

In Confidence

Office of the Associate Minister of Housing (Public Housing)

Cabinet

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

Proposal

- 1 I seek Cabinet's agreement to policy decisions for amendments to the Residential Tenancies Act 1986 (RTA) to:
 - 1.1 enable the Minister to make RTA COVID-19 orders which restrict tenancy terminations during any current or future outbreak of COVID-19;
 - 1.2 include provisions setting out the tenancy termination restrictions which apply when RTA COVID-19 orders are in force; and
 - 1.3 enable the Tenancy Tribunal to conduct proceedings on the papers, for a period of twelve months after commencement of the amendments, to assist in addressing the backlog of applications due to the current outbreak of COVID-19.

Executive Summary

- 2 The highly transmissible nature of the COVID-19 Delta variant makes it especially important to sustain tenancies in order to keep people at home and reduce transmission. However, the current legal rules for tenancy terminations in the Residential Tenancies Act (RTA) are not consistent with COVID-19 Public Health Response Orders requiring people to stay at home and stop the spread of COVID-19.
- 3 I am increasingly hearing from tenancy stakeholder groups that this lack of legal consistency is becoming problematic. Vulnerable tenants are dealing with landlords pursuing terminations under Alert Level 4, and there is confusion about what notice periods should apply both under current Alert levels and once Alert Levels de-escalate and people are able to move house. I consider a legislative approach is needed which provides clarity and certainty for the tenancy sector, mitigates disruption for landlords and tenants, and which aligns with public health objectives.
- 4 Accordingly, I seek policy decisions to amend the RTA to revive, with modifications, the tenancy termination restrictions in expired Schedule 5 ('Provisions relating to an outbreak of COVID-19') and allow the restrictions to be 'switched on' by a Ministerial order made by the Minister with responsibility for the RTA ('RTA COVID-19 orders'). The Minister, after consulting with the Prime Minister and the Minister responsible for administration of the COVID-19 Public Health Response Act 2020 (currently the Minister for COVID-19

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

- 4.1 a COVID-19 Public Health Response Order is or will be made containing measures that generally restrict people from moving house in that area; and
 - 4.2 the order is necessary or desirable to align with or support those stay-at-home measures.
- 5 The Minister would have the ability to extend, amend, or revoke an existing RTA COVID-19 order in accordance with the statutory test. In effect, this means RTA COVID-19 orders would only be in place during Alert Level 4 periods, as moving house is generally allowed at lower Alert Levels.
- 6 I propose the termination restrictions are similar to those set out in (now expired) Schedule 5 of the RTA, with some modifications to render the provisions more workable, taking into account changes made by the Residential Tenancies Amendment Act last year.
- 7 I am also seeking agreement to amendments to allow the Tenancy Tribunal to conduct proceedings on the papers (i.e. the Tribunal can decide an application based on written submissions, without the parties having to attend) as it sees fit for twelve months from commencement of an amendment bill, to help address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted.
- 8 I do not propose to reinstate the rent increase freeze through these amendments. Since August last year, landlords are only able to increase rent once every 12 months. For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist. Tenants may also be eligible for assistance through the COVID-19 Wage Subsidy and the COVID-19 Leave Support Scheme.
- 9 Ideally, the legislative provisions would be in place as soon as possible so they can be used if the Auckland region remains in Alert Level 4 beyond the next few weeks or if other regions are escalated up to Alert Level 4. The Leader of the House is considering the preferred legislative vehicle for these changes (a standalone RTA amendment bill or a COVID-19 omnibus bill) and whether they can be accorded urgency.

