

Residential Tenancies Act Reform: Improving fairness in the Act

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| Advising agencies | Ministry of Housing and Urban Development (HUD) |
| Decision sought | Approval to progress proposed legislative changes to the Residential Tenancies Act 1986 that: <ul style="list-style-type: none"> • Improve security of tenure for tenants who are meeting their obligations while maintaining adequate protection of landlords' interests; and, • Strengthen enforcement options to help improve compliance with legislative requirements. |
| Proposing Ministers | Hon Kris Faafoi Associate Minister of Housing (Public Housing) |

Summary: Problem and Proposed Approach

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| <p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p> |
| <p>The Residential Tenancies Act (RTA) 1986 no longer provides a level of protection that remains proportionate to the changing composition of the market.</p> <p>An increased proportion of New Zealand households now reside in rental accommodation and are renting into later life stages. In these circumstances, security of tenure is important to the wellbeing of a large number of New Zealand households.</p> <p>Provisions in the RTA relating to the types of tenancy agreements, the reasons tenancies can be terminated, and notice periods are not conducive to improving security of tenure to the extent desired by the Government.</p> <p><i>Compliance and Enforcement</i></p> <p>Measures designed to improve the wellbeing of tenants while protecting the rights of landlords depend on both landlords and tenants meeting their legal obligations. The current regulatory system could be strengthened to provide better incentives to ensure compliance with these obligations, particularly where new requirements – such as, for example, the new Healthy Homes Standards - increase compliance costs.</p> <p>Moreover, the Regulator - the Ministry of Business Innovation & Employment (MBIE) - does not have the range of tools it requires to improve compliance across the sector. Penalty provisions and levels are insufficient for the Tenancy Tribunal to address non-compliance. Limits on the Tribunals' jurisdiction means the Regulator and regulated parties do not have access to a specialist tribunal that can address all relevant tenancy matters in a timely, cost-effective manner. The current limitation periods in mean the Regulator is unable to seek a penalty for some serious breaches of the RTA. Lodgement requirements that prevent the Regulator addressing multiple breaches in a single application are inefficient.</p> |

Proposed Approach

We propose improving security of tenure for tenants who are meeting their obligations, while maintaining adequate protection for landlords' interests by:

- Removing the ability for landlords to end a periodic tenancy for any reason and instead allowing periodic agreements to end for legally specified reasons only;
- Updating the specified reasons a landlord can use as the basis for issuing a termination notice without the Tenancy Tribunal's involvement;
- Increasing the notice periods landlords and tenants must give when terminating a periodic tenancy;
- Requiring fixed term agreements to automatically become periodic agreements after the initial fixed term unless both parties agree otherwise, or the agreement is terminated in accord with established notice provisions.

We propose strengthening enforcement to help improve compliance with legislative requirements by:

- Introducing a wider range of enforcement tools that can be used by MBIE (as the Regulator) to address non-compliance
- Raising the penalty levels the Tenancy Tribunal can apply when landlords or tenants fail to meet their obligations
- Strengthening the RTA's offence provisions to provide tougher sanctions when there are serious breaches
- Increasing the Tenancy Tribunal's jurisdictional limit from \$50,000 to \$100,000
- Enabling the Regulator to take proceedings to the Tenancy Tribunal and District Court up to 12 months after the date on which the Regulator becomes aware of the matter
- Enabling the Regulator to lodge a single application covering multiple breaches by a single landlord or property manager.

Section B: Summary Impacts: Benefits and costs

| Who are the main expected beneficiaries and what is the nature of the expected benefit? | |
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| <p>The key beneficiaries of the proposed changes are tenants and landlords. The security of tenure proposals are of greater benefit to tenants, while we have mitigated several risks to landlords. The enforcement proposals are expected to be of benefit to both landlords and tenants. The changes also improve the operational efficiency and effectiveness of the Regulator and extend the jurisdiction and effectiveness of the Residential Tenancy Tribunal. There are also broader indirect public good benefits to New Zealand society.</p> | |
| Beneficiaries | Benefits |
| Tenants | <p><i>Security of Tenure:</i> Improved security of tenure contributes to:</p> <ul style="list-style-type: none"> • <i>Improved wellbeing:</i> By enabling tenants to establish better roots in their community, and providing a foundation for tenants to realise improved health, education and employment outcomes • <i>Reduced costs:</i> Because of less involuntary changes in rental accommodation • <i>Reduced risk of homelessness for tenants:</i> Because of longer tenancies and having more time to find alternative accommodation given an increase in the termination notice period. • <i>Improved transparency and accountability:</i> Increased transparency around a landlord's reason for termination enables tenants to exercise their rights where they disagree. <p><i>Improved compliance supports the achievement of wellbeing outcomes:</i> Improved enforcement measures that result in increased compliance by property managers and landlords will enable greater realisation of the outcomes sought from regulatory reforms to ensure tenants have access to safe, healthy and secure rental accommodation.</p> <p>Strengthening enforcement to help improve compliance will also:</p> <ul style="list-style-type: none"> • <i>Enable More Timely, Cost-Effective Dispute Resolution:</i> Providing the Regulator with a broader range of tools - including enforceable undertakings, and improvement and infringement notices - enables more timely and proportionate responses to address non-compliance by tenants. Extending the jurisdiction of the Tenancy Tribunal extends access to a specialist dispute resolution service which is timelier and more cost effective than seeking redress through the District Court. • <i>Improve deterrence of, and compensation for, breaches:</i> Increases in penalty levels for damages together with the introduction of new penalties that can be applied by the Tenancy Tribunal will help deter breaches and ensure appropriate compensation can be provided when breaches do occur. |
| Landlords | <p><i>Longer Tenancies:</i> The security of tenure proposals may reduce tenant turnover which would reduce landlords' costs through a reduction in lost revenue during periods of vacancy and reduced letting fees from agents (which can no longer be passed onto tenants since the law change in December 2018).</p> |

