporarily unable to access private rentals or one of the 3533 Transitional Housing places across the country. In locations such as Gisborne, Rotorua and Napier-Hastings EHSNG are high reflecting the underlying tightness in the rental market and difficulty in accessing secure affordable rentals when existing tenancies are ended.

Rent control to counter the risk that investors increase rents to recoup their costs

53. The Treasury advice noted that rent control measures could be drafted to offset or limit negative impacts of adjustments to tax policy changes on rent prices. If the government introduces a temporary rent control then this could incentivise more investors to sell, but international evidence shows that those that retain rental properties will try to find other ways to increase rental income and/or increase rents up as soon as the period of rent control ends.

Next steps

54. We will be reporting to you on HUD's recommended package of measures in more detail in January 2021, including further advice that you have requested on rent control.

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Residential tenancies under COVID-19 Alert Level 4 – initial advice			
Date:	19 August 2021	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF21/22081078

Action sought		
	Action sought	**Deadline**
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Note** the contents of this briefing and attached talking points, in preparation for Cabinet on Friday 20 August.	19 August 2021

Contact for discussion				
Name	**Position**	**Telephone**		**1st contact**
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Katherine Slaney	Principal Policy Advisor	04 830 6912		

Other agencies consulted
Tenancy Services (MBIE), Ministry of Justice, Ministry for Primary Industries, Ministry of Health, Ministry of Social Development, Department of Prime Minister and Cabinet, the Treasury Kāinga Ora, Parliamentary Counsel Office.

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Residential tenancies under COVID-19 Alert Level 4 – initial advice

For:	Hon Poto Williams, Associate Minister Housing (Public Housing)		
Date:	19 August 2021	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF21/22081078

Purpose

1. This advice responds to your request for advice about managing residential tenancies issues under COVID-19 Alert Level 4, in preparation for your meeting with Cabinet tomorrow (Friday). We attach talking points to support you at Cabinet (**Annex A**).

Executive summary

What approach was taken last time we moved to Alert Level 4

In the context of the first outbreak of COVID-19 and subsequent Alert Level 4 lockdown in New Zealand in March 2020, temporary changes were made to the Residential Tenancies Act 1986 (RTA) through the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID Act) to support the health measures (RTA COVID provisions). The RTA COVID provisions restricted tenancy terminations, imposed a freeze on rent increases and empowered the Tenancy Tribunal to operate flexibly. Because it was unclear how long the Alert Levels would be in place and because the restrictions were a significant imposition on property rights, the RTA COVID provisions were time limited for three months (termination restrictions) and six months (rent increase freeze). The restrictions have now expired. The Tenancy Tribunal flexible operations were set to expire after six months but were subsequently extended to 25 March 2021 through a change made by Residential Tenancies Amendment Act 2020.

Why the situation is different this time

In March 2020 New Zealand moved up to Alert Level 4 more gradually and de-escalated down Alert Levels over 11 weeks; this meant there was a window of opportunity for Parliament to pass the COVID-19 Act, the Alert Level rules could be communicated in advance, and people had time to adjust to the rules and restrictions. This time, the immediate escalation to Alert Level 4 for the whole country on Tuesday evening (due to the highly transmissible nature of the Delta variant) has meant there has been no lead in time to the significant rules and restrictions under the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021 (the COVID Health Order) and no time to pass legislation amending the RTA.

The Tenancy Tribunal is continuing to operate and is hearing all matters that can proceed by telephone, rather than adjourn everything (as it did last year). A conversation with REINZ indicated that the industry is implementing their protocols for operating from last time the country was in Alert Level 4 so are managing in the short term.

Legal advice

The COVID Health Order mandates people to remain living at their home or place of residence, unless required to move by court order or law enforcement or if they need to use a temporary or emergency home, for example for care while sick or to seek refuge in a women's refuge accommodation. However, the COVID Health Order cannot override the RTA. Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) and Tenancy Services have developed and published guidance that encourages landlords and tenants to ensure compliance with the COVID-19 Health Order, for example by agreeing to extend a tenancy that is due to expire during Alert Level 4.

Ultimately, fines can be imposed on a tenant for either breaching the COVID Health Order or breaching the RTA requirement to vacate the property following termination of the tenancy. While we expect landlords and tenants to work together during Level 4, this could place tenants in a difficult situation if their landlord insists on enforcing a termination. Without legislative change, landlords will retain their current legal rights to terminate tenancies under the RTA and the Government cannot require landlords to delay or withdraw any terminations to facilitate tenants complying with the COVID Health Order.

What this means for the approach we recommend this time.

We recommend a tailored and proportionate approach to addressing residential tenancies going forward, meaning if Alert Level 4 is not extended beyond three weeks the current guidance will be sufficient and no legislative changes will be required. If the current outbreak cannot be quickly brought under control by containment measures and Alert Level 4 is subsequently extended beyond three weeks (or looks like it will be extended), Ministers could consider passing legislation to reinstate the RTA COVID provisions (with modifications), as contemplated by Cabinet in December 2020 (in the context of the paper, *Economic response to future resurgences of COVID-19*).

Similar to last time, we recommend the RTA changes comprise restrictions on tenancy terminations linked to Alert Level 4 (and possibly Alert Level 3), and a freeze on rent increases for Alert Levels 4 and 3 (subsequent to Alert Level 4) in the regions which go into Alert Level 4. However, we would need to undertake further work with Parliamentary Counsel Office on how the amendments could be linked with Alert Levels and regions, for example through an Order in Council mechanism, so that the rules could be applied if the country enters Alert Level 4 and a COVID Public Health Response Order is made.

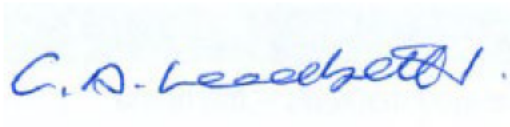
Consideration needs to be given to a number of matters, including whether to apply the rules at Alert Level 3 as well as Alert Level 4, as it would be confusing and disruptive to have RTA restrictions applied and then disapplied if the country or regions were to move up and down Alert Levels 3 and 4 in response to an uptick in COVID-19 case numbers.

Recommended actions

2. It is recommended that you:

1.	**Note** that last year temporary changes were made to the Residential Tenancies Act 1986 (RTA) to support the health measures to keep people in their rental homes including termination restrictions, a freeze on rent increases, and Tenancy Tribunal powers to operate flexibly and these provisions have now expired.	*Noted*
2.	**Note** COVID Health Orders cannot override the RTA and landlords still have the legal ability to terminate tenancies under the RTA despite the requirements the COVID Health Order to stay at home.	*Noted*
3.	**Note** officials recommend a tailored and proportionate approach to addressing residential tenancies: if Alert Level 4 is not extended beyond three weeks the current guidance that encourages landlords and tenants to ensure compliance with the COVID-19 Health Order will be sufficient and no legislative changes will be required.	*Noted*
4.	**Note** if the current outbreak cannot be quickly brought under control by containment measures and Alert Level 4 is extended, Ministers could consider passing legislation to reinstate the RTA COVID provisions (with modifications), as contemplated by Cabinet in December 2020.	*Noted*
5.	**Note** we recommend a rent increase freeze is reinstated for Alert Levels 3 and 4, as there are less Government COVID-related support products this	

	time (the temporary changes made last year to the Rent Arrears Assistance Housing Support Product, expired on 1 July 2021).	*Noted*
6.	**Note** we would need to undertake further work with Parliamentary Counsel Office on how the amendments could be future-proofed by linking them with Alert Levels and regions, through an Order in Council mechanism, for example that applies any or all of the rules if the country or region enters Alert Level 4 and a COVID Public Health Response Order is made.	Noted



Claire Leadbetter
Manager, Tenures and Housing Quality

..... / ..... / .....

Hon Poto Williams
Associate Minister of Housing (Public Housing)

..... / ..... / .....

Background

You have asked for advice in the context of the community outbreak of COVID

3. The country is currently at Alert Level 4 after the detection of a community case of the COVID-19 Delta variant in the Auckland region. There have been subsequent community cases. You have asked for advice and talking points on Alert Level 4 and residential tenancies (specifically rent increases and terminations) in preparation for a discussion at Cabinet tomorrow. You have requested that the advice cover:

    a. What approach was taken last time we moved to Alert Level 4

    b. Why the situation is different this time and

    c. What this means for the approach we recommend this time.

Cabinet has previously agreed to reinstate tenancy restrictions and rent increase freezes in the event of a return to Alert Level 4

4. In relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19*, Cabinet noted that, in the event of COVID-19 Alert Level escalations, a comprehensive package of economic support is critical to minimise the associated economic and social impacts, and to support compliance with the public health response.

5. In relation to residential tenancies, Cabinet:

    a. noted that further design work and new legislation will be required to reinstate a freeze on residential rent increases and restrictions on tenancy terminations and

    b. agreed (if New Zealand went back into Alert Level 4) that a freeze on residential rent increases and restrictions on tenancy terminations be reinstated, subject to the passage of the required legislation and approval by Cabinet at the time of an escalation to Alert Level 4 (CAB-20-MIN-0521).

What approach was taken last time we moved to Alert Level 4

There were extensive restrictions during Alert Level 4 during March - April 2020

6. In response to the COVID-19 outbreak in New Zealand in March 2020, the Government pursued an elimination strategy, underpinned by a four-tier Alert Level regime of restrictions aimed at eliminating the transmission of the virus in New Zealand.

7. The Alert Level system is linked to a risk assessment, whereby under Alert Level 4 – Lockdown - "sustained and intensive community transmission is occurring and widespread outbreaks." Alert Level 3 – Restrict – means there is a high risk the virus is not contained, that community transmission might be occurring, and new clusters may emerge, controlled through testing and contact tracing.

8. COVID-19 Alert Level 4 was in place across the country between 25 March and 27 April 2021. During that time:

    a. people were instructed to stay at home in their bubble other than for essential personal movement, and to work from home unless that was not possible;

    b. workplaces could only open if certain strict conditions applied and they were considered essential services;

    c. only safe recreational activity was allowed in a local area within a reasonable distance;

    d. all educational facilities were closed;

    e. travel was severely limited; and

    f. all gatherings were cancelled and all public venues were closed.

Temporary COVID-19 changes to Residential Tenancies Act supported people staying at home to stop the spread of the virus

9. Temporary changes were made to the Residential Tenancies Act 1986 (RTA) to support the health measures by facilitating people to stay in their rental homes. The amendments, which helped sustain tenancies to the greatest extent possible and protected tenants from becoming homeless during the COVID-19 outbreak, were made by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act). The COVID-19 Act was drafted and passed under urgency and came into force on 26 March 2020. The COVID-19 Act included the following amendments to the RTA, set out in Schedule 5:

    a. Temporary termination restrictions: the changes restricted a landlord's ability to serve termination notices. In many instances, tenancies could only be terminated by order of the Tenancy Tribunal on limited grounds, including for significant anti-social behaviour or if tenants were at least 60 days in rent arrears (instead of the usual 21 days). In the case of rent arrears, the Tribunal could refuse to terminate the tenancy if the tenant had made reasonable efforts to pay rent and the Tribunal considered termination unjustified.

    b. Tenants were still able to terminate their tenancy as normal but were also able to revoke termination notices that they had given before 26 March 2020, in case they needed to stay in the tenancy during the termination 'freeze'.

    c. A freeze on rent increases: the freeze prevented landlords from increasing rents but did not prevent them from agreeing to reduce the rent.

    d. If, as a result of the tenant remaining in the premises, the landlord was no longer able to provide vacant possession to an incoming tenant, the incoming tenant had no right to occupy the premises and any obligations between the landlord and the incoming tenant were cancelled.

    e. A freeze on rent increases: the freeze prevented landlords from increasing rents but did not prevent them from negotiating reduced rent.

    f. Tenancy Tribunal flexible operations: the Tenancy Tribunal was enabled to make decisions on the papers, and to hold hearings by telephone or video conference.

10. The COVID-19 Act:

    a. invalidated termination notices that had been given by landlords, but which had not yet taken effect;

    b. allowed tenants to revoke termination notices, if they had not yet taken effect;

    c. continued fixed-term tenancies that otherwise would have expired. These fixed-term tenancies were converted to periodic tenancies upon their expiry; and

    d. suspended certain Tribunal orders.

RTA COVID-19 provisions were time limited and have expired

11. Because of the impositions on property rights, these provisions were time-limited, as it was unclear how long New Zealand would spend in Alert Levels 3 and 4. The restrictions on tenancy terminations were set to expire after three months, unless they were extended by up to a further three months by Order in Council, if the Minister was 'satisfied that it is necessary or desirable to support measures taken to contain or mitigate the outbreak of COVID-19 or its effects'.

12. Following advice in early June, Ministers agreed not to use the extension and the provisions expired on 25 June 2020. This was primarily because the significant public health risks were well managed and there was greater movement around the country under Alert Level 2.

13. The other changes (rent increase freeze and Tenancy Tribunal flexible operations) were set to expire after six months. The restrictions on rent increases expired on 25 September 2020.

14. The Tenancy Tribunal flexible operations provisions were subsequently extended to 25 March 2021 through a change made by Residential Tenancies Amendment Act 2020 (the RT Amendment Act 2020).

15. In addition to the temporary RTA changes, the Residential Tenancies (Healthy Homes Standards) Regulations 2019 were amended. Landlords were originally required to provide a compliance statement for any new or renewed tenancies after 1 July 2020. This date was changed to 1 December 2020, to allow landlords an opportunity to assess properties for compliance.

Additional government support assisted renters

16. The Government also provided assistance to cushion the economic impact from COVID-19, which supported renters who were struggling to meet rent payments. These included wage subsidies, COVID-19 Income Relief Payments and temporary changes to the Rent Arrears Assistance Housing Support Product.

The COVID-19 Public Health Response Act 2020 allows for COVID-19 Public Health Response Orders

17. In May 2020, the COVID-19 Public Health Response Act 2020 (the Act) came into force. The Act is designed to provide various legal mechanisms for the Government to respond to COVID-19 risks, including making COVID-19 Public Health Response Orders to support the purposes of the Act.

18. Under the Act, the Minister responsible for the administration of the Act (currently the Minister for COVID-19 Response) or the Director-General of Health can make an order if they consider it is needed to prevent or contain the outbreak or spread of COVID-19 and it is the most appropriate way of addressing those matters at the time. This can include requiring people to stay in a specified place or refrain from going to a specified place, exercise physical distancing, be isolated or quarantined; and refrain from travelling to or from any specified area. The COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021 (COVID Health Order) is a COVID-19 Public Health Response Order. This order establishes the current restrictions on people's movement during Alert Level 4.

Why the situation is different this time

In 2020, New Zealand moved up to Alert Level 4 in a few days and moved down Alert Levels gradually…

19. The first COVID-19 case in New Zealand was reported on 28 February 2020. On 21 March 2020 the 4-tiered Alert Level system was introduced, when the Prime Minister announced that New Zealand was at Alert Level 2. The Prime Minister announced a move to Alert Level 3 on 23 March, and that New Zealand would move into Alert Level 4 at 11.59pm on 25 March. At that time, New Zealand had just over 100 cases of COVID-19.

20. The measures and restrictions on movement associated with the different Alert Levels were designed to contain the outbreak as quickly as possible. There was a balance between the short-term economic costs and inconvenience the restrictions caused and managing the health risks and the long-term economic impacts of further outbreaks if the virus was not eliminated and re-emerged in the community, which may have prompted a re-escalation up Alert Levels.

21. New Zealand moved from Alert Level 4 to 1 over nearly 11 weeks:

    a. Alert Level 4 was in place from 25 March - 27 April 2020

    b. Level 3 from 28 April – 12 May 2020

    c. Level 2 from 13 May – 7 June 2020 and

    d. Level 1 from 8 June 2020 onwards.

22. The slightly slower escalation in Alert Levels meant there was a window of opportunity for Parliament to pass legislation (including changes to the RTA) to support the COVID-19 response, the Alert Level rules could be communicated in advance and people had time to adjust to the restrictions.

23. There have been further escalations up to Alert Levels 2 and 3 since the August 2020, in various parts of the country for different periods of time:

    a. August – October 2020: Following community cases recorded in Auckland, Auckland moved to Alert Level 3 and the rest of New Zealand moved to Alert Level 2 from noon 12 August, and subsequently moved down the Alert Levels.

    b. February – March 2021: Following community cases recorded in Auckland, Auckland moved to Alert Level 3 and the rest of New Zealand moved to Alert Level 2 from 11:59pm 14 February, and subsequently moved down, back up, and down the Alert Levels again.

    c. June 2021: Following the confirmation that a tourist from NSW who visited Wellington tested positive for COVID-19, Wellington moved to Alert Level 2 from 11:59pm 23 June, and subsequently moved down to Alert Level 1.

… but the Delta variant is 'a game changer' - so this time the country went straight into Alert Level 4

The Delta variant is more transmissible – as evidenced in New South Wales

24. The new community case announced on 17 August 2021 is the Delta variant of COVID-19. As compared with previous variants, the Delta variant is more transmissible, the viral load is higher, and it incubates for a shorter time. It is a greater threat to the health of individuals and life of individuals infected and presents a greater challenge to contain in an outbreak.

25. Australia effectively suppressed COVID-19 throughout much of 2020 and the first half of 2021. On 16 June 2021, a community case of the Delta variant was confirmed in New South Wales. NSW has since struggled to contain transmission of the Delta variant. Since 16 June 2021, there have been 9,280 community cases as of 8pm 17 August 2021 and 60 deaths linked to the virus since the 16 June outbreak. Daily case numbers have trended upwards, with 633 new community cases in the 24 hours to 8pm 17 August 2021.

It was imperative to shift from Alert Level 1 to 4 immediately - and the situation is evolving rapidly

26. Subsequent to the Prime Minister's announcement on Tuesday evening, the country went into Alert Level 4 at 11.59pm on 17 August 2021. In accordance with the COVID Health Order issued at that time, government advice is everyone must now stay home. People can only move house if required to do so by court order or law enforcement or if they need to use a temporary or emergency home, for example for care while sick or to seek refuge in a women's refuge accommodation. Public guidance is that people can only leave home to shop for groceries, access necessary healthcare, get a COVID-19 test, exercise in your local area, or go to work if they are working in an Alert Level 4 service and cannot work from home. People must only make physical contact with those in their household unit.

27. As of this 1.00pm today, there are 21 community cases of COVID-19 and this case number is expected to rise. The situation is rapidly evolving. Currently, Auckland and the Coromandel Peninsula is at Alert Level 4 for seven days and the rest of New Zealand is at Alert Level 4 for three days when it will be reviewed by Cabinet tomorrow (Friday).

28. It is not yet decided whether all, or parts of New Zealand will remain at Alert Level 4 for a longer period, whether some areas (where the risk of community transmission of the virus is lower) will go into Alert Level 3, or whether there may be escalations up and down Alert Levels ('short sharp' lockdowns) over the coming weeks.