Background

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

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

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

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

- 11 Amendments made by the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Legislation Act) to the RTA last year supported the COVID-19 health measures by facilitating people to stay in their rental homes, sustaining tenancies to the greatest extent possible, and protecting tenants from becoming homeless during the COVID-19 outbreak.
- 12 The COVID-19 Legislation Act included temporary amendments to the RTA in Schedule 5 which were time-limited as they were a significant imposition on private property rights, and it was unclear how long New Zealand would spend in Alert Levels 3 and 4. The provisions:
 - 12.1 restricted the grounds on which tenancies could be terminated (these expired after three months);
 - 12.2 prohibited rent increases (these expired after six months); and
 - 12.3 enabled the Tenancy Tribunal to operate more flexibly: for example make decisions on the papers and hold hearings by telephone or video conference (this ability was initially set for six months but extended to expire after a year through a change made by the Residential Tenancies Amendment Act 2020).
- 13 In respect of the termination restrictions, the COVID-19 Legislation Act did not restrict a tenant's ability to terminate tenancies but it:
 - 13.1 invalidated termination notices that had been given by landlords, which had not yet taken effect;
 - 13.2 allowed tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and
 - 13.3 continued fixed-term tenancies that otherwise would have expired. These fixed-term tenancies were converted to periodic tenancies upon their expiry.
- 14 The COVID-19 Legislation Act was drafted and passed under urgency and came into force on 26 March 2020, coinciding with the start of the country going into Alert Level 4.

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

- 15 In response to the current community outbreak of the Delta variant of COVID-19, the COVID-19 Public Health Response (Alert Level Requirements) Order (No 10) 2021 is currently in place. The Order, made under the COVID-19 Public Health Response Act 2020¹, establishes specific significant restrictions on people's movement during Alert Level 4 in Auckland and Northland and Alert Level 3 across the rest of the country.
- 16 Under the current COVID-19 Public Health Response Order:
- 16.1 in Alert Level 4 areas, people can only move house if required to do so by court order (including a Tenancy Tribunal order) or law enforcement or if they need to relocate to or from health-related or residential care or use a temporary or emergency home, for example for care while sick or to seek refuge in a women's refuge accommodation
- 16.2 in Alert Level 3 areas, people can move house, including to and from an area that is at Alert Level 1 or Alert Level 2.

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

- 17 As the Schedule 5 provisions have now expired, the usual RTA rules apply to tenancies, notwithstanding the requirements of any applicable COVID-19 Public Health Response Orders in place. That means landlords can serve termination notices on tenants, or fixed term tenancies may end during any Alert Level restrictions on movement in place.
- 18 Under current COVID-19 Public Health Response Orders operating in Auckland, Northland and the rest of the country, Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) and Tenancy Services in the Ministry of Business, Innovation and Employment (MBIE) have issued guidance for the tenancy sector emphasising the importance of complying with the restrictions on people's movements under the COVID-19 Public Health Response Orders. It encourages landlords and tenants to agree to continue tenancies during Alert Level 4, so that tenants can remain in their homes to stay safe and support the health response to stop the spread of the virus.
- 19 The guidance is not legally binding. While many landlords and tenants in Alert Level 4 areas have been cooperating and adhering to the COVID-19 Health Response Order restrictions, the Government cannot require landlords to delay or withdraw any terminations to facilitate tenants self-isolating in accordance with COVID-19 Public Health Response Orders. I am increasingly hearing from

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

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

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

- 20 In the event that the Auckland region remains in Alert Level 4 beyond the next few weeks, or other regions are escalated back up Alert Levels in the future, I consider the RTA should be amended to facilitate tenants self-isolating in accordance with COVID-19 Public Health Response Orders, which:
- 20.1 are proportionate to achieve public health objectives;
 - 20.2 mitigate disruption to landlords' businesses and tenants' living arrangements as far as possible; and
 - 20.3 provide clarity and certainty for tenancy sector.
- 21 Accordingly, I seek policy decisions to amend the RTA to revive, with modifications, the tenancy termination restrictions in Schedule 5 and allow the modifications to be switched on by Ministerial order.