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| | <p>Strengthening enforcement measures to help improve compliance have the following benefits to landlords:</p> <ul style="list-style-type: none"> • <i>Access to More Timely, Cost-Effective Dispute Resolution:</i> Providing the Regulator with a broader range of tools including enforceable undertakings, improvement and infringement notices enables more timely and proportionate responses to address non-compliance by tenants. Extending the jurisdiction of the Tenancy Tribunal to extends access to specialist dispute resolution service which is timelier and more cost effective than seeking redress through the District Court. • <i>Improved deterrence of, and compensation for, breaches:</i> Increases in penalty levels for damages together with the introduction of new penalties that can be applied by the Tenancy Tribunal will help deter breaches and ensure appropriate compensation can be provided when breaches do occur. • <i>Provides a Level Playing Field:</i> Landlords that comply with regulatory requirements are less disadvantaged in relation to landlords that seek to avoid their obligations. • <i>Reputational Benefits:</i> An overall improvement in compliance enhances the reputation of all landlords. |
| Property Managers | As landlords' agents, property managers will receive similar benefits to landlords because of the proposed changes. Property managers are considered to be landlords where they have granted the tenancy (through signing as the landlord). These property managers will continue to be subject to the obligations of landlords, including the obligations in the proposed amendments. |
| MBIE (Regulator) | <i>More Efficient and Effective Compliance Management:</i> Access to a broader range of compliance intervention tools will enable a more efficient and effective graduated response to non-compliance by tenants or landlords. There are also efficiency and effectiveness benefits from enabling the lodgement of single applications and clarifying limitation periods. |
| Tenancy Tribunal | <p><i>More Effective Dispute Resolution:</i> Access to higher penalty levels and additional powers to enforce its decisions enables the Tribunal to respond more effectively when it finds a regulated party is non-compliant.</p> <p><i>Rebalanced workload:</i> More effective compliance intervention by the Regulator (utilising new enforcement tools) may result in a reduction in certain cases being referred to the Tribunal, although there may be an increase in cases arising from other aspects of the reform such as the removal of no cause terminations.</p> |
| New Zealand public | <i>Public Good Benefits:</i> Improved tenant wellbeing - arising from improved security of tenure and compliance – forms part of the social foundations that enable tenants to realise improved health, education and employment outcomes. These outcomes have broader public good benefits to New Zealand society and may reduce demand on remedial social services provided by government and non-government organisations. |

Where do the costs fall?

Improving security of tenure while protecting the rights of landlords – regulated parties

Landlords: Removing 'no cause' terminations has the potential to generate additional compliance costs arising from increased disputes over the rationale for termination and from underperforming tenants remaining in tenancies for longer than the landlord wants. The proposed increased notice periods present the risk of lost income if the tenant chooses to exercise their right to terminate the tenancy shortly after the landlord issues notice.

Tenants: While there are no additional direct monetary costs arising from the proposed security of tenure changes, there is the potential for rents to increase if landlords seek to offset additional risk. There is also a small potential for additional cost from needing to provide an additional week's notice to terminate a periodic tenancy.

We recognise that some landlords consider that the package of tenancy initiatives underway will increase the risk to their business as they will have more constraints on the reasons to end a tenancy and the exercise of termination notices may be more frequently tested at the Tribunal once a reason is provided. 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. There also could be impacts to homelessness, but there is a broader government programme underway to prevent and respond to homelessness.

There are a wide number of factors that affect rent, so it would be difficult to attribute any change in market rent to this one factor. Effects on rents may be muted by other factors that reduce costs for landlords, such as lower interest rates. Increased supply of housing because of the government's build programme will in the medium to long term limit landlord's ability to increase rents.

