



28 May 2020

DOIA19/20040411

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 18 April 2020 requesting, under the Official Information Act 1982 (the Act), the following information:

The following documents relating to policy and legislation changes to protect tenants and renters during and after COVID-19, and relating to the amendments of the Residential Tenancies Act in the COVID-19 Response (Urgent Management Measures) Legislation Bill:

- 1. Direction from the Minister/s for Housing and Associate Minister/s for Housing to Tenancy Services and/or the Ministry for Housing and Urban Development*
- 2. Briefing and information papers and documents*
- 3. Regulatory Impact Assessment/s*
- 4. Cabinet papers*

As I am sure you are aware, the COVID-19 Response (Urgent Management Measures) Act was passed under urgency on 25 March 2020, being introduced and passed on the same day. This Act amended the Residential Tenancies Act 1986 and enacted the rent increase freeze and protections against terminations.

All work produced by Ministerial direction was to ensure that renters were protected during these unprecedented times and to lessen the economic impact for tenants.

In total, five documents were found within the scope of your request, three of which are already publicly available so are refused under section 18(d) of the Act. Links to the documents have been provided in the attached document schedule.

The remaining two documents are released to you with some information redacted as it is outside the scope of your request. In addition, mobile numbers are withheld under section 9(2)(a) of the Act, to protect the privacy of officials.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the decision to withhold information under section 9 of the Act is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz.

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

Yours sincerely

Naomi Stephen-Smith
Manager, Tenures and Housing Quality
Housing and Urban Settings

Documents released – DOIA19/20040411			
Ref	Date	Title	Section of the Act applied
1	23 March 2020 10:41pm	Email: FW: Urgent tenancy legislation - rental freeze and restrictions on evictions	Out of scope 9(2)(a)
2	25 March 2020 11:48am	Email: RE: Change to non rent payment termination provision	Out of scope

Documents publicly available – DOIA19/20040411		
Date	Title	Section of the Act applied
24 March 2020	BRF19/20030594 – COVID-19: Residential Tenancies Act amendments Publicly available at: https://covid19.govt.nz/assets/resources/proactive-release/Covid-19-Residential-Tenancies-Act-amendments.pdf	18(d)
24 March 2020	Summary of international approaches to rental stress as a result of COVID Publicly available at: https://covid19.govt.nz/assets/resources/proactive-release/Summary-of-international-approaches-to-rental-stress-as-a-result-of-COVID.pdf	18(d)
25 March 2020	Cabinet Paper: COVID-19 Response (Urgent Management Measures) Bill Publicly available at : https://covid19.govt.nz/assets/resources/proactive-release/COVID-19-Response-Urgent-Management-Measures-Legislation-Bill - Approval-for-Introduction.pdf	18(d)

From: Claire Leadbetter

Sent: Monday, 23 March 2020 10:41 PM

To: Cade Bedford - Parliament <cade.bedford@parliament.govt.nz>

Cc: kate.rickerby@hud.govt.nz; Susan O'Neill <Susan.O'Neill@hud.govt.nz>; Sam Anderson <Sam.Anderson@hud.govt.nz>; Deborah McFarlane <Deborah.McFarlane@hud.govt.nz>; Jenny Cassie <Jenny.Cassie@hud.govt.nz>; Claire Solon <Claire.Solon@hud.govt.nz>; Georgia Bloor-Wilson <Georgia.Bloor-Wilson@hud.govt.nz>; Brad Ward <Brad.Ward@hud.govt.nz>

Subject: FW: Urgent tenancy legislation – rental freeze and restrictions on evictions

Hi Cade

Apologies for the timing on this. Sorry for the weird format also – my device is playing up a little so I couldn't send it in a word doc. The following is the outline of the policy proposals. The wording isn't perfect but keen to hear your views. The red text are matters I think we could get away without changing to make things more achievable for PCO. I am so sorry but we would need any comments (reply all) by 830 am tomorrow to have any hope of including in the final brief back to you at 10.

I am signing off for the day now. If you need to call to discuss you can get me in the morning on s 9(2)(a)

Many Thanks

Claire

Covid 19 - Advice on urgent tenancy legislation

Freeze on evictions

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- The Minister of Finance has announced an extension of no-cause terminations.
 - The Minister of Housing has indicated that for the next six months evictions will require

approval by the Tenancy Tribunal and be restricted to exceptional circumstances.