Analysis

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

- 22 Passing urgent primary legislation every time the country moves back into lockdowns (regionally or nationally) is impractical and creates uncertainty for the tenancy sector about what the rules are for a particular Alert Level.
- 23 I propose a more enduring and flexible approach which enables RTA termination restrictions to be applied quickly and only when strictly necessary. Under my proposal, COVID-19 tenancy termination restrictions will 'sit' in the RTA but only apply if a Ministerial order (a 'RTA COVID-19 order') is made by the Minister responsible for the administration of the RTA; this is currently the Associate Minister of Housing (Public Housing). Ministerial orders are instruments which allow the Government to act quickly to respond to an emergency, because they do not require a long and complex process to enact.
- 24 I propose the Minister may make an order in relation to an area if satisfied that:
- 24.1 an order under section 11 of the COVID-19 Public Health Response Act 2020 (a COVID-19 Health Order) is, or will be, made containing measures that generally restrict people from moving house in that area (subject to any specified exceptions in that order, for example, if moving is required by court order or to use a temporary or emergency home); and

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- 24.2 the order is necessary or desirable to align with or support those stay-at-home measures.
- 25 The Ministerial orders will have wide reaching effects and therefore I consider it appropriate that before making an order, the Minister must consult with the Prime Minister and the Minister responsible for administration of the COVID-19 Public Health Response Act 2020 (currently the Minister for COVID-19 Response), and may consult any other Minister that the Minister thinks fit.
- 26 In order to be able to respond appropriately to and align with ongoing COVID-19 health measures, I propose the Minister would have the ability to extend, amend, or revoke an RTA COVID-19 order. The Minister would need to be satisfied that an extension or amendment satisfies the criteria set out above at paragraph 24. The Minister would have to revoke an order if the criteria no longer applied.
- 27 The order will need to be in writing, state the area to which it applies, when it comes into force, and be published in the Gazette and on a publicly accessible Government website as soon as practicable.
- 28 I acknowledge that if Alert Levels 'bounce around' then it will be disruptive for landlords and tenants if termination restrictions are applied and then disapplied over a number of months. However, having restrictions for a set period is also disruptive, particularly if the restrictions are still in place at lower Alert Levels when people are allowed to move house, and not justified in terms of protecting public health.

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

- 29 The termination restrictions in the COVID-19 Legislation Act achieved the purpose of keeping people in their tenancies during the initial COVID-19 outbreak, balanced with the right of landlords to protect their properties and regain possession in specified, extreme circumstances. I recommend these same termination grounds, as set out below in clauses 4 and 5 of Schedule 5 of the RTA, should be permitted this time.
- 30 The provisions would not restrict a tenant's ability to terminate tenancies but would:
- 30.1 preserve tenancies even where termination notices had been served by landlords but they have not yet taken effect, including by agreement between the parties;
- 30.2 allow tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and
- 30.3 continue fixed-term tenancies that otherwise would have expired and convert them to periodic tenancies upon their expiry.
- 31 Notwithstanding the termination provisions, tenants and landlords would still be able to agree, in writing, to terminate the tenancy.

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- 32 Landlords will be able to apply to the Tenancy Tribunal to terminate a tenancy where a non-boarding house tenant:
- 32.1 substantially damages the premises;
 - 32.2 assaults or threatens to assault the landlord or their family, the property owner or their family, an agent of the landlord, an occupier of a building which the premises is part of, or the neighbours;
 - 32.3 abandons the property;
 - 32.4 engages in significant anti-social behaviour (defined as harassment; or any intentional act, if the act reasonably causes significant alarm, distress, or nuisance); or
 - 32.5 is 60 days or more behind in rent (taking into account fairness and whether the tenant is making reasonable efforts to pay the rent).
- 33 Landlords will not be able to serve termination notices when an RTA COVID-19 order is in place but will be able to apply to the Tribunal for terminations (in the limited circumstances above). However, landlords will be able to terminate tenancies:
- 33.1 upon the death of a sole tenant;
 - 33.2 where the premises are uninhabitable; and
in specified circumstances in boarding house tenancies (as referred below).
- 34 For boarding house tenants, landlords will be able to terminate tenancies in extreme circumstances, such as where a tenant has threatened other tenants, or caused significant damages, or the tenant is using the premises for an illegal purpose. Landlords will have to give a 28-day termination notice period in these circumstances. This is in contrast to the standard RTA rules, which enable immediate termination where a boarding house tenant has threatened other tenants or caused significant damage, or termination with 48 hours' notice where a boarding house tenant is using the premises for an illegal purpose. This longer notice period will enable boarding house tenants to arrange emergency accommodation and limit movement during Alert Level 4.
- 35 Landlords will also be able to apply to the Tenancy Tribunal to terminate a boarding house tenancy if the rent is 60 days in arrears (the same as non-boarding house tenancies).
- 36 Boarding house tenancies will also be able to be terminated:
- 36.1 upon the death of a sole tenant;
 - 36.2 where the premises are uninhabitable; and
 - 36.3 where the premises are abandoned and the tenant is in rent arrears.