Other Government Agencies: If there are increases in market rent, this will flow through in increased costs to the Crown at the margin, due to increases in Accommodation Supplement, Temporary Additional Support, Income Related Rent Subsidy and transitional housing payments.

Compliance and enforcement – regulated parties

For tenants and landlords meeting their regulatory obligations there are no additional costs associated with the proposed enforcement and compliance measures. Those tenants and landlords that breach requirements will, however, be subject to new and/or higher infringement and penalty costs.

The increased penalties available for serious breaches of the RTA will, however, only be incurred in the case of systemic non-compliance, and where a lack of enforcement action would have the effect of undermining public confidence in the RTA and creating serious and harmful impacts for individuals affected by a serious breach in rental standards.

The Regulator

The Regulator will incur some-one off operational costs associated with updating operational policies and procedures, staff training and communicating the changes to key external stakeholders. MBIE also anticipates incurring additional annual operating costs associated with information and education development and resourcing, quality assurance, legal, debt recovery and service centre operations.

Tenancy Tribunal and the wider Justice Sector

Tenancy Tribunal and Justice Sector. There may be some additional administrative costs associated with any increase in disputes arising from the security of tenure proposals, in particular, the removal of 'no cause' terminations.

The proposals for strengthening enforcement may result in a rebalancing of Tenancy Tribunal workload because of reduced caseloads (at the margins), with less serious breaches being dealt with directly by the Regulator rather than proceeding to the Tribunal. It is possible, however, that the introduction of infringements may result in the Regulator addressing cases that are currently going unenforced, rather than addressing cases that would typically proceed to the Tribunal.

There may be some very marginal increase in costs for the Ministry of Justice, with a tiny increase in cases (less than five per annum) associated with new offences. There may be some minuscule costs from issuing infringement notices, based on an assumption of 100 infringement notices yearly and 5 percent appealed or unpaid.

Overall, it is anticipated that administrative costs for enforcement of the RTA will remain largely unchanged, with any changes occurring at the margin. For example, instead of taking an application to the Tenancy Tribunal, adopting a slightly lower level enforcement for moderate breaches, or for more serious cases, taking a case to the District Court. Over time, as compliance rates improve because of earlier intervention there may be a reduction in administrative costs for the justice sector.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The proposed changes may increase landlord's business risks and impact on their profit margins as:

- They will have more constraints on the reasons to end a tenancy
- The exercise of termination notices may be more frequently tested at the Tribunal once a reason is required to be provided to tenant
- They will have less ability to lock tenants into fixed-term tenancies where this is not desired by the tenant and this could impact on investment certainty, especially in geographic areas where demand for rental properties does not span a full calendar year
- Increased notice periods for landlords present a risk to their income in the event the tenant chooses to leave earlier by exercising their shorter notice period
- Strengthened enforcement measures result in increased compliance costs for non-compliant landlords.

This could affect landlord willingness to rent, and the amount of rent charged, and could lead to more stringent vetting of tenants. Consequently, there could be negative impacts on security of tenure for some tenants and at the margin a potential increased need for public housing.

If the changes result in market rent increases, this may also result in increased costs to the Crown at the margin, due to increases in Accommodation Supplement, Temporary Additional Support, Income Related Rent Subsidy and transitional housing payments.

The likelihood of rental supply contracting because of the proposed changes is considered low.

The likelihood of the proposed changes resulting in rental increases is uncertain. There are a wide number of factors that affect rent, so it would be difficult to attribute any change in market rent to any one factor or elements of the tenancy reform package. Effects on rents may be muted by other factors that reduce costs for landlords such as, for example, lower interest rates. Increased housing supply because of the government's build programme will in the medium to long term limit landlord's ability to increase rents.

The risks are partially mitigated by other elements of the reform package. The risk of a reduction in income arising from the increase in notice periods the landlord needs to provide is partially mitigated by the proposed increase in the tenant's notice period from 21 to 28 days. The risks arising from the removal of no cause terminations are partially mitigated by the inclusion of additional grounds for termination and new systems for dealing with antisocial behaviour and rent arrears. However, we recognise that a consequence of limiting landlord's ability to end periodic tenancies unilaterally and for any reason, will be that - in some instances - tenants remain in a property for longer than is desired by the landlord.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

HUD's proposed approach is aligned with the guidance provided in *Government Expectations for Good Regulatory Practice (April 2017)*.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

HUD considers there is an adequate evidence base for the proposed changes to the residential tenancy legislative framework. The proposals address shortcomings in the current system and are the result of a robust policy development process.

HUD led the initial problem definition, options identification and analysis process in collaboration with other key government agencies including MBIE, Te Puni Kōkiri, the Ministry of Social Development, the Ministry of Justice and The Treasury.