- The table below sets out the proposed termination grounds, whether they come from the Act, or the Residential Tenancies Amendment Bill and any changes needed to the provision.

Act / Bill	Termination ground	Any changes needed
Act – s50A	Death of sole tenant	Retain
Act – s51	Termination by notice	Repeal subs (1) Retain rest of section as far as it relates to tenant's notice
Act – s52	Tribunal can agree to shorter notice period if both parties agree	Retain
Act – s53	Special provisions for notice terminating service tenancies	Amend to allow tenants of a service tenancy to give notice. Landlords of a service tenancy cannot give notice, unless it is granted by the Armed Forces to a person subject to the Armed Forces Discipline Act 1971.
Act – s53A	Special provisions for notice terminating student tenancies	Amend to allow tenants of a student tenancy to give notice. Landlords of a student tenancy cannot give notice under this section.
Act – s55(1)	Application to Tribunal to terminate tenancy if: a) The rent was at least 21 days in arrears b) The tenant has caused or permitted any other person to cause, or threatened to cause, substantial damage to the premises c) The tenant has assaulted, threatened to assault, or caused or permitted any person to assault or threaten to assault: i. The landlord or a member of their family ii. The owner of the premises or a member of their family iii. Any agent of the landlord iv. Any occupier of the building of which the premises are part v. Any neighbour of the premises or any building of which the premises are part	Retain Amend 21 days to 42 days – rent will be required to be 42 days in arrears
Bill – cl 37,	Termination for anti-social behaviour	Retain but change:

s55A	<p>A landlord can apply to the Tribunal to terminate a periodic tenancy if:</p> <ul style="list-style-type: none"> a) On 3 separate occasions within a 90 day period the tenant or a person in the property with the tenant's permission, engaged in anti-social behaviour in relation to the tenancy. b) The landlord must give written notice each time to the tenant. c) The Tribunal must not make the order if it would be unfair, or if the application is in retaliation for the tenant exercising their rights. <p>Anti-social behaviour is defined as:</p> <ul style="list-style-type: none"> a) harassment; or b) any other act or omission (whether intentional or not), if the act or omission reasonably causes alarm, distress, or nuisance that is more than minor. 	<ul style="list-style-type: none"> a) Only need one instance of anti-social behaviour b) Landlord need not give notice, but must simply apply to the Tribunal c) Anti-social behaviour is defined as: <ul style="list-style-type: none"> i. harassment; or ii. any intentional act, if the act reasonably causes alarm, distress, or nuisance that is significant.
Act – 56A	<p>Termination of premises that are unlawful residential premises:</p> <p>Tenant can give two days' notice if premises were unlawful at start of tenancy and remain</p> <p>Tenant or landlord can apply to Tribunal to terminate if unlawful premises. Tribunal makes order if inequitable to refuse to do so.</p>	Retain
Act – s57	Effect on sub-tenancy of termination of head tenancy	<p>Retain sub (1) – termination of a head tenancy is termination of the sub-tenancy</p> <p>Amend subs (2)-(3) to remove reference to s 51. If a landlord gives notice under s52, the landlord may give notice to the sub-tenant or continue the tenancy.</p>
Act – s58	Mortgagee or other person becoming entitled to possession	Retain
Act – s59	Destruction of premises	Retain
Act – s59A	Termination where breach renders premises inhabitable	Retain
Act – s60A Bill – cl 39, s60A	Fixed-term tenancy longer than 90 days becomes periodic at the end of the fixed term, unless: the parties agree to renew or extend the fixed term, or either party gives notice	<p>Retain the Bill drafting</p> <p>Amend so that a landlord can only give notice for the reasons set out in these proposals</p>

