

In Confidence

Office of the Associate Minister of Housing (Public Housing)

Chair, Cabinet Social Wellbeing Committee

## **REFORM OF THE RESIDENTIAL TENANCIES ACT 1986 – IMPROVING FAIRNESS IN THE ACT**

### **Proposal**

1. This paper seeks agreement to changes to the Residential Tenancies Act 1986 (RTA) that will modernise and improve the RTA, improve tenants' security in their homes and give clarity to landlords, while protecting their interests. The paper also seeks agreement to update the RTA's enforcement framework, including updating penalties which have not been updated since 2006. These proposals provide the foundation for the Government's reform of the RTA for the estimated 604,100 households<sup>1</sup> in a rental property in New Zealand.

### **Executive Summary**

2. I propose a range of changes in this paper that seek to modernise the RTA and align it with the present day realities of renting in New Zealand. The RTA was adopted in 1986 when 75 percent of New Zealanders lived in owner-occupied dwellings and renting was understood as a predominantly short-term arrangement for people without children, with renters moving frequently rather than setting down roots in their communities.
3. Homeownership is now at a 60 year low and nearly a third of all households (604,100), including an estimated 43 percent of all children, now live in a rented property. In this context, reform and modernisation of the RTA is essential to align it with the government's priorities of improving the wellbeing of New Zealanders and their families by supporting healthier, safer and more connected communities, ensuring everyone has a warm dry home, and making New Zealand the best place in the world to be a child.
4. My proposed changes follow public consultation on the reform of the RTA and consideration of the 4,787 viewpoints received. This paper provides the foundation for the reform by outlining my recommendations to give people greater security and stability in their homes, while giving landlords more modern and clear guidance and protecting their interests. I am also recommending an updated enforcement framework to make it fit for purpose. The shifts I propose in this paper will:
  - 4.1. Achieve greater security for tenants who are meeting their obligations and better realise the intent of the law.

1 Statistics New Zealand's Dwelling and household estimates for June 2019 quarter, based on the 2013 census.





imposes a reasonable burden on landlords and will endure changing market characteristics.

10. As a result of feedback received through consultation, I am proposing new initiatives to mitigate some of the problems that landlords may experience as a result of tenants having improved security of tenure. These include additional grounds to end a periodic tenancy for legitimate business reasons and new systems to respond to lower level antisocial behaviour and rent arrears breaches that may arise throughout the tenancy.
11. However, I am mindful that despite best efforts to mitigate problems for landlords, impacts will remain. When we extend tenants greater rights over the tenancy and increase the incentives for landlords to comply with the law, there is an increased risk for landlords to some extent. While I consider that these impacts are justified to improve the wellbeing of an increasing number of tenants in the private rental market, I understand that some landlords will perceive these changes to be an imposition and may choose to leave the market, reconsider their rental pricing or choose tenants more carefully at the beginning of a tenancy. Should this lead to a reduction in rental supply, for example due to tenanted properties being converted into short-stay accommodation, it may become more difficult for tenants to find a property at a given price.
12. While it is important that these risks are front-of-mind, they need to be considered against the wider benefits of these proposals as elaborated on in this paper. They should also be considered in the context of other factors that offset them such as lower interest rates and the increased supply of housing that will be generated through the Government's build programme.
13. There will also be establishment and ongoing costs for the Regulator resulting from the need to raise awareness of the changes amongst tenants, landlords and property managers and for the Regulator to update system and operational policies to enable the use of the new enforcement tools I propose. s 9(2)(f)(iv) The proposals in this paper will not result in any direct costs for the tenants and landlords who are compliant with the law. However, indirect costs are likely to arise from landlords and property managers upskilling on the new requirements and changing their business models accordingly.
14. Subject to Cabinet's agreement, I propose that recommendations contained in this paper are drafted into a Bill to be introduced to Parliament by March 2020. This reform has a s 9(2)(f)(iv) allocation on the 2019 Legislation programme. This Bill would also give effect to the decisions I will seek at a later meeting of the Cabinet Social Wellbeing Committee, including new processes and obligations around tenants keeping pets in rental properties and adding minor fittings to the property and how rent is set and when it can be increased.

## Background

15. New Zealand is suffering a housing crisis and we have committed to addressing the problem on several fronts. As well as a range of initiatives to improve the supply of housing, the Government has aspired through its plan for *a Modern New Zealand we can all be proud of* ensure that every New Zealander has a safe, warm and dry home to call their own, even if they are renting [CPC-18-MIN-0001 refers]. Included in this plan were specific commitments to remove letting fees, to strengthen the rights of renters, and to ensure landlords provide adequate insulation, heating and ventilation through the Healthy Homes Guarantee.
16. We have made significant progress on a number of these fronts. Following the passage of the Residential Tenancies (Prohibiting Letting Fees) Amendment Act 2018 it has been illegal to charge letting fees to tenants. Furthermore, standards under the Healthy Homes Guarantee Act 2017 were Gazetted on 13 May 2019, bringing into force staged obligations for rental properties to comply between 2021 and 2024.
17. The remaining component of our Plan encompasses a general strengthening of tenant's rights which we have committed to in the context of a rental market undergoing significant change. Homeownership in New Zealand is at a 60 year low and nearly a third of all households (604,100), including an estimated 43 percent of all children, now live in a rented property. Despite this, our laws around renters' rights do not appear to have kept up. They still appear to be designed around the assumption that renting is a predominantly short-term arrangement for people without children, and renters will move frequently rather than set down roots in their community.
18. In this context the Government agreed to initiate a reform of the RTA in July 2018 [SWC-18-Min-0080] focusing on:
  - 18.1. Improving the security and stability of tenure for tenants while maintaining adequate protection of landlords' interests.
  - 18.2. Ensuring the law appropriately balances the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home.
  - 18.3. Modernising the law so it can appropriately respond to changing trends in the rental market.
  - 18.4. Improving the quality standards of boarding houses and the accountability of boarding house landlords.
19. While all aspects of the reform are important, improving security of tenure for the tenants that are meeting their obligations is the primary objective for the work. In doing so I am mindful of the problems that transience can cause and the disproportionate impacts it

can have on low income households as well as the chilling effect that insecure tenure can have on tenant's willingness to exercise their legal rights. The key proposals officials consulted on in this regard included:

- 19.1.** removing the ability for landlords to end periodic tenancies unilaterally, for any reason, and without a requirement to tell the tenant why (often referred to as a no cause termination) and replacing this with just causes for termination
  - 19.2.** lengthening notice periods that apply when a tenancy ends
  - 19.3.** considering whether the types of agreements that parties may enter into remain fit for purpose.
- 20.** Other matters consulted on included:
- 20.1.** how rent is set and when it may be increased
  - 20.2.** whether new processes and rights are warranted around adding minor fittings to rental properties or the keeping of pets
  - 20.3.** the general responsibilities and obligations that parties have
  - 20.4.** the enforcement tools and penalties available
  - 20.5.** whether further controls for boarding houses are needed.
- 21.** Public consultation on the reform ran for seven weeks from 27 August to 24 October 2018 and was supported by stakeholder workshops in Auckland, Tauranga, Wellington and Christchurch. Significant interest was received in the consultation with 4,787 viewpoints received. Fifty percent of these submitters identified as representing landlords, forty-one percent as tenants, six percent as property managers and the remaining three percent comprised social housing providers or other interest groups.
- 22.** This paper is the first of several. It seeks agreement to my proposals for the reform and presents options to improve security of tenure and the RTA's enforcement framework, which provide the foundation for the reform. My next papers will include proposals to improve wellbeing throughout a tenancy. The success of these proposals will depend on tenants feeling secure enough to take advantage of those proposals and landlords facing sufficient incentives to comply with their obligations.
- 23.** Noting the size and complexity of the reform, I have instructed my officials to focus on the aspects concerning the general rental market first so that progress can be made on this. This has required the aspects of the reform concerning boarding houses to be decoupled and progressed separately.

## Issue One - Improving security of tenure for tenants

### ***Background information on security of tenure in the regulatory system, the issues and my plan to improve security of tenure***

*The two types of tenancy agreements have different rules for how the tenancy ends*

- 24.** The RTA provides for two types of tenancy agreements:
- 24.1.** A periodic agreement has no set end date. Rather, it operates until either the tenant or landlord give notice that the tenancy will end. Neither party is currently required to provide the other with a justification for this, but landlords can issue shorter notice for one of the specified reasons.
  - 24.2.** A fixed-term agreement runs for the period specified in the agreement. Currently, at the end of the fixed term:
    - 24.2.1. the tenancy will end if either the landlord or tenant has given notice between 90 and 21 days before the end of the term to say they do not want a periodic tenancy
    - 24.2.2. the tenancy will automatically roll over to a periodic agreement (following an amendment to the RTA in 2010), or
    - 24.2.3. the parties can agree to renew or extend the tenancy for a further fixed term.
- 25.** Fixed-term agreements are understood to be the most common offering in the New Zealand market. These are generally for a term of 12 months. However, as tenancy agreements are a contract between two parties and not lodged centrally with agencies, we have limited insights on the composition of the market.
- 26.** While fixed-term agreements provide security throughout the tenancy, problems can arise at their conclusion when tenants can receive as little as 21 days' notice that the agreement will not be renewed. In some markets including Wellington, problems then arise when a large portion of the region's fixed-term agreements all expire around the same time of the year, inflating demand for available properties.

*The Wellbeing Statistics 2018 indicate that people who live in rental properties move more frequently than those in owner-occupied properties*

- 27.** The 2018 General Social Survey asked approximately 8,000 people about housing quality and tenure. It indicates that people in rental properties are moving frequently, and that landlords ending a tenancy is a common reason for moving:<sup>2</sup>
- 27.1.** Thirty percent of those renting at the time of the survey had lived in the residence for less than one year, compared to eight percent of owner-occupied properties.

<sup>2</sup> Statistics New Zealand *The General Social Survey, Wellbeing Statistics: 2018*. Thirty-four percent of respondents were renting at the time of the survey, which reflects general population trends.

Forty-seven percent of respondents in owner-occupied properties had lived there for 10 years or more, compared to thirteen percent of those renting.

- 27.2.** Of those respondents who had moved in the last five years, 47 percent of all respondents had moved once, 43 percent had moved between two and four times, and 10 percent had moved five or more times.
- 27.3.** For those renting at the time of the survey, the most common reason for moving was that the tenancy was ended by landlords – 25 percent. The Survey does not indicate on what grounds the tenancies were ended by the landlords.
- 27.4.** In addition, eight percent of the population moved for other reasons, which included “had a poor relationship with landlord”.

#### *Insecure tenure undermines tenants’ wellbeing*

- 28.** In the context of the rental market, “security of tenure” relates to the rights tenants have to determine how long they stay in the property. When tenure is insecure, tenants may be displaced due to a competing demand for the property they reside in. Displacement is linked with negative impacts on health, education, and employment outcomes. International evidence links a lack of secure sustainable housing with low academic performance and negative health outcomes for young children.<sup>3</sup> Domestically, housing has featured strongly as a social determinant of mental health recognised in the Inquiry into Mental Health and Addiction. Cabinet has agreed that improving access to affordable housing is one of the key priority areas of short-term work in response to the Welfare Expert Advisory Group [CAB-19-MIN-0170 refers]. Insecure tenure has a disproportionate impact for Māori as they are over represented in homelessness and housing stress statistics.
- 29.** Recognising similar problems in their own territories, several jurisdictions have legislated to provide tenants in their private rental markets with improved security of tenure including Ireland which passed changes in 2004, Scotland in 2016, and the State of Victoria, Australia in 2019. The English government and other Australian states have also recently commenced their own reforms of tenancy law with similar objectives.

#### *The proposals aim to improve the security of tenure for tenants, while balancing the rights of landlords*

- 30.** I am committed to improving the security of tenure that tenants have. However, I am mindful that in a closed system like the rental market it is not possible to extend rights to one party without impacting on the rights of the other. This means that improving tenant’s security of tenure means a reduction to some extent in the autonomy that landlords have over their asset and an increase in the risk to their business. If not managed carefully, improving security of tenure could potentially affect landlords’ willingness to rent, and the amount of rent charged.

3 G. Thomas Kingsley, Audrey Jordan, and William Traynor. 2012. “Addressing Residential Instability: Options for Cities and Community Initiatives,” *Cityscape* 14:3, 168.

- 31.** With these issues considered, I have sought ways to make these changes with the least impact for landlords. The package I propose does not progress some of the more interventionist measures canvassed in the discussion document such reconfiguring the market around a single type of tenancy agreement. Rather, it makes a range of discrete changes designed to lift behaviours in the market to a level that many landlords are already providing to their tenants. My proposals will:
- 31.1.** Retain the ability for parties to negotiate an agreement best suited to their circumstances, but provide tenants with more negotiating power to improve the choice and control they have over their tenancy when meeting their obligations under the RTA.
  - 31.2.** Set out the reasons a landlord can terminate a tenancy for and provide tenants with greater transparency.
  - 31.3.** Promote self-resolution while providing greater incentives to comply with the RTA and improving the ability of tenants to exercise their rights.
  - 31.4.** Extend the current periods of notice for tenants and landlords when a tenancy is terminated for reasons unrelated to conduct.