Termination notice periods

- 37 The temporary Schedule 5 provisions invalidated landlord termination notices, which had to be re-served (effectively re-started) after the termination provisions expired, unless an earlier termination date was agreed. For example, even if a 90 day termination notice only had a few days to run when Schedule 5 came into effect, landlords needed to serve another 90 day termination notice when the restrictions lifted.
- 38 I propose under RTA COVID-19 changes this time that for tenancies which can be terminated under section 51 ('Termination by notice') or section 53B(1)(b)(iii)² ('Special provisions for notice terminating social housing tenancies') of the RTA unless otherwise agreed, termination notices take effect once termination restrictions are lifted, on the later of:
- 38.1 the date originally provided for in the notice; or
- 38.2 28 days after the restrictions end.
- 39 This approach allows tenants sufficient time to find accommodation after the termination restrictions are lifted, if they have not already been able to make arrangements. For fixed term tenancies which were due to expire during a period in which tenancy termination restrictions apply, landlords would need to give at least 28 days' notice once the restrictions are no longer in force.
- 40 To avoid the situation where a tenant is liable for paying rent on two properties for an overlapping period (due to being 'locked in' to a current tenancy for the mandatory 28 days' notice period after termination restrictions end), I propose a tenant may, by written notice to the landlord, elect to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).
- 41 I consider the above approach is appropriate, because the Residential Tenancies Amendment Act 2020 changes now in effect mean landlord termination notice periods are longer than under previous rules. Whereas previously notice periods could be just 42 days, landlords must now give 63 days' or 90 days' notice (depending on the grounds for termination) and 90 day 'no cause' terminations are no longer allowed.
- 42 For other tenancies which have shorter notice periods and different termination provisions (including service tenancies), landlords would need to re-serve termination notices once restrictions were lifted. Tenants in these tenancies would also be able to give notice to the landlord if they wish to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).

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

Tenancy Tribunal ordered terminations

- 43 I propose that if legislation is passed and applied to regions which are currently in Alert Level 4, that RTA COVID-19 orders do not override Tenancy Tribunal termination orders previously obtained by landlords during that time (where the tenant has not yet moved out). I am advised that for tenancies in regions which have just been under and are still under Alert Level 4 restrictions, the Tenancy Tribunal has been taking a cautious approach to all landlord termination applications applied for during Alert Level 4, in order to ensure compliance with COVID-19 Health Response Orders as much as possible, by delaying termination dates until the lower Alert Levels are in place, when moving house is permitted.
- 44 Tribunal adjudicators are applying a high bar to termination applications, and only ordering termination in extreme circumstances, consistent with the expired Schedule 5 grounds. It would be unfair on landlords to override these orders.
- 45 The Tribunal has been working with the Ministry of Justice to make sure no one is rendered homeless as a result of a termination order while in Alert Level 4. Bailiffs will not enforce an eviction order unless for very serious issues, in conjunction with the Ministry of Social Development. MSD can provide assistance to people with their broader housing needs, for example through the Special Needs Grant Programme.
- 46 Other than for the circumstances described above, where a Tribunal termination order was obtained prior to an RTA COVID-19 order coming into force (for a tenancy in which a tenant is still residing), the termination would be suspended until 15 days after the termination restrictions end.