The Reform of the Residential Tenancy Act 1986 Discussion Document (the discussion document) was released to support a seven-week consultation process in August 2018. We also held five stakeholder workshops. The consultation process generated a high level of interest from both tenants and landlords with a total of 4,787 viewpoints received.

Those submissions have been carefully considered and have informed the refinement and final analysis of the proposals outlined in this regulatory assessment. Our preferred approach also reflects further feedback from other government agencies.

Quality Assurance Reviewing Agency:

A cross-agency Quality Assurance Panel with representatives from the Treasury and HUD.

Quality Assurance Assessment:

The cross-agency Quality Assurance Panel 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.

Impact Statement:

Residential Tenancies Act Reform- Improving security of tenure and compliance

Section 1: General information

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| Purpose |
| <p>The Ministry of Housing and Urban Development (HUD) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis has been produced to inform policy decisions to be taken by Cabinet.</p> <p>This regulatory impact assessment provides an analysis of options that involve changes to the RTA.</p> <p>The RTA is intended to:</p> <ul style="list-style-type: none"> • Reform and restate the law relating to residential tenancies; • Define the rights and obligations of landlords and tenants of residential properties; • Establish a tribunal to determine expeditiously disputes arising between landlords and tenants; • Establish a fund in which bonds payable by tenants are held; and • Repeal the Tenancy Act 1955 and the Rent Appeal Act 1973 and their amendments. <p>The options for changing the legislation are assessed against the status quo and are intended to:</p> <ul style="list-style-type: none"> • Improve the security of tenure for tenants who are meeting their obligations, while maintaining adequate protection for landlords’ interests; and, • Strengthen enforcement measures to help improve compliance with legislative requirements. |
| Key Limitations or Constraints on Analysis |
| <p>Security of Tenure - Limitations and Constraints</p> <p><i>Absence of a Market Analysis Model:</i></p> <p>HUD does not have, and is not able to readily create, a market analysis model that would enable us to produce quantified estimates of the potential impact of regulatory changes on the operation of the market and the intended outcomes. We have not, for example, been able to model and quantify:</p> <ul style="list-style-type: none"> • The likelihood and size of any rental increase that might arise from the reforms, and its consequent impact on tenants’ costs and Crown appropriations used to subsidise housing; or • The social and economic benefits arising from improvements in security of tenure and improved compliance. |

HUD considered a range of different approaches that would allow us to make assumptions in this regard before arriving at the conclusion that modelling cannot be undertaken in this area with the accuracy required. Firstly, we considered whether similar approaches taken by other jurisdictions could provide a proxy for what might happen in the New Zealand market as a consequence of extending tenants greater security of tenure.

One example is Ireland which introduced changes in 2004 that provided tenants with a right to stay in their tenancies for up to four years once a six-month trial period had successfully concluded. Correspondence with Irish officials indicates that data on the size of the rental market was not collected in a useable format between 2004 when the changes came into force and 2006 when the Residential Tenancies Board became operational. However, between 2006 and 2010 the private rental sector expanded significantly from 137,961 registered tenancies to 231,818 registered tenancies. While, this may indicate a favourable market response to security of tenure regulation, HUD notes that the data collection period interrelates with the impact of the global financial crisis which reduced the equity held by investors in that market and is likely to have muted impacts by limiting their potential to liquidate their asset or to raise rents in response to policy changes given the significant increases in rental supply taking place at that time.

Scotland is another jurisdiction commonly referred to in this context since it established a single private residential tenancy in 2017 that purported to extend tenants improved security of tenure. HUD has not been able to obtain information on the impacts of this change but notes that if data was forthcoming comparisons would still be difficult to make due to differences in the composition between the private rental markets of Scotland and New Zealand. In Scotland, 23 percent of those in the rental market are housed in social housing compared with 11 percent in New Zealand. This differing composition between markets results in varying levels of risk for landlords and varying levels of tenants' ability to meet the cost of rent increases. As a result, the Scotland experience is likewise unable to provide credible inputs into a model to ascertain the impacts of improving tenant's security of tenure in New Zealand.

In the absence of international data, HUD then considered what inputs we could draw on domestically to ascertain the impacts of the rights-based changes proposed. While modelling of the impacts the Healthy Homes Standards may have on rents was able to be undertaken, the range of direct costs anticipated to comply with those standards was known and assumptions in that context were limited to the extent that landlords might pass costs through to tenants and the period over which they may choose to do so.

The proposed changes impose indirect rather than direct quantifiable costs for landlords. Therefore, an additional layer of assumptions would need to be made concerning how much of an imposition landlords perceive these changes to be in the context of varying pressures and other regulatory interventions impacting on the private rental market at the same time. Even if we were able to form a credible view on these points, further assumptions would still be required to attempt to ascertain what the consequences for the market would be. Landlords choosing to sell investment properties would only bring about negative impacts for the market if that action resulted in a net reduction in rental supply, such as when the future owner used the property for a different purpose. Sale from one investor to another would not have material consequences at the macro level.