### ***Termination Provisions***

- 32.** The RTA currently enables a landlord to end a periodic tenancy without the involvement of the Tribunal for any one of seven specific situations (see Table 1 below). However, one of these situations is “in any other case”. The practical effect is that landlords can end a periodic tenancy unilaterally for any reason and without a requirement to advise the tenant why (a no cause termination).

### ***What the problem is***

- 33.** Ensuring tenancies can be terminated for legitimate reasons and in a timely manner is important for ensuring that landlords are able to effectively manage their business and are incentivised to provide private residential rental accommodation. However, the landlord’s ability to issue a no cause termination notice may be having a negative impact on security of tenure and the relationship between tenants and landlords as:
- 33.1.** Tenants face uncertainty over the reasons their tenancy may end and knowing this could happen at any time and for any reason may make some tenants feel insecure and reluctant to put down roots in their community.
  - 33.2.** Tenancies may be terminated for reasons that do not relate to tenant conduct, or for reasons necessary to ensure adequate protection of the landlords’ interest in the property.
  - 33.3.** Tenants may worry about raising concerns about the property or exercising their rights under the RTA, for fear of their tenancy being terminated (or not renewed). While the RTA contains provisions that prevent landlords from issuing a termination notice in retaliation to a tenant exercising their rights, tenants may

practically find it different to challenge termination on this basis where no reason for the termination has been provided.

- 33.4.** Some landlords could be using no cause terminations instead of specified termination grounds as they consider this approach is less confrontational and less likely to be challenged. This could be resulting in higher levels of turnover as there may be instances where the tenancy would not have been terminated if the specified ground was used. For example, if the tenant successfully challenged the use of the ground, or if the Tribunal ruled that termination was not appropriate given the level of breach.
- 34.** While it is recognised that these situations do arise in relation to some tenancies, it is unclear how pervasive the issues with no cause terminations are. Because the use of this provision does not require mediation or adjudication, it is not possible to identify how frequently tenancies are being ended in this way. It is not clear how frequently no cause terminations are used compared to other termination provisions under the RTA (for example, in relation to rent arrears). Furthermore, I note that there are limited incentives for landlords to terminate a tenancy and subsequently re-tenant it where there are good tenants in place.

*What submitters said*

- 35.** There was a strong push from renters to rebalance tenancy laws so that decisions around whether to stay or leave the property are largely in the hands of the tenant, not the landlord. Submitters in favour of removing no cause terminations, many of whom were tenants, considered this would provide renters with greater security of tenure and result in fairer termination provisions. Some of these submitters considered the proposed list of reasons for terminating tenancies should be further curtailed, for example, by requiring tenancies to transfer with the sale of a property even in the case of a periodic tenancy agreement.
- 36.** Landlords and property managers considered that the proposed reforms add up to a very different proposition for investors. For some landlords, the removal of no cause terminations was the most contentious part of the proposed reform. These landlords argued that, while no cause terminations are a rarely used tool, they are essential to property management and part of the rights of property ownership that should not be interfered with. Landlords and property managers commonly referred to the incentive to retain good tenants. They also considered this provision was useful to be able to offer vacant possession when selling a property.
- 37.** The discussion document did not ask specifically whether parties supported the removal of no cause terminations but did query what submitters thought the impacts of this change would be. Sixty-eight percent of tenants and seventy-one percent of landlords identified the potential for negative impacts to arise as a result. From this, officials infer that despite differing views on the need for these provisions, there is broad recognition on both sides that the change could result in challenges if not managed properly. For example, we need to ensure that there are still adequate powers for landlords to manage problematic tenants.

## *Proposals*

- 38.** Having had regard to these points and being mindful of the impacts that landlords have identified, my position continues to be that it is untenable for a modern renting law to continue to allow tenancies to end at the landlord's sole discretion and with no requirement to tell the tenant why. I wish to proceed with the removal of no cause terminations with the effect that:
- 38.1.** Landlords would be required to provide tenants with a specified reason as to why their tenancy is being terminated. New specified grounds would be included in the RTA. The Tribunal will have discretion to end tenancies for any other reason where on balance, the Tribunal considers that the landlord's application to end the tenancy is legitimate and fair, taking into account the impact on the tenant.
- 38.2.** Landlords will retain the ability to end a periodic tenancy without Tribunal involvement for specified reasons, but that penalties should be introduced for the intentional misuse of these provisions.
- 39.** This approach is consistent with recent tenancy reforms in other jurisdictions. Scotland removed the ability for landlords to end a tenancy for any reason in December 2017. The State of Victoria, Australia passed legislation to achieve this in September 2018 which has not yet to come into force. The English and Welsh government has announced an intention to ban "no fault" terminations but is yet to develop the required legislation. The State of New South Wales, Australia considered this issue in its own reform of tenancy laws but resolved in 2018 not to abolish "no grounds" evictions.

*Tables 1 and 2 below sets out the termination provisions that I propose be available to landlord*

- 40.** Table 1 sets out the current specified reasons for termination of a tenancy. I propose that these specified reasons all continue to be available, with the addition of the reasons set out in Table 2.
- 41.** Two new termination grounds are included in Table 2 that are specific to public housing. These grounds are required so that providers such as Housing New Zealand can sustain tenancies by transferring a tenant from one property to another, a business need that is currently met using a no cause termination.
- 42.** Table 2 carries over the existing ground that allows an owner or their family member to move in. However, it provides an additional requirement: the owner or family member should intend to use the property as their principal place of residence for at least 90 days. I consider that this approach will ensure that the costs of moving are not imposed on a tenant in situations where a landlord or their family member only wants the property for a short amount of time or where there is not a legitimate intention to reside in the property. I propose to use the current definition of member of landlord's or owner's family in the RTA. My officials will provide me with advice on whether this definition needs any modernisation.

**Table 1: Existing termination grounds for periodic tenancies**

<i>With Tribunal involvement</i>	<i>Without Tribunal involvement</i>
<ul style="list-style-type: none"> <li>• The tenant or their visitor has unreasonably interfered with the peace, comfort, or privacy of the other tenants in the premises, or any other person residing in the neighbourhood.</li> <li>• The tenant is at least 21 days in rent arrears.</li> <li>• Tenant has caused or threatened to cause significant damage.</li> <li>• The tenant has assaulted or threatened to assault specified persons.</li> <li>• The tenant has breached the tenancy agreement (and in the case of a breach capable of remedy, the tenant has not remedied the breach after being given a reasonable time to do so).</li> <li>• The tenant has used the premises for unlawful activity.</li> <li>• The tenant needs to vacate the premises to meet requirements relating to a mortgagee sale process or similar.</li> <li>• The tenant has abandoned the property and the rent is in arrears.</li> </ul> <p>(Tribunal decides notice period)</p>	<ul style="list-style-type: none"> <li>• The owner or their family member requires the premises to live in (note change to this below) (42 days' notice).</li> <li>• The property is needed for an employee and this was foreshadowed in the tenancy agreement (42 days' notice).</li> <li>• The property has been sold with a requirement by the new owner for vacant possession (42 days' notice).</li> <li>• Death of the sole tenant (21 days' notice from specified acts).</li> <li>• Destruction of the premises (7 days' notice from landlord; 2 days' notice from tenant).</li> <li>• The tenancy is a service tenancy and the tenant's employment ends (14 days' notice).</li> </ul>

**Table 2: Proposed additional specified termination grounds for periodic tenancies**

<i>With Tribunal involvement</i>	<i>Without Tribunal involvement</i>
<ul style="list-style-type: none"> <li>• Where a tenant has been at least three working days behind in their rent payment on three separate occasions within any 90-day period.</li> <li>• Where three notices for separate acts of antisocial behaviour have been issued within any 90-day period.</li> <li>• For any other reason where on balance, the Tribunal considers that the landlord's application to end the tenancy is legitimate and fair, taking into account the impact on the tenant. (Tribunal decides notice period)</li> </ul>	<ul style="list-style-type: none"> <li>• The owner or their family member requires the property to live in, for a minimum of 90 days (63 days' notice).</li> <li>• The landlord intends to make the property available for sale within 90 days of the tenant ceasing to occupy it (90 days' notice).</li> <li>• Where the property has been acquired in support of a business use, where that business is not the provision of residential rental accommodation, and termination is required for the purposes of the business and this was foreshadowed in the tenancy agreement (90 days' notice).</li> <li>• The landlord intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises and it would not be reasonably practicable for the tenant to continue to live there while the work was being undertaken (90 days' notice).</li> <li>• The landlord wants to change the use of the premises (e.g. from residential to commercial) (90 days' notice).</li> <li>• The premises are to be demolished (90 days' notice).</li> <li>• The landlord is not the owner of the premises and the landlord's interest in the property ends (90 days' notice).</li> <li>• For public housing properties in circumstances where the tenant is no longer eligible for public housing<sup>4</sup>, or the property ceases to be funded as a public housing place<sup>5</sup> (90 days' notice).</li> <li>• For public housing properties in circumstances where the tenant needs to be transferred to a different public housing property that is considered to better match their needs, the public housing provider's business requirements, or the needs of the community(90 days' notice).</li> </ul>

4 In keeping with the Tenancy review processes, noting the policy changes and exemptions, made by Cabinet in October 2018 (SWC-18-MIN-0112) are resulting in more targeted Tenancy Reviews, shifting towards tenants who are more likely to be ready to move out of public housing.

5 Section 170 of the Housing Restructuring and Tenancy Matters Act 1992 outlines the circumstances when registration of a community housing provider can be revoked. These relate to failing to meet eligibility, performance and compliance requirements, ceasing to operate as a community housing provider or being unable to carry on business.

<b>Existing termination grounds for periodic tenancies with extended notice periods</b>	
<i>With Tribunal involvement</i>	<i>Without Tribunal involvement</i>
	<ul style="list-style-type: none"> <li>• The property is needed for an employee and this was foreshadowed in the tenancy agreement (63 days' notice).</li> <li>• The property has been sold with a requirement by the new owner for vacant possession (90 days' notice).</li> </ul>

*Benefits*

- 43.** Requiring landlords to provide tenants with a reason the tenancy being terminated and introducing penalties for the misuse of the termination provisions, is expected to improve security of tenure for tenants who are meeting their obligations, while maintaining adequate protection of landlord interests in the following ways:
- 43.1.** Tenancies will be able to be terminated where there are breaches of the RTA or where the property is needed for a purpose which cannot reasonably be accommodated with the tenancy in place.
  - 43.2.** Tenants will have greater certainty over the reasons their tenancy can be terminated, which may make them feel more confident exercising their rights and give them greater confidence in their ability to put down roots in their community, providing a foundation for improved employment, education, health and social outcomes.
  - 43.3.** Landlords will retain the ability to terminate tenancies for certain reasons which cannot be reasonably accommodated with the tenancy in place without the Tribunal's involvement. The Tribunal will only be involved in a situation where there are likely to be greater levels of subjectivity over whether the conduct warrants termination, or a dispute over the validity of a termination ground.
  - 43.4.** There will be greater incentives for landlords to use the termination grounds correctly. This will provide tenants with greater confidence in the validity of a termination notice issued without Tribunal involvement and provide them with greater recourse where they are used incorrectly, without penalising those landlords who are already complying with the RTA.

*Landlords currently use no cause terminations in various situations, including antisocial behaviour*

- 44.** The landlord position that came through in consultation is that no cause terminations are seldom used but are critical to the effective management of their asset. They see no cause terminations as the best option to move on tenants who display antisocial behaviour in a manner they consider to be non-confrontational. The New Zealand Property Investors Federation's submission noted that approximately a third of their members had issued a no cause termination. Of those who had, 74 percent had only issued one in the last five years. The main reasons for the terminations were antisocial behaviour, tenant damage, and rent arrears. Antisocial behaviour has been raised as a particular concern in instances where a tenant's actions are impacting on others but

because third parties feel intimidated, they are not providing evidence of the behaviour that a landlord would feel comfortable defending at the Tribunal.

45. Officials have advised me that it will not be possible to fully mitigate the concerns of landlords, as the ability to terminate a tenancy for any reason will always be more enabling for landlords than a system that constrains when tenancies may be terminated in some form.