Other issues

- 47 I propose that a landlord who knowingly serves a termination notice in breach of the tenancy termination provisions will commit an unlawful act, and may be liable for exemplary damages of up to \$6,500 in each case (the same as in clause 6 in Schedule 5).
- 48 Where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other and landlords would need to let the incoming tenant know the premises are no longer available.
- 49 The termination restrictions will have consequential effects on other tenancies and the legislative amendments will not be able to address every scenario. I anticipate that in most situations, landlords and tenants will come to a workable agreement. If matters cannot be resolved by the parties, they will have the option of mediation or adjudication through the Tenancy Tribunal.
- 50 The RTA applies to public housing tenancies as well as the private rental market so the termination measures will also apply to Kāinga Ora and Community Housing Providers.

Amendments will expire three years after commencement

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

I do not recommend restrictions on rent increases

- 52 Cabinet previously agreed to reinstate a rent increase freeze if New Zealand went back into Alert Level 4 (CAB-20-MIN-0521). On further consideration, I do not consider a rent increase freeze is necessary for future Alert Level 4 scenarios and I seek Cabinet's agreement to rescind that decision. This is because since August last year, landlords are only able to increase rent once every 12 months and must give at least 60 days' notice to tenants of a rent increase (due to changes made by the Residential Tenancies Amendment Act 2020). Previously landlords could increase rents every six months. This change gives tenants longer term certainty about rent costs and makes them less likely to have rent increased during Alert Level 4 periods.
- 53 In addition, rent increase freezes are not directly aimed at supporting the health response, but more at temporarily addressing some of the economic impact of an Alert Level 4 lockdown. For renters who have lost jobs or cannot work due to Alert Level 4 or 3 restrictions and are struggling to meet rent payments, there are some Ministry of Social Development support products available to assist. Tenants may also be eligible for assistance through the COVID-19 Wage Subsidy and the COVID-19 Leave Support Scheme.
- 54 Although it is lawful to increase rents during Alert Level 4 (if the RTA requirements are met), Tenancy Services asks landlords to be mindful that tenants may be experiencing financial stress during Alert Level 4 if they cannot work, and recommends that they consider the financial situation of their tenants and postpone rent increases if appropriate.

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

- 55 Schedule 5 enabled the Tenancy Tribunal to conduct proceedings on the papers and hold hearings as it 'thinks fit', including by telephone or video conference. This ability was invaluable last year in enabling the Tribunal to clear the backlog of hearings which were adjourned during the lockdown period relatively quickly.
- 56 The Tribunal is now permanently empowered to conduct hearings by telephone (as well as audiovisual link or other remote access facility, if available) if an adjudicator considers it appropriate. The Tribunal routinely uses teleconference hearings for both business-as-usual operations and to hold hearings under Alert Levels 3 and 4.

- 57 However, the ability to hear applications on the papers has not been made permanent. This ability means the Tribunal can decide an application based on written submissions filed by parties, without the parties having to attend and present oral submissions. It is an efficient way of disposing with straight forward matters. I propose that the Tenancy Tribunal is legislatively provided with this additional ability for a further twelve months from commencement of a bill, as it is not known yet how long the current Alert Levels 4, 3 and 2 will be in place for.
- 58 The ability to hear applications on the papers will help to address the backlog of cases which the Tribunal will need to clear after the current Alert Levels are lifted, and also because even at Alert Levels 3 and 2, restrictions and social distancing apply, and therefore the Tribunal cannot operate in person and at full capacity. Hearings on the papers are only used in cases suited for them, for example 'vacated' applications determining compensation in respect of terminated tenancies, for which the tenant does not attend.