We likewise can't infer with any certainty whether landlords who choose to stay in the market would raise rents by the level that modelling may indicate as their ability to do so would be hindered to some extent by tenant's ability to pay and muted by other incentives that landlords have to retain their tenants. Due to the level of subjectivity involved in layering assumption on assumption as outlined above in attempt to forecast landlord behaviour, HUD considers that modelling of impacts would be complex and unable to provide insights with any accuracy. This view appears to be shared by other agencies. In its Regulatory Impact Statement examining the impact of Ring-fencing Rental Losses (<https://taxpolicy.ird.govt.nz/sites/default/files/2018-ria-argosrrm-bill-3.pdf>) the Inland Revenue Department's examination of the impact of changes on rent was limited to noting the general trend that reduced supply of rental houses could lead to increases in rent.

Similar constraints are encountered when attempting to model the economic and social benefits. While we can quantify what costs might fall to tenants at the individual level from involuntary movements in the rental sector, we can't convey the counterfactual of those costs as a quantified benefit at the societal level. This is because bond refund applications do not ascertain the reasons why a tenancy is ending so our insights about the proportion of movements in the market that are voluntary rather than involuntary is limited to market surveys which are likely to suffer from selection bias. As a consequence of this data gap, our examination of benefits of security of tenure are generally limited to the wellbeing outcomes that are likely to arise across health, education and social domains together with the wider benefits that are expected to arise from tenants having a stronger foundation to exercise their existing legal rights and protections under the RTA.

HUD is also committed to ensuring it establishes a robust monitoring, evaluation and review process that enables it to assess whether or not the proposed changes deliver the anticipated net benefits. HUD's System Performance Group, which will come into operation on 1 July 2019, will undertake work to agree an approach to measuring the impact of the proposed changes to the law before the end of the Select Committee process.

Without pre-empting the detailed planning work that will need to be undertaken, we anticipate our approach will involve a baseline survey prior to the changes coming into force to be followed up at set intervals post-implementation to ascertain the impact of the changes.

Compliance and Enforcement – Limitations and Constraints

Limitation on measuring the impact increased deterrence has on compliance

Given a certain level of enforcement activity, regulatory practice and theory generally assumes that tougher penalties for offences will induce an increase in the level of compliance. The extent of any gain in compliance associated with a given increase in penalties is not readily quantifiable as many other factors (societal norms, responses of participants in the sector, information and education) are also associated with efforts to strengthen enforcement approaches.

Limitation on types of penalties available in a civil regime

Not all regulators have access to every tool, and the new regulatory tools proposed for the RTA recognise the essentially civil nature and self-resolution objectives of the regulatory framework. The nature of the RTA regulatory framework is a constraint on the

introduction of a wide range of criminal sanctions to cover the various breaches of the RTA.

Most regulatory frameworks contain several offence provisions, which allow a regulator to pursue a criminal prosecution for serious breaches and enable a significant financial penalty to be imposed by the court. This ability provides a strong deterrence element within most regulatory regimes.

There are some offence provisions in the RTA, but it is important to maintain the integrity of the civil nature of the legislation, with its goal of supporting self-resolution between landlords and tenants. While widespread introduction of more offences (with fines) for serious breaches could fundamentally compromise the RTA regime, it is appropriate that for the most severe breaches the Regulator can pursue more serious penalties in the criminal jurisdiction. Two new offences are proposed for the RTA to enable the regulator to take direct action against those landlords or tenants who repeatedly ignore previous rulings by the Tribunal and whose actions impact on the safety, security and health of individuals.

Limitations on understanding why the civil regime is not effective in ensuring compliance

In the current rental market, with limited rental supply and rising rents, many tenants may be reluctant to try to resolve issues using existing RTA regime settings. The level of tenants' reluctance to use existing RTA dispute resolution processes and the extent of a power imbalance between tenants and landlords is not easily quantifiable. Nor is not clear whether improved information and support could successfully address tenants' lower use of the existing civil dispute resolution mechanisms.

In a recent surveyⁱ undertaken on behalf of MBIE, tenants were asked how they would respond to a scenario where their property was not legally compliant (e.g. didn't meet health and safety standards or didn't have smoke alarms). Almost two-thirds of tenants said they would be *very or extremely likely* to raise the matter with their landlord or property manager. Over half said if their landlord refused to address an issue they would pursue such a matter either through an advocate, Tenancy Services or the Tenancy Tribunal.