*I propose a new system for termination for repeated lower-level antisocial acts*

46. I propose to address the situation where repeated acts by a tenant cause distress, alarm or harassment to the landlord or others, but those acts individually fall short of the threshold required to terminate a tenancy. Currently, landlords would likely issue a no cause termination in these circumstances. The existing provisions require a single breach incapable of remedy (such as an antisocial act) to be of such a magnitude that it would be inequitable to refuse the end the tenancy. This does not appear to capture breaches which are each of lower severity but repeating.
47. I propose a new system that will allow termination for these acts that are more minor in nature than the current breaches but reoccur. Under this system, landlords would be able to issue notices for acts of antisocial behaviour in the context of their tenancy. The Regulator will provide guidance on what behaviour may be considered antisocial under this provision. This could include unreasonably large or loud parties, harassment, or blocking others' vehicle access. Landlords would need to act reasonably and fairly when issuing a notice. Where three such notices had been issued in any 90-day period, the landlord could then apply to the Tribunal to terminate the tenancy. The application to the Tribunal would need to be made no later than 28 days after the date on which the third notice was issued.
48. If the system is to mitigate the gap from removing no cause terminations, landlords will need certainty that the Tribunal will grant termination if the notices have been issued correctly. I therefore propose that the role of the Tribunal in these instances would be to ascertain whether the notices were substantially valid. The Tribunal would not be able to have regard to the circumstances of the tenant or the impact of ending the tenancy when making their ruling. However, tenants would have the right to contest the issue of any of the three notices as part of the Tribunal hearing, and this could be taken into account by the Tribunal adjudicator when making their ruling.
49. For landlords, this process would fill one gap that removing no cause terminations will leave behind. A similar system was supported by the New Zealand Property Investors Federation in its submission as a second-best option should no cause terminations be removed.

- 50.** For tenants, this system would still be an improvement relative to the status quo as:
- 50.1.** Rather than a landlord issuing a 90-day notice with finality for any reason, the tenant would be advised of what the problem was first and given the opportunity not to repeat it or to do other similarly problematic actions.
  - 50.2.** A third party would be considering if the landlord has issued the notices validly.

*Landlords are also concerned about non-payment of rent*

- 51.** In 2018, out of the 27,552 landlord applications to the Tribunal, 22,092 involved rent arrears. Currently under the RTA,<sup>6</sup> a landlord can apply to the Tribunal to have either a fixed term or periodic tenancy terminated if:
- 51.1.** the rent was at least 21 days in arrears at the time the Tribunal application was made, or
  - 51.2.** the tenant has been issued with a notice to remedy overdue rent (where the amount owing can be less than 21 days) and has failed to do so within the specified time period.
- 52.** Landlords also expressed concerns about their ability to address rent arrears situations outside of the scenarios above if no cause terminations are removed. For example, situations where there has been a pattern of late payment over the course of the tenancy, and multiple notices to remedy have been issued, but in each incidence, the overdue rent has been paid before the notice to remedy has expired.

*I propose a new system for termination where rent is repeatedly paid late*

- 53.** Landlords have a right to receive fair rent in exchange for letting out their property and a tenant's primary responsibility under a tenancy agreement is to pay their rent on time. I therefore propose that a landlord may apply to the Tribunal to terminate a tenancy where:
- 53.1.** a tenant has been at least five working days late with their rent payment on three separate occasions within a 90-day period
  - 53.2.** the tenant was advised that the payment was late in each instance, and
  - 53.3.** the application to the Tribunal was made no later than 28 days after the date on which the tenant was notified of their third late payment.
- 54.** As noted above, when an order is made to terminate a tenancy, the Tenancy Tribunal will determine the notice period that applies. The Tribunal would have discretion to make an order requiring the tenant to pay any rent in arrears within a specified period instead

<sup>6</sup> Section 55.

of a termination (if they were satisfied that it was unlikely that any further breach would be committed).<sup>7</sup>

- 55.** This proposal would ensure that landlords retain the ability to terminate tenancies for patterns of non-payment of rent. It would provide tenants with greater protections than under the status quo as there would need to be a pattern of non-payment and this pattern would need to be independently verified. Under the status quo, landlords have the ability to issue a no cause termination for a single instance of rent arrears without the Tribunal's involvement.

*Landlords sometimes want to terminate a tenancy to ready the property for sale*

- 56.** Finally, landlords have raised the need to end a periodic tenancy to enable a property to be advertised for sale as vacant. While properties subject to a periodic tenancy agreement can be marketed with sitting tenants, landlords have submitted that:
- 56.1.** It is sometimes necessary to terminate a tenancy to enable upgrades, maintenance, or staging to be done in advance of advertising a property for sale.
  - 56.2.** A tenanted property attracts a smaller pool of potential buyers, which can reduce the property's sale price.
  - 56.3.** Some tenants can be unhelpful during the sale process (for example, by limiting access for property viewings or keeping the property in an untidy state).
- 57.** Currently, landlords would issue a no cause termination in this situation. Instead, I have proposed a new termination ground in Table 2 above that would enable a periodic tenancy to be terminated where a landlord intends to make the property available for sale within 90 days of the tenant ceasing to occupy it. The 90-day timeframe aims to strike a balance between ensuring that an owner has enough time to carry out any necessary work in advance of the property being advertised (such as repairs to the property, staging, or marketing activity), while sustaining the tenancy for as long as reasonably practicable.
- 58.** Consistent with all termination provisions, penalties would apply for the misuse of this ground. This ground would only apply to periodic tenancies. As is the case currently, a fixed-term agreement would continue even when the property is sold.

**Notice periods**

- 59.** Currently, the amount of notice a landlord must give to end a periodic tenancy depends on the reason for the termination, and whether the Tribunal is involved in the termination:

<sup>7</sup> As is the case when considering an application for a tenancy termination where the rent is at least 21 days in arrear, or where a tenant has been issued with a notice to remedy overdue rent (where the amount owing can be less than 21 days) and has failed to do so within the specified time period.

- 59.1.** If the landlord has utilised a specific ground in the RTA, such as when the property is sold with vacant possession required, they are required to give 42 days' notice.
- 59.2.** If a landlord has issued a no cause termination, they are required to give 90 days' notice.
- 59.3.** If a landlord is terminating a periodic agreement with the Tribunal's involvement, the Tribunal will determine the notice period as part of their ruling.

*What the problem is*

- 60.** I understand that some tenants are unable to find accommodation within 42 days that is suitable to their needs and within a locality that enables them to maintain their community networks. This issue is likely to be exacerbated in a tight rental market.

*What submitters said*

- 61.** Submitters were divided on the impact that extending the notice periods would have. Sixty-four percent of tenants considered this would have a generally positive impact, noting that it would align with the time it takes to find a new tenancy, reduce stress, and allow time to save for new tenancy costs. These submitters considered that the impact on landlords would be minimal and that any costs on landlords would be outweighed by the positive effects on tenants.
- 62.** Sixty percent of landlords considered this change would have negative or unfair implications. Concerns expressed included that it would make selling houses more difficult, the time period is too long for planning purposes and it would increase the risk of unpaid rent and damage being done following the issue of the termination notice.

*Proposals*

- 63.** I propose increasing the amount of notice that landlords would need to give when terminating a periodic tenancy for these existing reasons without the involvement of the Tribunal from 42 to either 63 days (nine weeks) or 90 days. As well as giving tenants more time to find a property, I consider that 63 days is a fairer timeframe to allow tenants to raise the costs of moving, including the money required upfront for the bond and their next property. I propose the 63 day notice period applies to the following existing grounds:
  - 63.1.** The owner or their family member requires the premises to live in, for a minimum of 90 days.
  - 63.2.** The property is needed for an employee and this was foreshadowed in the tenancy agreement.
- 64.** In addition, I propose increasing the notice period from 42 to 90 days for the existing ground that the property has been sold with a requirement by the new owner for vacant possession. I consider this ground should align with the notice period for the new termination ground that the landlord intends to make the property available for sale

within 90 days of the tenant ceasing to occupy it. I do not want to have two broadly similar grounds with differing periods of notice. Creating this discrepancy would likely exacerbate existing problems with the current ground which is not well complied with in practice. I understand that currently some landlords are incorrectly using this termination ground when they want to market the property for sale untenanted.

- 65.** While there is wide variation in the notice periods for tenancy terminations that landlords must provide tenants between different jurisdictions, my proposal to align the notice periods at 63 and 90 days is broadly consistent with other regimes. In the State of Victoria, landlords must give the tenant up to 120 days' notice, but shorter notice periods are available depending on the severity of the breach. In Ireland, notice periods range from 28 to 224 days depending on the length of the tenancy and the termination ground being used. In Scotland, the period ranges from 28 to 84 days.

### *Risks and mitigations*

- 66.** While this option does not result in direct costs for landlords, there is a risk that landlords may face additional costs from the increased notice period. This is because as tenants would retain the ability to leave the property (with the requisite notice) after being issued a termination notice from their landlord, landlords may be subject to longer periods where the property is untenanted. Currently the maximum potential period of lost rent is 21 days (in the situation where a tenant issues a notice to vacate as soon as they receive a termination notice from their landlord). Absent any changes to the tenant's notice period, this would extend to 42 or 69 days, depending on the termination ground.
- 67.** In a situation where a rental property is being sold to an owner-occupier, the time required for a tenant to vacate the property needs to be factored in when negotiating the settlement period. Currently, if a rental property is being sold and the new owner requires vacant possession, a landlord can give their tenant 42 days' notice to vacate the property. Under the proposed changes, landlords would be required to give 90 days' notice. The settlement process for a property that required vacant possession would need to account for this additional six weeks.
- 68.** For the most part, I expect the market will adjust to the impacts of longer notice periods over time and do not consider that this can be mitigated. However, I propose extending the notice period that tenants are required to give (when vacating the property without the Tribunal's involvement) from 21 days to 28 days as a way of mitigating some of the risks faced by landlords.

### *Tenancy Agreements*

- 69.** As noted above, the types of tenancy agreements available are a component of security of tenure. Currently, the law provides for fixed-term and periodic agreements and these have not been substantially revisited since the RTA came into force over 30 years ago. We consulted the public on a range of options from removing fixed-term agreements from the market so that only a single secure tenancy type was available through to providing minimum terms for fixed-term agreements or providing a right of renewal in the tenant's favour when a fixed-term agreement expires.

### *What the problem is*

- 70.** The current tenancy offerings provide options for those tenants and landlords who prefer secure arrangements, as well as for those who prefer more flexibility. However, in some cases, these offerings may not be providing tenants who are meeting their obligations with security of tenure as:
- 70.1.** Tenants can be moved on from a property solely because the initial term has expired, and the tenant can be notified that the tenancy will not be continuing with as little as 21 days' notice. This may be resulting in some tenancies being terminated even when the tenant is meeting their obligations and the property would continue to be used as rental accommodation.
  - 70.2.** Most fixed-term tenancies are set for a period of one year. Some tenants may find themselves locked into a cycle where their fixed-term ends during peak times of the year when it is more difficult to find alternative accommodation.
  - 70.3.** Tenant choices may be restricted by the types of agreement that a landlord wishes to offer in a tight rental market. This may mean that, in some instances, tenants are signing up to agreements that are not best suited to their needs.

### *What submitters said*

- 71.** Eighty-eight percent of landlords and forty-nine percent of tenants did not think that the Government should further investigate removing fixed-term tenancies from the market. A common theme shared by submitters was the need for flexibility in the tenancy agreements being made available to tenants and landlords. A one-size-fits-all model for tenancy agreements received little support with both tenants and landlords considering options should be available that best suit their circumstances. However, tenants did consider that the standard use of fixed-term agreements in the market is too rigid, creating a cycle of uncertainty between when the existing agreement is close to expiring and a new agreement is not guaranteed.

### *Proposals*

- 72.** Having regard to stakeholder feedback, I consider that the best way to improve security of tenure at least cost to landlords is to retain both fixed-term and periodic agreements subject to the proposed changes to notice periods and termination provisions above. At the end of the fixed term:
- 72.1.** both parties can agree to end the tenancy
  - 72.2.** both parties can agree to extend or renew the fixed-term
  - 72.3.** the tenant can give notice at least 28 days before the end of the fixed-term that they wish to vacate the premises when the fixed-term ends

- 72.4.** the landlord gives notice using the termination provisions for a periodic tenancy set out in Tables 1 and 2 above for a notice period of at least 63 or 90 days before the end of the fixed term, depending on the termination ground, or
  - 72.5.** the fixed-term tenancy will automatically become a periodic tenancy.
- 73.** There is no direct example of another jurisdiction taking this approach as there is a large amount of variability in the composition of tenancy agreements internationally. However, in the State of Victoria, a landlord can only end a fixed-term agreement without a specified reason for the initial fixed-term. All subsequent terms of the tenancy between that landlord and tenant will require specified reasons to terminate, similar to what I propose.

### *Benefits*

- 74.** Tenants and landlords would retain the ability to enter into either more flexible or secure tenancy arrangements. However, this approach carries a number of benefits for security of tenure compared to the status quo as:
- 74.1.** Tenants would no longer be able to be moved on from a property solely because the fixed term has expired.
  - 74.2.** If a tenancy wasn't going to continue, parties would have greater notice of this than under the status quo.
  - 74.3.** Tenants on a fixed-term agreement who are meeting their obligations and wished to remain in the property would no longer be required to vacate the property in a situation where the property would still be used for rental accommodation after the initial fixed-term, but the tenants were unwilling or unable to sign up to another fixed-term agreement.
  - 74.4.** Tenants and landlords remain free to negotiate the best type of arrangement for their needs after the initial fixed-term, but tenants would have greater negotiating power given that the default would be that they are able to remain in the property.
  - 74.5.** There is less risk of tenants being locked in to arrangements that are not suited for their needs. Given the income certainty benefits for landlords, highly performing tenants who wish to secure fixed-term arrangements are likely to be able to continue to do so but a tenant who would prefer a more flexible arrangement will have confidence that, provided they meet their obligations, the arrangement will become periodic after the initial fixed-term.
  - 74.6.** It reduces the potential for many fixed-term agreements in a given location to end at a similar time.
  - 74.7.** It benefits good landlords and property managers, as tenants would likely be more willing to enter in to subsequent fixed-term agreements, providing greater

investment certainty for landlords, where there is a positive landlord-tenant relationship.