The usual RTA rules currently apply, despite the COVID Order

29. As the RTA Schedule 5 COVID provisions have now expired, the usual RTA rules apply to tenancies under Alert Level 4, notwithstanding the requirements of the current the COVID Health Order.

s 9(2)(h)



Landlords can still increase rent

33. Landlords may still increase rent, in accordance with rent increase notice provisions in the RTA. Rent may be increased once every 12 months and landlords must give at least 60 days' notice. There is no restriction on the amount that rent can be increased, although tenants can apply to the Tenancy Tribunal to reduce the rent where it is substantially above market rent.

Tenancy Services have issued guidance to encourage tenancies to remain in place and postpone rent increases if appropriate

34. Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) and Tenancy Services (Ministry of Business, Innovation and Employment) have developed guidance for the tenancy sector, emphasising the importance of complying with the extensive restrictions on people's movements under the latest the COVID Health Order. The key points in the guidance are:

    a. At Alert Level 4, tenants can only move house if required to do so by court order or other law enforcement measures or if they need to use a temporary or emergency home, for example for care while sick or to seek refuge in a women's refuge accommodation.

    b. Landlords and tenants should talk to each other if tenancies are due to expire during Alert Level 4 so that tenancies can continue during Alert Level 4, for example they could agree to either renew or extend the tenancy during Alert Level 4, and landlords should be mindful that tenants may need extra time to find a new tenancy once Alert Levels are de-escalated.

    c. Landlords and tenants can continue to make applications to the Tenancy Tribunal and where possible, hearings will take place remotely. No in person hearings will take place at Alert Level 4. Hearings that can't be held remotely will be rescheduled.

35. Although it is lawful to increase rents during Alert Level 4 (if the RTA requirements are met), the guidance asks landlords to be mindful that tenants may be experiencing financial stress during Alert Level 4 if they cannot work, and recommends that they consider the financial

situation of their tenants and postpone rent increases if appropriate. As above, a landlord can only increase rent once every 12 months.

36. However, the guidance is not enforceable, and landlords may legally terminate tenancies or raise rents in accordance with the RTA during Alert Level 4.

What this means for the approach we recommend this time

37. The current situation suggests an approach to residential tenancies during Alert Level 4, and possibly Alert Level 3, is needed which takes into account:

    a. The highly transmissibility nature of the Delta variant and overriding imperative to keep people at home to stop the spread out of control (as witnessed in NSW)

    b. the need to support tenancies to be sustained (through termination restrictions and ensuring renters do not lose their home due to a reduced ability to meet rent payments caused by COVID-related job losses or a drop in income)

    c. the need for interventions to be clear and proportionate, so that disruption to landlords' businesses and to tenants' living arrangements are mitigated as far as possible

    d. the value in providing certainty to the tenancy sector, particularly if regions are to move up and down Alert Levels and

    e. the importance of landlords and tenants having access to the Tenancy Tribunal so that when disputes (inevitably) arise, they can be resolved quickly.

We recommend flexible, tailored and proportionate measures

Guidance will be sufficient if Alert Level 4 is not extended beyond several weeks

38. In the event there are indications the latest outbreak can be brought under control relatively quickly (through Alert Level 4 restrictions, testing, and contact tracing) and a decision is made to move down to Alert Level 3 in the next several weeks, we consider further urgent legislative changes to the RTA would be unnecessary, untimely and disproportionate to the problems outlined above.

39. In this scenario, the current temporary guidance 'work around' will be sufficient and we would continue to emphasise the importance of landlords and tenants maintaining a good relationship and attempting to resolve issues between them in the first instance. Tenancy Services continues to be available to provide mediation services to help landlords and tenants discuss and resolve residential tenancy disputes.

40. Once there is a de-escalation to Alert Level 3, moving house is allowed, and guidance can be issued which assists landlords and tenants to understand rights and obligations under the relevant COVID-19 Public Health Response Orders, for example that moving properties should be undertaken with extreme caution to abide by public health imperatives.

If Alert Level 4 is extended beyond several weeks, legislative changes may be justified

41. If Level 4 is extended beyond several weeks, the inconsistencies between the COVID Health Order and the RTA provisions will become increasingly difficult and unhelpful for the tenancy sector, and more protection and certainty may be justified through reviving the COVID RTA amendments, as contemplated by Cabinet in December 2020. However, we note that the steps necessary to pass legislation would need to be completed at pace: policy decisions obtained, amendments drafted and approved, and a Bill passed under urgency.

Legislative changes should be more 'agile' than last time to ensure they are proportionate

We recommend the similar restrictions as last time but tied to Alert Levels and regions

42. The fixed periods for the temporary RTA restrictions in 2020 (three or six months) were inflexible and meant that the restrictions applied not just during Alert Level 4, but also subsequently during Alert Levels 3, 2 and 1, across the country. At the lower levels, the

relatively strong restrictions were not necessary to achieve the goal of protecting public health. Any new temporary changes to the RTA could avoid some of the issues which arose during 2020 by allowing for the ability to link the restrictions to Alert Levels and if appropriate, to regions.

43. If Level 4 is extended beyond several weeks and a legislative response is considered justified, we recommend the following set of 'tweaked' RTA COVID provisions:

    a. reinstate restrictions on tenancy terminations for Alert Levels 4 and 3 (subsequent to Alert Level 4), in the regions which go into Alert Level 4 (depending on whether shifts up and down between Alert Levels 3 and 4 are contemplated – discussed below) and

    b. reinstate a freeze on rent increases for Alert Levels 4 and 3 (subsequent to Alert Level 4), in the regions which go into Alert Level 4.

Initial thinking on the detail of restrictions

44. Even in Alert Level 4, landlords still need to be able to terminate tenancies in extreme circumstances. Any future approach to restricting terminations at this Alert Level should include the previous termination grounds (as specified in the COVID-19 Act), where landlords can apply to the Tenancy Tribunal to terminate a tenancy in specified circumstances, including where the tenant: substantially damages the premises, assaults or threatens to assault the landlord, their family, or the neighbours, abandons the property, engages in significant anti-social behaviour or is 60 days or more behind in rent.

45. We recommend the rent arrears ground only applies during Alert Level 3, because without temporary supports for rent arrears this time, allowing for terminations after 60 days' rent arrears still risks some evictions at Alert Level 4, which would put pressure on emergency housing.

46. Where a termination notice had been served prior to Alert Level 4 and has not taken effect by the time the RTA COVID provisions commence, that notice would be invalidated and would have to be served again once the termination restrictions expired, that is, the notice period 're-started' (unless other arrangements are agreed between the parties).

47. The rent increase freeze and termination restrictions would apply to tenancies relating to rental properties in an area which goes into Alert Level 4, which is in place for the period of both Alert Levels 4 and 3. This is justified because movement is still heavily restricted at Alert Level 3. A rent increase freeze would mean tenants are not faced with additional rent stress during a time in which they may not be able to work, or they lose their job as a result of the lockdown and will support people to stay in their tenancy. The rent increase freeze would not preclude landlords and tenants agreeing to a discounted rent for that period. The only Government support products this time which may assist renters are the COVID-19 Wage Subsidy and the COVID-19 Leave Support Scheme. Temporary changes were made last July to the Rent Arrears Assistance Housing Support Product, which allowed applicants to be considered for RAA HSP in the first instance and provided an increased level of support available in a 52-week period (to $4,000 from $2,000). These temporary settings reverted back on 1 July 2021 (i.e. this is an option of last resort with a maximum payment of $2000).

Activate the RTA COVID provisions when there is an escalation to Alert Level 4

48. Passing urgent primary legislation every time the country moves back into lockdowns (regionally or nationally) is impractical and creates uncertainty for the tenancy sector about what the rules are for a particular Alert Level.

49. A more enduring approach to 'future-proof' the policy would be to amend the RTA to establish the RTA Alert Level rules regarding temporary tenancy restrictions. These rules would 'sit' in the RTA but would only apply if an order by the Minister or the Governor-General is made. The RTA would create a power for the Minister (or the Governor-General, by Order in Council) to make an order that applies any or all of the rules if the country enters Alert Level 4 and a COVID Public Health Response Order is made. This would allow the Minister or Governor-General to determine when the rules can be applied and disapplied.

50. The power for the Minister/Governor-General to make an RTA order could be linked to the COVID-19 Public Health Response Act 2020 so that, in effect, an RTA order can only be made once Alert Level 4 applies (activated through a COVID-19 Public Health Response Order made by the Minister of Health or Director General). The details of this option would be worked through with Parliamentary Counsel Office, including how the rules could be activated under Alert Level 4, and only continue under Alert Level 3, for example in prescribed circumstances or if specified criteria or conditions were met.

51. An RTA order could either be made by the responsible Minister (a Ministerial order) or the Governor-General (an Order in Council). Any RTA order would need to be approved by Cabinet in the usual way. If the RTA order is an Order in Council, it would have the additional steps of being approved by the Executive Council and signed by the Governor-General.

Implementing legislative changes would require announcements to be aligned with the commencement of the COVID provisions

52. s 9(2)(g)(i) We recommend a similar approach to that taken last year, which is making the announcement on the same day amendments to the RTA are passed through all stages under urgency. Policy decisions would need to be obtained, and the Bill drafted, before any public announcement.

Issues to discuss with your Ministerial colleagues

53. We recommend you discuss testing the appetite for legislative change with your Cabinet colleagues. If Ministers agree there is a case for urgent temporary amendments to the RTA to support the COVID response, you may like to discuss the following elements of the changes:

    a. **How long would Alert Level 4 have to be extended before the RTA restrictions were applied?** As noted above, we consider if the current Alert Level 4 restrictions are extended beyond three weeks, application of the RTA COVID provisions would be justified, to make the RTA provisions consistent with the COVID Health Order and provide certainty for the sector and protections for renters.

    b. **Should the temporary RTA COVID provisions be applied in Alert Level 3 as well as Alert Level 4, after those regions have been in Alert Level 4?** For example it would be confusing and disruptive to have RTA restrictions applied and then disapplied if the country/regions moved in and out of Alert Level 4 (due to an uptick in case numbers). For this reason, and because the RTA changes would need to go through a Cabinet process each time Alert Levels were escalated, our recommendation would be that the restrictions were applied on a case-by-case basis, but with the objective of applying them for both Alert Levels 3 and 4.

    c. **Should termination notices be paused or reissued?** Under the previous COVID-19 provisions, any notices to terminate tenancies which had not yet taken effect mostly became invalid. This meant that when the provisions expired on 25 June 2020, new notices needed to be served, and the full notice period applied. As above, although having to restart termination notices may create inconvenience, we recommend this option, as the alternative is that tenants may not be left with sufficient time to find a new place to live after the restrictions end. It would also be confusing as to how much notice period remained after the termination restrictions ended.

    d. **Should a tenant's ability to terminate be restricted, to ensure compliance with restrictions under a COVID Public Health Response Order?** Our recommendation is not to restrict this ability, as doing so may cause tenants significant cost and inconvenience, for example by compelling them to remain in a tenancy they can no longer afford, due to the economic impact the COVID-19 outbreak may have.

    e. **Should landlords be able to terminate tenancies where a tenant is undertaking unlawful activities?** This would be additional to the limited termination grounds last time

and was raised by the Tenancy Tribunal adjudicators. We consider this ground may undermine the overriding public health imperative to keep people in their homes during Alert Level 4 and note that landlords would still be apply to the Tribunal to terminate tenancies on the basis of significant anti-social behaviour (defined as harassment or any intentional act that reasonably causes significant alarm, distress, or nuisance). Landlords can still serve anti-social behaviour notices during Alert Level 4 . If the activity or anti-social behaviour is not significant but is more than minor, which puts tenants on notice that their tenancy may be at risk if such behaviour is repeated once the termination restrictions are lifted.

f. **How would movement between regions in different Alert Levels be managed?** Tenants and landlords will need clarity about whether they can move between regions that are subject to different Alert Levels. We think this is an issue that would need to be addressed through public health mechanisms rather than tenancy legislation. For example, if a tenant wanted to move from an Alert Level 1, 2 or 3 region into a new tenancy located in an Alert Level 4 region, they would need to refer to the public health requirements that would stipulate whether movement is permitted. Another scenario is a tenant who lives in one region (in Alert Level 2) but works in another (in Alert Level 3 or 4) and suffers financial hardship because they cannot access their job in a Level 3 or 4 area.

g. **Should service tenancies have different rules?** Under the previous COVID-19 provisions, any notices to terminate tenancies which had not yet taken effect mostly became invalid and no notices could be issued, this included when employment relationships came to an end. This meant that employers were left housing ex-employees, which was problematic particular for rural employers with on-farm tenancies, where there was no alternative accommodation to house in-coming workers. It was greatly exacerbated for farmers and workers by the fact the restrictions applied during Moving Day (June) last year.

Risks

54. Because the RTA COVID provisions in Schedule 5 have expired, there is a risk that landlords may try to enforce terminations falling during Alert Level 4, through pressure on tenants to leave or applying to the Tenancy Tribunal, despite the requirements of the COVID Health Order. This would compromise the health objectives of the lockdown, risk tenants becoming homeless, and put additional pressure on Emergency Housing.

55. As discussed, this risk can be managed by providing guidance to the tenancy sector if Alert Level 4 lasts does not extend past three weeks. It is also mitigated by the approach the Tenancy Tribunal and Ministry of Justice (MOJ) is taking to possession order applications. While the Tribunal can issue immediate possession orders during Alert Level 4 which the landlords can act upon, it is at the discretion of the Bailiff as to when to execute that eviction. MOJ would need to make sure the tenants are able to continue following the lockdown requirements prior to eviction, as well as making sure the Bailiffs are safe when doing so. Last time MOJ worked with Police and MSD to find alternative accommodation for tenants before they were evicted.

56. The Tenancy Tribunal is continuing to operate and is hearing all matters that can proceed by telephone, rather than adjourn everything (as it did last year) and deal with only a discreet group of urgent or essential applications. We understand the adjudicators are taking a practical approach and if there are serious safety issues / anti-social behaviour or property damage applications it is likely that the termination order would be made effective immediately. For other matters where the grounds for termination are met, the effective date of the order might be delayed to a date post the end of the Alert Level 4 lockdown.

Legal advice

57. As noted above, the COVID Health Order does not override a tenant's obligation, under the RTA, to vacate the property if their tenancy is terminated during Level 4. Ultimately, fines can be imposed on a tenant for either breaching the COVID Health Order or breaching the RTA requirement to vacate the property following termination of the tenancy. While we expect

landlords and tenants to work together during Level 4, this could place tenants in a difficult situation if their landlord insists on enforcing a termination.

58. s 9(2)(h)

Consultation

59. We have consulted with relevant agencies on this briefing however in the timeframe available not all were able to provide feedback.

60. The Ministry for Social Development (MSD) support a tailored and proportionate approach to addressing residential tenancies during Alert Levels and agree that interim measures or messaging to the public should be clear about encouraging landlords and tenants to comply with the COVID Health Order. MSD considers the aim of any interventions beyond three weeks should be stability, given the lockdowns and market conditions mean household income changes may not be able to be absorbed at this time by some renters. Therefore, tenancies ending during Alert Levels will undoubtedly result in a rise in emergency housing use and homelessness (noting that demand for emergency housing is already high).

61. Tenancy Services advises the main issue for the Tenancy Tribunal at present is the enforcement of terminations, given that the COVID Health Order does not override the RTA. Guidance has been provided to adjudicators on how to deal with termination requests and they have been asked to take into account public interests and the expectation of keeping people in their homes.

62. HUD officials also had an online meeting with representatives of the Real Estate Institute of New Zealand (REINZ) on Wednesday. REINZ, whose membership includes a large group of property managers, advised there is a lot of potential disruption and confusion in the sector caused by the sudden announcement of Alert Level 4, and their members are seeking clarity about what is and isn't permitted under a range of scenarios. Based on experiences last year, they are anticipating many tenants will be financially impacted (particularly as there are less support products this time) and their property managers may come under pressure to give rent reductions to which they are not able to agree.

Next steps

63. Officials are available to discuss the contents of this briefing. Subject to the outcome of discussions with Cabinet tomorrow, we can provide further advice as required.

Annexes

Annex A – *Talking points for Cabinet on Friday 20 August: approach to residential sector issues to support the COVID response*

Annex A

Talking points for Cabinet on Friday 20 August

Approach to residential sector issues to support the COVID response

Approach last time we moved to Alert Level 4

- For the first Alert Level 4 lockdown in March 2020, temporary changes were made to the Residential Tenancies Act 1986 through the COVID-19 Response (Urgent Management Measures) Legislation Act 2020.
- These RTA COVID provisions restricted tenancy terminations, imposed a freeze on rent increases and empowered the Tenancy Tribunal to operate flexibly.
- Those RTA COVID provisions were time limited and have now expired.

Situation this time

- Unlike last year when the whole country moved up and down Alert Levels more gradually, emergence of the Delta variant of COVID-19 in the community has meant an immediate escalation to Alert Level 4 for the whole country.
- This means there has been no lead in time to the significant restrictions under the current COVID Health Response Order and no time to communicate the rules or pass legislation amending the RTA. It is also a time of uncertainty as the situation evolves rapidly.
- Even though the Health Response Order cannot override the RTA, s 9(2)(h) [redacted]. To facilitate people staying at home, Tenancy Services has published guidance that encourages landlords and tenants to work together to ensure compliance with the COVID-19 Health Order, for example by agreeing to extend a tenancy that is due to expire during Alert Level 4.

What should we do this time?

- I recommend a tailored and proportionate approach to addressing residential tenancies going forward.
    - If Alert Level 4 is not extended beyond three weeks the current guidance will be sufficient and no legislative changes will be required.
    - If the current outbreak is not quickly brought under control and Alert Level 4 is extended beyond three weeks, legislation could be passed to reinstate the RTA COVID provisions (with modifications), as contemplated by Cabinet in December 2020.
- Similar to last time, the RTA changes could comprise restrictions on tenancy terminations linked to Alert Level 4 and possibly Alert Level 3 and if Ministers wish, a freeze on rent increases for Alert Levels 4 and 3.

- Officials would need to undertake further work with Parliamentary Counsel Office on how the amendments could be linked with Alert Levels and regions, for example through an Order in Council mechanism, so that the rules could be applied if the country enters Alert Level 4 and a COVID Public Health Response Order is made.
- A number of design details would need to be considered, including:
    - *How long would Alert Level 4 have to be extended before the RTA restrictions were applied?* I consider if the current Alert Level 4 restrictions are extended beyond three weeks, legislation allowing for the application of the RTA COVID restrictions would be justified – to make the RTA provisions consistent with the COVID Health Order and provide certainty for the sector and protections for renters.
    - *Should the temporary RTA COVID provisions be applied in Alert Level 3 as well as Alert Level 4, after those regions have been in Alert Level 4?* Restrictions could be applied on a case-by-case basis, but with the objective of applying them for both Alert Levels 3 and 4 to provide certainty and protection for the sector
    - *Should termination notices be paused or reissued?* Under the previous COVID-19 provisions, any notices to terminate tenancies which had not yet taken effect mostly became invalid and landlords had to reissue and 'restart' termination notices. I recommend sticking with this option, both because it is simple and because as the alternative is that tenants may not be left with sufficient time to find a new place to live after the restrictions end.
- Subject to other COVID-related decisions made today and the views of Ministers, I could return to Cabinet to seek policy decisions underpinning further RTA changes in the following two weeks.