However, for those tenants who would not raise concerns about a breach, they were concerned about future rent increases, landlords attempting to move them out, or that raising concerns could affect their ability to get rentals in the future. Consequently, some tenants endure sub-standard and poor-quality homes, loss of privacy, and repairs and maintenance will go unattended.

While a self-resolution approach remains highly relevant for landlords and tenants, particularly in the case of minor issues that arise during a tenancy, this approach is not always suitable in resolving more significant issues relating to rental properties (particularly those that compromise health and safety).

Responsible Manager (signature and date):

Claire Leadbetter
Manager, Tenures and Housing Quality
Housing and Urban Settings Policy Group
Ministry of Housing and Urban Development

20/09/2019

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Since the RTA came into force the rental market has changed markedly – the home ownership rate has declined from 75.2 percent in 1986 to 63.7 percent in 2013. Over one-third of the population was living in rental properties by 2013.ⁱⁱ

There are an estimated 604,100 households who rent in New Zealand.ⁱⁱⁱ The number of children under 15 years of age living in rental accommodation increased from 26 percent in 1986 to 43 percent in 2013.^{iv}

The numbers of elderly living in rented housing have also increased. The censuses of 2006 and 2013 show the estimated number of renting households where occupants were over 60 years of age in New Zealand increased from 14,181 to 40,764. This is an increase of 187 percent. We expect this trend to continue given declining home ownership rates amongst the next generation of older people.

While there are many more families living in rental accommodation for longer periods, the most common length of a tenancy is still about 12 months.

Most households who rent do so from private landlords, with approximately 11 percent (67,228 households)^v renting public housing. As at 27 May 2019, 79 percent of private landlords owned only one rental property, while 18 percent owned between 2-5 properties. These properties constitute 34 percent of the total number of residential rental properties.^{vi}

Residential property managers play a significant role in the private tenancy market. As at 27 May 2019 there were 2,039 residential property management companies responsible for managing 41 percent of residential properties (184,364 properties). The remaining 59 percent of properties are managed by landlords themselves.^{vii}¹

The regulatory system enables tenants and landlords and property managers to resolve any difficulties with their rental situations directly, or via mediation or adjudication (Tenancy Tribunal). Landlords are more likely to use the self-resolution approach than tenants.

Tenancy Tribunal applications covering access to both mediation and adjudication services are dominated by landlords seeking to resolve cases of rent arrears (28,312 applications in 2017 out of 33,684 applications in total). There were 4,510 applications from tenants in 2017.

The Regulator, MBIE, has a key role in supporting compliance with the RTA, relying mainly on education and information activities, persuasion, warnings and voluntary compliance, and for the most serious cases, initiating Tenancy Tribunal proceedings on behalf of a party. However, the Regulator is transitioning towards incorporating a more proactive, risk-based approach that targets locations and landlords that are causing the greatest harm, as well as developing inspection and monitoring programmes to assess compliance with the new Healthy Homes Standards.

¹ These figures are based on active bond records posted with the regulator. It does not capture all residential tenancies. The data includes 'all landlords' which includes private owners, companies, trusts, and property management companies. The data counts the number of properties per landlord ID number. In some cases, a landlord or property manager may have several ID numbers allocated and could therefore be counted more than once and listed in multiple categories. There are also variations in the way that boarding house bond records have been collected over time. Boarding houses are now given an address ID for each room so will count as more than one tenancy. Older entries in the system list one boarding house address ID per property rather than for each room.

These changes are proposed at a time of transformational change for the rental sector and in the context of a range of other initiatives that may have positive impacts on security of tenure independent of the proposed changes.

For example:

- The banning of letting fees in December 2018 removed a financial incentive for property managers to discontinue with an existing tenancy and may result in improvements to tenants' situations at the point where a tenancy is coming to an end.
- The Healthy Homes Standards will likely result in less tenant-initiated movement as an improvement in the quality of rental properties is achieved and this may improve the security landlords' experience.

Finally, the Government is not the only influence on the market and heightened demand for rental properties that outstrips supply is likely to be a stronger shaping force on the extent of security of tenure and compliance than regulation. We are mindful that changes to these market characteristics will likely have a greater impact on the outcomes sought than can be achieved through regulation.

2.2 What regulatory system, or systems, are already in place?

Security of Tenure

The RTA regulates the residential tenancy market. Key elements of the RTA that impact on security of tenure include:

- The reasons tenancies can be terminated
- The notice periods each party is required to give when ending a tenancy
- The types of tenancy agreements.

Termination Provisions

There are currently two main types of tenancy agreements: periodic and fixed-term.

- *Periodic agreements* have no specified end date, continuing until either the tenant or the landlord gives written notice to end it in accordance with one of the prescribed grounds.
- *Fixed-term agreements* run for the period specified in the agreement. The tenancy automatically rolls over to a periodic agreement when it expires, unless the tenant or landlord give notice within a specified period to say they do not want a periodic tenancy. If both the tenant and the landlord agree, the tenancy can be renewed or extended for a further fixed term.