### *Risks and mitigations*

75. The primary risk with this approach is that landlords who currently prefer to offer only rolling fixed-term agreements will have less certainty and control over what happens to the tenancy after the initial fixed-term, and consequently, less certainty over their income stream over the medium-term. However, many landlords do already consent to fixed-term agreements becoming periodic at the end of the initial fixed term. These landlords will experience no change to how the agreements with their tenants are structured.
76. The risk outlined above is mitigated to some extent through the policy design as:
- 76.1. Landlords will still be able to enter in to an initial fixed-term agreement, and can negotiate the length of that term with their tenants.
- 76.2. As proposed above, where an agreement becomes periodic, tenants will be required to give greater notice to leave than they do currently.
- 76.3. Landlords and tenants will be free to negotiate what arrangement should take place after the initial fixed-term. Landlords who place a higher value on fixed-terms will have the opportunity to negotiate with their tenants to enter into a further fixed-term (for example, by not increasing rent for the second term). As being on a fixed-term does have additional security of tenure advantages for tenants than periodic agreements, I would expect that many tenants will be willing to enter in to subsequent fixed-terms (particularly in a tight rental market).
- 76.4. Based on the feedback received during the consultation process, I understand that many landlords are already comfortable with a fixed-term agreement becoming periodic after the initial fixed-term where they have good tenants in the property.
77. There is a risk that tenants will not be aware of the rules around what happens at the end of a fixed-term tenancy. The Regulator will consider how to mitigate this risk, and will communicate these new rules to both landlords and tenants, as part of its education process. The Regulator may also prepare a template letter that landlords can send to tenants to advise them of their rights at the end of the fixed term.

## **Issue Two - Strengthening Enforcement and Compliance**

### ***Background and problem definition***

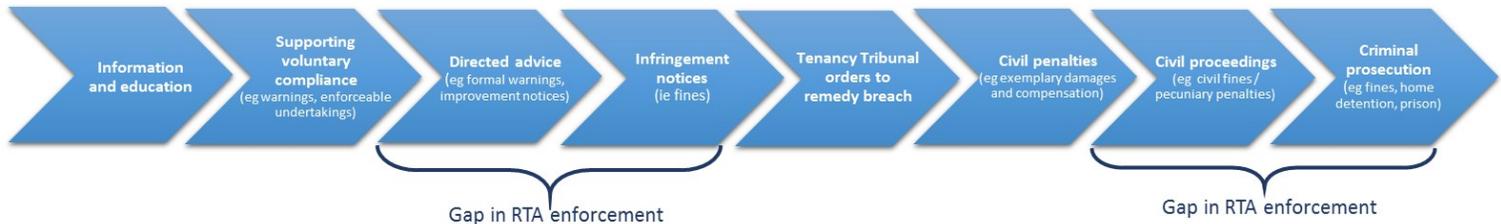
78. The RTA is primarily designed to enable two parties (landlords and tenants) to self-resolve problems that may arise. The government provides a variety of mechanisms to support landlords and tenants to do this by providing information, advice and education services, mediation and dispute resolution at the specialist Tribunal. However, the RTA's enforcement framework has not been reviewed since it came into force, and the penalty levels have not been updated since 2006.

79. The RTA provides that the Regulator has regulatory oversight for ensuring landlords and tenants meet their obligations and requirements under the RTA. However, the Regulator has a limited number of tools to ensure compliance across the sector, such as working with it to encourage compliance by providing advice and information, warning letters and negotiating voluntary compliance agreements. If voluntary compliance does not work, the Regulator has limited options to enforce compliance, unless the breach meets the RTA’s public interest test. In those instances, the Regulator can initiate proceedings at the Tribunal, who can impose work orders to remedy non-compliance, award compensation for harm or damages, or impose a penalty in the form of exemplary damages.
80. Landlords include agents (such as property managers) where the agent is the grantor of the tenancy. These agents are subject to the same obligations as landlords. When I refer to landlords, their obligations and liabilities, this includes agents who have granted the tenancy.
81. Considering the size of the private rental market, the Regulator will always be limited in how much it can contribute to compliance across it. The integrity of the RTA depends firstly on parties complying with their obligations and secondly on parties self-resolving disputes when breaches of those obligations do occur. However, where there is constrained rental supply, tenants have limited incentive to seek resolution of disputes as they fear potential negative repercussions. These repercussions could include that their tenancy may be terminated, or their rent will rise. Vulnerable tenants, who are at a greater risk of living in poor quality rental accommodation, are in a particularly weak position to be raising issues and may not have the knowledge to self-resolve matters. While my proposals to improve security of tenure outlined in the paper will provide a stronger foundation for tenants to exercise their rights, I consider that further changes are necessary to drive compliance with the RTA.

**Identifying the gap in enforcement**

82. The existing approaches the Regulator can use to enforce the RTA are only appropriate for remedying very minor breaches or serious breaches. The current enforcement tools do not allow the Regulator to address moderate to serious breaches in an efficient way, nor to address the most serious or severe breaches. My view of the gap in the spectrum of available enforcement tools is illustrated in Diagram 1 below.

**Diagram 1 – Spectrum of enforcement tools and gaps**



83. I propose a five-pronged approach, to address the gaps identified and to modernise the law to provide greater incentives for voluntary compliance. This approach is designed to

comply with the Legislation Design and Advisory Committee guidelines. The proposals to strengthen enforcement and compliance will not result in any direct costs for the tenants and landlords who are compliant with the law. The five proposals are:

- 83.1.** introducing a new suite of tools for lower-level breaches
- 83.2.** increasing penalty levels from the 2006 levels
- 83.3.** creating new offences for breaches of the RTA
- 83.4.** introducing new civil pecuniary penalties for the most serious breaches
- 83.5.** strengthening criminal sanctions.

#### ***Introducing a more proportionate range of tools to address lower-level breaches***

- 84.** I propose that the Regulator has a new suite of tools which will enable it to address lower-level breaches. The Regulator will continue to use advice, information, education and informal warnings when appropriate. The new tools will allow the Regulator to take direct action on lower-level breaches without the requirement to escalate proceedings to the Tribunal. This will drive voluntary compliance because it increases the real and perceived likelihood of parties being caught and will help to ensure that lower level breaches do not escalate into wider issues.

#### ***Enforceable Undertakings***

- 85.** I propose to introduce an Enforceable Undertaking, which will replace the existing compliance agreement. A compliance agreement is currently used by the Regulator to reach agreement with a landlord or tenant on how and when they will remedy a less serious matter. However, there are no consequences for parties that fail to follow through with the work outlined in a compliance agreement. This is untenable as the Regulator starts to take a more proactive approach to ensure compliance with the Healthy Homes Standards. The Regulator will need confidence that issues agreed between parties will be remedied in a reliable and timely way.
- 86.** An Enforceable Undertaking will still reflect an agreement that is voluntarily negotiated to address a breach. If a landlord or tenant does not follow through with their commitment to comply, the other party (or the Regulator on behalf of that party) can seek exemplary damages for a breach of the Enforceable Undertaking.

#### ***Improvement Notices***

- 87.** I propose that when the Regulator identifies a more serious breach, or if an Enforceable Undertaking cannot be agreed, it will be able to issue an Improvement Notice. An Improvement Notice will require the landlord to take specific action to remedy the breach, or to avoid a likely breach, to ensure compliance with the RTA. This tool will differ from the Enforceable Undertaking outlined above as it will be issued unilaterally by the Regulator and not negotiated between each party.

88. The Improvement Notice will set out the specific RTA requirements that the Regulator believes the landlord is not meeting, the nature and extent of the breach or likely breach, the steps that landlord could take to comply with the RTA, and the date for that compliance. The landlord would be able to lodge an objection to the Improvement Notice with the Tribunal within 28 days if they disagree with the Regulator's assessment.
89. If the Improvement Notice is not complied with, the Regulator would be able to initiate proceedings at the Tribunal to address the breaches identified in the Improvement Notice. The tenant would also be able to claim exemplary damages for breach of the Improvement Notice. The Tribunal could issue a work order, award exemplary damages, or issue a restraining order.

#### *Infringement notices*

90. I propose to establish an infringement regime that would allow the Regulator to issue infringement notices to deter behaviour that is of relatively low seriousness. Infringement schemes fall under the criminal jurisdiction, but no conviction is entered. Infringements are widely used across New Zealand's regulatory landscape and will enable a proportionate and cost-effective response to minor breaches of the RTA, preventing the Tribunal from being overburdened with minor and clear-cut breaches. Without an infringement regime, often the only action the Regulator can take unilaterally is to issue informal warnings.
91. The infringement scheme would only apply to the strict liability offences detailed in Schedule A of Appendix 1 which cover matters such as failure to provide prescribed information to tenants, failure to keep prescribed records, or failure to lodge bond payments. It is proposed that the conduct in Schedule A will be addressed at the Regulator's discretion by either:
- 91.1. serving infringement offence notices with the fixed fee set out in Schedule A, or
  - 91.2. filing a charging document in court, without having to seek the court's leave to do so. The court would then be able to impose an infringement offence fine of up to the maximum fine set out in Schedule A for that offence. The court's fine may be higher or lower than the equivalent fixed infringement fee for that offence.
92. There are a range of infringement fees, depending on the offence. I propose that the maximum infringement fee would be \$1,000 for a landlord who has five or fewer tenancies, and \$3,000 for a landlord with six or more tenancies. The Chief Executive (or delegate) of the department acting as the Regulator (currently the Ministry of Business, Innovation and Employment (MBIE)) would have the authority to issue infringement notices. All revenue generated from the infringements would be payable to the Crown.

#### ***Increasing penalty levels to incentivise compliance***

93. The Tribunal has jurisdiction to determine any rental dispute that exists between a landlord and tenant. The Tribunal can award compensation for losses or repairs and exemplary damages. Exemplary damages are a civil penalty paid by the unsuccessful party to the dispute to the other.

94. I consider the current penalty levels available at the Tribunal are too low to provide effective deterrence for landlords and tenants. The RTA sets out the maximum exemplary damages, which range from \$200 to \$4,000. The actual penalty levels ordered by the Tribunal depend on the seriousness of the breach. For example, the maximum penalty for health and safety breaches is \$4,000, but the Tribunal's penalty will start at around half of that unless the circumstances are particularly egregious.

*Adjusting penalty levels for inflation*

95. The maximum value of these penalties was set in 2006 (CAB Min (06) 34/5 refers). New unlawful acts have been added to the RTA over the time, such as through the introduction of the Healthy Homes Guarantee Act 2017. The new penalty amounts introduced were set to maintain relativity with existing 2006 penalty levels within the scheme.
96. Increasing exemplary damages levels across the board to reflect the increase in rental costs since 2006 will ensure that exemplary damages represent a consistent value vis-à-vis rental costs for landlords and tenants. I propose that exemplary damages in the RTA increase by 50 percent as a starting point. This is close to the rate at which national rents have increased since 2006, of about 60 percent.

*Adjusting penalty levels to reflect seriousness of offence*

97. There are some penalty levels that are too low to deter irresponsible landlords and tenants from breaching RTA requirements, even after an adjustment for inflation is considered. Landlords are more likely to comply with the law when the penalties associated with non-compliance exceed the financial benefits of not meeting their requirements.
98. However, I do not wish to raise the maximum penalties too far, too fast. Landlords may be concerned at high increases. Therefore, the increases for more serious offences are limited to an 80 percent increase. These more serious offences relate to health and safety breaches, or record-keeping. The failure to keep proper business records and receipts can impact on the ability of the Regulator to take enforcement action.
99. I recognise that raising penalty levels is a balancing act between improving the effectiveness of enforcement, and managing the risk that landlords may choose to exit the market. I note that these penalties will only apply to landlords that have been found to breach the RTA. I propose that two years after the new penalties come into force, that the Ministry of Housing and Urban Development (HUD) undertakes a review of their effectiveness and reports to the Minister of Housing on the outcome.

***Introducing new unlawful acts***

100. Currently, the RTA provides for several obligations that do not have any consequences if the obligations are not met. I propose including the breach of these obligations as unlawful acts, to be treated as infringement offences or subject to exemplary damages.