In Confidence

Office of the Associate Minister of Housing (Public Housing)

Cabinet

Policy decisions for amending the Residential Tenancies Act 1986 in response to COVID-19 outbreaks

Proposal

1 I seek Cabinet's agreement to policy decisions for amendments to the Residential Tenancies Act 1986 (RTA) to:

1.1 enable the Minister to make RTA COVID-19 orders which restrict tenancy terminations during any current or future outbreak of COVID-19;

1.2 include provisions setting out the tenancy termination restrictions which apply when RTA COVID-19 orders are in force; and

1.3 enable the Tenancy Tribunal to conduct proceedings on the papers, for a period of twelve months after commencement of the amendments, to assist in addressing the backlog of applications due to the current outbreak of COVID-19.

Executive Summary

2 The highly transmissible nature of the COVID-19 Delta variant makes it especially important to sustain tenancies in order to keep people at home and reduce transmission. However, the current legal rules for tenancy terminations in the Residential Tenancies Act (RTA) are not consistent with COVID-19 Public Health Response Orders requiring people to stay at home and stop the spread of COVID-19.

3 I am increasingly hearing from tenancy stakeholder groups that this lack of legal consistency is becoming problematic. Vulnerable tenants are dealing with landlords pursuing terminations under Alert Level 4, and there is confusion about what notice periods should apply both under current Alert levels and once Alert Levels de-escalate and people are able to move house. I consider a legislative approach is needed which provides clarity and certainty for the tenancy sector, mitigates disruption for landlords and tenants, and which aligns with public health objectives.

4 Accordingly, I seek policy decisions to amend the RTA to revive, with modifications, the tenancy termination restrictions in expired Schedule 5 ('Provisions relating to an outbreak of COVID-19') and allow the restrictions to be 'switched on' by a Ministerial order made by the Minister with responsibility for the RTA ('RTA COVID-19 orders'). The Minister, after consulting with the Prime Minister and the Minister responsible for administration of the COVID-19 Public Health Response Act 2020 (currently the Minister for COVID-19

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Response), would be able to make an order relating to a geographic area if satisfied that:

4.1 a COVID-19 Public Health Response Order is or will be made containing measures that generally restrict people from moving house in that area; and

4.2 the order is necessary or desirable to align with or support those stay-at-home measures.

5 The Minister would have the ability to extend, amend, or revoke an existing RTA COVID-19 order in accordance with the statutory test. In effect, this means RTA COVID-19 orders would only be in place during Alert Level 4 periods, as moving house is generally allowed at lower Alert Levels.

6 I propose the termination restrictions are similar to those set out in (now expired) Schedule 5 of the RTA, with some modifications to render the provisions more workable, taking into account changes made by the Residential Tenancies Amendment Act last year.

7 I am also seeking agreement to amendments to allow the Tenancy Tribunal to conduct proceedings on the papers (i.e. the Tribunal can decide an application based on written submissions, without the parties having to attend) as it sees fit for twelve months from commencement of an amendment bill, to help address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted.

8 I do not propose to reinstate the rent increase freeze through these amendments. Since August last year, landlords are only able to increase rent once every 12 months. For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist. Tenants may also be eligible for assistance through the COVID-19 Wage Subsidy and the COVID-19 Leave Support Scheme.

9 Ideally, the legislative provisions would be in place as soon as possible so they can be used if the Auckland region remains in Alert Level 4 beyond the next few weeks or if other regions are escalated up to Alert Level 4. The Leader of the House is considering the preferred legislative vehicle for these changes (a standalone RTA amendment bill or a COVID-19 omnibus bill) and whether they can be accorded urgency.

Background

Cabinet previously agreed to reinstate temporary RTA restrictions in the event of a return to Alert Level 4

10 In relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19*, Cabinet:

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10.1 noted that further design work and new legislation will be required to reinstate a freeze on residential rent increases and restrictions on tenancy terminations; and

10.2 agreed (if New Zealand went back into Alert Level 4) that a freeze on residential rent increases and restrictions on tenancy terminations be reinstated, subject to the passage of the required legislation and approval by Cabinet at the time of an escalation to Alert Level 4 (CAB-20-MIN-0521).

Temporary COVID-19 changes to the RTA in 2020 supported people to stay at home to stop the spread of the virus

11 Amendments made by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Legislation Act) to the RTA last year supported the COVID-19 health measures by facilitating people to stay in their rental homes, sustaining tenancies to the greatest extent possible, and protecting tenants from becoming homeless during the COVID-19 outbreak.

12 The COVID-19 Legislation Act included temporary amendments to the RTA in Schedule 5 which were time-limited as they were a significant imposition on private property rights, and it was unclear how long New Zealand would spend in Alert Levels 3 and 4. The provisions:

12.1 restricted the grounds on which tenancies could be terminated (these expired after three months);

12.2 prohibited rent increases (these expired after six months); and

12.3 enabled the Tenancy Tribunal to operate more flexibly: for example make decisions on the papers and hold hearings by telephone or video conference (this ability was initially set for six months but extended to expire after a year through a change made by the Residential Tenancies Amendment Act 2020).

13 In respect of the termination restrictions, the COVID-19 Legislation Act did not restrict a tenant's ability to terminate tenancies but it:

13.1 invalidated termination notices that had been given by landlords, which had not yet taken effect;

13.2 allowed tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and

13.3 continued fixed-term tenancies that otherwise would have expired. These fixed-term tenancies were converted to periodic tenancies upon their expiry.

14 The COVID-19 Legislation Act was drafted and passed under urgency and came into force on 26 March 2020, coinciding with the start of the country going into Alert Level 4.

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Effect of COVID-19 Public Health Response Orders on moving house

15 In response to the current community outbreak of the Delta variant of COVID-19, the COVID-19 Public Health Response (Alert Level Requirements) Order (No 10) 2021 is currently in place. The Order, made under the COVID-19 Public Health Response Act 2020[1], establishes specific significant restrictions on people's movement during Alert Level 4 in Auckland and Northland and Alert Level 3 across the rest of the country.

16 Under the current COVID-19 Public Health Response Order:

16.1 in Alert Level 4 areas, people can only move house if required to do so by court order (including a Tenancy Tribunal order) or law enforcement or if they need to relocate to or from health-related or residential care or use a temporary or emergency home, for example for care while sick or to seek refuge in a women's refuge accommodation

16.2 in Alert Level 3 areas, people can move house, including to and from an area that is at Alert Level 1 or Alert Level 2.

The RTA provisions are not consistent with the COVID-19 Health Response Orders

17 As the Schedule 5 provisions have now expired, the usual RTA rules apply to tenancies, notwithstanding the requirements of any applicable COVID-19 Public Health Response Orders in place. That means landlords can serve termination notices on tenants, or fixed term tenancies may end during any Alert Level restrictions on movement in place.

18 Under current COVID-19 Public Health Response Orders operating in Auckland, Northland and the rest of the country, Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) and Tenancy Services in the Ministry of Business, Innovation and Employment (MBIE) have issued guidance for the tenancy sector emphasising the importance of complying with the restrictions on people's movements under the COVID-19 Public Health Response Orders. It encourages landlords and tenants to agree to continue tenancies during Alert Level 4, so that tenants can remain in their homes to stay safe and support the health response to stop the spread of the virus.

19 The guidance is not legally binding. While many landlords and tenants in Alert Level 4 areas have been cooperating and adhering to the COVID-19 Health Response Order restrictions, the Government cannot require landlords to delay or withdraw any terminations to facilitate tenants self-isolating in accordance with COVID-19 Public Health Response Orders. I am increasingly hearing from

[1] The COVID-19 Public Health Response Act 2020 (the Act) came into force in May 2020. The Act is designed to provide various legal mechanisms for the Government to respond to COVID-19 risks, including making COVID-19 Public Health Response Orders to support the purposes of the Act. Under the Act, the Minister responsible for the administration of the Act (currently the Minister for COVID-19 Response) or the Director-General of Health can make an order if they consider it is needed to prevent or contain the outbreak or spread of COVID-19 and it is the most appropriate way of addressing those matters at the time. This can include requiring people to stay in a specified place or refrain from going to a specified place, exercise physical distancing, be isolated or quarantined; and refrain from travelling to or from any specified area.

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tenancy stakeholder groups that the lack of legal clarity under Alert Levels is becoming problematic for the tenancy sector. For example, there is pressure on vulnerable tenants to have to 'push back' on landlords pursuing terminations, and confusion about the impact of Alert Level 4 on termination notice periods, whether they should be paused or continue to run during Alert Level 4.

Legislative changes are needed to sustain tenancies and support the health response

20 In the event that the Auckland region remains in Alert Level 4 beyond the next few weeks, or other regions are escalated back up Alert Levels in the future, I consider the RTA should be amended to facilitate tenants self-isolating in accordance with COVID-19 Public Health Response Orders, which:

20.1 are proportionate to achieve public health objectives;

20.2 mitigate disruption to landlords' businesses and tenants' living arrangements as far as possible; and

20.3 provide clarity and certainty for tenancy sector.

21 Accordingly, I seek policy decisions to amend the RTA to revive, with modifications, the tenancy termination restrictions in Schedule 5 and allow the modifications to be switched on by Ministerial order.

Analysis

Legislative changes need to be more 'agile' than last time to ensure they are proportionate in terms of supporting the health response

22 Passing urgent primary legislation every time the country moves back into lockdowns (regionally or nationally) is impractical and creates uncertainty for the tenancy sector about what the rules are for a particular Alert Level.

23 I propose a more enduring and flexible approach which enables RTA termination restrictions to be applied quickly and only when strictly necessary. Under my proposal, COVID-19 tenancy termination restrictions will 'sit' in the RTA but only apply if a Ministerial order (a 'RTA COVID-19 order') is made by the Minister responsible for the administration of the RTA; this is currently the Associate Minister of Housing (Public Housing). Ministerial orders are instruments which allow the Government to act quickly to respond to an emergency, because they do not require a long and complex process to enact.

24 I propose the Minister may make an order in relation to an area if satisfied that:

24.1 an order under section 11 of the COVID-19 Public Health Response Act 2020 (a COVID-19 Health Order) is, or will be, made containing measures that generally restrict people from moving house in that area (subject to any specified exceptions in that order, for example, if moving is required by court order or to use a temporary or emergency home); and

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24.2 the order is necessary or desirable to align with or support those stay-at-home measures.

25 The Ministerial orders will have wide reaching effects and therefore I consider it appropriate that before making an order, the Minister must consult with the Prime Minister and the Minister responsible for administration of the COVID-19 Public Health Response Act 2020 (currently the Minister for COVID-19 Response), and may consult any other Minister that the Minister thinks fit.

26 In order to be able to respond appropriately to and align with ongoing COVID-19 health measures, I propose the Minister would have the ability to extend, amend, or revoke an RTA COVID-19 order. The Minister would need to be satisfied that an extension or amendment satisfies the criteria set out above at paragraph 24. The Minister would have to revoke an order if the criteria no longer applied.

27 The order will need to be in writing, state the area to which it applies, when it comes into force, and be published in the Gazette and on a publicly accessible Government website as soon as practicable.

28 I acknowledge that if Alert Levels 'bounce around' then it will be disruptive for landlords and tenants if termination restrictions are applied and then disapplied over a number of months. However, having restrictions for a set period is also disruptive, particularly if the restrictions are still in place at lower Alert Levels when people are allowed to move house, and not justified in terms of protecting public health.

I propose similar limited grounds for terminating tenancies to those in Schedule 5

29 The termination restrictions in the COVID-19 Legislation Act achieved the purpose of keeping people in their tenancies during the initial COVID-19 outbreak, balanced with the right of landlords to protect their properties and regain possession in specified, extreme circumstances. I recommend these same termination grounds, as set out below in clauses 4 and 5 of Schedule 5 of the RTA, should be permitted this time.

30 The provisions would not restrict a tenant's ability to terminate tenancies but would:

30.1 preserve tenancies even where termination notices had been served by landlords but they have not yet taken effect, including by agreement between the parties;

30.2 allow tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and

30.3 continue fixed-term tenancies that otherwise would have expired and convert them to periodic tenancies upon their expiry.

31 Notwithstanding the termination provisions, tenants and landlords would still be able to agree, in writing, to terminate the tenancy.

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32 Landlords will be able to apply to the Tenancy Tribunal to terminate a tenancy where a non-boarding house tenant:

32.1 substantially damages the premises;

32.2 assaults or threatens to assault the landlord or their family, the property owner or their family, an agent of the landlord, an occupier of a building which the premises is part of, or the neighbours;

32.3 abandons the property;

32.4 engages in significant anti-social behaviour (defined as harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance); or

32.5 is 60 days or more behind in rent (taking into account fairness and whether the tenant is making reasonable efforts to pay the rent).

33 Landlords will not be able to serve termination notices when an RTA COVID-19 order is in place but will be able to apply to the Tribunal for terminations (in the limited circumstances above). However, landlordswill be able to terminate tenancies:

33.1 upon the death of a sole tenant;

33.2 where the premises are uninhabitable; and

in specified circumstances in boarding house tenancies (as referred below).

34 For boarding house tenants, landlords will be able to terminate tenancies in extreme circumstances, such as where a tenant has threatened other tenants, or caused significant damages, or the tenant is using the premises for an illegal purpose. Landlords will have to give a 28-day termination notice period in these circumstances. This is in contrast to the standard RTA rules, which enable immediate termination where a boarding house tenant has threatened other tenants or caused significant damage, or termination with 48 hours' notice where a boarding house tenant is using the premises for an illegal purpose. This longer notice period will enable boarding house tenants to arrange emergency accommodation and limit movement during Alert Level 4.

35 Landlords will also be able to apply to the Tenancy Tribunal to terminate a boarding house tenancy if the rent is 60 days in arrears (the same as non-boarding house tenancies).

36 Boarding house tenancies will also be able to be terminated:

36.1 upon the death of a sole tenant;

36.2 where the premises are uninhabitable; and

36.3 where the premises are abandoned and the tenant is in rent arrears.

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Termination notice periods

37 The temporary Schedule 5 provisions invalidated landlord termination notices, which had to be re-served (effectively re-started) after the termination provisions expired, unless an earlier termination date was agreed. For example, even if a 90 day termination notice only had a few days to run when Schedule 5 came into effect, landlords needed to serve another 90 day termination notice when the restrictions lifted.

38 I propose under RTA COVID-19 changes this time that for tenancies which can be terminated under section 51 ('Termination by notice') or section 53B(1)(b)(iii)[2] ('Special provisions for notice terminating social housing tenancies') of the RTA unless otherwise agreed, termination notices take effect once termination restrictions are lifted, on the later of:

38.1 the date originally provided for in the notice; or

38.2 28 days after the restrictions end.

39 This approach allows tenants sufficient time to find accommodation after the termination restrictions are lifted, if they have not already been able to make arrangements. For fixed term tenancies which were due to expire during a period in which tenancy termination restrictions apply, landlords would need to give at least 28 days' notice once the restrictions are no longer in force.

40 To avoid the situation where a tenant is liable for paying rent on two properties for an overlapping period (due to being 'locked in' to a current tenancy for the mandatory 28 days' notice period after termination restrictions end), I propose a tenant may, by written notice to the landlord, elect to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).

41 I consider the above approach is appropriate, because the Residential Tenancies Amendment Act 2020 changes now in effect mean landlord termination notice periods are longer than under previous rules. Whereas previously notice periods could be just 42 days, landlords must now give 63 days' or 90 days' notice (depending on the grounds for termination) and 90 day 'no cause' terminations are no longer allowed.

42 For other tenancies which have shorter notice periods and different termination provisions (including service tenancies), landlords would need to re-serve termination notices once restrictions were lifted. Tenants in these tenancies would also be able to give notice to the landlord if they wish to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).

[2] Section 53B(1)(b)(iii) allows social housing providers to require a tenant to transfer to different social housing if the transfer is necessary or desirable for any reason and the alternative housing is appropriate for the tenant's housing needs as most recently assessed.

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Tenancy Tribunal ordered terminations

43 I propose that if legislation is passed and applied to regions which are currently in Alert Level 4, that RTA COVID-19 orders do not override Tenancy Tribunal termination orders previously obtained by landlords during that time (where the tenant has not yet moved out). I am advised that for tenancies in regions which have just been under and are still under Alert Level 4 restrictions, the Tenancy Tribunal has been taking a cautious approach to all landlord termination applications applied for during Alert Level 4, in order to ensure compliance with COVID-19 Health Response Orders as much as possible, by delaying termination dates until the lower Alert Levels are in place, when moving house is permitted.

44 Tribunal adjudicators are applying a high bar to termination applications, and only ordering termination in extreme circumstances, consistent with the expired Schedule 5 grounds. It would be unfair on landlords to override these orders.

45 The Tribunal has been working with the Ministry of Justice to make sure no one is rendered homeless as a result of a termination order while in Alert Level 4. Bailiffs will not enforce an eviction order unless for very serious issues, in conjunction with the Ministry of Social Development. MSD can provide assistance to people with their broader housing needs, for example through the Special Needs Grant Programme.

46 Other than for the circumstances described above, where a Tribunal termination order was obtained prior to an RTA COVID-19 order coming into force (for a tenancy in which a tenant is still residing), the termination would be suspended until 15 days after the termination restrictions end.

Other issues

47 I propose that a landlord who knowingly serves a termination notice in breach of the tenancy termination provisions will commit an unlawful act, and may be liable for exemplary damages of up to $6,500 in each case (the same as in clause 6 in Schedule 5).

48 Where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other and landlords would need to let the incoming tenant know the premises are no longer available.

49 The termination restrictions will have consequential effects on other tenancies and the legislative amendments will not be able to address every scenario. I anticipate that in most situations, landlords and tenants will come to a workable agreement. If matters cannot be resolved by the parties, they will have the option of mediation or adjudication through the Tenancy Tribunal.

50 The RTA applies to public housing tenancies as well as the private rental market so the termination measures will also apply to Kāinga Ora and Community Housing Providers.

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Amendments will expire three years after commencement

51 Finally, to ensure this legislative intervention is only in place for as long as foreseeably necessary, I propose the COVID-19 RTA amendments expire three years after commencement.

I do not recommend restrictions on rent increases

52 Cabinet previously agreed to reinstate a rent increase freeze if New Zealand went back into Alert Level 4 (CAB-20-MIN-0521). On further consideration, I do not consider a rent increase freeze is necessary for future Alert Level 4 scenarios and I seek Cabinet's agreement to rescind that decision. This is because since August last year, landlords are only able to increase rent once every 12 months and must give at least 60 days' notice to tenants of a rent increase (due to changes made by the Residential Tenancies Amendment Act 2020). Previously landlords could increase rents every six months. This change gives tenants longer term certainty about rent costs and makes them less likely to have rent increased during Alert Level 4 periods.

53 In addition, rent increase freezes are not directly aimed at supporting the health response, but more at temporarily addressing some of the economic impact of an Alert Level 4 lockdown. For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist. Tenants may also be eligible for assistance through the COVID-19 Wage Subsidy and the COVID-19 Leave Support Scheme.