The reasons that a tenancy can be ended differ depending on the type of tenancy agreement that has been agreed.

Fixed-term tenancies end at the specified end date. We understand that most fixed-term tenancies are set for a period of one year. However, as the type of tenancy agreement is not required to be specified on the bond lodgement form, we do not have a repository of data to confirm this. A fixed-term tenancy can only be terminated early by mutual agreement, where the premises have been destroyed,² on the death of the sole tenant, or with the Tenancy Tribunal's involvement. The reasons the Tenancy Tribunal may grant an early termination of a fixed-term agreement are:

- A breach of the tenancy agreement (for example, if rent is in arrears);
- If there has been an unforeseen change in the circumstances of either the tenant or the landlord which will cause them serious hardship if the tenancy continues; or

² or so seriously damaged as to be uninhabitable.

- The property is a unit title and there has been a change to body corporate rules that negatively affects the tenant.

Periodic tenancies can be ended by either party at any time, provided the requisite notice has been given.

A landlord can issue a notice terminating a periodic tenancy without the involvement of the Tenancy Tribunal in the following situations:

- On the death of the sole tenant;
- Where the premises have been destroyed, or so badly damaged as to become uninhabitable;
- The tenancy is a service tenancy and the tenant's employment ends;
- The owner (or their family member) is moving in to the premises;
- The premises is needed for an employee, and this is noted in the tenancy agreement;
- The owner has sold the property and is required to give the purchaser vacant possession; and
- Any other reason. The use of this ground is sometimes referred to as a no cause termination, as when using this ground, the reason for the termination is not required to be disclosed to the tenant.

There are also a range of additional termination provisions that relate to breaches of the RTA (for example, rent arrears, or other breaches of the tenancy agreement). To use these grounds the landlord must apply to the Tenancy Tribunal, who has discretion over whether the tenancy should be terminated.

Tenants may terminate a periodic tenancy at any time and for any reason by giving their landlord at least 21 days' written notice. Tenants are not required to provide their landlord with a reason as to why they are terminating the tenancy.

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, allowing landlords to issue a termination notice without providing the tenant with a reason may be having a negative impact on security of tenure and the relationship between tenants and landlords.

Notice Periods for periodic tenancy agreements

The amount of notice a landlord must give to end a periodic tenancy depends on the reason for the termination, and whether the Tenancy Tribunal is involved in the termination.

If a landlord is terminating a periodic tenancy without the involvement of the Tenancy Tribunal, they must generally provide the tenant with at least 90 days' written notice. There are three situations that do not require Tenancy Tribunal involvement where a landlord is only required to give 42 days' written notice to end the tenancy:

- The owner (or their family member) is moving in to the premises;
- The premises are needed for an employee, and this is noted in the tenancy agreement; and
- The owner has sold the property and is required to give the purchaser vacant possession.

If a landlord is terminating a periodic agreement with the Tenancy Tribunal's involvement, the Tenancy Tribunal will determine the notice period as part of their ruling.

For a tenant to end a periodic tenancy, they must provide their landlord with at least 21 days' written notice, unless the landlord agrees to a shorter timeframe. They are not required to provide a reason for they are vacating the premises. If a landlord gives their

tenant notice to end the tenancy and the tenant wants to move out sooner, the tenant must still give the landlord 21 days' written notice.

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.

Data from the 2017 New Zealand Rental Sector Survey indicates that this issue has the potential to impact on many tenants, with sale of the property identified as the second most common reason that tenants were required to move (the most common reason was to move to better quality accommodation).

The existing 21 days' notice that tenants are required to provide when vacating a tenancy may not be providing some landlords with enough time to find replacement tenants, exposing them to periods of lost rent.

Tenancy Agreements

There are two main types of tenancy agreements:

- *A periodic tenancy* is the more flexible option. This is an open-ended agreement. Either party can give notice at any stage to terminate the agreement.
- *A fixed-term tenancy* is often considered the more secure option. This has a specified end date. Neither party can independently break the tenancy agreement before the end date without involving the Tenancy Tribunal.

Fixed-term tenancies longer than 90 days automatically become a periodic tenancy when they expire unless the landlord or tenant gives notice during the effective period (between 90 and 21 days before the end of the fixed-term) to say they don't want that to happen, or the parties agree to a renewal or new fixed-term.

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, it is possible that, in some cases, these offerings may not be providing tenants who are meeting their obligations with security of tenure as:

- 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 in some form 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.
- Anecdotally, we understand that most fixed-term tenancies are set for a period of one year. Some tenants may find themselves locked in to a cycle where their fixed-term ends during peak times of the year when it is more difficult to find alternative accommodation.
- 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.