- 101.** The new unlawful acts address the following behaviour:
- 101.1.** Failure to have a written tenancy agreement or to provide a copy of the written tenancy agreement to the tenant.
  - 101.2.** Failure to provide contact details when the landlord's or tenant's interest in the property passes to another person (for example, the landlord sells the property).
  - 101.3.** Failure to notify a change of name or contact details to the other party of the tenancy.
  - 101.4.** Failure to give notice to a tenant or prospective tenant that the premises are on the market.
  - 101.5.** Failure to advise the tenant of any contamination test results at the premises, within seven days of receiving the results.
- 102.** I propose that these unlawful acts may be subject to exemplary damages as set out in Schedule B to Appendix 1 of this paper, or may be subject to an infringement fee or fine as set out in Schedule A to Appendix 1.
- 103.** I also propose a new unlawful act for the intentional misuse of termination provisions in the RTA. This unlawful act may be subject to both exemplary damages and civil pecuniary penalties (which are discussed below). This unlawful act is a key support for the changes to improve the security of tenure for tenants.
- 104.** However, if a landlord gives a notice of termination for a legitimate reason, but a change in circumstances mean that the property is no longer required for that reason, the landlord will not meet the threshold of "intentional misuse". For example, if the property is needed for an employee and this was foreshadowed in the tenancy agreement, a landlord may give notice of termination. If the employee changes their mind and does not require the property, this would not be an intentional misuse of the termination provisions.
- 105.** Currently, the RTA provides for several obligations that do not have any consequences if the obligations are not met. For example, the RTA provides that when the landlord's or tenant's name or contact details change, the other party must be notified. However, the RTA does not provide that it is an unlawful act not to do so. I propose including these breaches as unlawful acts, to be treated as infringement offences or subject to exemplary damages.

***Introducing new civil pecuniary penalties for the most serious breaches***

- 106.** I propose to introduce a new civil pecuniary penalties regime for the most serious breaches of the RTA. The civil pecuniary penalties cover five provisions where their breach can result in serious consequences for the health and safety of tenants, or where deliberate action has been taken to undermine the protections afforded by the RTA. I

propose the new civil pecuniary penalties would be a maximum of \$50,000 payable to the Crown account.

- 107.** These penalties would only be awarded where the Tribunal considers a breach of one of the specified provisions warrants a higher penalty than the exemplary damages penalty. The RTA will set out criteria to assess whether the higher penalty is warranted, based on current criteria in the RTA in respect of exemplary damages and appropriate provisions from other pecuniary penalty regimes. For example, the criteria would include such matters as whether the breach was a single or repeated instance and the intent of the landlord in committing the unlawful act.
- 108.** I propose that these penalties can only be applied against landlords with six or more tenancies. The reasoning for this requirement is:
- 108.1.** the breach has caused, or had the potential to cause, harm across a large property portfolio, and
- 108.2.** larger scale landlords may arguably have better means to understand their legal obligations and to defend a proceeding brought against them in this context.
- 109.** The penalties I propose are outlined in Schedule C of Appendix 1. The Regulator will be able to apply for an award of a civil pecuniary penalty in the Tribunal. The legislative drafting will rationalise the current exemplary damages provisions where the application is made by the Regulator with the new civil pecuniary penalties. The new provisions will clearly distinguish between the ability of landlords and tenants to apply for exemplary damages, and the ability of the Regulator to apply for penalties.

### ***Strengthening criminal sanctions***

- 110.** There are very few criminal offence provisions in the RTA as the legislation is primarily designed to resolve civil matters at the Tribunal in a fair and expeditious manner. Civil pecuniary penalties, exemplary and general damages are civil debts, and there is no criminal record for any landlord or tenant if they are awarded.
- 111.** The RTA provides instances where the Regulator can take criminal proceedings, but the penalties are relatively small. I do not consider the penalties to be proportionate to the harm caused or high enough to create a sufficient deterrence effect. I propose to strengthen deterrence by increasing the fines for a small number of the criminal offence provisions to improve compliance with Tribunal orders, specifically those breaches that are both serious and/or repeated breaches of the RTA.
- 112.** My specific proposals for increases to these provisions are contained in Schedule D of Appendix 1. I propose an increase of 80 percent. As noted above in relation to exemplary damages, there is a balance between effective enforcement and landlords' interests. I propose that the review of penalty levels after two years, also apply to criminal penalty levels.

- 113.** I also propose to introduce a new offence to address serious and repeated conduct that has the potential to cause further harm. Currently, landlords and tenants can repeatedly breach the RTA and there are no adverse consequences over and above their increasing civil debt. I will address this by creating a new offence for breaching a Tribunal work order, where the landlord or tenant has failed to complete the actions ordered by the Tribunal, and the ongoing breach creates a continued risk to the health, safety, security and habitability of the buildings or property or inhabitants.
- 114.** I consider that this new offence will improve the effectiveness of the regime by increasing the deterrent effect and improving compliance. A breach of a Tribunal work order is currently an unlawful act, and in most instances the default penalty will be exemplary damages. However, the new offence will enable the Regulator to target rogue tenants or landlords who flagrantly and deliberately ignore Tribunal orders to remedy serious conditions. The Regulator will put in place criteria for determining when to take a prosecution, and it is only expected to be used rarely.

#### ***How the various offences and penalties fit together***

- 115.** A breach of the RTA may result in:
- 115.1.** a tenant seeking exemplary damages
  - 115.2.** the Regulator imposing an infringement fee or filing proceedings for a court-imposed infringement fine
  - 115.3.** the Regulator seeking a civil pecuniary penalty, or
  - 115.4.** the Regulator filing proceedings for a criminal offence.
- 116.** So that a person is not facing two punishments for the same breach (double jeopardy), only one of the above penalties can be imposed in respect of a breach. The tenant or landlord is still able to seek compensatory damages for the same breach of the RTA.

#### ***Administrative matters***

- 117.** I propose three changes to the administration of the RTA to make it easier for landlords and tenants in breach to be held to account.

#### ***Power to audit***

- 118.** The Regulator can currently require landlords to provide it with certain documents when investigating breaches of the RTA, but this does not extend to particular types of records such as rent records and business practices or processes. The Healthy Homes Guarantee Act 2017 gave the Regulator powers to monitor and assess compliance of landlords with the Healthy Homes Standards. I now consider that the law is inconsistent as from an investigation perspective, there is no strong justification to treat general breaches of the RTA differently from breaches of the Healthy Homes Standards.
- 119.** I propose to achieve greater compliance with the RTA by clarifying the Regulator's powers to audit. Parties are more likely to comply if they know they can be proactively

audited, and systemic issues are likely to be uncovered earlier which could result in less escalation of issues up to the higher tiers of the enforcement regime.

**120.** My proposals are to:

**120.1.** Provide the Regulator with a general function and power to monitor and assess compliance of landlords with the RTA.

**120.2.** Widen the existing requirement that landlords have (under section 123A) to retain records of any maintenance or repair work carried out at the premises during the tenancy, to also cover rent and bond records and records pertaining to their general responsibilities under the RTA including when these predate the current tenancy. For example, building records demonstrating current or past compliance at the property or any relevant documentation under the Safety at Work Act 2015.

**120.3.** Require landlords to provide the expanded set of records demonstrating their compliance with the RTA to the Regulator should these be required in the context of the Regulator's general function to monitor and assess compliance of landlords with the RTA.

**121.** I note that requiring landlords to retain a wider range of records and to produce them to the Regulator upon request may impose additional burden on them. However, these requirements are minimal, considering that a landlord is already required by the RTA to keep bond records and rent records for seven years and the types of documents captured by this expanded requirement, such as building consents, would already be held by any prudent landlord. On this basis, the primary difference landlords will experience is that they may be required to provide such information to the Regulator in situations where their compliance with the RTA is being assessed.

#### *Increasing the jurisdiction of the Tribunal*

**122.** The Tribunal does not have the jurisdiction to require a landlord/property manager or tenant to pay any sum, or do any work, or incur any expenditure above \$50,000. This jurisdictional limit was set in 2006 and came into force in 2010. Since that time the costs of rentals has risen by approximately 60 percent and there have also been increases in building costs associated with implementing Tribunal work orders, the compensation levels to reflect damage and repairs, and the proposed increase in exemplary damage levels.

**123.** The Tribunal can transfer cases to the District Court when the maximum awards/orders sought are likely to exceed the Tribunal's \$50,000 jurisdictional threshold. However, this would be at odds with the Tribunal exercising its jurisdiction in a manner to ensure a fair and expeditious resolution of issues.

**124.** If the Tribunal's jurisdiction of \$50,000 was adjusted for the increases in rental costs from 2006 to 2018 in line with that proposed for increase in exemplary damages and fines, the jurisdiction of the Tribunal would rise to \$80,000. However, I propose that the

jurisdiction be established at \$100,000, both for administrative ease and public awareness.

*Allowing multiple breaches across multiple properties on a single application*

- 125.** The law is currently unclear about whether the Regulator is required to lodge a separate application for each property where an unlawful breach has occurred, even if the same landlord/property manager is responsible for the same breach. For example, an application by the Regulator in respect of the Rent Centre Ltd's failure to lodge bond [2018 NZTT 4129065] resulted in 116 individual applications.
- 126.** The Tribunal already consolidates multiple applications for the purposes of the hearing, and in considering the cumulative total of the amounts to be paid in terms of its award of exemplary damages. For ease of operation by the Regulator and the Tribunal, there is a sound case for clarifying the law to remove any doubt that the Regulator may submit multiple breaches on a single application.

*Clarifying the limitation periods in the RTA for enforcement purposes*

- 127.** Currently a landlord, a tenant or the Regulator (when acting on behalf of a landlord or tenant) can apply for exemplary damages because of a breach of the RTA within 12 months of the unlawful act happening. In contrast, the Regulator acting in its own right has the ability to take civil proceedings up to 12 months from the date the Regulator becomes aware of the breach. This inconsistency compromises the integrity of the law as the Regulator has in practice been unable to seek a penalty for breaches of the RTA. In turn, this reduces the public's confidence in the protections provided to tenants and landlords and provides lawbreaking landlords with greater comfort that breaches are unlikely to have consequences for them.
- 128.** A different limitation period for Tribunal proceedings is warranted for the Regulator compared to the limitation period faced by individuals who are party to a tenancy agreement. The way in which unlawful events come to light for the Regulator, the responsibilities for sound investigation and bringing well-evidenced proceedings before the Tribunal, justifies altering the limitation period for enforcement purposes.
- 129.** I propose that the Regulator be able to apply for exemplary damages and civil pecuniary penalties within 12 months after becoming aware of the unlawful event.
- 130.** Once the Regulator is notified of a potential breach, it makes an assessment as to the most appropriate course of action, taking into account the potential harm and public interest considerations. This assessment may or may not result in an application to the Tribunal and the timeline for an investigation to be brought to the Tribunal may vary based on the scale or complexity of the alleged breach. However, the investigation and any resulting application to the Tribunal will need to be within 12 months of the Regulator becoming aware of the breach. I will be considering the resourcing requirements of the compliance and investigations function so that tenants and landlords can be assured that when breaches are identified and investigated, proceedings are timely.

*Improving the timeliness of remedy and redress through the Tribunal*

131. According to the Ministry of Justice Annual Report (2017-18), the Tenancy Tribunal dealt with 92% of cases within 20 working days.
132. Different factors that can influence the time it takes for the Tribunal hear a specific case include whether the paperwork has been properly completed, how prepared parties are for the Tribunal hearing, the number of Court sitting days in a particular location, whether the property has already been vacated by the tenant, and the complexity and urgency of the case.
133. I will be working with the Minister of Justice and the Minister of Courts to ensure that when cases are brought before the Tribunal, tenants and landlords can receive a timely remedy, irrespective of any regional variations.
134. I will monitor the case management timeframes of the Regulator and the Tribunal to ensure the law is working effectively, and consider a wider review of the Tribunal, if needed.

*Preventing landlords from structuring their legal affairs to avoid the “six or more tenancies” threshold*

135. As noted above, I have proposed two situations where a landlord with six or more tenancies is subject to different penalties:
  - 135.1. In the infringement regime, there is a higher infringement fee and fine for landlords with six or more tenancies.
  - 135.2. Only landlords with six or more tenancies may be subject to civil pecuniary penalties for serious breaches of the RTA.
136. I recognise there is a risk that some landlords may seek to structure their legal affairs so that legally they own five or fewer tenancies, when the reality is that they are landlords for six or more tenancies. I therefore propose that the RTA is amended to prevent landlords from structuring their legal affairs to appear to have fewer than six tenancies in order to avoid this threshold.

