



Briefing

RESIDENTIAL TENANCIES ACT 1986 AMENDMENTS: CABINET LEGISLATION COMMITTEE PAPER, DRAFT BILL, AND DEPARTMENTAL DISCLOSURE STATEMENT FOR FEEDBACK AND MINISTERIAL AND COALITION PARTY CONSULTATION

Date	17/04/2024	Priority	High
Tracking number	HUD2024-004178		

ACTION SOUGHT

Minister	Action sought	Deadline
Hon Chris Bishop Minister of Housing	Commence Ministerial and coalition party consultation on the attached draft Bill, Cabinet Legislation Committee paper and Departmental Disclosure Statement. Agree to provide feedback on the documents by 10am 1 May 2024. Note the risks to the timeline if there is substantial feedback.	18 April 2024

CONTACT FOR DISCUSSION

Name	Position	Telephone	1st contact
Jeremy Steele	General Manager, Policy and Legislation Design	04 832 2471	
Claire Leadbetter	Manager, Tenancy and Tenures	s 9(2)(a)	✓

OTHER AGENCIES CONSULTED

Ministry of Business, Innovation and Employment, the Ministry of Social Development, Kāinga Ora – Homes and Communities, the Treasury, Te Puni Kōkiri, the Ministry of Health, the Ministry of Education, the Ministry of Justice, Parliamentary Counsel Office, Te Puna Aonui, Whaikaha – Ministry of Disabled People, the Office for Seniors, the Office of the Privacy Commissioner, the Ministry for Pacific Peoples, and the Principal and Deputy Tenancy Adjudicators. The Department of Prime Minister and Cabinet was informed.



Briefing

RESIDENTIAL TENANCIES ACT 1986 AMENDMENTS: CABINET LEGISLATION COMMITTEE PAPER, DRAFT BILL, AND DEPARTMENTAL DISCLOSURE STATEMENT FOR FEEDBACK AND MINISTERIAL AND COALITION PARTY CONSULTATION

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Purpose

1. To provide you with the draft Residential Tenancies Amendment Bill (the Bill), Cabinet Legislation Committee (LEG) paper, and Departmental Disclosure Statement for your feedback and any feedback from Ministerial and coalition party consultation.

RECOMMENDED ACTIONS

It is recommended that you:

1. **Note** that the attached draft Cabinet Legislation Committee (LEG) paper and draft Bill reflect decisions agreed by Cabinet on 11 March 2024 [ECO-24-MIN-0016 and ECO-24-MIN-0017 refer]. *Noted*
2. **Note** that the commencement date for provisions in the draft Bill is currently by Order in Council. Officials will provide you with advice on time needed to implement respective provisions after the Bill's introduction. *Noted*
3. **Agree** to undertake Ministerial and coalition party consultation on the attached draft Bill, LEG paper and Departmental Disclosure Statement. *Agree/Disagree*
4. **Agree** to provide any feedback on the draft Bill, LEG paper and Departmental Disclosure Statement, including feedback arising from Ministerial and coalition party consultation, by 10am on 1 May 2024. *Agree/Disagree*



5. **Note** that if feedback is not provided by 10am on 1 May 2024 and/or if significant changes are required, this will likely mean the Bill's introduction will be delayed. *Noted*

Jeremy Steele
**General Manager, Policy and
Legislation Design**
17 / 04 / 2024

Hon Chris Bishop
Minister of Housing
..... / /



Background

2. On 11 March 2024 Cabinet agreed to amend the Residential Tenancies Act 1986 (RTA) to implement a range of policy decisions relating to the termination of tenancies, improve the clarity and efficiency of the RTA, and introduce new rules for keeping pets in rental properties, including enabling landlords to charge a pet bond [ECO-24-MIN-0016 and ECO-24-MIN-0017 refer].
3. We have been working with Parliamentary Counsel Office (PCO) on drafting the Bill to reflect Cabinet's decisions. You have indicated the Bill will be introduced in May. For introduction in the week of 13 May, the Bill will need to be considered by LEG on 9 May and approved by Cabinet on 13 May. This means the Bill and LEG paper will need to be lodged on 2 May, unless you wish to have a late lodgement on 3 May.

The draft Residential Tenancies Amendment Bill, Cabinet paper, and Departmental Disclosure Statement

4. The draft Bill, LEG paper and Departmental Disclosure Statement are attached. The LEG paper seeks approval to introduce the Bill to Parliament.
5. The Departmental Disclosure Statement complements the general policy statement in the Bill and provides information on background policy material, quality assurance steps undertaken during the Bill's development, and any significant or unusual provisions. This will be published on the dedicated disclosure statements website managed by PCO at introduction.