54 Although it is lawful to increase rents during Alert Level 4 (if the RTA requirements are met), Tenancy Services asks landlords to be mindful that tenants may be experiencing financial stress during Alert Level 4 if they cannot work, and recommends that they consider the financial situation of their tenants and postpone rent increases if appropriate.

Enabling the Tenancy Tribunal to hear applications on the papers for twelve months

55 Schedule 5 enabled the Tenancy Tribunal to conduct proceedings on the papers and hold hearings as it 'thinks fit', including by telephone or video conference. This ability was invaluable last year in enabling the Tribunal to clear the backlog of hearings which were adjourned during the lockdown period relatively quickly.

56 The Tribunal is now permanently empowered to conduct hearings by telephone (as well as audiovisual link or other remote access facility, if available) if an adjudicator considers it appropriate. The Tribunal routinely uses teleconference hearings for both business-as-usual operations and to hold hearings under Alert Levels 3 and 4.

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57 However, the ability to hear applications on the papers has not been made permanent. This ability means the Tribunal can decide an application based on written submissions filed by parties, without the parties having to attend and present oral submissions. It is an efficient way of disposing with straight forward matters. I propose that the Tenancy Tribunal is legislatively provided with this additional ability for a further twelve months from commencement of a bill, as it is not known yet how long the current Alert Levels 4, 3 and 2 will be in place for.

58 The ability to hear applications on the papers will help to address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted, and also because even at Alert Levels 3 and 2, restrictions and social distancing apply, and therefore the Tribunal cannot operate in person and at full capacity. Hearings on the papers are only used in cases suited for them, for example 'vacated' applicationsdetermining compensation in respect of terminated tenancies, for which the tenant does not attend.

Implementation

59 Tenancy Services will prepare information and education material on the legislative changes to be ready once they are in place, including a legislative alert email to their 30,000 subscribers, as well as a website news article, stakeholder emails and Facebook posts.

60 My officials will work with stakeholders to communicate the changes, and with the Tenancy Tribunal on the legal and operational implications of the RTA COVID-19 orders on applications to the Tribunal.

61 Additionally, HUD and Tenancy Services will work with the Ministry of Primary Industries and rural stakeholders to ensure the public education campaign is tailored and addresses the issues that are unique to the rural sector, for the impact of the RTA COVID-19 orders in relation to on-farm service tenancies.

Financial Implications

62 There are no financial implications associated with these proposals.

Legislative Implications

63 Amendments to the RTA are needed (primary legislation) to implement the proposals, either through a standalone bill, or a COVID-19 omnibus bill. The Leader of the House is considering the preferred legislative vehicle for these changes and whether they can be accorded urgency.

Impact Analysis

64 Due to the urgent nature of the legislative amendments proposed, a Regulatory Impact Statement is not included with these proposals.

65 HUD has prepared a Supplementary Analysis Report (SAR) in relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19* (CAB-20-MIN-0521). The SAR assesses proposals to make

7c7o2hn232 2022-11-30 12:20:47

amendments to the RTA if there was a widespread re-emergence of COVID-19 in the community and a re-escalation in Alert Levels.

66 The SAR has not been published. It will be updated and published at a later date.

Climate Implications of Policy Assessment.

67 A Climate Implications of Policy Assessment (CIPA) is not required for these proposals.

Population Implications

68 Restricting tenancy terminations during a COVID-19 outbreak will have a significant impact on tenants and landlords. The proposals will enable tenants to remain in their tenancies to self-isolate during a public health emergency, when it is critical to stay in place and not move around. This will help avoid tenants needing to seek emergency accommodation and becoming homeless, and breaching COVID-19 level 4 isolation requirements.

69 The proposals will have a positive impact for the high proportion of Māori, Pacific peoples and families with children living in rental accommodation.

70 While the restrictions may cause some short-term disruption for landlords, the inconvenience will be temporary and is outweighed by the overall stability and certainty to the tenancy sector the legislative changes will provide.

Human Rights

71 The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

72 In preparing this paper Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (HUD) consulted with: the Ministries of Business, Innovation and Employment, Health, Justice, Social Development, and Pacific Peoples; the Treasury; Te Puni Kōkiri; Parliamentary Counsel Office and the Department of Prime Minister and Cabinet. Kāinga Ora was also consulted.

73 The Ministry of Health is receiving exemption requests from people whose tenancy agreements are due to expire under the current COVID-19 Public Health Response Orders. RTA COVID-19 Orders would therefore give tenants and landlords greater certainty and reduce administration as well as wait times for people applying.

74 Te Puni Kōkiri support the proposals to restrict tenancy terminations during future outbreaks of COVID-19. However, Te Puni Kōkiri would like to see rent increase freezes reinstated during Alert Level Four periods, as they do not consider the one year limit to increasing rents a sufficient protection for tenants during an already stressful period. s 9(2)(g)(i)

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s 9(2)(g)(i) [redacted]

75 In relation to the proposal not to reinstate rent increase freezes, the Ministry of Social Development notes that there are limited housing support products available, especially with the temporary increases in rent arrears assistance as a response to COVID-19 ending in June this year, so the amount of funding available is significantly less than what was provided last year to clients.

Communications

76 Public announcement on the legislative changes will be considered closer to the passing of the legislation, as it will depend on current Alert Levels at that time. s 9(2)(g)(i) [redacted]

Proactive Release

77 I propose to proactively release this paper within 30 business days of decisions by Cabinet. The released paper will be subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister of Housing (Public Housing) recommends that the Committee:

Background

1 note the temporary COVID-19 changes to the Residential Tenancies Act (RTA) made last year to restrict tenancy terminations, freeze rent increases and enable the Tenancy Tribunal to operate flexibly were time-limited, and have now expired;

2 note that in relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19*, Cabinet:

2.1 noted that further design work and new legislation will be required to reinstate a freeze on residential rent increases and restrictions on tenancy terminations; and

2.2 agreed (if New Zealand went back into Alert Level 4) that a freeze on residential rent increases and restrictions on tenancy terminations be reinstated, subject to the passage of the required legislation and approval by Cabinet at the time of an escalation to Alert Level 4 (CAB-20-MIN-0521);

3 rescind the decision referred to in recommendation 2.2 above, and instead agree to the policy decisions set out in the recommendations below.

Need for further RTA amendments in case of current and future COVID-19 outbreaks

4 s 9(2)(g)(i) [redacted]

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s 9(2)(g)(i)

5 note legislative changes to the RTA are needed if the Auckland region remains in Alert Level 4 beyond the next few weeks or other regions are escalated back up to Alert Level 4, to provide clarity and certainty for tenancy sector, mitigate disruption for landlords and tenants, and which are proportionate to achieve public health objectives.

RTA COVID-19 orders

6 agree the RTA is amended to provide:

6.1 for a set of tenancy termination restrictions and provisions (as detailed in recommendations 7–12 below) which will apply if a Ministerial order (an RTA COVID-19 order) is made by the Minister responsible for the administration of the RTA;

6.2 the Minister may make an order in relation to all of New Zealand, or an area of New Zealand, if satisfied that:

6.2.1 an order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID Order) is, or will be, made containing measures that generally restrict people from moving house in that area (subject to any specified exceptions in that order, for example, if moving is required by court order or to use a temporary or emergency home); and

6.2.2 the order is necessary or desirable to align with or support those stay-at-home measures;

6.3 before making an order, the Minister must consult with the Prime Minister and Minister responsible for administration of the COVID-19 Public Health Response Act 2020, and may consult any other Minister that the Minister thinks fit;

6.4 the Minister may extend or amend an RTA COVID-19 order in accordance with the criteria in recommendation 6.2 above;

6.5 the Minister must revoke an order if the criteria in recommendation 6.2 above no longer applied.

6.6 the order must be in writing, state the area to which it applies and when it comes into force, and be published in the Gazette and on a publicly accessible Government website as soon as practicable.

Termination restrictions

7 agree to amend the RTA to include the termination provisions set out in clauses 4 and 5 of (now expired) Schedule 5 of the RTA, except as modified by the recommendations in this paper;

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8 agree the COVID-19 tenancy restrictions would not restrict a tenant's ability to terminate tenancies but would:

8.1 preserve tenancies even where termination notices had been served by landlords but they have not yet taken effect, including by agreement between the parties;

8.2 allow tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and

8.3 continue fixed-term tenancies that otherwise would have expired and convert them to periodic tenancies upon their expiry.

9 agree landlords will only be able to serve termination notices when an RTA COVID-19 order is in limited circumstances (for example on the death of a sole tenant or in boarding house tenancies for certain reasons) and will only be able to apply to the Tribunal for terminations in the limited specified circumstances.

Termination notice periods

10 agree to amend the RTA to provide:

10.1 that for tenancies which can be terminated under section 51 ('Termination by notice') or section 53B(1)(b)(iii) ('Special provisions for notice terminating social housing tenancies') of the RTA termination notices will take effect once termination restrictions are lifted, on the later of:

10.1.1 the date originally provided for in the notice; or

10.1.2 28 days after the restrictions end;

10.2 that for fixed term tenancies which would have otherwise expired, landlords must give at least 28 days' notice of termination to a tenant once the termination restrictions are lifted;

10.3 a tenant may, by written notice to the landlord, elect to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted);

10.4 for other tenancies which have shorter notice periods and different termination provisions (including service tenancies), landlords will have to re-serve termination notices once restrictions were lifted, unless a tenant gives notice to the landlord if they wish to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).

Tenancy Tribunal termination orders

11 agree to amend the RTA to provide that where a Tenancy Tribunal termination order is obtained by landlords prior to an RTA COVID-19 order coming into force for a tenancy for which a tenant is still residing in the property:

7c7o2hn232 2022-11-30 12:20:47

11.1 RTA COVID-19 orders do not override the termination order if the order was previously obtained by landlords during the time the relevant area was at Alert Level 4; and in other circumstances, the termination would be suspended until 15 days after the termination restrictions end.

Other issues

12 agree that a landlord knowingly breaching tenancy termination provisions commits an unlawful act, with exemplary damages of up to $6,500 in each case;

13 agree where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other and landlords would need to let the incoming tenant know the premises are no longer available;

14 note the RTA applies to public housing tenancies as well as the private rental market so the termination restrictions will also apply to Kāinga Ora and Community Housing Providers.

Legislation will expire three years after commencement

15 agree the COVID-19 RTA amendments expire three years after commencement.

Enable the Tenancy Tribunal to hear applications on the papers for twelve months

16 agree the RTA is amended to conduct proceedings as it sees fit, including on the papers, for twelve months from commencement of the bill, to help address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted.

Next steps

17 invite the Associate Minister of Housing (Public Housing) to issue drafting instructions to Parliamentary Counsel Office (PCO) to give effect to the policy proposals in this paper;

18 authorise the Associate Minister of Housing (Public Housing) to make decisions, consistent with the proposals in these recommendations, on any issues which arise during the drafting process without reference to Cabinet;

7c7o2hn232 2022-11-30 12:20:47

19 note that the Leader of the House is considering the preferred legislative vehicle for these changes (a standalone RTA amendment bill or a COVID-19 omnibus bill) and whether they can be accorded urgency.

Authorised for lodgement

Hon Poto Williams

Associate Minister of Housing (Public Housing)

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Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Aide-memoire

Supporting material for Cabinet paper: Policy decisions for amending the Residential Tenancies Act in response to COVID-19 outbreaks			
Date:	Monday 6 September	**Security level:**	In Confidence
Priority:	High	**Report number:**	AMI21/22090632

Information for Minister(s)	
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Note** the contents of this briefing, attached talking points and questions and answers, in preparation for the COVID-19 Ministerial Group meeting on Tuesday 7 September.

Contact for discussion

Name	Position	Telephone		1st contact
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a)	✓
Katherine Slaney	Principal Advisor, Tenures and Housing Quality	04 830 6912	s 9(2)(a)	
Courtney Carson	Senior Advisor, Tenures and Housing Quality	04 830 6964	-	

Other agencies consulted

The following agencies were consulted on the Cabinet paper: Ministries of Business, Innovation and Employment, Health, Justice, Social Development and Pacific Peoples; the Treasury; Te Puni Kōkiri; Parliamentary Counsel Office, the Department of Prime Minister and Cabinet and Kāinga Ora.

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ See Minister's notes
- ☐ Needs change
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

Comments

Date returned to HUD:

Aide-memoire

Supporting material for Cabinet paper: Policy decisions for amending the Residential Tenancies Act in response to COVID-19 outbreaks

For:	Hon Poto Williams		
Date:	Monday 6 September	**Security level:**	In Confidence
Priority:	High	**Report number:**	AMI21/22090632

Purpose

1. To provide material to support discussion on your Cabinet paper, *Policy decisions for amending the Residential Tenancies Act in response to COVID-19 outbreaks*, at the COVID-19 Ministerial Group meeting on Tuesday 7 September 2021. Suggested talking points and questions and answers on the proposals are attached at Annexes A and B.

Cabinet paper seeks agreement to RTA COVID-19 amendments

2. The Cabinet paper seeks agreement to policy decisions for urgent amendments to the Residential Tenancies Act 1986 (RTA) to enable the Minister to make a Ministerial order (a 'RTA COVID-19 order') which restrict tenancy terminations during future outbreaks of COVID-19 during the critical 'stay at home' period. An RTA COVID-19 order would preserve existing tenancies, allow tenants to revoke termination notices (whether tenant or landlord initiated) and continue fixed-term tenancies that otherwise would have expired.

3. The Cabinet paper also seeks agreement to RTA amendments to enable the Tenancy Tribunal to conduct proceedings on the papers, for a period of twelve months after commencement, to assist in addressing the backlog of applications due to the current outbreak of COVID-19, as the Tribunal cannot currently hold face to face hearings at Alert Levels 3 and 4.

Supporting information for Cabinet meeting

Ministerial orders are more agile than other forms of delegated legislation

4. Ministerial orders are a form of delegated legislation. This type of instrument can be activated quickly, and is therefore more appropriate to respond to an emergency than other types of delegated legislation, such as making an Order in Council or regulations. Orders made under section 11 of the COVID-19 Public Health Response Act 2020 are a similar type of instrument, and can be made by the either the Minister for COVID-19 Response or the Director General of Health. However, a key difference is that whereas the detail of the COVID-19 Public Health Response Orders are not pre-drafted, under the RTA proposals, COVID-19 tenancy termination restrictions will 'sit' in the RTA (i.e. in the primary legislation) but could be 'switched on' if an RTA COVID-19 order is made by the Minister.

5. The Minster would only be able to make an order relating to a geographic area if satisfied that:

   a. a COVID-19 Public Health Response Order is or will be made containing measures that generally restrict people from moving house in that area; and

   b. the order is necessary or desirable to align with or support those stay-at-home measures.

6. This statutory test is appropriate because it allows the restrictions to align with a relevant COVID-19 Public Health Response Order which restricts people from moving house to limit

movement as much as possible (generally only under 'Alert Level 4'). s 9(2)(h) [redacted]

7. Because the Ministerial orders will have wide reaching effects, we propose that the Minister must consult with the Prime Minister and the Minister for COVID-19 Response before making an order. The Ministerial orders will also be disallowable, meaning that they must be presented to Parliament within 16 sitting days and Parliament may invalidate them.

8. This is a more agile and responsive approach than the model used for the temporary RTA restrictions in 2020, where termination restrictions were in place for a fixed period of three months, and meant that the restrictions applied not just during Alert Level 4, but also subsequently during Alert Levels 3, 2 and 1, across the country. At the lower levels, the relatively strong restrictions were not necessary to achieve the goal of limit movement to protect public health, and the termination restrictions had unintended consequences. For example, they caused huge disruption for the agricultural sector, when farmers were not able to move in farm workers over Moving Day in June 2020, due to current on-farm workers refusing to move out (discussed below).

Tenant and landlords are unclear about their rights and responsibilities in Alert Level 4

9. Over the past two weeks, tenant advocacy organisations and Tenancy Services have received a number of enquiries from tenants and landlords who are unclear about their tenancy rights under Alert Level 4.

10. Citizens Advice Bureau has heard from tenants and landlords who are seeking advice on whether landlords can give notice to terminate during Alert Level 4, the validity of termination notices served prior to Alert Level 4, and whether evictions are permitted during Alert Level 4 for antisocial behaviour. This supports the need for the proposed RTA COVID-19 order to provide certainty for landlords and tenants about whether and how tenancies may be terminated during outbreaks of COVID-19.

11. There have also been reports of tenants who were due to move houses in Alert Level 4 but were unable to do so, and are being asked to pay double rent (at the property they are currently occupying and at the new tenancy). For renters who are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist. Tenancy Services are also encouraging landlords and tenants to come to a fair agreement in these situations and consider reducing the rent for both tenancies so that the cost is spread across all parties.

12. Tenants Protection Association noted any legislation relating to terminations should be flexible and linked to both Alert Level 3 and Alert Level 4, as this will provide a time buffer for tenants to organise a new tenancy.

Agency feedback on the proposal to restrict terminations

13. Agencies have been generally supportive of the proposals. The Ministry of Health is receiving exemption requests from people whose tenancy agreements are due to expire under the current COVID-19 Public Health Response Orders. RTA COVID-19 Orders would therefore give tenants and landlords greater certainty and reduce administration as well as wait times for people applying.

14. Initially, the Ministry of Justice and Ministry of Health were concerned the conditions for issuing an RTA COVID-19 Order were relatively broad, and that further specificity was needed on the circumstances where it is appropriate for the Minister to utilise such a wide-reaching power. We have made the proposed statutory clearer and more specified because of this feedback, and also feedback from the Parliamentary Counsel Office.

15. Te Puni Kōkiri support the proposals to restrict tenancy terminations during future outbreaks of COVID-19, but would like rent increase freezes reinstated during Alert Level Four periods, as they do not consider the one year limit to increasing rents a sufficient protection for tenants during an already stressful period.

16. Regarding the proposal to not reinstate a rent increase freeze, the Ministry of Social Development notes there are limited housing support products available, especially with the temporary increases in rent arrears assistance as a response to COVID-19 ending in June this year, so the amount of funding available is significantly less than what was provided last year to clients.

17. The Ministry of Primary Industries (MPI) supports the proposals as they will mean a more flexible regime for farmers, particularly if regions are moving between Alert Levels and lockdowns over a period of time, as on-farm tenancies are linked with farm employment and there is a lack of private rental accommodation in rural areas.

Key issues to note

Landlord and tenants will still be able to agree to end tenancies, even when termination restrictions are in place

18. Protections against terminations help to ensure tenants can comply with restrictions under a relevant COVID-19 Public Health Response Order. But we have not gone as far as recommending that a tenant should be restricted from being able to terminate their tenancy, or from agreeing with their landlord to end their tenancy, when an RTA COVID-19 order is in place.

19. There are a range of circumstances where a tenant may need to move out of their rental property during Alert Level 4, which could include because they need to move into more suitable or affordable accommodation, or they are essential workers and need to be closer to work (e.g. farm workers), or they would otherwise have to pay two lots of rent (due to tenancies 'overlapping').