	within the effective period (21-90 days before the end of the term). The Bill amends this section to provide that the tenant may give notice of 28 days, but the landlord can only give notice for a termination ground in relation to periodic tenancies	
Act – s61	Abandonment of premises	Retain
Act – s65	Eviction of squatters by application to Tribunal	Retain
Act – s66	Reduction or termination of a fixed term tenancy	Retain
Termination in boarding house tenancies		
Act – 66U	<p>The landlord of a boarding house may terminate a boarding house tenancy <i>Immediately, if the tenant has</i></p> <ul style="list-style-type: none"> (i) caused, or threatened to cause, serious damage to the premises; or (ii) endangered, or threatened to endanger, people or property; or (iii) caused, or threatened to cause, serious disruption to other tenants; or <p><i>On 48 hours' notice, if</i></p> <ul style="list-style-type: none"> (i) the landlord has, by written notice to the tenant, required the tenant to pay any rent in arrears within a stated period of not less than 10 days, commencing on the day the notice is given, and the tenant fails to pay the rent in arrears within the stated period; or (ii) the tenant is using the premises for an illegal purpose; or (iii) the landlord believes, having complied with section 66X, that the tenant has abandoned the room; or <p><i>Or 14 days' notice, if the tenancy is also a service tenancy</i></p> <p><i>On 28 days' notice, if no reason is given.</i></p>	<p>Amend so that the landlord can <i>only</i> terminate if the tenant has:</p> <ul style="list-style-type: none"> • caused, or threatened to cause, serious damage to the premises; or • endangered, or threatened to endanger, people or property; or • caused, or threatened to cause, serious disruption to other tenants; or • the tenant is using the premises for an illegal purpose; or • the landlord believes, having complied with section 66X, that the tenant has abandoned the room. <p>Question: change notice period? 4 weeks to align with Level 4 minimum period?</p>
Act – s66V	Termination of boarding house tenancy by a tenant – 48 hours' notice	Retain
Act – s66W	Death of sole tenant in boarding house tenancy	Retain
Act – s66X	Abandonment of boarding house tenancy by tenant	Retain

- Other changes:
 - Remove section 56 – Termination for non-payment of rent and other breaches
 - Amend s 50 to reflect new allowable termination grounds

Timing and transitional arrangements

- The provision will apply to any application for termination from 23 March 2020 inclusive for a 6-month period.
- Any termination of tenancy prior to 23 March 2020 will be valid if the landlord has followed the notice and process rules currently in the Residential Tenancies Act.
- The legislation will include a power to extend this past the original 6-month period through Order in Council.

Freeze on rent increases

- The Minister of Finance has announced a freeze of rent increase.
- This legislative provision needs to prohibit landlords from increasing rent but allow for decreases in rent given that lower demand may occur in some areas.
- The freeze will apply nationwide.

Timing and transitional arrangements

- The provision will apply to any rent increase from 23 March 2020 inclusive for a 6-month period.
- Any rent increase notified prior to 23 March 2020 will be valid if the landlord has followed the notice and process rules currently in the Residential Tenancies Act.
- The legislation will include a power to extend this past the original 6-month period through Order in Council.

Applicability to public rental properties

- The Residential Tenancies Act applies to public housing tenancies as well as the private rental market so the termination measures will also apply to Kainga Ora and Community Housing Providers. Income Related Rents are calculated under the Public and Community Housing Management Act 1992 (PACHMA), and we advise that the Minister of Housing use this mechanism to direct Kainga Ora and Community Housing Providers not to apply any increase in Income Related Rent for public housing tenants at this time. If the government wants to prevent RR from rising for a certain period, there is a mechanism the government can use under the PACHMA to do this.

Penalties

There is an existing framework for civil penalties in the Act ('exemplary damages' for unlawful acts) The following actions by a landlord are to be of no effect:

- Increasing rent within the relevant timeframe
- Purporting to terminate a tenancy without grounds

Penalties are required

- To deter landlords from breaching the Act; and
- To allow tenants to seek payment (exemplary damages) from the landlord due to the landlord's breach

The penalty regime relies on the Tribunal being able to operate as that is the body which imposes the penalties.

We propose to make the two breaches above unlawful acts (i.e. subject to an exemplary damages order).

We propose that the maximum damages that can be awarded is \$3000 for either of the actions in the first two bullet points.