## **Consultation**

137. Public consultation on proposals to improve tenant’s security of tenure and on the revised enforcement regime ran for seven weeks from 27 August to 21 October 2018. A total of 4,787 viewpoints were received across four consultation channels:
  - 137.1. 3,234 submissions to an electronic web survey hosted by MBIE/HUD
  - 137.2. 450 written submissions
  - 137.3. 932 submissions to an electronic web survey hosted by Renters United

- 137.4.** 166 submissions to an independent landlord survey.
- 138.** Across these four consultation mediums:
- 138.1.** 50 percent of submitters primarily identified as representing landlords
  - 138.2.** 41 percent of submitters primarily identified as representing tenants
  - 138.3.** 6 percent of submitters primarily identified as representing property managers;
  - 138.4.** 2.5 percent of submitters primarily identified as representing interest groups such as District Health Boards
  - 138.5.** 0.5 percent of submitters (29 in total) primarily identified as representing social or community housing providers.
- 139.** MBIE as the policy agency leading the reform at the time that consultation commenced, worked with Te Puni Kōkiri to raise awareness of the proposed changes amongst Māori and to extend a platform for participation. This involved leveraging Te Puni Kōkiri's existing outreach channels and seeking advice from Te Matapihi, an independent voice to advocate for Māori housing interests at the national level, about which stakeholders should be invited to participate in workshops on the reform around the country. Te Matapihi also hosted an invitation to participate in HUD's consultation workshops on its website. However, as information on ethnicity was not requested as part of the consultation, it is unknown what proportion of the 4,787 viewpoints received represented the interests of Māori.
- 140.** A summary of submissions report has been prepared to present the insights received across the four consultation channels and submitters experience and views have been considered in the policy development process. I propose that this report be published on HUD's website at the time that the Government's decisions on the reform are publicly announced.
- 141.** The following agencies were consulted on the development of this Cabinet paper: the Ministries of Justice, Business, Innovation and Employment, Social Development, Health, Education, Pacific Peoples and Women; Te Puni Kōkiri; the Departments of the Prime Minister and Cabinet and Corrections; the Treasury; the New Zealand Defence Force; Land Information New Zealand; and Housing New Zealand Corporation.
- 142.** I have consulted with the Minister of Housing on this Cabinet paper and she has agreed that this Cabinet paper be lodged.

## Financial Implications

### *Tenants, landlords and property managers*

- 143.** The proposals in this paper will not result in any direct costs for the tenants and landlords who are compliant with the law. However, indirect costs are likely to arise from:
- 143.1.** The requirement for landlords to collect more information to withstand the challenge of a tenancy ending in response to a specified termination ground including time spent at the Tribunal in defence of this. For landlords this is a deterioration relative to the status quo which enables periodic tenancies to be ended unilaterally, for any reason, and generally without evidence.
  - 143.2.** The potential for lost revenue for landlords if following an initial fixed-term agreement a tenant can no longer be incentivised to sign up for a further fixed-term. This may expose landlords to risk should tenants subsequently leave the tenancy at a time of the cycle where there is low demand to replace them.
  - 143.3.** The potential for lost revenue for landlords if they are required to provide tenants with 63 or 90 days' notice to end a tenancy, a tenant subsequently serves 28 days' notice to leave, and an alternative tenant cannot be found to meet the shortfall.
  - 143.4.** The costs that landlords and property managers may face to upskill on the changing requirements and to adjust their business models accordingly.
- 144.** Parties who are non-compliant with the law will face direct costs as a result of these proposals in the form of larger penalties and an increased likelihood of lower level breaches of the RTA being acted on.
- 145.** Some landlords may generally consider that the package of tenancy initiatives underway will increase the risk to their business and this could affect landlord willingness to rent, and the amount of rent charged. Should this influence landlord decisions around rent increases or whether to remain in the rental market, there may be negative impacts on security of tenure for some tenants and at the margin a potential increased need for more public housing. However, noting that there are a wide number of factors that affect rent it would be difficult to attribute any change in market rent to the proposals in this paper alone and any impacts on rents may be muted by other factors that reduce costs for landlords, such as lower interest rates.
- 146.** Some of the shifts I have proposed in this paper such as the new processes and rights that will apply when a fixed-term agreement is coming to an end or the new grounds that will enable termination of a periodic tenancy, will require landlords and property managers to change the way they have been transacting with tenants. For larger landlords, including Housing New Zealand, this may necessitate a range of one-off project management costs to cover matters such as revising processes, training staff, or updating information technology systems.

## **Government**

- 147.** The Treasury and the Ministry of Social Development (MSD) have contended that if there are increases in market rent, this will flow through in increased costs to the Crown, due to increases in Accommodation Supplement (AS), Temporary Additional Support (TAS), Income Related Rent Subsidy (IRRS) and transitional housing payments. The Treasury and MSD have further comments below. HUD does not consider that these costs can be accurately modelled. There is no relevant international experience in comparable markets that is unaffected by competing factors to draw on and building a relevant model from the bottom up for domestic context would require multiple layers of assumptions that, in the view of officials, cannot be undertaken with an acceptable level of accuracy. For example, a model that attempted to forecast how the policy changes in this paper may impact on rents would need to factor in assumptions regarding:
- 147.1.** The current proportion of fixed-term and periodic tenancy agreements in the market.
  - 147.2.** The proportion of tenants that may exercise the right proposed in this paper to convert a fixed-term agreement to a periodic agreement upon expiry of the initial fixed term.
  - 147.3.** The proportion of periodic tenancy agreements that are end due to problems with tenant conduct rather than landlords' legitimate business reasons.
  - 147.4.** How landlords may price the risk of no longer being able to end a periodic tenancy unilaterally when tenants conduct is a problem.
  - 147.5.** How much of the risk priced by landlords would be passed onto tenants specifically in the context of other factors landlords have regard to when setting rent, such as supply constraints or general increases in the costs of providing a rental property.
  - 147.6.** The ability of tenants to meet an increase in rent.
- 148.** As noted above, if there are increases in market rent, the Crown will provide additional support to those who need it through mechanisms such as the AS and TAS. The Government is also working on a number of interventions to provide greater support to those with insecure housing, and to increase supply. Increasing supply should reduce pressure on the rental market and help stabilise or reduce rental costs. For example, Budget 2018 included funding of \$234.4 million to increase the supply of public housing by around 6,400 places by June 2022. I am advised that at least 4,000 of these houses will be new houses.
- 149.** The Government has also established the Urban Growth Agenda (UGA), which aims to address the fundamentals of land supply, development capacity, and infrastructure provision by creating the conditions for the market to respond to growth. The main objective for the UGA is to improve housing affordability, underpinned by affordable urban land. To do this, the UGA looks to remove constraints on the development of

much-needed affordable housing in New Zealand to make room for cities to grow up and out.

- 150.** Cabinet considered a paper I presented on preventing and reducing homelessness in New Zealand on 5 August 2019. Cabinet agreed that HUD begin engagement with housing providers to understand what additional public housing and transitional housing supply is available in “hot spot” locations, and housing providers’ capacity to deliver it [CAB-19-MIN-0384 refers]. Cabinet has considered a paper from the Minister of Housing about the reset of the Government Build Programme, which aims to:

**150.1.** increase the supply of affordable housing across the spectrum of housing need, and

**150.2.** make affordable housing more widely available through additional support to households.

*Joint comment from the Treasury and Ministry of Social Development*

- 151.** The Treasury and MSD support the proposed reforms and think increased security of tenure would have significant positive wellbeing effects for renting New Zealanders. However, we think the likelihood and magnitude of the risks that these reforms pose when combined with other changes happening in the rental market is larger than the paper states. In HUD’s consultation on the reforms, landlords submitted significant feedback that they see “no cause” terminations as a critical tool to manage their property and risk. The proposed reforms mitigate some of these concerns by increasing “with cause” termination options, but overall we think any meaningful change to remove “no cause” tenancy terminations includes a risk of negative impacts on the rental market, particularly low income and vulnerable renters.
- 152.** This risk includes landlords exiting or not entering the rental market, raising rents to price in risk, or becoming more stringent about offering a rental to a prospective tenant. In our view this risk increases when combined with other changes happening in the rental market, such as an inability to meet demand, insurance and rates rises, and other reforms such as the Healthy Homes regulations. If this risk occurs, we think rents could rise and rental supply could decline; in our view this would particularly negatively affect low income and vulnerable households, as they would have to spend more income on rent or find it more difficult to access the private rental market.
- 153.** This risk could also lead to increased government spend on housing initiatives, such as IRRS, AS and TAS. It could also create further demand and pressure on public and transitional housing.
- 154.** An estimate of the likely risks and costs these proposed reforms could have for government housing spend has not been done. However, we estimate that small rent increases can have a large impact on government housing spend. s 9(2)(f)(iv)
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s 9(2)(f)(iv)

*Information and education activities and operationalising new enforcement tools*

- 155.** The successful implementation of the proposals will require a degree of awareness by both tenants and landlords, so that parties know what new rights and systems apply. I therefore consider that information and education activities will be important to ensure that the market is aware of what will be different and what new processes, obligations and rights will apply.
- 156.** The regulator, MBIE, already undertakes this role across the private rental market and has established systems in place to communicate changes to the RTA. However, MBIE has advised that activities required to appropriately communicate the changes will fall outside of the business as usual activities it is funded to deliver. This is due to the need to run a specific information campaign to clearly communicate the complexity of the changes proposed and to overcome information delivery risks that arise from other activities such as supporting the implementation of the Healthy Homes Standards.
- 157.** Costs will also arise from the requirement for the Regulator to operationalise a new enforcement and compliance regime. MBIE anticipates one off implementation arising from the need to develop an effective enforcement policy and operational procedures for use of the new enforcement tools. The Regulator will also have ongoing operational costs of administering this regime due to the additional quality assurance processes that will be required, and additional business processes needed to recover debt owed from infringement notices.

**158.**

s 9(2)(f)(iv)

**159.**

s 9(2)(f)(iv)

s 9(2)(f)(iv)

### *Resourcing implications for the Tribunal*

**160.** There are also likely to be resourcing implications for the Ministry of Justice because of the potential for an increase in the number of cases coming before the Tribunal for the termination of a tenancy or to challenge a tenancy's conversion into a periodic agreement at the end of an initial fixed term. The volume of these cases is difficult to quantify as officials do not know what the split is between fixed-term and periodic agreements in the market nor how many no cause terminations are issued currently, as these provisions cannot generally be challenged and subsequently coded.

**161.**

s 9(2)(f)(iv)

### **Legislative Implications**

**162.** The proposals in this paper will require legislation to be introduced to Parliament to amend the RTA. A Bill has been included on the Government's Legislation Programme for this purpose with a s 9(2)(f)(iv)

### **Impact Analysis**

**163.** The Regulatory Impact Analysis requirements apply to the proposals in this paper. A cross-agency Quality Assurance Panel with representatives from the Treasury and HUD has reviewed the Regulatory Impact Assessment (RIA) "Reform of the Residential Tenancies Act" dated September 2019, produced by HUD. The panel considers that the RIA partially meets the Quality Assurance criteria. The RIA does not meet the convincing criteria due to gaps in the problem definition, performance measures for success and risk mitigation.

### **Human Rights**

**164.** The proposals in this paper are consistent with New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view on whether these proposals are consistent with the Bill of Rights Act 1990 will be made once legislation is drafted.

## Gender Implications

165. The proposals contained in this Cabinet paper have no gender implications.

## Disability Perspective

166. Disabled people, and their families, including children, have a critical need for housing which is safe and healthy. They are also more likely to live in rental housing, due to comparably lower incomes. The proposals in this paper are expected to have twofold positive effect for disabled people. Firstly, as tenancies will be made more secure necessitating less unintended changes in address and associated costs. Secondly, noting that compliance is expected to be improved because of the proposals in this paper there will be increased potential for disabled people receive a benefit from the Healthy Homes Standards. At the time that agreement was sought for those standards I noted that tenants with disabilities, including people with age-related disabilities and those who spend longer indoors because they are housebound, are more likely to experience illnesses in unhealthy rental housing.

## Publicity

167. The Office of the Associate Minister of Housing (Public Housing), in consultation with the Prime Minister's Office and the Minister of Housing's Office, will manage any publicity.

## Proactive Release

168. I intend to proactively release this paper along with my next Cabinet paper on the reform as single package once both items have been considered and the policy direction for the reform has been announced, subject to any require due diligence around the need for certain material to be redacted. I expect that proactive release will occur within the 30 business days provided for in Cabinet Office Circular CO (18)4.