20. When tenants are considering termination and moving, we consider that the relevant COVID-19 Public Health Response Order would be the appropriate way to restrict their movement to achieve public health objectives. We note that the Ministry of Health processes exemption requests from people whose tenancy agreements are expiring and need to move. Travel must be reasonably necessary and consistent with purposes of the Order and the COVID-19 Public Health Response Act 2020.

Moving between areas in different Alert Levels will need to be guided by the COVID-19 Public Health Response Orders

21. The proposed legislative amendments will have implications for tenants wanting to move between different areas, where those areas are at different Alert Levels. For example, Alert Level 3 rules generally allow people to move houses, but not at Alert Level 4. Tenants and landlords will need to be guided by the relevant COVID-19 Public Health Response Order when making decisions about moving and how to do so (e.g. adhering to social distancing protocols).

Proposed termination notice periods are different this time

22. To balance the disruption of the termination restrictions on landlords and the uncertainty for tenants who need to find alternative accommodation after the restrictions are lifted, the Cabinet paper proposes that unless otherwise agreed, most termination notices will take effect once termination restrictions are lifted, on the later of the date originally provided for in the notice; or 28 days after the restrictions end. This means that termination notices are not cancelled or paused, but the notice period effectively keeps running, but with a 28 day 'top up' once restrictions are lifted, if below 28 days.

23. For tenancies with shorter notice periods and different termination provisions (including service tenancies), landlords would need to re-serve termination notices once restrictions were lifted.

24. The proposal means landlords will generally not have to 'restart' termination notices once restrictions are ended (now generally 63 days or 90 days). But to ensure tenants are not 'locked in' to tenancies once restrictions end (e.g. a tenant has arranged to go into another rental property and does not want to pay for an additional 28 days' rent), tenants will be able to end their tenancy on the date originally provided for in the notice (if it falls on or after the restrictions are lifted).

Rural issues

25. If a future Alert Level 4 occurred during Moving Day[1], or during a major horticultural harvest time, termination restrictions would present significant disruption for farmers, including sheep and beef farmers (who may experience staff turnover at any time during the year).

26. Aligning termination restrictions to Alert Level 4 areas will help. Termination notice periods for service tenancies are only 14 days, so workers could be moved on relatively quickly once terminations restrictions were lifted. We also note that when the COVID-19 provisions expire farmers will have the ability to terminate service tenancies with less than 14 days' notice under section 53(2)(b) of the RTA. This applies in circumstances where a worker/tenant's contract for services is terminated or the tenant is transferred to another district, and it is necessary for the conduct of the landlord's business to bring in a replacement employee in less than 14 days and no suitable alternative accommodation is available for the replacement worker.

Tenancy Tribunal ability to hear applications on the papers

27. The Tenancy Tribunal have requested the ability to conduct hearings on the papers in appropriate cases to assist with managing large volumes of cases that accrue following COVID-19 level 3 and 4 restrictions. The Residential Tenancies Act 1986 limits the Tribunal to conducting hearings either in person (in court), or by telephone or other audio-visual link.

28. Because the Tribunal cannot conduct in person hearings during levels 3 and 4, it has been conducting hearings by telephone where possible. The Tribunal is managing to hear around half of the applications by telephone, with the balance adjourned to be rescheduled to a court hearing once there is a move to Alert Level 2, which inevitably means a large backlog of work to schedule and hear. To provide context, during Alert Level 1 Tenancy Services would normally have less than 40 applications to schedule, whereas there are currently 603 applications to be scheduled (as of 3 September 2021).

29. The Tribunal had the ability under the previous emergency legislation to conduct hearings on the papers. That was an effective option for some cases that were not disputed. The Tribunal's practice was to first contact the respondent to check if they wanted to dispute the claim, or to have the matter heard in a hearing. If the application was not disputed, or the respondent did not request a hearing, then it would consider an 'on the papers' option.

No rent increase freeze this time

30. Rent increase freezes are not proposed this time, because since August last year, landlords are only able to increase rent once every 12 months. "Freezing' rents every time areas go into Alert Level 4 would be short term and would only delay, rather than stop increases. For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist.

Next steps

31. Following Cabinet agreement, officials will issue drafting instructions for the Parliamentary Counsel Office on Tuesday 7 September. We understand the Leader of the House is considering the preferred legislative vehicle for these changes and whether they can be accorded urgency.

[1] Moving Day is at the end of May beginning of June, when many dairy farming families, sharemilkers, contract milkers and employees move to new farms to commence new employment and milking contracts with their families, personal possessions, livestock and farm machinery.

32. Subject to that consideration and other legislative priorities, an indicative timeline is set out in the table below:

Date	**Activity**
7 Sept	COVID Committee considers policy proposals
7 – 17 Sept	PCO drafts RTA amendments
20 Sept	RTA Amendment Bill goes straight to Cabinet for approval for introduction.
21 Sept	Introduction of Bill to Parliament and Minister moves an urgency motion for RTA Amendment Bill
22 Sept	Subject to House according urgency, Bill passes through all stages
23 - 24 Sept	Earliest time period for drafting, issuing and gazetting a Ministerial order applying termination restrictions (depending on Alert Levels and whether Minister seeks Cabinet approval)

Annexes

Annex A: Suggested talking points for COVID-19 Ministerial Group meeting

Annex B: Questions and Answers on proposals

Annex A: Suggested talking points for COVID-19 Ministerial Group meeting

Background

- For the first Alert Level 4 lockdown in March 2020, three sets of temporary changes were made to the Residential Tenancies Act 1986 through the COVID-19 Response (Urgent Management Measures) Legislation Act 2020:
    - restricting tenancy terminations,
    - imposing a freeze on rent increases, and
    - empowering the Tenancy Tribunal to operate flexibly.
- Together, the provisions helped support the COVID-19 health measures by facilitating people to stay in their rental homes, sustaining tenancies to the greatest extent possible, and protecting tenants from becoming homeless during the COVID-19 outbreak.
- Those RTA COVID provisions were time limited and have now expired.
- Cabinet previously agreed to reinstate temporary RTA restrictions in the event of a return to Alert Level 4.

The current situation

- s 9(2)(h)
- I am increasingly hearing from tenancy stakeholder groups that the lack of legal clarity under Alert Levels is becoming problematic for tenants and landlords.
- For example, there is pressure on vulnerable tenants to have to 'push back' on landlords pursuing terminations.

I propose restricting tenancy terminations

- Accordingly, I am recommending urgent amendments to the RTA that will enable the Minister to make 'RTA COVID-19 orders' to restrict tenancy terminations during current and future outbreaks of COVID-19.
- This will help provide clarity and certainty for the tenancy sector, and aligns with public health objectives to keep people at home during a COVID-19 outbreak.
- This is a more agile and flexible approach than the approach taken in 2020, where termination restrictions were in place for fixed time periods of three to six months. This meant that the restrictions applied not just during Alert Level 4, but also at lower levels where the relatively strong restrictions were not necessary to achieve the goal of protecting public health. 'Tying' the restrictions to Alert Level 4 enables a sufficiently targeted response that effectively protects public health while minimising unintended consequences.

How will the RTA COVID-19 order work?

- I propose the COVID-19 tenancy termination restrictions will 'sit' in the RTA but only apply from time to time if a Ministerial order is made by the Minister responsible for the RTA.
- The Minster would only be able to make an order relating to a geographic area if satisfied that:
    - a COVID-19 Public Health Response Order is or will be made containing measures that generally restrict people from moving house in that area; and
    - the order is necessary or desirable to align with or support those stay-at-home measures.
- Because the Ministerial orders will have wide reaching effects, I consider it appropriate that the Minister consult with the Prime Minister and the Minister and the Minister for COVID-19 Response before making an order.

- Termination restrictions would be guided by COVID-19 Public Health Response Orders and would not be automatically tied to Alert Levels. However, in practice, termination restrictions are likely to only apply during Alert Level 4 due to the proposed statutory criteria that requires an order to be in place only for as long as there are 'stay-at-home' measures in place.

I propose to allow the Tenancy Tribunal to conduct proceedings on the papers

- I am also seeking agreement to allow the Tenancy Tribunal to conduct proceedings 'on the papers', as it sees fit for twelve months from commencement of an amendment bill. This means the Tribunal can decide an application based on written submissions, without the parties having to attend.
- This would help address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted, and if Alert Levels are re-escalated in the foreseeable future.

I do not recommend restrictions on rent increases

- Cabinet previously agreed to also reinstate a rent increase freeze if New Zealand went back into Alert Level 4.
- On further consideration, I do not consider a rent increase freeze is necessary for future Alert Level 4 scenarios and I seek Cabinet's agreement to rescind that decision.
- This is because since August last year, landlords are only able to increase rent once every 12 months and must give at least 60 days' notice to tenants of a rent increase. Previously landlords could increase rents every six months.
- This change gives tenants longer term certainty about rent costs and makes them less likely to have rent increased during Alert Level 4 periods.
- In addition, rent increase freezes are not directly aimed at supporting the health response to keep people at home, but more at temporarily addressing some of the economic impact of an Alert Level 4 lockdown. Renters who are struggling to meet rent payments may be eligible for the COVID wage subsidy or other Ministry for Social Development support packages.

Next steps

- If you agree, I will authorise HUD to work with PCO to draft the amendments. I seek your authorisation to making any further policy decisions, consistent with the proposals in the Cabinet paper.
- The Leader of the House will consider the preferred legislative vehicle for these changes (a standalone RTA amendment bill or a COVID-19 omnibus bill) and whether they can be accorded urgency.

Annex B: Questions and answers on policy proposals

What if a tenant and landlord has made alternative arrangements as to a moving date – will the legislation override those arrangements?

The tenant will have the right to revoke the agreed moving date and remain in the premises. At a minimum, they have a right to a further 28 days' notice once the RTA COVID-19 order is revoked (unless it is a special tenancy type with a shorter notice period or different termination provisions, for example a service tenancy for farmers / farm workers).

However, if both the landlord and the tenant want the tenancy to end earlier, they can still agree to this – the legislation does not override this agreement.

Can a landlord issue a termination notice during the period an RTA COVID-19 order is in place?

No, generally a landlord will need to wait until the order is revoked to issue a termination notice.

What about renters who are having to pay double rent because of overlapping tenancies – will the legislation help them?

The legislation does not make any changes to rent obligations.

Tenants still have a legal obligation to pay rent in accordance with signed agreements, unless they make arrangements with landlords. Tenancy Services has published guidance encouraging landlords and tenants to consider rent reductions where a tenant is paying rent for a property they are not occupying.

Tenancy Services has also published guidance that if landlords are unable to provide incoming tenants with the property (for example, because the old tenants remain in the property), then rent generally should not be charged to the incoming tenants.

The proposed amendments will also clarify that where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other and landlords would need to let the incoming tenant know the premises are no longer available.

What Housing Support products are there to assist renters?

Housing Support Products (HSPs) support clients to access or retain housing. These products provide additional assistance where the client's needs can't be met by existing products and services the Ministry currently offers. For example, Accommodation Supplement, Housing related recoverable assistance. HSPs are discretionary and are based on a client's situation, their needs and what will make a difference for their household.

There are seven individual HSPs as described below.

Bond Grant

A non-recoverable payment to help clients moving from social housing into alternative housing, where there is a gap between the client's existing bond using Income Related Rent and bond payable at usual rent amounts.

Moving Assistance

Helps with the physical cost of moving. It is recoverable to ensure that clients find the most economical way to move.

Rent Arrears Assistance

A recoverable payment to help clients who have rent arrears and are at risk of losing their tenancy due to those arrears.

Rent in Advance

A non-recoverable payment to help clients moving into alternative housing.

Statement of Satisfactory Tenancy

A reference from social housing providers that directly targets landlords' three core tenant selection concerns (rent arrears, damages and behaviours).

Tenancy Costs Cover

Aims to reduce the (perceived) risks for landlords of letting to clients in disadvantaged groups.

Transition to Alternative Housing Grant

An incentive payment that may be offered to clients in social housing living in areas with high waiting lists or who voluntarily exit their social housing.

All information on HSPs can be found also on MSD's Work and Income site:

https://www.workandincome.govt.nz/map/income-support/extra-help/housing-support-products/index.html

What's the point of the termination restrictions if landlords and tenants can agree to end a tenancy in an Alert Level 4 area?

The termination restrictions give tenants more control over their circumstances by ensuring that tenants generally will not be forced to leave their home in breach of the COVID-19 Public Health Response Order.

The termination restrictions still allow tenancies to be terminated where tenants agree, because there may be many unique circumstances where it is appropriate for the tenancy to be terminated – for example, because the tenant had already moved out prior to Alert Level 4 and is staying in a different home, or because the tenant had to move homes due to an immediate risk to their health and safety.

Regardless of the tenancy termination rules, tenants still have to abide by the COVID-19 Public Health Order Response, which restricts their movements for public health.

Will farmers still be able to move in workers when an RTA COVID-19 order is in place?

Under the COVID-19 Health Order, at Alert Level 4, people are only permitted to relocate their home where required by a court order or where they need to use an emergency or temporary home, for example to receive care while sick, or to see refuge from family violence. Therefore, tenants generally will not able to move into a new tenancy on a farm during Alert Level 4.

Once their area moves to Alert Level 3, farmers will be able to give any existing tenants notice to move out, so that they can move in new farm workers. Landlord farmers tend to use service tenancies for their farm workers, which only require 5 or 14 days' notice depending on the circumstances.

Why does the notice period not pause during Alert Level 4?

Allowing notice periods to continue to run rather than pausing them is a clearer and simpler approach than stopping and starting them. To address the concern that tenants do not have sufficient time to find new accommodation once the restrictions end, the proposals will require a minimum notice period of 28 days.

What if a tenancy has already ended during Alert Level 4 and the tenant is still occupying the premises without the written agreement of the landlord – do they get to stay?

This depends on the circumstances.

For example, if a landlord wanted to evict a tenant who is occupying the premises unlawfully, they would have to apply to the Tenancy Tribunal and obtain a possession order. The landlord could then seek eviction by a bailiff. Where these occur during Alert Level 4, the Ministry of Justice works with Police and MSD to ensure the eviction can be completed by a court Bailiff safely and that the evicted party has a residence to move to where they can continue self-isolation.

However, if tenants and landlords had informally agreed to a tenancy continuing, the proposed changes would sustain the tenancy, and the tenant would be able to stay on in the premises.

Why aren't we doing temporary rent increase freezes this time?

In 2020, the Government amended the Residential Tenancies Act to limit rent increases to once every 12 months. This provides additional protection for tenants.

Freezing' rents every time areas go into Alert Level 4 would only be short term and confusing and to some degree, just delay increases.

For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist.

What about flatmates – are they protected by the proposed changes?

Depending on the circumstances, flatmates may not be covered by the RTA (for example if they are not on the tenancy agreement). Therefore, any changes to the RTA will not provide additional protection for flatmates.

What about emergency and transitional housing clients – are they protected from termination restrictions?

Emergency and transitional housing is not covered by the RTA.

It is understood that Transitional and Emergency Housing Providers are working together with whānau, HUD and MSD to avoid evictions during Alert Level 4, and where evictions are necessary for the security and safety of others, efforts are made to find those involved alternative accommodation.

What about social housing tenants – are they protected?

Yes, social housing tenants are covered by the RTA and receive the same protections as tenants in the private rental market.

Termination notices served under section 53B(1)(b)(iii) by social housing providers prior to RTA COVID-19 orders will keep running and be 'topped up' to 28 days after the restrictions lift. That section allows social housing providers to require a tenant to transfer to different social housing if the transfer is necessary or desirable for any reason and the alternative housing is appropriate for the tenant's housing needs as most recently assessed.

Geographical options for rent indexation

1. You have asked for information on how rent indexation could be applied to particular geographical locations in Aotearoa/New Zealand, and whether 'triggers' could be imposed.

Geographically based rent indexation

2. Geographically-based rent indexation could be used if the Government identified particular markets where rents were increasing unacceptably or rental affordability was declining.
3. This note provides information on:
    a. how triggers that could be used for indexation, including available data sources
    b. examples of potential boundaries for rent-indexed areas
    c. the legislative mechanisms that could be used
    d. other areas and risks that need to be considered if the Government wishes to progress with this idea.

'Triggers' for indexation

4. You have asked for advice on whether triggers could be used to impose indexation. For example, a trigger could be an increase in median rents above a certain percentage in a particular geographical area, an increase in the rate of increase in rents, or a change in affordability in a particular geographical area (e.g. a certain proportion of the population in that area is paying 30% or more of their income on rent).
5. Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (HUD) considers a geographically-based indexation would require a bespoke approach for a particular area, and therefore rent indexing should be applied only where certain criteria are met, rather than one specific 'trigger' which may be too blunt for a particular area. As an example, median rents in the Wellington region increased by 3% in the year to October 2020, but there were variations across the region from -5% (Carterton District) to +9% (Porirua City).
6. For example, criteria could include, for a particular area:
    a. that rate of increase of rents is above a certain percentage
    b. there are a significant proportion of renters who are struggling to pay their rent (i.e. rent is a high proportion of income)
    c. there is a sufficient pipeline of new supply of housing forecast in that area (such as consents per 1000 people), as rent controls in other countries have resulted in a longer-term decrease in overall rental supply.

Data to support the criteria

Increase in median and/or lower quartile rents

7. The Stats NZ's Rental Price Index is the most reliable source of data to identify trends across the rental market. The index is published monthly, and is based on the Tenancy Services bond data set published by the Ministry of Business Innovation and Employment (MBIE). Unlike geometric

mean rents published by MBIE the index adjusts the bond data to account for the changing types and characteristics of properties being rented and for the tendency of more expensive rentals bonds to be processed earlier.[1]

8. As noted in previous advice, at least 75% of renters are not in a position to buy their own home. Stressed renters (30%-45% of all renters) are those that have high rent relative to their income, and are most impacted when rent rises. For these renters, lower quartile rents would be a better indicator of affordability than medians.

9. We do not recommend a national threshold, such as CPI, or CPI minus rent, to determine whether rent indexation is justified in a particular area. This is because it negates the purpose of taking a regional approach: once a cap is put on one region, it could become a de facto 'cap' for other regions and as investors identify that they can increase rent up to the cap, even when they might not have done so.

10. With a geographic approach, there is also a risk that property investors in uncapped regions or metro areas increase rents as much as possible in case a cap is imposed in their region. This effect will be limited to some extent by tenant's ability to pay as property investors are also incentivised to have tenants stay in their property.

Change in affordability

11. HUD is developing rental affordability measures which could be applied to geographical areas. These measures are likely to be completed in mid-2021. The measures will assess affordability for the typical renter, but, for example, would not reflect if people at the lower end of the rental market are experiencing rent changes that vary from the median. This data will have a three-month reporting lag.

12. Nevertheless, the Government could establish a threshold or set of thresholds that could trigger indexation for that area.

13. Thresholds could be based on one or more of the affordability measures. Further work would be required on a threshold once the measures have been developed.

What geographical boundaries could we use?