Released under the
Official Information Act 1982

Out of Scope

Released under the
Official Information Act 1982

From: Cade Bedford <Cade.Bedford@parliament.govt.nz>

Sent: Wednesday, 25 March 2020 11:48 AM

To: Sam Anderson <Sam.Anderson@hud.govt.nz>; Susan O'Neill <Susan.ONeill@hud.govt.nz>; Claire Leadbetter <Claire.Leadbetter@hud.govt.nz>

Cc: Andrew Gregory <Andrew.Gregory@hud.govt.nz>; Dennis de Reus <Dennis.DeReus@hud.govt.nz>; Arati Waldegrave <Arati.Waldegrave@dpmc.govt.nz>; Ingrid Bayliss <ingrid.bayliss@mbie.govt.nz>; Jennifer Sykes <Jennifer.Sykes@mbie.govt.nz>; Kate Rickerby <Kate.Rickerby@hud.govt.nz>; Helen Potiki <Helen.Potiki@hud.govt.nz>

Subject: RE: Change to non rent payment termination provision

Minister preferred 60 across both boarding houses and standard tenancy. Is that possible to draft in time?

From: Sam Anderson [<mailto:Sam.Anderson@hud.govt.nz>]

Sent: Wednesday, 25 March 2020 11:29 AM

To: Susan O'Neill <Susan.ONeill@hud.govt.nz>; Cade Bedford <Cade.Bedford@parliament.govt.nz>; Claire Leadbetter <Claire.Leadbetter@hud.govt.nz>

Cc: Andrew Gregory <Andrew.Gregory@hud.govt.nz>; Dennis de Reus <Dennis.DeReus@hud.govt.nz>; Arati Waldegrave <Arati.Waldegrave@dpmc.govt.nz>; Ingrid Bayliss <ingrid.bayliss@mbie.govt.nz>; Jennifer Sykes <Jennifer.Sykes@mbie.govt.nz>; Kate Rickerby <Kate.Rickerby@hud.govt.nz>; Helen Potiki <Helen.Potiki@hud.govt.nz>

Subject: RE: Change to non rent payment termination provision

Sorry Cade – it would be ideal if you could please provide an answer on the below by **12pm**. Otherwise, the Bill will need to be amended post-introduction, which will be quite tricky in current circumstances!

From: Susan O'Neill <Susan.ONeill@hud.govt.nz>

Sent: Wednesday, 25 March 2020 10:55 AM

To: Cade Bedford - Parliament <cade.bedford@parliament.govt.nz>; Claire Leadbetter <Claire.Leadbetter@hud.govt.nz>

Cc: Andrew Gregory <Andrew.Gregory@hud.govt.nz>; Dennis de Reus <Dennis.DeReus@hud.govt.nz>; Sam Anderson <Sam.Anderson@hud.govt.nz>; Arati Waldegrave <Arati.Waldegrave@dpmc.govt.nz>; Ingrid Bayliss <ingrid.bayliss@mbie.govt.nz>; Jennifer Sykes <Jennifer.Sykes@mbie.govt.nz>; Kate Rickerby <Kate.Rickerby@hud.govt.nz>; Helen Potiki <Helen.Potiki@hud.govt.nz>

Subject: RE: Change to non rent payment termination provision

Hi Cade

Thanks for this. We will pass on to PCO.

Query: the Bill currently distinguishes between rental arrears period for fixed-term and periodic tenancies (42 days, increase from 21 days) and boarding house tenancies (21 days, increase from 10 days).

With the increase to 60 days, should that apply to all tenancies, or should boarding house tenancies be less than 60 days?

Thanks, Susan

From: Cade Bedford <Cade.Bedford@parliament.govt.nz>

Sent: Wednesday, 25 March 2020 10:45 AM

To: Claire Leadbetter <Claire.Leadbetter@hud.govt.nz>

Cc: Andrew Gregory <Andrew.Gregory@hud.govt.nz>; Dennis de Reus <Dennis.DeReus@hud.govt.nz>; Sam Anderson <Sam.Anderson@hud.govt.nz>; Arati Waldegrave <Arati.Waldegrave@dpmc.govt.nz>; Ingrid Bayliss <ingrid.bayliss@mbie.govt.nz>; Jennifer Sykes <Jennifer.Sykes@mbie.govt.nz>; Susan O'Neill <Susan.ONeill@hud.govt.nz>; Kate Rickerby <Kate.Rickerby@hud.govt.nz>; Helen Potiki <Helen.Potiki@hud.govt.nz>

Subject: Change to non rent payment termination provision

COVID committee has decided the non rent period should be 60 days rather than 42. Can you please update comms material. Unsure if PCO is being informed directly but please pass on.

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