## Recommendations

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

1. **Note** that the Government initiated a reform of the Residential Tenancies Act 1986 in July 2018 [SWC-18-Min-0080] centred around the primary objective to improve tenants' security of tenure while maintaining adequate protection of landlords' interests;
2. **Note** that public consultation on the reform of the Residential Tenancies Act 1986 ran for seven weeks between August and October 2018 and that submissions representing the viewpoints of 4,787 viewpoints were received;
3. **Note** that due to the size and complexity of the reform of the Residential Tenancies Act 1986 programme, the first stage of the reform will focus on the aspects concerning the general rental market first and changes to the boarding house provisions of the Residential Tenancies Act 1986 will progress on a longer-term basis;
4. **Note** that further papers on the reform of the Residential Tenancies Act 1986 will follow seeking agreement to matters such as the processes and obligations that should apply for keeping pets in, and adding minor fittings to, rental properties, the general responsibilities parties have, and the way rent is set and how frequently it can be increased, among other matters;

### ***Changes to improve tenant's security of tenure***

#### *Termination Provisions*

5. **Note** that the current provisions of the Residential Tenancies Act 1986 may be having a negative impact on security of tenure;

6. **Note** negative impacts of insecure tenure can manifest in a range of adverse social outcomes, unintended costs for tenants and generally compromise the integrity of the law by disincentivising tenants to exercise their legal rights;
7. **Note** that section 51(1)(d) of the Residential Tenancies Act 1986 enables landlords to end a periodic tenancy “in any other case” (with no cause);
8. **Note** that submissions show that landlords consider that the ability to end a periodic tenancy with no cause is an essential property management tool in a range of circumstances, including when tenants display antisocial behaviour and in instances where rent is frequently in arrears but not at the threshold that would compel the Tenancy Tribunal to terminate the tenancy;
9. **Note** that officials do not consider it possible to fully mitigate landlord concerns if the ability to end a periodic tenancy with no cause is removed, as this will always be more enabling for landlords than a system that constrains when tenancies may be terminated;
10. **Note** that the Associate Minister of Housing (Public Housing) is sympathetic to the landlord view, but considers that the security of tenure benefits that will arise from removing the ability to end a periodic tenancy with no cause must take precedence over the costs that could fall to landlords in some situations and that mitigations the Associate Minister of Housing (Public Housing) proposes will address landlord concerns to some extent;
11. **Agree** to remove the ability for landlords to end a periodic tenancy with no cause with the effect that periodic tenancies that are ended without the involvement of the Tenancy Tribunal would be ended for legally specified reasons only;
12. **Note** that additional reasons will need to be specified in the Residential Tenancies Act 1986 to provide for periodic tenancies to be ended for legitimate reasons in substitution for the removal of the ability to end a periodic tenancy with no cause;
13. **Agree** that new specified reasons for terminating a periodic tenancy be included in the Residential Tenancies Act 1986 that provide for tenancies to end in the following circumstances:
  - 13.1 the owner intends to make the property available for sale within 90 days of the tenant ceasing to occupy it;
  - 13.2 where the property has been acquired in support of a business use (where that business is not the provision of residential rental accommodation) and termination is required for the purposes of the business (and this was foreshadowed in the tenancy agreement);
  - 13.3 the landlord intends to carry out extensive alterations, refurbishment, repairs, or redevelopment of the premises and it would not be reasonably practicable for the tenant to continue to live there while the work was being undertaken;
  - 13.4 the landlord wants to change the use of the premises (e.g. from residential to commercial);
  - 13.5 the premises are to be demolished; or
  - 13.6 the landlord is not the owner of the premises and the landlord's interest in the property ends;
14. **Agree** that consistent with other termination provisions that apply to periodic tenancies in the Residential Tenancies Act 1986, landlords should be able to issue notice in the circumstances described in Recommendation 13 above without the involvement of the Tenancy Tribunal, unless challenged by the tenant;
15. **Note** that public housing providers are also bound by the Residential Tenancies Act 1986 but have differing business needs to private landlords arising from requirements to transfer tenants from one property to the other to order to sustain, rather than end, the tenancy;
16. **Agree** that to the following additional circumstances for terminating a periodic tenancy that would only apply to public housing:
  - 16.1 the tenant is no longer eligible for public housing or the premises ceases to be funded as a public housing place and/or the community housing provider is no longer registered as a community housing provider; or

- 16.2** the tenant needs to be transferred to a different public housing property that is considered to better match their needs, the public housing provider's business requirements, or the needs of the community;
- 17. Agree** to the following new processes that will allow a periodic tenancy to be terminated by the Tenancy Tribunal in the following circumstances:
- 17.1** where a tenant has been at least five working days late with their rent payment on three separate occasions within any 90-day period and application to the Tribunal is made with 28 days of the third notice being issued;
- 17.2** where three notices for individual acts of antisocial behaviour have been issued reasonably and fairly by the landlord within any 90-day period and application to the Tribunal is made with 28 days of the third notice being issued;
- 17.3** for any other reason where the Tribunal considers on balance that the landlord's application to end the tenancy is legitimate and fair, taking into account the impact on the tenant;
- 18. Agree** that the antisocial behaviour referred to in Recommendation 17 above should broadly cover situations where repeated acts by a tenant in the context of their tenancy cause harassment, alarm or distress to a third party, but that legislation should be non-exhaustive so that the specific behaviours and acts in scope of this can evolve over time;
- 19. Agree** that where the Tenancy Tribunal terminates a periodic tenancy for the grounds set out in Recommendation 17, the Tenancy Tribunal will determine the notice period;
- 20. Agree** that existing ground enabling a periodic tenancy to be terminated so that an owner or member of their family can be moved in is amended so that this ground can only be exercised in circumstances where the owner or family member intends to use the property as their principal place of residence for a minimum of 90 days;
- 21. Agree** that the intentional misuse of termination provisions be established as a new unlawful act and subject to the maximum penalties set out in Schedule B and Schedule C of Appendix 1;

*Notice Periods*

- 22. Note** that the Residential Tenancies Act 1986 currently allows periodic tenancies to be terminated with 42 days' notice in certain situations without the Tenancy Tribunal's involvement, and that I consider this is problematic when tenants are unable to find suitable alternative accommodation within this timeframe;
- 23. Agree** to increase the amount of notice that landlords would need to give when terminating a periodic tenancy from 42 to 63 days on the following grounds currently specified in the Residential Tenancies Act 1986:
- 23.1** the owner or their family member requires the premises to live in; and
- 23.2** the property is needed for an employee and this was foreshadowed in the tenancy agreement;
- 24. Agree to** increase the amount of notice that landlords would need to give when terminating a periodic tenancy from 42 to 90 days on the following ground currently specified in the Residential Tenancies Act 1986: the property has been sold with a requirement by the new owner for vacant possession;
- 25. Note** that the increase in notice in Recommendations 23 and 24 does not affect the current termination provisions in the case of the death of the sole tenant, the destruction of the premises, or in relation to service tenancies;
- 26. Agree** that the amount of notice that landlords would need to give when terminating a periodic tenancy for the new grounds set out in Recommendations 13 and 16 be 90 days;
- 27. Note** that, while this proposal is expected to provide tenants with greater security of tenure, it may have implications for settlement processes, and increase the likelihood of landlords being

exposed to periods of lost rent;

- 28. Agree** that tenants should be required to give 28 days' written notice instead of 21 days' written notice, when ending a periodic tenancy;

#### *Tenancy Agreements*

- 29. Note** that the existing arrangements for fixed-term agreements may be having a negative impact on security of tenure as:

**29.1** tenants can be moved on from a property solely because the fixed term has expired, and the tenant can be notified that the tenancy will not be continuing with as little as 21 days' notice; and

**29.2** some tenants may find themselves locked in to a cycle where their fixed-term tenancies end during peak times of the year when it is more difficult to find alternative accommodation;

- 30. Agree** that at the end of the term of a fixed-term tenancy:

**30.1** both parties can agree to end the tenancy;

**30.2** both parties can agree to extend or renew the fixed-term;

**30.3** the tenant can give at least 28 days' notice before the end of the fixed term that they wish to vacate the premises when the fixed term ends; or

**30.4** the landlord can give notice for the current and additional reasons specified in the Residential Tenancies Act 1986 in relation to periodic tenancies, with the notice period of at least 63 or 90 days before the end of the fixed term, in accordance with the notice period for that termination ground; or

**30.5** the fixed-term tenancy will automatically become a periodic tenancy.

- 31. Agree** that the proposals in the recommendations above will not apply to boarding house tenancies as the circumstances surrounding these tenancies are different to standard tenancy arrangements;

#### ***Changes to Strengthen Enforcement and Improve Compliance***

- 32. Note** that tighter conditions in the private rental market make it increasingly unlikely that tenants will raise issues about their rental property with landlords and that this reduces the effectiveness of the self-resolution framework that underpins the law and increases the risk of non-compliance;

- 33. Note** that the introduction of new requirements, such as the Healthy Homes Standards, which adds additional compliance costs for some landlords, will further exacerbate the growing risk of non-compliance in rentals not meeting minimum standards, particularly for those living in poorer quality housing;

- 34. Note** that benefits for security of tenure and the other matters expected to be delivered through the reform of the Residential Tenancies Act 1986 will be limited unless enough incentives exist for landlords to comply with the law;

#### *New tools for the Regulator*

- 35. Note** that while the Ministry of Business, Innovation and Employment as the Regulator was given an increased authorisation under the Residential Tenancies Act 1986 to address serious non-compliance in July 2016, the Regulator does not have a proportionate range of tools to deal with lower-level breaches and to take action before those breaches escalate;

- 36. Agree** to establish an infringement regime that would enable the Chief Executive (or delegate) of the department acting as the Regulator for the tenancy market to issue infringements notices for strict liability offences;

- 37. Agree** that the infringement regime outlined in Recommendation 36 will apply to the strict liability offences outlined in Schedule A of Appendix 1, which includes some new unlawful acts, with

- higher penalties applicable to landlords with six or more tenancies;
38. **Agree** that revenue generated from the issuance of infringements will be paid to the Crown;
  39. **Agree** to provide the department acting as the Regulator for the tenancy market with the power to enter into Enforceable Undertakings, negotiated agreements with a landlord or tenant to address minor or technical breaches, with the breach of the agreement being an unlawful act;
  40. **Agree** to provide the department acting as the Regulator for the tenancy market with the power to issue Improvement Notices to direct a landlord or tenant to take specific actions, in a specified timeframe, to remedy a breach or avoid a likely breach, with failure to comply with the notice being an unlawful act;
  41. **Agree** to amend the Residential Tenancies Act 1986 to establish the breach of the following requirements as new unlawful acts with the corresponding maximum penalty set out in Schedule B of this paper:
    - 41.1 Failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse (sections 13(1) and 13(2));
    - 41.2 Failure to notify details specified in 15(1) (a) and (b) when a landlord's or tenant's interest passes to another person, without reasonable excuse (section 15(1));
    - 41.3 Failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse (section 16(1));
    - 41.4 Landlord failing to give notice to tenant or prospective tenant that premises are on the market (sections [47\(1\) & \(2\)](#));
    - 41.5 Landlord failing to advise tenant of any contamination test results within 7 days of receipt (if landlord used right of entry for testing) (section 48(3B). To be brought into force at the same time as section 48(3B));

#### *Increasing civil penalties*

42. **Note** that the penalties applicable to breaches of the Residential Tenancies Act 1986 have not been reviewed since 2006 and if adjusted for inflation in rental costs, are 60 percent too low in real terms;
43. **Agree** to the increases to exemplary damage penalties available in the Tenancy Tribunal as outlined in Schedule B of Appendix 1;
44. **Agree** to the introduction of a new civil pecuniary penalty awardable by the Tenancy Tribunal and payable to the Crown that would apply to the serious breaches as outlined in Schedule C of Appendix 1;
45. **Agree** that the legislation set out criteria to assist the Tenancy Tribunal in determining whether a breach of one of the provisions in Schedule C of Appendix 1 warrants the higher civil pecuniary penalty, based on the current criteria in the Residential Tenancies Act 1986 in relation to exemplary damages, and appropriate provisions from other pecuniary penalty regimes;
46. **Agree** that the legislation will rationalise the current exemplary damages provisions where the application is made by the Regulator with the new civil pecuniary penalties;
47. **Agree** that civil pecuniary penalties only apply to landlords with six or more tenancies;

#### *New and increased criminal penalties*

48. **Note** that the Residential Tenancies Act 1986 contains a small number of criminal offences and associated fines that are too low to deter offending;
49. **Agree** to increase the maximum fines for criminal offences under the Residential Tenancies Act 1986 as outlined in Schedule D of Appendix 1;
50. **Agree** to a new criminal offence for breaching a Tenancy Tribunal work order, where the ongoing breach creates a continued risk to the health, safety, security and habitability of the buildings or property or inhabitants with a maximum fine of \$3,600;

#### *How the penalties fit together*

51. **Agree** that an infringement fee or fine, a civil pecuniary penalty or exemplary damages cannot be imposed in respect of the same breach of the Residential Tenancies Act 1986;
52. **Note** that a tenant may seek compensatory damages, whether or not an infringement fee or fine, a civil pecuniary penalty or exemplary damages has already been imposed in respect of the same

breach of the Residential Tenancies Act 1986;

#### *Administrative matters*

53. **Agree** to broaden the general functions and powers of the chief executive of the department acting as Regulator under the Residential Tenancies Act 1986 to include monitoring and assessing compliance of landlords with that Act;
54. **Agree** that landlords be required to retain an expanded range of documents including rent and bond records and other documents required to demonstrate compliance with their general responsibilities and obligations under the Residential Tenancies Act 1986, such as building records or documentation under the Safety at Work Act 2015, and that this will include documents that predate a landlord's current tenancy at the property;
55. **Authorise** the Associate Minister of Housing (Public Housing) to decide on the specific documents that will be required in the context of Recommendation 54 above;
56. **Agree** that the specific documents that landlords must retain will be clearly listed in the Act or regulations so that landlords are aware of these new obligations;
57. **Agree** that landlords be required to provide the expanded range of documents established by Recommendation 54 above to the Regulator if requested for the purpose of ascertaining a landlord's compliance with the Residential Tenancies Act 1986;
58. **Agree** to increase the jurisdiction limit of the Tenancy Tribunal from \$50,000 to \$100,000 to reflect the increase in rental costs (and associated compensation and damages awards) and proposed penalties;
59. **Agree** that the Regulator can apply for exemplary damages and civil pecuniary penalties to the Tenancy Tribunal no later than 12 months after the date on which the Regulator becomes aware of the matter;
60. **Agree** that the Regulator should have the ability to consolidate multiple applications for breaches by a single party into a single application for the Tenancy Tribunal;
61. **Note** that landlords with six or more tenancies are subject to higher penalties as outlined in Recommendations 37 and 47;
62. **Agree** that the Residential Tenancies Act 1986 is amended to prevent landlords from structuring their legal affairs to appear to have fewer than six tenancies in order to avoid this threshold;

#### **Financial Implications**

63. s 9(2)(f)(iv)

64.