Implementation

- 59 Tenancy Services will prepare information and education material on the legislative changes to be ready once they are in place, including a legislative alert email to their 30,000 subscribers, as well as a website news article, stakeholder emails and Facebook posts.
- 60 My officials will work with stakeholders to communicate the changes, and with the Tenancy Tribunal on the legal and operational implications of the RTA COVID-19 orders on applications to the Tribunal.
- 61 Additionally, HUD and Tenancy Services will work with the Ministry of Primary Industries and rural stakeholders to ensure the public education campaign is tailored and addresses the issues that are unique to the rural sector, for the impact of the RTA COVID-19 orders in relation to on-farm service tenancies.

Financial Implications

- 62 There are no financial implications associated with these proposals.

Legislative Implications

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

Impact Analysis

- 64 Due to the urgent nature of the legislative amendments proposed, a Regulatory Impact Statement is not included with these proposals.
- 65 HUD has prepared a Supplementary Analysis Report (SAR) in relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19* (CAB-20-MIN-0521). The SAR assesses proposals to make

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

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

Climate Implications of Policy Assessment.

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

Population Implications

- 68 Restricting tenancy terminations during a COVID-19 outbreak will have a significant impact on tenants and landlords. The proposals will enable tenants to remain in their tenancies to self-isolate during a public health emergency, when it is critical to stay in place and not move around. This will help avoid tenants needing to seek emergency accommodation and becoming homeless, and breaching COVID-19 level 4 isolation requirements.
- 69 The proposals will have a positive impact for the high proportion of Māori, Pacific peoples and families with children living in rental accommodation.
- 70 While the restrictions may cause some short-term disruption for landlords, the inconvenience will be temporary and is outweighed by the overall stability and certainty to the tenancy sector the legislative changes will provide.

Human Rights

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

Consultation

- 72 In preparing this paper Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (HUD) consulted with: the Ministries of Business, Innovation and Employment, Health, Justice, Social Development, and Pacific Peoples; the Treasury; Te Puni Kōkiri; Parliamentary Counsel Office and the Department of Prime Minister and Cabinet. Kāinga Ora was also consulted.
- 73 The Ministry of Health is receiving exemption requests from people whose tenancy agreements are due to expire under the current COVID-19 Public Health Response Orders. RTA COVID-19 Orders would therefore give tenants and landlords greater certainty and reduce administration as well as wait times for people applying.
- 74 Te Puni Kōkiri support the proposals to restrict tenancy terminations during future outbreaks of COVID-19. However, Te Puni Kōkiri would like to see rent increase freezes reinstated during Alert Level Four periods, as they do not consider the one year limit to increasing rents a sufficient protection for tenants during an already stressful period. s 9(2)(g)(i)

[REDACTED]

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

Communications

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

Proactive Release

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

Recommendations

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

Background

- 1 note the temporary COVID-19 changes to the Residential Tenancies Act (RTA) made last year to restrict tenancy terminations, freeze rent increases and enable the Tenancy Tribunal to operate flexibly were time-limited, and have now expired;
- 2 note that in relation to the December 2020 Cabinet paper, *Economic response to future resurgences of COVID-19*, Cabinet:
 - 2.1 noted that further design work and new legislation will be required to reinstate a freeze on residential rent increases and restrictions on tenancy terminations; and
 - 2.2 agreed (if New Zealand went back into Alert Level 4) that a freeze on residential rent increases and restrictions on tenancy terminations be reinstated, subject to the passage of the required legislation and approval by Cabinet at the time of an escalation to Alert Level 4 (CAB-20-MIN-0521);
- 3 rescind the decision referred to in recommendation 2.2 above, and instead agree to the policy decisions set out in the recommendations below.