14. The options for geographical areas would depend on what data is available or could be readily developed for the chosen trigger, and if and how an area could be defined in legislation.

15. At present the Stats NZ Rental Price Index is broken down by the five broad CPI regions (Auckland, Wellington, Rest of North Island, Canterbury, and Rest of South Island). HUD is creating a Rental Price Index with a similar methodology that can be broken down to regions, territorial authorities or other defined areas if further work was undertaken. We would need to consider which areas to apply rent indexing to, and how to define those areas. Examples could include:

    a. relatively big areas, such as the Auckland region as determined by the Local Government (Auckland Boundaries) Determination Act 2010

[1] HUD would recommend the flow rent index, which tracks price change for new tenancies. Although the stock rent index attempts to model change across all tenancies it is not done through actual observations of rent changes for all tenancies; it imputes what's happening for people who've not moved based on historic data. It is therefore less suitable for understanding recent changes in the rental market.

b. a smaller area such as a district council area or wards within that area or

c. a specific area within a region or district to address a particular region or group of suburbs

16. Once an area is identified as having significant rent pressure, that area could be defined through the statutory mechanism for applying rent indexation, for example using existing geographic boundaries and relevant district plans (or proposed plans) to ensure it is easily identifiable in practice.

17. Existing boundaries of larger areas may be relatively easy to define and administer, but may not provide a sufficiently tailored approach to addressing rental inequality in a particular area. A smaller area or a specifically defined area would provide for more accuracy, but decisions would be based off more volatile data and it may be difficult to administer, communicate, and enforce a rent indexation regime in such areas.

Legislative mechanisms required

18. As noted previously, rent indexation is a complex change, and primary legislation would be required to amend the Residential Tenancies Act 1986 (RTA).

19. Further work would be required on:

    a. Ensuring any geographical boundary is clearly defined, so that landlords and tenants have clarity about whether their tenancy is subject to indexing.

    b. Developing a mechanism that allows indexing to be applied to a particular geographical region when certain 'trigger' criteria is met, and then dis-applied once the criteria is no longer met. One potential option would be to amend the RTA so that this could be done by Order in Council, so that amendments to primary legislation are not required every time rent indexing is turned on or off.

    c. Addressing any transitional issues that could arise when a region moves in or out of rent indexing. For example, whether to address the risk that landlords might significantly increase rent just before indexing is applied.

20. It is likely that other important legislative design questions will arise as further policy work is undertaken.

Other considerations

Previous advice

21. We have previously advised that rent indexation, if adopted, should be applied nationally, to avoid price distortions between indexed and non-indexed areas (BRF20/21010833 refers). Geographically-based rent indexation has been found overseas to lead to a decrease in volume and quality of rental supply in indexed areas, as landlords sell indexed properties in favour of properties in non-indexed areas, or reduce maintenance to offset the reduction in income.

Further work required

22. We would also want to consider if other interventions are required in an area, if rent controls were imposed. Given that rent controls have been shown to reduce supply and quality, additional support may be advisable for those areas to focus on relieving supply pressure in that place, however this would require shifting focus away from existing priority areas. We note that

one of the drivers in rising rents in regional centres over the past five years has been the high cost of housing in other centres. For example, prices have likely risen in Stratford as a flow on from high prices in New Plymouth.

23. As also advised, further detailed design work would need to be undertaken, should any form of rent indexation be progressed (AMI20/21020448 refers). These include working through implementation issues, how such a system could be communicated and enforced, and other details of the system.

Role of councils

24. We would want to carefully consider possible impact in terms of district and regional plans, supply of housing (including social housing) and possible flow-on effects for local infrastructure. For example, a requirement of a regional regime could be that the Minister makes a decision to apply rent indexing in a particular area in consultation with the relevant local authority.

Timing of announcement and passing of legislation critical – but design will take time

25. Finally, as noted in previous advice, any announcement of rent indexation, whether nationally or geographically based, should be considered carefully, balancing the risk of widespread rent increases ahead of the regime coming into effect with an expectation for at least some public and stakeholder engagement on such a significant and controversial change to rental laws.

26. An option to limit the risk of widespread rent increases would be to limit rent increases nationwide to, for example, CPI (minus the rent component) until the Bill is passed.

27. In addition, it is not advisable for legislation to operate retrospectively, and therefore we would advise having the Bill drafted (and therefore carrying out policy design work across government and obtaining Cabinet decisions prior) before an announcement is made. If a regional rather than national rent indexation regime was to be designed, this would add to the complexity and would take several months to develop.

Unintended consequences

28. Once announced and applied to one geographical area, it may incentivise landlords in other areas to increase rents ahead of any further potential indexation, so as not to "miss out" on the opportunity to increase rent above the threshold. Alternatively, landlords in other areas may use the threshold as a quasi-indexation/maximum, and increase rents annually by that amount.

IREQ21/22021246 High-level options to address rent increases

Objective: to make rents more affordable for low-income households in private rentals

Context and problem

Rents are becoming more unaffordable for low-income households and rental supply is slowing

- Nationally, rents increased 5.5% in the year to January 2022.
- CPI rose to 5.9% in the year to December 2021, driven largely by escalating fuel and food prices.
- Rents have broadly risen in line with wages.
- However, adjusting for inflation, the real wages of low-income (bottom quintile) households have typically increased less than rents have increased.
- Even prior to recent inflation, 53% of renters receiving the Accommodation Supplement were spending more than 50% of their income on rent.
- The mismatch between housing costs and incomes among lower-income households has resulted in a high reliance on Temporary Additional Support to make up for the gap in income needed for essential items.
- The number of available rental properties is increasing at a slower rate (down from 2% in early 2021 to 0.8% currently) and is not keeping up with demand.

Deteriorating rental affordability has knock- on effects for the housing system

- Lack of affordable housing coupled with high inflation and increased household costs put a disproportionate pressure on renters in lower income bands, as they:
  - have experienced less wage growth and
  - spend a greater proportion of their income on rents and living costs.
- This is particularly true for Māori, beneficiary and low-income households.
- Consequences of rental stress are overcrowding, and increased demand for Housing Support Products and public, transitional and emergency housing.

Considerations

Government supports and initiatives can directly assist households experiencing rent pressure…

- **Accommodation Supplement** (AS) provides around $2 billion annually in support for around 360,000 households that are spending a high proportion of their income on housing costs – **but** rapidly rising rental costs mean that a high proportion of AS recipients remain in housing stress.
- **Temporary Additional Support** (TAS) supports households with low residual incomes after their regular and ongoing expenses. TAS spend is increasing.
- **Housing Support Products & housing related hardship assistance** provide one-off payments to assist renting households.
- Recent and upcoming changes to the **main social security benefits** (increases in April 2020, July 2021 and April 2022), **minimum wage** and **benefit abatement rules** will increase incomes for the lowest income households.

… and further regulatory interventions carry risks for renters

- Landlords are experiencing regulatory fatigue – there has been significant change to the RTA and taxation laws over the last five years.
- Many landlords will have increased costs from compliance with healthy homes standards and phasing out of interest rates tax deductions.
- Further rent regulation will negatively impact renters if landlords choose to exit the market or reduce discretionary maintenance.
- Any regulatory response would need to consider stakeholder engagement balanced with careful timing to avoid landlords raising rents in anticipation of new rules.

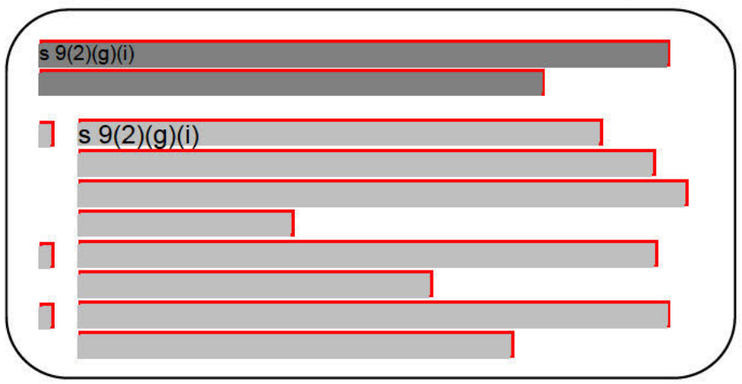
Our previous HUD advice on rent control, indexation or freezes still stands

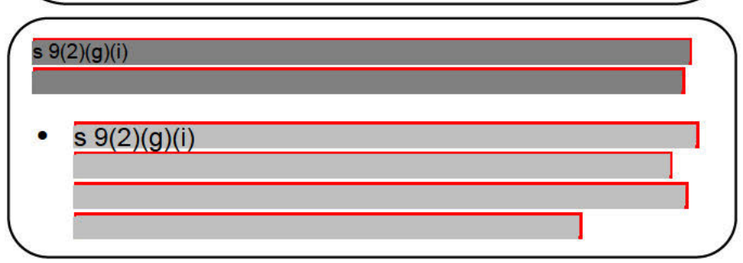
- January 2021: BRF20/21010833 - *Options for rent indexation and further protections for tenants*
- February 2021: AMI20-21020459 – *Geographical options for rent indexation*
- February 2021: AMI20/21020448 - *Speaking points: options for protecting renters from the impacts of demand side measures*
- June 2021: BRF20/21040936 - *Proposal to limit rent increases to once every 12 months per property (instead of per tenancy) – updated approach*

Suggested direction

Increase overall supply as it will have the greatest impact on affordability…

- Increasing the overall supply of new build housing (including public housing) in the right places will have the greatest impact on affordability
- Government supply-side initiatives to support development of new supply:
  - 2021 Housing Package, which includes:
    - the $3.8 billion Housing Acceleration Fund to accelerate housing supply in the short to medium term
    - $730 million for Māori infrastructure, housing and housing repairs and
    - support for Kāinga Ora to borrow $2 billion extra for strategic land acquisitions to increase the pace, scale and mix of housing developments, including more affordable housing.
  - Build to Rent (not announced), the Affordable Housing Fund (not announced) and the National Policy Statement-Urban Development.
- However, the supply-side measures are not a quick fix.





Other regulatory options to address rent increases

Option	Explanation and examples	High level analysis
Limit rent increases to once per year *per property* (instead of once per year per tenancy)	A prohibition on landlords increasing rents for new tenancies starting less than 12 months after the previous rent increase	• Aims to mitigate the practice of landlords significantly increasing rent when re-tenanting a property (the new tenancy price for rent is approximately $50 higher than average existing rent prices, which tend to be more 'sticky'). • Unlikely to be effective at moderating rents as would likely only delay rent increases by a few months. New tenants would not know what their future rent will be when they sign up– may get substantial rent increase only a few months into tenancy. Current law provides more certainty for tenants. • May result in higher rent increases for existing tenants, by incentivising landlords to systematically increase rents in line with the market, who would otherwise reward long-term good tenants with below market rent. • Difficult to administer and enforce.
Require tenancy agreements to include rent review clauses	Rent review clauses set out how rent increases will be calculated during the tenancy. Currently, rent increases are imposed by the landlord without the requirement for a discussion with the tenant. For example, the tenant and landlord might agree that rent will be reviewed yearly and increased in line with market rent, or inflation. There are examples in commercial leases.	• Provides tenants with more information going into rent discussions. • May provide more certainty and predictability of rent increases. • Unlikely to moderate rent increases – as tenants have a limited ability to negotiate in the current market. • Incentivises landlords to start tenancies with a higher rent. • May be complicated for tenants and landlords to understand and comply with.
Amend the market rent provisions in the RTA	The RTA currently provides that, on application of the tenant, the Tribunal can make an order reducing rent in line with market rent if the rent exceeds the market rent by a substantial amount. 'Market rent' is defined as what a landlord might reasonably expect to receive and a tenant reasonably expect to pay, taking into account rents for comparable tenancies / properties in the area, without regard to personal circumstances. This test could be rebalanced by: • removing the 'substantial' amount requirement; and/or • reversing the burden of proof – on application by the tenant, the landlord must prove that rent is in line with market rent.	• Potentially slows down the rate of increase of rents at the margin as provides a narrower range for acceptable market rent. • Relies on tenants taking cases to the Tenancy Tribunal, which tenants may be unwilling to do due to being reluctant to damage relationship with landlord. • May incentivise landlords to keep up with the maximum allowed rent increases (although many landlords may already do this). • May incentivise stricter vetting of tenants at the margins (landlords already likely to do this in a tight market).
Amend the RTA to require disclosure of previous rent	The RTA does not require a landlord to disclosure to a new prospective tenant what the previous tenant paid. This option would amend the RTA to require a landlord to disclosure the previous rent to a new prospective tenant at the same property. Would need to consider a timeframe e.g. the rent paid in the previous 12 months.	• Provides transparency for prospective tenants, who can use this information to inform rent negotiations. • Unlikely to slow down rent increases as tenants are unlikely to be able to successfully negotiate a similar rent in the current tight rental market. • The previous rent may not be a good guide to the current market rent, e.g. if the landlord had made improvements to the property, or had held the rent at a lower rate for the previous long-term tenants. • Difficult to administer and enforce.

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Indicative timeline and advice on potential legislative vehicles for proposal to limit rent increases per property			
Date:	26 March 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21030899

Action sought		
	Action sought	**Deadline**
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Agree** to the proposed stakeholder consultation process. **Note** the advice on potential legislative vehicles. **Agree** to provide feedback on the indicative timeline. **Agree** to forward this briefing to the Minister of Finance.	1 April 2021 so that we can consult with government agencies on the 'conversation starter' document from 6 April 2021.
Hon Dr Megan Woods **Minister of Housing**	For noting.	-

Contact for discussion				
Name	**Position**	**Telephone**		**1st contact**
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a)	✓
Georgia Bloor-Wilson	Graduate Policy Advisor, Tenures and Housing Quality	04 831 6062	-	

Other agencies consulted
Nil.

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Indicative timeline and advice on potential legislative vehicles for proposal to limit rent increases per property

For:	Hon Poto Williams, Associate Minister of Housing (Public Housing)		
Date:	26 March 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21030899

Purpose

1. This briefing outlines the potential legislative vehicles for the proposal to limit rent increases per property (rather than per tenancy). The briefing also seeks your agreement to the proposed stakeholder consultation process and the indicative timeline.

Recommended actions

2. It is recommended that you:

a) **Note** that the Residential Tenancies Act 1986 provides that:

i) rent must not be increased within 12 months after the date of the commencement of the tenancy; and

ii) rent must not be increased within 12 months after the date on which the last increase took effect. *Noted*

b) **Note** that Cabinet directed Ministry of Housing and Urban Development (HUD) officials to consult on the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) and to report back to the Minister of Finance, Minister of Housing, and the Associate Minister of Housing (Public Housing) with their findings from that process [CAB-21-MIN-0045 refers]. *Noted*

c) **Agree** to the proposed stakeholder consultation process and indicative timeline. *Agree / Disagree*

d) **Note** the advice on possible legislative vehicles. *Noted*

e) **Agree** to provide feedback on the indicative timeline. *Agree / Disagree*

f) **Agree** to forward this briefing to the Minister of Finance. *Agree / Disagree*

C.P. Leadbetter

Claire Leadbetter
Manager, Tenures and Housing Quality

26 / 03 / 2021

Hon Poto Williams
Associate Minister of Housing (Public Housing)

..... / ..... / .....

Background

3. The Residential Tenancies Act 1986 (RTA) provides that:
    a. rent must not be increased within 12 months after the date of the commencement of the tenancy; and
    b. rent must not be increased within 12 months after the date on which the last increase took effect.
4. On 8 March 2021, Cabinet directed Ministry of Housing and Urban Development (HUD) officials to consult on the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) (the proposal) and to report back to the Minister of Finance, Minister of Housing, and the Associate Minister of Housing (Public Housing) with the findings from that process [CAB-21-MIN-0045 refers].
5. On 16 March 2021, Hon Williams asked HUD officials for advice on potential legislative vehicles, should the proposal proceed to legislative change.

Proposed stakeholder consultation process

6. The proposal is likely to require a small and straightforward legislative change. However, there is potential for complications in the detail of the proposal. The proposal is also likely to be controversial as it has implications for rent for both tenants and landlords. The sector has experienced many changes recently and landlords are expressing a level of fatigue with legislative change.
7. HUD proposes to undertake targeted consultation with key stakeholders (property investor organisations and tenant advocacy groups) in the form of stakeholder meetings. HUD will draft a conversation starter document on the proposed change to guide stakeholder meetings. HUD will also publish a question form for the public to submit on via an email channel.
8. Consultation will occur from May to mid-June alongside consultation for the family violence withdrawal notices and physical assault termination notices regulations. This will enable HUD officials to combine meetings with key stakeholders. Six weeks is an appropriate amount of time for stakeholder consultation.

Approving the conversation starter for release

9. We recommend that the decision to undertake targeted consultation does not require consultation with your Cabinet colleagues as Cabinet has already directed HUD officials to consult on the proposal [CAB-21-MIN-0045 refers].
10. However, if you would like to consult with your Cabinet colleagues, we can support you to do this through an oral item, letter, or Cabinet paper. This may push out the indicative timelines (**Annex A**) by four weeks or more.

After consultation we will report back for next steps

11. We will report to the Minister of Finance, the Minister of Housing and the Associate Minister of Housing (Public Housing) on the results of the consultation process so that Ministers can decide whether to progress the proposal after consultation.

Legislative vehicle

12. If a decision is made to progress the proposal after consultation, a legislative vehicle will be required. You have asked us for advice on potential legislative vehicles by which to make the proposed RTA change. We have identified four potential legislative vehicles (discussed below), in addition to the Statutes Amendment Bill.
13. In order to include the proposed RTA change in one of the below bills, the bill would become an omnibus bill. Omnibus bills are bills that deal with more than one defined subject area.

Because of their scope, omnibus bills are only allowed in specific circumstances, for example, if the amendments implement a single broad policy. We would need to discuss with the Clerk of the House, but our initial view is the inclusion of the proposed RTA change would not fit within the scope of an omnibus bill for one of the below legislative vehicles.

14. However, omnibus bills can be introduced if the Business Committee agrees (Standing Order 267(1)(c)). As this would require cross-party agreement, there is a risk the Business Committee may not agree. The consequence would be to require the House to agree to the omnibus bill. s 9(2)(g)(i)

15. The potential legislative vehicles are outlined below. We will monitor potential legislative vehicles in case additional potential legislative vehicles should arise.

Housing portfolio potential legislative vehicles

16. As previously discussed, the Housing legislative programme does not anticipate an RTA focussed amendment bill will be introduced this year or early 2022. The current timeline for property management regulation anticipates introduction in late 2022. There are also no amendments proposed for the Public and Community Housing Management Act in full over this period.

A. Interim measures to support the upzoning of land for housing

17. This is a package of interim measures to accelerate the upzoning of land for housing. These are tightly scoped to Resource Management Act amendments, including introducing a default density zone, and a streamlined planning process for achieving the intensification outcomes of the National Policy Statement on Urban Development.

18. The timeline for this package is still an early draft, but we expect the package may be introduced in June 2021. This would not provide us enough time to undertake sufficient consultation.