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

#### **Next Steps**

66. **Note** that provision has been made of the 2019 Legislation Programme for a Residential Tenancies Bill with a s 9(2)(f)(iv) and that this Bill will incorporate both the decisions in this paper and in a subsequent paper I will submit in 2019;
67. **Authorise** the Ministry of Housing and Urban Development to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to Cabinet's agreement to the recommendations above;
68. **Authorise** the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising throughout the drafting process;
69. **Note** that I intend to introduce legislation to Parliament by March 2020;

**70. Agree** that the summary of submissions for the public consultation be published on the Ministry of Housing and Urban Development's website at the time that the Government's decisions on the reform are publicly announced.

Authorised for lodgment

Hon Kris Faafoi

Associate Minister of Housing (Public Housing)

Date /.../.../

## Appendix 1 – Proposed changes to unlawful acts, offences and penalties

### Schedule A – Proposed infringement offences and penalties

Section	Description – infringement offences	Infringement (\$)	
		Fee <sup>9</sup>	Fine <sup>10</sup>
13(1) & (2) <b>New</b>	Failure to have a written tenancy agreement and/or provide a copy to the tenant	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
<a href="#">13A(1F)(a)</a>	Fails to comply with providing required information to tenant (e.g. insurance and tenant's liability, healthy homes standards)	500 (F) 1000 (S)	1,000 (F) 2,000 (S)
13A(1F)(b)	Knowingly includes false/misleading statements in required information to tenant (e.g. insurance and tenant's liability, healthy homes standards)	500 (F) 1000 (S)	1,500 (F) 3,000 (S)
15(1) <b>New</b>	Failure to notify details specified in 15(1)(a) and (b) when a landlord's or tenant's interest passes to another person	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
16(1) <b>New</b>	Failure to notify a change of name and contact address to the other party of the tenancy	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
<a href="#">16A(6)</a>	Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days	500 (F) 1000 (S)	1,500 (F) 3,000 (S)
<a href="#">17</a>	Requiring key money	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
17A	Requiring letting fees	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
<a href="#">18</a>	Landlord requiring bond greater than amount permitted	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
<a href="#">18A</a>	Requiring unauthorised form of security	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
<a href="#">19(2)</a>	Breach of duties of landlord on receipt of bond	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
<a href="#">23</a>	Landlord requiring rent more than 2 weeks in advance or before rent already paid expires	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
29	Failure by landlord to give receipts or written statement of rent	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
30(2)	Landlord failing to keep proper business records related to payments	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
<a href="#">47(1) &amp; (2)</a>	Landlord failing to give notice to tenant or prospective tenant that premises are on the market	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
48(3B) <b>New</b>	Landlord to advise tenant of any contamination test results within 7 days of receipt (if landlord used right of entry for testing)	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)

9 (F) relates to the infringement fee or fine that would apply to a landlord with five or fewer tenancies; (S) is the infringement fee or fine that would apply to landlords with six or more tenancies.

10 The fee is the amount imposed via the issuing of an infringement offence notice by the Regulator. The fine is the maximum amount that can be imposed for the same offence by a court following a successful prosecution.

Section	Description – infringement offences	Infringement (\$)	
		Fee	Fine
66J(4)	Landlord of boarding house failing to advise that premises are on the market	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)
<a href="#">123A(4)</a>	Landlord failing to provide required documents to Chief Executive, without reasonable excuse	500 (F) 1,000 (S)	1,500 (F) 3,000 (S)

### Schedule B - Proposed increases to exemplary damages

Section	Description - Unlawful acts (Schedule 1A of the RTA)	Exemplary Damages (\$)	
		Current	Proposed
<a href="#">12</a>	Unlawful discrimination	4,000	6,500
13(1) & (2) <b>New</b>	Failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse	-	750
<a href="#">13A(1F)(a)</a>	Fails to comply with providing required information to tenant (e.g. insurance and tenant's liability, healthy homes standards)	500	750
<a href="#">13A(1F)(b)</a>	Knowingly includes false/misleading statements in required information to tenant (e.g. insurance and tenant's liability, healthy homes standards)	500	900
15(1) (c) <b>New</b>	Failure to notify details specified in 15(1) (a) and (b) when a landlord's or tenant's interest passes to another person, without reasonable excuse	-	750
16(1) (d) <b>New</b>	Failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse	-	750
<a href="#">16A(6)</a>	Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days	1,000	1,500
<a href="#">17</a>	Requiring key money	1,000	1,500
17A	Requiring letting fees	1,000	1,500
<a href="#">18</a>	Landlord requiring bond greater than amount permitted	1,000	1,500
<a href="#">18A</a>	Requiring unauthorised form of security	1,000	1,500
<a href="#">19(2)</a>	Breach of duties of landlord on receipt of bond	1,000	1,500
<a href="#">23</a>	Landlord requiring rent more than 2 weeks in advance or before rent already paid expires	1,000	1,500
<a href="#">27(2)</a>	Landlord requiring rent in excess of market rent order, made by Tribunal under s.25	200	350
<a href="#">29</a>	Failure by landlord to give receipts or written statement of rent (NB: Receipts not required when rent is an automatic payment or paid direct into rent account)	200	350
<a href="#">30(2)</a>	Landlord failing to keep proper business records related to payments	200	350

Section	Description - Unlawful acts (Schedule 1A of the RTA)	Exemplary Damages (\$)	
		Current	Proposed
<a href="#">33</a>	Landlord seizing or disposing of tenant's goods	2,000	3,000
<a href="#">38(3)</a>	Landlord's interference with privacy of tenant (interference with reasonable peace, comfort or privacy)	2,000	3,000
<a href="#">40(2)(ab)</a>	Tenant's cause or permit any interference with, or render inoperative, any means of escape from fire within the meaning of the Building Act 2004	3,000	4,000
<a href="#">40(3A)(a)</a>	Tenant failure to observe, without reasonable excuse, the tenant's duties upon termination	1,000	1,500
<a href="#">40(3A)(c)</a>	Tenant using or permitting premises to be used for unlawful purpose	1,000	1,800
<a href="#">40(3A)(d)</a>	Tenant's harassment of other tenants or neighbours (interference with reasonable peace, comfort or privacy)	2,000	3,000
<a href="#">40(3A)(e)</a>	Tenant failing to ensure number of residents does not exceed maximum allowed, without reasonable excuse	1,000	1,500
<a href="#">44(2A)</a>	Tenant assigns or sublets a tenancy when prohibited to do so, or without the landlord's written consent	1,000	1,500
<a href="#">45(1A)</a>	Landlord's failure to meet obligations in respect of cleanliness, maintenance, smoke alarms, healthy homes standards, or building, or health, and safety requirements	4,000	7,200
45(1AB)	Landlord providing premises at start of tenancy despite knowledge of contamination	4,000	7,200
<a href="#">45(2A)</a>	Landlord interfering with supply of services to premises (unless to enable repairs/maintenance or avoid danger)	1,000	1,800
45(2D)	Landlord's failure to meet obligations to provide insurance policy or to correct information provided	500	900
<a href="#">46(3)</a>	Altering locks without consent of other party, without reasonable excuse	1,000	1,500
<a href="#">47(1) &amp; (2)</a>	Landlord failing to give notice to tenant or prospective tenant that premises are on the market [duplicate provision of Boarding Houses s.66J(4)]	-	1,800
48(3B) <b>New</b>	Landlord to advise tenant of any contamination test results within 7 days of receipt (if landlord used right of entry for testing)	-	1,000
<a href="#">48(4)(a)</a>	Unlawful entry by landlord, other than permitted under 48(1)-(3)	1,000	1,500
<a href="#">48(4)(b)</a>	Tenant failing, without reasonable excuse, to allow landlord to enter upon premises in circumstances where landlord entitled to enter	1,000	1,500
49D	Unlawful acts of landlord related to the tenant's liability under s.49B (e.g. charging further payments relating to damage and destruction)	1,000	1,800
<a href="#">54(3)</a>	Retaliatory notice of termination	4,000	6,500

Section	Description - Unlawful acts (Schedule 1A of the RTA)	Exemplary Damages (\$)	
		Current	Proposed
<b>New</b>	Intentional misuse of termination provisions	-	6,500
<a href="#">61(5)</a>	Abandonment of premises without reasonable excuse	1,000	1,500
66G(4)	Harassment of a tenant in a boarding house	2,000	3,000
66I(4)	Landlord of boarding house failing to meet obligations in respect of cleanliness, maintenance, smoke alarms, the healthy homes standards, or buildings, health, and safety requirements	4,000	7,200
66J(4)	Landlord of boarding house interfering with services	1,000	1,800
66J(4)	Landlord of boarding house failing to advise that premises on the market	1,000	1,800
66J(7)	Landlord of boarding house failing to meet obligations to provide insurance policy or to correct information provided	500	900
<a href="#">66K(2)(b)</a>	Tenant's interference, etc, with means of escape from fire	3,000	4,000
<a href="#">66K(4)(b)</a>	Tenant using or permitting premises to be used for unlawful purposes	1,000	1,500
<a href="#">66K(4)(c)</a>	Tenant's harassment of neighbour (interference with reasonable peace, comfort or privacy)	2,000	3,000
66P(4)	Landlord of boarding house failing to comply with order relating to house rules	2,000	3,000
66T(1)	Contraventions relating to entry, or attempted entry, of tenant's room in boarding house	1,000	1,500
<a href="#">66X(5)</a>	Abandonment of premises without reasonable excuse	1,000	1,500
<a href="#">108(2A)</a>	Breach of work order (other than s.78A work order) without reasonable excuse	3,000	5,000
108(2A)	Landlord breaching s.78A work order without reasonable excuse	4,000	5,000
<a href="#">123A(4)</a>	Landlord failing to provide required documents to Chief Executive without reasonable excuse	1,000	1,500
<a href="#">137(2)</a>	Contracting to contravene or evade the provisions of this Act	1,000	1,800
<b>New</b>	Failure to remedy a breach of the RTA or tenancy agreement as agreed by an Enforceable Undertaking with the Regulator	-	1,000
<b>New</b>	Failure to comply with an Improvement Notice issued by the Regulator	-	3,000

#### Schedule C – New civil pecuniary penalties for serious breaches

Refer Section	Description - Unlawful acts (Schedule 1A of the RTA)	Civil Pecuniary Penalty \$
<a href="#">45(1A)</a>	Landlord's failure to meet obligations in respect of cleanliness, maintenance, smoke alarms, healthy homes standards, or building, or health, and safety requirements	50,000

45(1AB) <sup>11</sup>	Landlord providing premises, or continuing to provide premises, despite landlord's knowledge of contamination of premises	50,000
<a href="#">54(3)</a>	Retaliatory notice of termination	50,000
<b>New</b>	Intentional misuse of termination provisions	50,000
<a href="#">137(2)</a>	Contracting to contravene or evade the provisions of this Act	50,000

#### Schedule D – Proposed criminal offences and fines

Section	Description – Offences	Fine (\$) or Sentence	
		Current	Proposed
48(5)	Landlord uses force (or threat of force) to enter premises while tenant is on premises	2,000 or < 3 months prison	3,000 or < 3 months prison
63(2)	Entry to premises to take possession without tenant's consent or Tribunal order	2,000	3,000
66T(2)	Boarding house landlord uses force (or threat) to enter (or attempt) tenant's room (except for emergency or risk to life/property)	2,000 or < 3 months prison	3,000 or < 3 months prison
90(1)	Tenancy mediator breaches confidentiality of dispute mediation	1,000	1,800
109A(5)	Intentionally contravenes a Tribunal order restraining further unlawful acts	2,000	3,600
<b>New 108</b>	Breach a Tenancy Tribunal work order (made in respect of s.78 or s.78A), where the work has not been completed and the ongoing breach of the work order creates a continued risk to the health, safety, security and habitability of the buildings or property or inhabitants.	-	3,600
<a href="#">110(1)</a>	Failure to attend Tribunal summons to give evidence or produce documents, without reasonable cause	2,000	3,600
<a href="#">111</a>	Giving false evidence	< 3 years prison	No change
<a href="#">114(7)</a>	Hindering or obstructing Tenancy Mediator's power of entry (without reasonable excuse)	2,000	3,000
<a href="#">123D(9)</a>	Hindering or obstructing an Authorised Person's power of entry (without reasonable excuse)	2,000	3,000
<a href="#">133(2)</a>	Failure to provide tenancy agreement to Tribunal or Chief Executive within 10 days of notice (without reasonable excuse)	2,000	3,600

11 Inserted by the Residential Tenancies Amendment Act 2019.