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

- 4 s 9(2)(h) [REDACTED]

[REDACTED]
[REDACTED];

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

RTA COVID-19 orders

- 6 agree the RTA is amended to provide:
- 6.1 for a set of tenancy termination restrictions and provisions (as detailed in recommendations 7–12 below) which will apply if a Ministerial order (an RTA COVID-19 order) is made by the Minister responsible for the administration of the RTA;
 - 6.2 the Minister may make an order in relation to all of New Zealand, or an area of New Zealand, if satisfied that:
 - 6.2.1 an order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID Order) is, or will be, made containing measures that generally restrict people from moving house in that area (subject to any specified exceptions in that order, for example, if moving is required by court order or to use a temporary or emergency home); and
 - 6.2.2 the order is necessary or desirable to align with or support those stay-at-home measures;
 - 6.3 before making an order, the Minister must consult with the Prime Minister and Minister responsible for administration of the COVID-19 Public Health Response Act 2020, and may consult any other Minister that the Minister thinks fit;
 - 6.4 the Minister may extend or amend an RTA COVID-19 order in accordance with the criteria in recommendation 6.2 above;
 - 6.5 the Minister must revoke an order if the criteria in recommendation 6.2 above no longer applied.
 - 6.6 the order must be in writing, state the area to which it applies and when it comes into force, and be published in the Gazette and on a publicly accessible Government website as soon as practicable.

Termination restrictions

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

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- 8 agree the COVID-19 tenancy restrictions would not restrict a tenant's ability to terminate tenancies but would:
- 8.1 preserve tenancies even where termination notices had been served by landlords but they have not yet taken effect, including by agreement between the parties;
 - 8.2 allow tenants to revoke termination notices or Tenancy Tribunal orders they had obtained, if they had not yet taken effect; and
 - 8.3 continue fixed-term tenancies that otherwise would have expired and convert them to periodic tenancies upon their expiry.
- 9 agree landlords will only be able to serve termination notices when an RTA COVID-19 order is in limited circumstances (for example on the death of a sole tenant or in boarding house tenancies for certain reasons) and will only be able to apply to the Tribunal for terminations in the limited specified circumstances.

Termination notice periods

- 10 agree to amend the RTA to provide:
- 10.1 that for tenancies which can be terminated under section 51 ('Termination by notice') or section 53B(1)(b)(iii) ('Special provisions for notice terminating social housing tenancies') of the RTA termination notices will take effect once termination restrictions are lifted, on the later of:
 - 10.1.1 the date originally provided for in the notice; or
 - 10.1.2 28 days after the restrictions end;
 - 10.2 that for fixed term tenancies which would have otherwise expired, landlords must give at least 28 days' notice of termination to a tenant once the termination restrictions are lifted;
 - 10.3 a tenant may, by written notice to the landlord, elect to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted);
 - 10.4 for other tenancies which have shorter notice periods and different termination provisions (including service tenancies), landlords will have to re-serve termination notices once restrictions were lifted, unless a tenant gives notice to the landlord if they wish to end the tenancy on the date originally provided for in the notice (if it falls after the restrictions are lifted).

Tenancy Tribunal termination orders

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

IN CONFIDENCE

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

Other issues

- 12 agree that a landlord knowingly breaching tenancy termination provisions commits an unlawful act, with exemplary damages of up to \$6,500 in each case;
- 13 agree where vacant possession of a premises cannot be delivered to an incoming tenant as a consequence of the effect of the termination restrictions, tenants and landlords would be exempt from obligations owed to each other and landlords would need to let the incoming tenant know the premises are no longer available;
- 14 note the RTA applies to public housing tenancies as well as the private rental market so the termination restrictions will also apply to Kāinga Ora and Community Housing Providers.

Legislation will expire three years after commencement

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

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

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

Next steps

- 17 invite the Associate Minister of Housing (Public Housing) to issue drafting instructions to Parliamentary Counsel Office (PCO) to give effect to the policy proposals in this paper;
- 18 authorise the Associate Minister of Housing (Public Housing) to make decisions, consistent with the proposals in these recommendations, on any issues which arise during the drafting process without reference to Cabinet;

IN CONFIDENCE

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

Authorised for lodgement

Hon Poto Williams

Associate Minister of Housing (Public Housing)