Building and construction portfolio potential legislative vehicles

B. Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill

19. This bill is currently awaiting the Committee of the whole House stage, which is likely to occur in the next sitting block. It is too late to add amendments to this bill and doing so would run into scope issues.

C. Construction Contracts (Retention Money) Amendment Bill

20. The scope of this bill is to make changes to improve the retention money regime under the Construction Contracts Act (i.e. the regime that regulates how retentions are held on trust in order to protect subcontractors in cases where main contractors become insolvent). The current scope would need to be widened considerably to add in an RTA amendment as the bill is essentially insolvency law.

21. This bill is likely to go to the Economic Development, Science and Innovation Committee for select committee consideration, which would not be the best committee to consider an amendment to the RTA.

D. Building and Construction Sector Occupational Regulation Bill

22. The scope of this bill will be to make changes to a range of occupational regulation regimes in the building and construction sector, to enhance public confidence in the professions and what they do. s 9(2)(f)(iv) The scope would need to be widened to add in an RTA amendment.

23. s 9(2)(f)(iv)

24. The bill may be somewhat controversial, as it will include proposals to put in place a new two-tier occupational regulation regime for engineers, which has come off the back of the Canterbury Earthquakes Royal Commission.

The Statutes Amendment Bill (SAB) would not be an adequate vehicle to progress the proposal

25. SABs are omnibus bills designed to provide a legislative vehicle for short, technical, and non-controversial amendments to a range of Acts. If any Member of Parliament objects to a clause of the SAB during its consideration by the committee of the whole House, it will be struck out of the bill.

26. HUD proposes not pursuing this option. Including the RTA change in the SAB is likely to be controversial, could attract media and political risk, and there may be complications in the detail of the proposal. The proposal will require Cabinet approval. It is also possible that a Member of Parliament will object to the changes during the committee of the whole House stage.

Indicative timeline

27. An indicative timeline is attached at **Annex A**. The indicative timeline would see Cabinet Legislation Committee (LEG) considering the drafting in February 2022. The timeline from LEG onwards would depend on the legislative vehicle chosen and legislative priorities, but could take approximately 9 – 10 months. The Select Committee process could be shortened, depending on the number of submissions, as the proposal is likely to be small and reasonably straightforward.

Next steps

28. HUD will draft a ‘conversation starter’ document for stakeholder consultation for the proposal. Subject to your agreement to the indicative timeline, HUD will consult with government agencies on the ‘conversation starter’.

Annexes

Annex A: Indicative timeline

Annex A: Indicative timeline

Task	Indicative date	Comment
Develop draft conversation starter	26 March – 1 April	Easter 2 – 5 April.
Consult on draft conversation starter with government agencies	6 – 13 April	
Incorporate agency feedback	14 – 20 April	
Brief Ministers seeking agreement to engage with stakeholders	21 – 28 April	Opportunity to discuss at Ministers meeting.
Provide stakeholders with conversation starter and organise meetings with stakeholders	29 April	
Meetings with key stakeholders Email channel open for broader submissions and question form published on website	May	6 weeks is best practice for stakeholder consultation for this type of proposal. Stakeholders may also be involved in tax consultation occurring at the same time.
Submissions close	Mid-June	
Analyse stakeholder submissions	Mid-June – July	
Report back to Ministers on findings	Early August	
If Ministers decide to proceed with legislative change:		
Draft Cabinet paper and RIS	Mid-August to early September	Approximately 3 weeks.
Consult with government agencies on Cabinet paper	Mid-September	Approximately 1 week.
Provide draft Cabinet paper to Minister's office for Ministerial feedback Caucus and Ministerial Consultation	Late September – early October	Caucus and Ministerial consultation require 3 weeks.
Incorporate any changes after Ministerial consultation	Mid-October	Approximately 1 week.
Cabinet paper and RIS lodged	Mid-October	
SWC considers paper	Late October	Subject to SWC meeting dates.
Cabinet considers paper	Late October	Subject to Cabinet meeting dates.
PCO drafts legislation Consult with government agencies on draft regulations as drafted Draft LEG Paper Consult with government agencies on LEG paper	Early November – mid-December	PCO recommends 6 weeks for a short and straightforward amendment. This includes two weeks for Bill of Rights Act vetting. If the policy has any complexity to it, or there are any other complications, more time will be needed.
Provide draft LEG Paper and legislation to Minister's office Caucus and Ministerial consultation	Mid-late December – late January 2022	Holiday period. Caucus and Ministerial consultation require 3 weeks.
Incorporate any changes after consultation	Late January 2022	
LEG paper lodged	February 2022	
LEG considers paper	February 2022	
Timeline post-LEG will depend on legislative vehicle and legislative priorities		

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Proposal to limit rent increases to once every 12 months per property (instead of per tenancy) – updated approach			
Date:	30 June 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21040936

Action sought		
	Action sought	**Deadline**
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Agree** to either – a) stop work on the proposal while HUD monitors the impact of housing policy changes on the rental market, OR b) begin work on the proposal and **agree** to the proposed consultation process. **Agree** to forward this briefing to the Minister of Finance.	By 16 July 2021, so that we can begin drafting the brief discussion paper if you decide to begin work on the proposal now.
Hon Dr Megan Woods **Minister of Housing**	For noting.	

Contact for discussion				
Name	**Position**	**Telephone**		**1st contact**
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a)	✓
Georgia Bloor-Wilson	Policy Advisor, Tenures and Housing Quality	04 831 6062	-	

Other agencies consulted
The Ministry of Business, Innovation and Employment

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

_____

Comments

Date returned to HUD:

_____

Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Briefing

Proposal to limit rent increases to once every 12 months per property (instead of per tenancy) – updated approach

For:	Hon Poto Williams, Associate Minister of Housing (Public Housing)		
Date:	30 June 2021	**Security level:**	In Confidence
Priority:	Medium	**Report number:**	BRF20/21040936

Purpose

1. We seek your agreement to stop work on the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) while Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) monitors the impact of the recent housing policy changes on the rental market. Following the outcome of rental monitoring, the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) could be one of a range of options considered if intervention is deemed necessary.
2. If you prefer to begin work on the proposal now, we have provided an indicative timeline and a proposed stakeholder consultation process.

Recommended actions

3. It is recommended that you:

a) **Note** that the Residential Tenancies Act 1986 provides that:

i) rent must not be increased within 12 months after the date of the commencement of the tenancy; and

ii) rent must not be increased within 12 months after the date on which the last increase took effect. *Noted*

b) **Note** that in relation to the paper, *Backing First Home Buyers and Encouraging Property Investment into New Housing Supply,* Cabinet 'directed Ministry of Housing and Urban Development officials to consult on the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) and to report back to the Minister of Finance, Minister of Housing, and the Associate Minister of Housing (Public Housing) with their findings from that process' [CAB-21-MIN-0045 refers]. *Noted*

c) **Note** that previous advice from HUD raised concerns about the efficacy and workability of the proposal s 9(2)(g)(i) *Noted*

d) **Agree** to stop work on the proposal while HUD monitors the impact of the housing policy changes on the rental market. **[HUD preferred]** *Agree / Disagree*

If you prefer to progress work on the proposal now:

e) **Agree** to the proposed stakeholder consultation process. *Agree / Disagree*

f) **Note** we recommend you seek Cabinet approval before the release of the brief discussion paper. *Noted*

g) **Note** the indicative timeline. *Noted*

h) **Agree** to forward this briefing to the Minister of Finance. *Agree / Disagree*



Claire Leadbetter
Manager, Tenures and Housing Quality

30 / 06 / 2021

Hon Poto Williams
Associate Minister of Housing (Public Housing)

..... / ..... / .....

Background

Currently rent may only be increased once per 12 months per tenancy

4. The Residential Tenancies Act 1986 (RTA) provides that:
    a. rent must not be increased within 12 months after the date of the commencement of the tenancy; and
    b. rent must not be increased within 12 months after the date on which the last increase took effect for the tenancy.
5. Prior to the RTA changes in 2020, rent could be increased once every six months for a tenancy.

Ministers have directed HUD officials to undertake work following Government housing announcements in March

6. In March, the Government announced a package of responses to the housing crisis, designed to encourage investment in new housing, dampen investment in properties by multiple property owners, and assist first home buyers to purchase homes. The demand-side changes include the extension of the bright line test from five to ten years, and an in-principle decision to limit deductions for interest payments on loans for rental properties, phased in over four years.
7. In considering the housing package, Cabinet:
    a. 'directed HUD officials to consult on the proposal to limit rent increases to once every 12 months per property (instead of per tenancy) and to report back to the Minister of Finance, Minister of Housing, and the Associate Minister of Housing (Public Housing) with the findings from the process', and
    b. 'noted that Ministry of Housing and Urban Development officials will monitor market impacts and in particular rental markets closely and propose further measures to protect renters if necessary' [*Backing First Home Buyers and Encouraging Property Investment into New Housing Supply* Cab-21-MIN-0045 refers].

HUD has provided two rental market monitoring reports

8. We are currently focussed on monitoring the rental market in light of the announced tax policy changes and have provided monitoring reports to Housing Ministers in April [BRF20-21030908] and June [BRF20/21060989]. We are monitoring the impact of the tax policy changes in terms of rent increases, turnover of rental properties, and any changes to the total rental stock. As advised, there is currently insufficient data to differentiate a change in trend in the rental market from normal seasonal changes, though there continues to be evidence that people at the lower end of the rental market are experiencing rent pressures and unaffordability.

Minister Williams previously agreed to a consultation process for the proposal to limit rent increases to once every 12 months per property (instead of per tenancy)

9. On 28 April 2021, in relation to advice provided on 26 March 2021, Minister Williams agreed to a proposed stakeholder consultation process on the proposal to limit rent increases to once every 12 months per property, instead of per tenancy (the rent-by-property proposal) [BRF20/21030899 refers].
10. Due to the time elapsed since that advice was provided and HUD's focus on rental market monitoring and other priorities, the rent-by-property proposal has not been progressed.

We recommend stopping work on the rent-by-property proposal while HUD monitors the impact of housing policy changes

11. We understand the rent-by-property proposal is intended to reduce the impact of rent increases when tenancies change, because landlords typically increase rents by an average of around $50 per week when they re-tenant properties. Previous advice from HUD provided 8 March 2021 set out concerns about the efficacy and workability of the proposal because we consider it would have little (if any) impact on rent increases, there are likely to be unintended

consequences, and it would be difficult to enforce. In particular, the proposal could incentivise some landlords, who would otherwise charge their long-term tenants below market rent, to increase rents in line with the market so that if the tenancy was to end, the landlord would be able to charge the new tenants market rent.

12. s 9(2)(g)(i) We recommend that work on the proposal is stopped until we have more clarity about the impact of the tax policy changes on the rental market. If the monitoring suggests rents are rising unsustainably, Ministers could consider interventions to address the impact, which could include the rent-by-property proposal.

If you prefer to progress the rent-by-property proposal soon, here is an updated approach

Stakeholder consultation

13. HUD proposes that the stakeholder consultation process would involve officials meeting with key stakeholders (property investor organisations and tenant advocacy groups), and the publication of a questions form for submissions from the public via an email channel. A brief discussion paper would guide stakeholder engagement.

Seeking Cabinet agreement to release the brief discussion paper

14. If you choose to proceed at this time, once HUD has drafted the brief discussion paper, we recommend that you seek Cabinet agreement to release the paper due to the time that will have elapsed since Cabinet directed HUD to consult on the proposal. We can support you to do this with a Cabinet paper.

After consultation we would report back for next steps

15. We would report to the Minister of Finance, the Minister of Housing and the Associate Minister of Housing (Public Housing) on the outcome of the consultation process so that Ministers can decide whether to progress the proposal after consultation.

Indicative timeline

16. An updated indicative timeline is attached at **Annex A.** If a consultation process is undertaken and Ministers decide to progress the proposal after consultation, the updated timeline would mean the Cabinet Legislation Committee (LEG) would consider any draft legislation changes in late November 2022. The timeline from LEG onwards would depend on the legislative vehicle and legislative priorities and could take approximately nine to ten months.

Next steps

17. HUD will continue to provide rental market monitoring reports to you.

18. If you decide to progress the rent-by-property proposal now, HUD will draft a brief discussion paper, undertake consultation with government agencies, and provide the discussion paper to you by 16 August 2021 for feedback.

Annexes

19. Annex A: Updated indicative timeline.

Annex A: Updated indicative timeline

Task	Indicative date	Comment
Draft brief discussion paper and develop consultation plan	19 – 30 July 2021	10 working days
Consult on draft brief discussion paper and proposed consultation plan with government agencies	2 – 13 August 2021	10 working days
Incorporate agency feedback	16 – 20 August 2021	5 working days
Brief Minister seeking feedback on draft brief discussion paper	23 August – 3 September 2021	10 working days
Draft Cabinet paper (seeking agreement to consult on proposal) and incorporate feedback from Minister into draft brief discussion paper	6 – 17 September 2021	10 working days
Consult with agencies on draft Cabinet paper	20 – 24 September 2021	5 working days
Incorporate agency feedback on Cabinet paper	27 September – 1 October 2021	5 working days
Brief Minister seeking feedback on draft Cabinet paper	4 – 13 October 2021	8 working days
Incorporate feedback from Minister into Cabinet paper	14 – 18 October 2021	3 working days
Provide final Cabinet paper and brief discussion paper to Minister's office for lodgement	19 October 2021	Tuesday
Lodge Cabinet paper and discussion paper	21 October 2021	Thursday
Cabinet Social Wellbeing Committee (SWC) considers paper	27 October 2021	Wednesday
Cabinet considers paper	1 November 2021	Monday
Provide stakeholders with brief discussion paper and organise meetings with stakeholders	8 – 26 November 2021	15 working days
Meetings with key stakeholders and email channel open for broader submissions and question form published on website.	29 November 2021 – 18 February 2022	Due to holiday period, consultation needs to extend into February.

Submissions close	18 February 2022	12 weeks but includes December – January holiday period
Analyse stakeholder submissions and develop policy recommendations	21 February – 25 March 2022	25 working days
Report back to Ministers on findings and seek decisions as to whether to proceed with legislative change	28 March – 22 April 2022	18 working days
If Ministers decide to proceed with legislative change:		
Draft Cabinet paper seeking policy decisions and RIS	26 April – 20 May 2022	19 working days
Consult with government agencies on Cabinet paper	23 May – 3 June 2022	10 working days
Incorporate agency feedback	7 – 10 June 2022	4 working days
Provide draft Cabinet paper to Minister's office for Ministerial feedback	13 – 23 June 2022	9 working days
Incorporate feedback from Hon Williams into Cabinet paper	27 – 29 June 2022	3 working days
Caucus and Ministerial consultation	30 June – 20 July 2022	15 working days
Incorporate any changes after Ministerial consultation	21 – 25 July 2022	3 working days.
Provide final Cabinet paper to Minister's office for lodgement	26 July 2022	Tuesday
Cabinet paper and RIS lodged	28 July 2022	Thursday
SWC considers paper	Week of 1 August 2022	Subject to SWC meeting dates.
Cabinet considers paper	Week of 8 August 2022	Subject to Cabinet meeting dates.
HUD's legal team writes drafting instructions	15 – 19 August 2022	5 working days
PCO drafts bill Consultation with government agencies on draft bill Draft Cabinet Legislation (LEG) paper Consult with government agencies on LEG paper	22 August – 30 September 2022	30 working days. PCO recommends 6 weeks for a short and straightforward amendment. This includes two weeks for Bill of Rights Act vetting. If the policy has any complexity, or there

		are other complications, more time will be needed.
Provide draft LEG paper and bill to Minister's office for feedback	3 – 14 October 2022	10 working days.
Incorporate feedback from Minister into LEG paper	17 – 19 October 2022	3 working days.
Caucus and Ministerial consultation	20 October – 9 November 2022	14 working days
Incorporate any changes after consultation	10 – 14 November 2022	3 working days
Provide final LEG paper and drafting to Minister's office for lodgement	15 November 2022	Tuesday
LEG paper lodged	17 November 2022	Thursday
LEG considers paper and bill	Week of 21 November 2022	Subject to LEG meeting dates.
Timeline post-LEG will depend on legislative vehicle and legislative priorities		

Briefing

Proposals for amending the rent-setting provisions in the Residential Tenancies Act 1986			
Date:	1 March 2022	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF21/22021232

Action sought

	Action sought	Deadline
Hon Poto Williams **Associate Minister of Housing (Public Housing)**	**Note** officials are available to discuss this briefing with you on 3 March. **Discuss** with Ministerial colleagues as required.	10 March 2022, depending on the pace you want to progress next steps
Hon Dr Megan Woods **Minister of Housing**	**Note** for your information	

Contact for discussion

Name	Position	Telephone		1st contact
Claire Leadbetter	Manager, Policy and Legislation Design	04 832 2431	s 9(2)(a)	✓
Katherine Slaney	Principal Policy Advisor	04 830 6912		
Georgia Bloor-Wilson	Policy Advisor	04 831 6062		

Other agencies consulted

Ministry of Business, Innovation and Employment, the Treasury, Department of Prime Minister and Cabinet, Ministry of Social Development, Ministry of Justice, and the Principal Tenancy Adjudicator/Deputy Principal Adjudicator.

Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

Comments

Date returned to HUD:

Briefing

Proposals for amending the rent-setting provisions in the Residential Tenancies Act 1986

For:	Hon Poto Williams, Associate Minister of Housing (Public Housing)		
Date:	1 March 2022	**Security level:**	In Confidence
Priority:	High	**Report number:**	BRF21/22021232

Purpose

1. To respond to your request for further advice on three proposals to amend the rent-setting provisions in the Residential Tenancies Act 1986 (RTA).
2. We will provide separate advice with information and data on Tenancy Tribunal applications generally (IREQ21/22021257).

Executive summary

Key points:

- This briefing responds to your request for further advice on three proposals to amend the Residential Tenancies Act 1986 (RTA) to address rent increases, discussed at a high level with you on 16 February (IREQ21/22021246 refers).
- Of the three options, we consider proposal 1, rebalancing the market rent provisions in the RTA, has the most potential to moderate rent for some tenants. The proposal would do this by prescribing a narrower criterion for rent increases above market rent, incentivising landlords to make less substantial rent increases, and 'nudging' some tenants to seek rent reduction applications (who otherwise wouldn't).
- However, the effect of the proposal is largely dependent on tenants taking rent reduction applications to the Tenancy Tribunal. It is apparent that tenants are not making use of existing protections in the RTA, due to current power imbalances, the tight rental market, and the risk of jeopardising future landlord relationships. Therefore, we would want to be sure that the benefits of making further minor rent setting amendments to the RTA would be justified weighed against the time, cost and resources of doing so, and the potential impact of further regulatory change on the tenancy sector.
- All of the assessed proposals would require primary legislative changes, which would usually take at least 12 to 18 months. A more truncated legislative timeline could be considered but we do not consider that there is a strong justification for urgency and particularly due to the limited effectiveness of the proposed changes. Any legislative change process would need to build in a stakeholder engagement component, as the industry would provide useful insights into practical issues, and can help refine policy to be more effective.

s 9(2)(g)(i)

Recommended actions

It is recommended that you:

1. **Note** that should you wish to progress any of the proposals outlined in this briefing, we would need to undertake further work on the detail of the policy. *Noted*

2. **Note** officials are available to discuss this briefing with you at your meeting on 3 March. *Noted*

3. **Indicate** whether you would like officials to progress work on proposal 1. *Agree / Disagree*

4. **Discuss** with your Ministerial colleagues as appropriate. *Agree / Disagree*

C. D. Leadbetter

Claire Leadbetter
Manager, Policy & Legislation Design
1 / 3 / 22

Hon Poto Williams
Associate Minister of Housing (Public Housing)
..... / ..... / .....