Terminations provisions

6. The terminations-related provisions in the draft Bill reflect Cabinet policy decisions. Two issues have arisen during the drafting, which we have addressed as below.
7. Firstly, the general transitional rule is that all the changes apply to existing tenancies. However, the draft Bill provides that if a fixed-term tenancy has 90 days or less before the end of the fixed term on commencement, the current law will apply. In practice, this means the landlord would not be able to unilaterally end the tenancy at the end of the fixed term. However, at the end of the fixed term, the tenancy would become periodic and the landlord could give a 90-day no cause termination notice under the new law. For any existing fixed-term tenancy with 90 or more days until the end of the fixed term at commencement, the new law will apply.
8. We consider this approach provides the best balance between implementing the amendments in a timely manner, and providing some security to tenants on existing fixed-term agreements. Alternatively, the Bill could provide greater security to tenants by not applying the new rules to any existing fixed-term tenancies.



9. Secondly, commencement of the provisions in the draft Bill is currently by Order in Council. We understand you have indicated an expectation for termination-related provisions to come into force in early 2025. We are discussing implementation time requirements for provisions in the Bill with the Ministry of Business, Innovation and Employment (MBIE) and the Ministry of Justice (MOJ) and will provide you with advice on commencement after the Bill's introduction. Any changes to commencement dates can be made during the select committee process.

Pets provisions

10. The pet-related provisions in the draft Bill reflect Cabinet policy decisions. A few issues have arisen during the drafting, which have been addressed as follows:
- a. Clause 4(5) amends existing section 2 (Interpretation) to provide the following definition, to make the pet provisions workable:

*The tenant of a premises **keeps a pet** on the premises if the tenant permits the pet to be kept there even if the tenant is not the owner of the pet.*

This definition could cover the situation where a tenant's flatmate has a pet, in which case the tenant will have to seek consent for the pet and a landlord will be able to require a pet bond from the tenant.
 - b. Clause 16 inserts new section 42C which provides a tenant and landlord may agree to the tenant keeping a pet through the tenancy agreement. This is so a tenant and landlord can agree to the tenant keeping a pet at the start of a tenancy, rather than having to adhere to the pet consent rules, which gives a landlord 21 days to respond to a tenant's written request to keep a pet.
 - c. Clause 16 inserts new section 42D which provides tenancy agreements must not prohibit a tenant from keeping a pet (unless the landlord provides reasonable grounds for the prohibition) or impose an unreasonable condition on the tenant keeping a pet. Failure to provide a reasonable ground for prohibiting a pet is an unlawful act. This is to make the unlawful act, that a landlord must not unreasonably withhold consent to a tenant's request, workable.
 - d. Section 42D(4) states the following types of provisions in a tenancy agreement will be of no effect:
 - i. a provision prohibiting a tenant from keeping a pet without providing reasonable grounds for the prohibition, or
 - ii. a provision that imposes an unreasonable condition relating to keeping a pet.

These provisions are necessary to address the uncertain status of 'no pet' clauses or unreasonable pet conditions in tenancy agreements at the time the provisions come into force.



- e. Clause 16 inserts new section 42E(2)(c) which provides that, in written responses to a tenant's pet request, landlords are required to provide grounds for refusing a pet. As above, this is to make the unlawful act, that a landlord must not unreasonably withhold consent to a tenant's request, workable.
- f. The transitional provisions are set out in amended Schedule 1AA and cover the foreseeable range of tenancy agreement scenarios at the point at which the provisions come into force (clauses 42 and 46-50 of amended Schedule 1AA). For example, for existing tenancies the transitional provisions will mean:
 - i. a tenant will not have to seek 'retrospective consent' to keep a current pet from their landlord, as long as they already have agreement from their landlord;
 - ii. if a tenant wants to keep a new pet, they will have to seek consent from their landlord, regardless of the tenancy agreement;
 - iii. if a tenant is already keeping a pet in accordance with consent or permission from their landlord, the landlord will not be able to require a pet bond for the pet; and
 - iv. a landlord will be able to require a pet bond for a tenant to keep a new pet, regardless of the tenancy agreement.

s 9(2)(f)(iv)



s 9(2)(f)(iv)

Communications for introduction of the Bill

17. The Ministry of Housing and Urban Development (HUD) will develop a communications plan in consultation with your office ahead of the introduction of the Bill to Parliament in the week of 13 May 2024.
18. We anticipate this will include a draft press release for you to use on the day of introduction, additional questions and answers, and key messages.