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Background

Recent request for advice on possible interventions to address rising rent increases

3. On 16 February officials from Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) discussed high level proposals to make rents more affordable. That advice noted that increasing the overall supply of new build housing (including public housing) in the right places will have the greatest impact on affordability (IREQ21/22021246 refers).

3. You have asked for further advice on the following three proposals to amend the Residential Tenancies Act 1986 (RTA) to address rent increases:

    a. Rebalancing the market rent provisions

    b. Requiring tenancy agreements to include rent review clauses and

    c. Requiring disclosure of previous rent paid to new tenants.

4. At this point in time, we have not identified any other regulatory options which would immediately address rental affordability.

Proposals will require further 'road testing'

Effectiveness of proposals is limited and would not be a 'quick fix'

5. The proposals assessed in this briefing would not be a quick fix, because they require amendments to the RTA, which would take time to develop, pass and implement, and then only apply to tenancies going forward. Even if enacted, proposal 1 would likely only have a limited impact on rent levels.

6. To varying degrees the proposals may empower tenants with more tools or information to affect or negotiate on rent increases, in order to moderate rent increases. However, it is apparent that tenants are not making use of existing protections in the RTA, due to current power imbalances, the tight rental market, and the risk of jeopardising future landlord relationships. Therefore, we would want to be sure that the benefits of making further minor rent setting amendments to the RTA would be justified weighed against the time, cost and resources of doing so, and the potential impact of further regulatory change on the tenancy sector.

Further work needed in respect of public housing

7. Our initial view is that the proposals would not apply to public housing, but this would require further consideration. Even though the RTA applies to public housing tenants, they have their rent set under the Public and Community Housing Management Act 1992 (PACHMA), according to their income circumstances. Public housing tenants generally pay an Income Related Rent (IRR), set at 25 percent of their income. A small proportion of tenants in social housing, due to their situation, pay market rent.

8. To the extent that public housing rents already have a separate regulatory regime for setting and monitoring market rents for social housing tenants, we would need to assess the impact of and interaction with the proposals on the current PACHMA regime.

Current RTA rent setting provisions

RTA permits landlords to increase rents once per year

9. Beyond limiting rents to market rent for a like property, the RTA does not limit how much landlords can increase rent by, only the process by which rent increases may be effected, and what tenants can do if they disagree with the new rent amount.

10. Rent increase provisions are set out in section 24 of the RTA. Rent increases are limited to once every 12 months for both fixed-term and periodic tenancies. For fixed-term tenancies, landlords can only increase rent if permitted by the tenancy agreement.

11. A landlord must give their tenant at least 60 days' written notice and boarding house landlords must give their tenant at least 28 days' written notice of a rent increase.

Parties can agree to a rent increase at any time if certain conditions apply

12. Under section 28, a landlord and tenant can also agree to an increase in rent even if it is not 12 months since the last increase if the landlord has (with the consent of the tenant):
    a. substantially improved the property, which increases its value and benefits the tenant (not being general or necessary repairs) or
    b. improved facilities or services for the tenant (not being general or necessary repairs) or
    c. changed the tenancy agreement to benefit the tenant (for example allowed pets).

Tenants can challenge rent on the basis it is 'substantially' above market rent

13. Section 25 of the RTA provides that, on an application of the tenant, the Tribunal may, if the rent 'exceeds the market rent by a substantial amount, make an order reducing the rent to an amount … in line with the market rent'.
14. 'Market rent' is defined in section 25(3) as 'the rent that, without regard to the personal circumstances of the landlord or the tenant, a willing landlord might reasonably expect to receive and a willing tenant might reasonably expect to pay … taking into consideration the general level of rents for comparable tenancies of comparable premises in the area (or a similar area)'.
15. Tenants of fixed-term tenancies must apply within a three-month period following the last rent increase or the beginning of the tenancy, whichever is later (section 25(2)). Tenants of periodic tenancies do not have a time limit for making an application.

Proposal 1: Rebalancing the market rent provisions in the RTA

What is the potential problem?

The market rent provisions of the RTA are not acting as a sufficient check on how much landlords can set or increase rent

16. It is important that tenants have an effective way of ensuring the rents they are being charged are fair. The market rent provisions act as a signal to landlords about what is an acceptable amount of rent to charge for their properties (i.e. the current signal is that rent should not exceed market rent by a substantial amount). But very few tenants seek rent reductions under the market rent provisions and only a fraction of these are successful. From January 2020 to January 2022 there were 54 published Tenancy Tribunal decisions under section 25.[1] Of these,
    a. 15 tenants (approx. 28 percent) were successful in their applications for rent reductions under section 25 and
    b. 12 of the 39 unsuccessful tenants had their claims dismissed because they did not apply within the necessary timeframe under section 25(2).
17. We understand there is a lack of awareness among tenants about the market rent provisions and what evidence is required, and as a result in many cases that go to the Tenancy Tribunal, little or insufficient evidence is presented by tenants to support their case. This is despite increasing and clarifying the information on the Tenancy Services website during the 2020 RTA reform.

[1] Note that there are a much higher number of applications which relate to market rent, but many are resolved at mediation or withdrawn prior to being heard.

18. On the other hand, landlords and property managers are generally well prepared in cases disputing market rent, and usually present relevant evidence. In market rent claims, evidence can take many forms, such as valuations, Tenancy Services rent data, TradeMe advertisements, or photos and descriptions of similar rental properties for comparison purposes. s 9(2)(f)(iv) [redacted]

There are varying interpretations for 'substantial amount' and 'market rent'

19. There is no statutory definition for 'substantial amount' (in terms of determining whether rent 'exceeds the market rent by a substantial amount') and there are a range of ways the Tenancy Tribunal interprets and applies this term. s 9(2)(ba)(i) [redacted]

20. Some adjudicators have suggested a 'rule of thumb' of 10 percent over market rent (for 'exceeds the market rent by a substantial amount'), while others have pointed out that such a specific percentage has no legal status and is not appropriate 'where rents rise at a rate significantly above income inflation'. Regardless, very few tenants are successful in their application for a rent reduction, as the Tenancy Tribunal generally rules that tenants have not established their rent is substantially above market rent.

Tenants in fixed term tenancies are time restricted and the Tenancy Tribunal cannot backdate rent reductions to the date the rent increase took effect

21. Tenants in fixed term tenancies are restricted to making an application for a rent reduction within a three-month time period. This short time period presents a barrier for tenants to effectively use the market rent provisions and is inconsistent with provisions for tenants in periodic tenancies, who have no time limit to make an application.

22. Section 25(4) limits the date on which a rent reduction order can take effect to the date of the application for the order or no later than 30 days after the date of the order. This means the Tribunal cannot backdate a rent reduction to the date on which a rent increase took effect, if a tenant does not successfully challenge the increase prior to the increase date.

Design of proposal 1 - rebalancing the market rent provisions in the RTA

23. Under proposal 1, the market rent provision could be rebalanced by the following amendments:

    a. replacing 'substantial amount' with 'more than minor amount', meaning a tenant would only have to show their rent exceeds the market rent by a 'more than minor amount' to obtain an order reducing the rent to an amount in line with the market rent

    b. reversing the burden of proof, meaning upon an application by the tenant, the landlord would need to prove that the rent *does not* exceed market rent by a more than minor amount (rather than the tenant having to prove the rent *does* exceed market rent by a more than minor amount)

    c. removing the three-month time limit for making an application for fixed term tenancies (or permitting market rent reduction applications to be made within a six-month time period for both periodic and fixed term tenancies) and

    d. allowing rent reduction orders to be backdated to the date at which the rent increase took effect.

Analysis

Replacing 'substantial' with 'more than minor' requirement may have a marginal effect on moderating rents

24. The proposal may have some effect on moderating rents by sending a signal to landlords about not setting rents at a level which is above market rent by a 'more than minor' amount. However, it is uncertain whether the Tribunal would consider 'a more than minor amount' to be much less than 'a substantial' amount in order for tenants to be successful in rent reduction claims. Properties vary widely in New Zealand so it is not always possible to accurately assess 'like with like' for the purposes of comparing rents of different rental properties.

25. Of the market rent applications referred to above, only three out of the 39 applications which failed did so because the Tribunal did not consider the rent *substantially* exceeded market rent, even though the Tribunal considered the rent to be above market rent. So the rent increases in these applications may have met the narrower criterion of 'more than minor'. But it was not clear from the other Tribunal decisions what the market rent was – so it was not possible to determine whether the rent in question was at or marginally above market rent. Therefore, it is difficult to estimate what the increased proportion of successful applications might be.

s 9(2)(h)

s 9(2)(g)(i)

28. s 9(2)(h)

Amendments to time limits and backdating claims would increase tenants' access to justice

29. Removing the three-month time limit for making an application for fixed term tenancies and allowing rent reduction orders to be backdated would correct an anomaly, remove a procedural barrier, and potentially allow for larger sums of rent relief. Accordingly, these changes could increase tenants' access to justice. If removing the three-month time period for making an application regarding a rent increase for a fixed term tenancy is considered too open-ended, providing a six-month time period for making a market rent application could be considered for both periodic and fixed term tenancies.

30. If increased backdating of rent reductions is proposed, further work would be required to develop an approach that is workable and fair for both parties (e.g. ensuring landlords are not exposed to excessive liability for rent charged and to address practical questions such as how market rent should be determined for various time periods in the past).

Proposal 2: Require tenancy agreements to include rent review clauses

What is the potential problem?

31. There is no requirement in the RTA for tenancy agreements to include rent review clauses. This means that, once a year, landlords can give tenants 60 days' notice of a rent increase with no requirement for how the increase has been calculated. This means the tenant has no transparency over or input into the way rent increases are determined.

32. Rent review clauses negotiated by tenants and landlords at the start of a tenancy to determine how rent increases will be calculated in the future. For example, a landlord and tenant could agree the rent will not be increased more than CPI annually. By comparison, commercial leases generally include standard rent review clauses and are very prescriptive.

Design of proposal 2 – require tenancy agreements to include rent review clauses

33. Under proposal 2, rent review clauses could be required to be included in tenancy agreements which prescribe either:

    a. the measure by which a rent will be increased as agreed by the landlord and tenant, such as in accordance with CPI, market rent, or a percentage figure (e.g. five percent), or

    b. a list of factors or landlord costs that will be taken into account when setting a rent increase, for example increased insurance and maintenance costs, rates, or market rent.

34. Under both options the current market rent provisions in section 25 would need to be amended or removed, in order to align with the rent review provision. The Tenancy Tribunal would need to be empowered with the ability to adjudicate on rent review applications, and make orders for rent reduction, as appropriate.

35. Both options rely on the landlord and tenant agreeing on the particular rent increase formula.

36. The first option (a) is more prescriptive and gives greater certainty to tenants. However, landlords and tenants could still agree to a permissive rent increase range, for example that rents must not be increased 'by more than 10 percent' annually.

37. The second option (b) offers more flexibility for landlords and gives them greater leeway to cover their (increased) costs.

Analysis

Rent review clauses could provide tenants with more certainty and transparency about future rent increases, but will not meaningfully moderate rents

38. Requiring tenancy agreements to include rent review clauses would provide tenants with more certainty and transparency about future rent increases, giving tenants a better understanding of how their housing costs might change, and enabling them to better plan for these costs. Rent review clauses could also support good faith tenancy relationships as tenants are less likely to be surprised by any rent increases made by their landlord.

39. However, in the current tight rental market, tenants would have limited ability to negotiate for favourable rent review clauses when signing a new tenancy agreement and would be compelled to accept rent review tenancy clauses which are favourable to landlords. Such clauses could provide certainty but not moderate rent increases.

40. Furthermore, since rent review clauses do not determine the initial rent setting, rent review clauses will only substantially impact the rents of longer-term tenants who experience rent increases throughout their tenancy. Where long-term tenants have an established and positive relationship with their landlord, they tend to already benefit from below-market rent, as a quid

pro quo for being trusted tenants. Rent review clauses therefore do not target the pressure points for rent increases (new tenancies) and are therefore unlikely to improve affordability.

41. Lastly, the unintended consequences of requiring rent review clause with rent-rise formulas might be that landlords are prompted to:

    a. start tenancies at a higher rent than they otherwise would have (to factor in the risk of being constrained by the rent review clause to increase the rent in the future) and

    b. lock in regular rent increases where they otherwise may not have.

Rent review clauses may make tenancy agreements more complicated to understand and enforce

42. Tenancy agreements are already required to include a detailed list of items. Requiring a further detailed item to be included in tenancy agreements would increase complexity for both parties and compliance costs for landlords. In general the aim is to keep tenancy agreements as simple as possible to encourage landlords and tenants to have an agreement. The more complicated the tenancy agreement, the more parties will be incentivised to operate outside the law.

43. It would be important for renters to understand and agree to rent review terms prior to signing a tenancy agreement, but they are less likely to read and negotiate on a long and complex tenancy agreement, especially in a competitive market. Most tenants will not have the time or means to obtain appropriate legal or tenancy advice prior to agreeing to rent review terms (unlike parties to commercial leases, who commonly do).

44. The proposal would be difficult for the regulator to enforce, as they do not have oversight of tenancy agreements. Tenants would need to apply to the Tenancy Tribunal to enforce the inclusion of a rent review clause in a tenancy agreement or to challenge the way a rent increase complies with their rent review clause. This would be time-consuming, costly and complicated for tenants with no guarantee of success.

Proposal 3 - Require disclosure of previous rent

What is the potential problem?

45. Tenants of new properties have no oversight over how much the rental property was previously rented for. The new 'sticker' price for rentals is typically significantly higher than the previous rent (approximately $50 per week) than for existing tenancies. Arguably, this puts tenants at a disadvantage when trying to negotiate rent for a new tenancy.

Design of proposal 3 – require disclosure of previous rent

46. Under proposal 3, landlords would be required to disclose the most recent rent of a property for which a new tenancy is offered to a prospective tenant. The disclosure requirement would only apply to the most recent rent within a specified time period (for example 12 months prior to the new tenancy), to allow for the scenario that a property was not rented under the RTA immediately before the new tenancy.

Analysis

Requiring landlords to disclose previous rent paid to new tenants would not moderate rents

47. Requiring landlords to disclose the rent paid by previous tenants to new tenants would improve transparency and potentially support rent negotiation in markets where there is supply choice.

48. However, this proposal is unlikely to make rents more affordable in the current tight rental market, because tenants would not be able to use this information to successfully negotiate the same level of rent as that previously paid. As rents are not captured on a central register or database, this proposal would be difficult for the regulator and tenants to enforce. It would rely on landlords accurately conveying rent information to tenants, who may not have access to corroborating evidence.

49. The previous rent may also not be a good guide to the current market rent. The practice of significantly increasing rents for new tenancies often reflects 'catch up', because many landlords do not tend to systematically increase the rent of existing tenancies to keep up with market rent, meaning that when a tenancy ends, the rent paid may be well below market rent. Keeping a rent static or only increasing it minimally over a long period is designed to retain long-term trusted tenants with whom the landlord has a good relationship. When a rental property is re-tenanted, landlords may want to increase rent to reflect market rate, and factor in the increased risk of not knowing whether the new tenants will be as reliable as the previous ones.

Assessment of comparative effectiveness of proposals

Proposal 1 (rebalancing the market rent provisions) has the most potential to moderate rent increases (compared to proposals 2 and 3)...

50. Proposal 1 has the potential to moderate the rate of rent increases for some tenants as it would prescribe a narrower criterion for rent increases, incentivise landlords to make less substantial rent increases to avoid having to defend Tribunal applications, and may 'nudge' some tenants to take market rent applications (who otherwise wouldn't). We would expect the sector to develop guidelines about setting and increasing rent in accordance with the amended criteria. However, these effects would only accrue slowly over time, and would not have a marked impact on rental affordability. We also note that this proposal would not make rent affordable for the many tenants for whom even paying market rent is a struggle.

51. Proposal 2 (requiring tenancy agreements to include rent review clauses) has less potential to moderate the rate of rent increases than proposal 1. Due to the imbalance of power between parties, tenants are unlikely to have meaningful input into any rent increase criteria in a tenancy agreement. It would be difficult to design provisions which make it simple for parties to include easy-to-understand rent review clauses, and the proposal is likely to add time and complexity to Tenancy Tribunal hearings.

52. We do not consider that proposal 3 (requiring landlords to disclose the previous rent of a property to prospective tenants) would be effective in moderating rents, because of the imbalance of power between tenants and landlords in the current tight rental market.

...and all proposals rely on tenants taking cases to the Tenancy Tribunal

53. The proposals rely on tenants applying to the Tenancy Tribunal to enforce their rights. Although some tenants may be willing and have the capability to take a case to the Tribunal, many tenants may be reluctant to do so, due to a fear of damaging their relationship with their landlord, the time and effort required, a concern to retain their rental, or a lack of awareness of their rights.

54. As referred above, tenants are already hesitant to enforce their rights through the current RTA provisions, due to the tight rental market.

Legislative process

Timeline

55. Amending legislation is time consuming and resource intensive. The standard time frame for making legislation changes of a reasonably simple nature is usually around 18 months – to undertake a thorough policy development process across government, assess proposals, impacts and unintended consequences, consult with stakeholders, obtain Cabinet decisions, draft a Bill, allow for select committee consideration and House time. The stakeholder engagement component of any RTA change is critical as the tenancy industry will provide insights into practical issues and can help refine policy to be more effective.

56. s 9(2)(g)(i)

s 9(2)(g)(i) [redacted]

57. If you would like to progress a legislative proposal, an indicative timeline can be provided once the policy options have been further refined.

Legislative vehicle

58. Should you wish to progress one of the above proposals to amend the RTA, a legislative vehicle will be required. We can provide advice on the process by which the RTA amendments could be included in an omnibus bill (if a potentially suitable bill could be identified) or the amendments could be made through a standalone RTA amendment Bill.

Risks

59. s 9(2)(g)(i) [redacted]

60. s 9(2)(g)(i) [redacted]

61. s 9(2)(g)(i) [redacted]

Consultation

62. The Ministry of Business, Innovation and Employment, the Treasury, Department of Prime Minister and Cabinet, Ministry of Social Development, Ministry of Justice, and Kāinga Ora were consulted.

63. We also discussed issues with the current market rent proposals with the Principal and Deputy Principal Tenancy Tribunal adjudicators.

Next steps

64. Should you wish to progress any of the proposals discussed in this briefing, we would need to undertake further work on the detail of the policy.

65. Officials are available to meet with you to discuss this briefing on 3 March.