Parliamentary process following introduction of the Bill

19. An indicative timeline is included in Annex A. Introduction is planned for the week of 13 May 2024, and the first possible date for first reading is 21 May 2024 (the next sitting day after introduction).
20. The Cabinet paper proposes that this Bill will be referred to the Social Services and Community Select Committee, as this subject matter would normally be in their remit.
21. A six-month select committee process would conclude at the end of November 2024. You would need to work with the Chair of the relevant select committee if you would like the process to be shorter than six months. However, factors that may limit the ability to undertake a shorter process include:
 - a. The amount of other business before the select committee at the time.
 - b. Whether the select committee will travel and, if so, how extensive this travel would be.
 - c. Appetite for engagement with the select committee, which is likely to be very high. There were 1,276 submitters on the Residential Tenancies Amendment Bill 2020. Levels of engagement may be higher on this Bill considering it will be the first opportunity for public comment on the proposals.



Risks

22. As previously indicated, the timeline has been expedited to meet a May introduction date and is tight. If there is substantial feedback on the documents, there is a high risk of the proposed dates for lodging the LEG paper, consideration by LEG and Cabinet, and subsequent introduction of the Bill slipping.

Consultation

23. The following agencies have been consulted on the draft Bill and LEG paper: Ministry of Business, Innovation and Employment, the Ministry of Social Development, Kāinga Ora – Homes and Communities, the Treasury, Te Puni Kōkiri, the Ministry of Health, the Ministry of Education, the Ministry of Justice, Parliamentary Counsel Office, Te Puna Aonui, Whaikaha – Ministry of Disabled People, the Office for Seniors, the Office of the Privacy Commissioner, and the Ministry for Pacific Peoples. The Principal and Deputy Tenancy Adjudicators were also consulted. The Department of Prime Minister and Cabinet was informed.

Next steps

24. We have provided the draft Bill to MOJ so they can undertake New Zealand Bill of Rights Act 1990 vetting, but this is not complete. We anticipate they will provide their advice to the Minister of Justice before the LEG meeting.
25. We are continuing to review the Bill and make minor changes. It is also subject to PCO's peer review and quality assurance processes.
26. For the Bill to be introduced in the week commencing 13 May 2024, the following milestones will need to be met:
- a. Between 18 – 30 April 2024, undertake Ministerial and coalition party colleagues on the draft Bill, Cabinet paper, and Departmental Disclosure Statement. This period for Ministerial and coalition party consultation (eight working days) is less than the ten days' total consultation time recommended in the recent Cabinet Office circular CO (24) 2: National, ACT and New Zealand First Coalition Government: Consultation and Operating Arrangements.
 - b. During the consultation period or by 10am 1 May 2024 at the latest, provide feedback from Ministerial and coalition party consultation to HUD.
 - c. By 3pm 1 May 2024, HUD will finalise and return documents to your office.
 - d. On 2 May 2024, your office will lodge documents so that they can be considered at LEG on 9 May 2024. This would enable the Bill to be introduced the following week (week commencing 13 May 2024).
27. A timeline setting out the steps for the Bill is provided as **Annex A**.



Annexes

Annex A: Timeline for Residential Tenancies Amendment Bill

Annex B: Draft Cabinet paper, Bill version 4.0 and Departmental Disclosure Statement



Annex A: Timeline for Residential Tenancies Amendment Bill

MILESTONE	DATE	NOTES
Ministerial and coalition party consultation on the Bill, LEG paper, and Departmental Disclosure Statement	18 – 30 April 2024	Eight working days provided, two days less than recommended by CO (24) 2 (period covers ANZAC day).
Feedback to HUD	10am, 1 May 2024	If Ministerial and coalition party feedback can be passed to officials for advice/action as it is received by your office that could support us to achieve lodgement by the targeted LEG date.
HUD returns final documents for lodging	1 May 2024	If there is substantial feedback there is a high-risk of this date slipping, causing a delay for lodging, LEG consideration and introduction, particularly if changes are needed to the Bill.
Lodge Cabinet paper and Bill	2 May 2024	
Cabinet Legislation Committee consideration of Bill	9 May 2024	
Cabinet consideration	13 May 2024	
Introduction of Bill to Parliament	Week of 13 May 2024	
First reading	21 May 2024	Next sitting day after introduction
<i>All timings indicative from here</i>		
Select committee report back to Parliament	Late November 2024	Select committee could report back between four to six months
Second reading	December 2024	Note that the last sitting week for Parliament is 17 – 19 December 2024.
Committee of the Whole House		
Third reading		
Royal assent		
Commencement	TBC	Subject to advice to be provided while the Bill is at select committee. This will allow for phased commencement of different sections of the Bill.



Annex B: Draft Cabinet paper, Bill version 4.0 and Departmental Disclosure Statement