Compliance and Enforcement

The legislative requirements for safe and secure rental homes are primarily enforced by two individual parties – landlords and tenants, with mediation and adjudication provided by government to support the resolution of disputes and ensure efficient market interactions.

The Regulator (MBIE) has a role in maintaining the integrity and effectiveness of the RTA. However, the Regulator's powers have some inherent limitations, as these powers are essentially an 'add-on' to a civil regime, with government setting the rules and supporting self-resolution of disputes. Instead of intervening as a Regulator for every breach of the RTA, MBIE undertakes several functions that support tenants and landlords effectively engage and enable the smooth functioning of New Zealand's rental market.

MBIE's tenancy services that support the efficient functioning of the rental market include:

- *Information and education activities* – working to ensure landlords and tenants are aware of their rights and obligations and know how to access services that can support them. A better-informed market encourages voluntary compliance and self-resolution of any rental dispute, ultimately reducing the number of cases that require more resource-intensive government interventions (e.g. compliance and investigation, Tenancy Tribunal applications).
- *Tenancy Dispute Resolution Services* – Mediation services are provided to help landlords and tenants talk and resolve their problems, and where issues are amenable to resolution through formal discussion. These agreements can be formalised by the Tenancy Tribunal, making them legally binding and enforceable, via the Ministry of Justice Collections Unit.
- *Tenancy Tribunal* – If an issue is not amenable to mediation or was not successfully resolved at mediation, the matter can be adjudicated by the Tenancy Tribunal (supported by both MBIE's Tenancy Services and the District Court). Landlords or Tenants can make an application to the Tribunal. MBIE can also make applications to the Tribunal in its own right. This is a civil regime and the Tribunal can make a variety of orders to resolve a dispute or provide financial redress for one of the parties, including an order to terminate a tenancy, to pay rent arrears, require work or repairs or refund a bond. The Tribunal can also impose a penalty in the form of exemplary damages, payable to the injured party.
- *Residential Tenancies Compliance and Investigations* – This function was established in 2016 following changes to the RTA that enabled MBIE to act as the Regulator as well as the administrator of the RTA. The team has both a reactive enforcement function of addressing the public complaints and a proactive enforcement function targeting geographic areas and landlords who are causing the most harm or damage to the reputation of the tenancy system.

The tools available to MBIE under the RTA to formally address non-compliance include:

- Taking or defending proceedings on behalf of any party
- Taking proceedings as if a tenant, which can include initiating proceedings with the Tribunal.

When serious breaches of the RTA are alleged that are of public interest, MBIE can also take direct action rather than on behalf of a tenant. While these responses are appropriate when there have been serious breaches of the RTA, they are much less appropriate for minor breaches of the RTA or situations where the breach was significant, but the party involved is committed to complying with their legal obligations (and has a good record of compliance).

The proportionality principle is an important part of modern and effective regulation, with the Regulator's response being proportionate to the benefits expected. The RTA does not include access to lower-level sanctions, such as improvement notices or infringements, to deal with moderate or minor breaches of the RTA.

For example, the ability for MBIE to issue an '*enforceable undertaking*', when it has worked with the landlord or tenant to voluntarily agree actions to comply the RTA requirements, enables a lower-level, less costly and more timely regulatory response than taking the case to the Tenancy Tribunal. MBIE's ability to issue an infringement for breaching this undertaking, provides a moderate level of deterrence. In many instances, the RTA breaches that could be addressed through an enforceable undertaking would not be of sufficient

seriousness to warrant MBIE taking the case to the Tenancy Tribunal, and therefore low-level breaches would go unenforced, with MBIE relying solely on voluntary compliance.

The Tenancy Tribunal has jurisdiction to determine any dispute that exists between a landlord and tenant that relates to any tenancy to which the RTA applies up to \$50,000. Specifically, the RTA gives the Tenancy Tribunal power to consider and award the payment of both general and exemplary damages, as follows:

- *Damages or compensation* for a breach of any express or implied provision of the tenancy agreement or the RTA.
 - *General damages* are available to compensate for non-pecuniary loss or intangible harms, such as mental distress, annoyance, inconvenience, stress and anxiety, etc that occurred because of the breach. These 'general damages' reflect the effect of the breach on the tenant /landlord (rather than respond to the nature of the other party's action, for which *exemplary damages* are available).
 - *Special damages* refer to losses or compensation for harms that can be objectively quantified in monetary terms (e.g. modifications made to the property, repairs undertaken by the tenant etc).

There is no formula for the award of *general damages*, but generally the amount awarded has been modest. *Special damages* will be based on the costs incurred.

- *Exemplary damages* are awarded when it has been established in terms of section 109 of the RTA that a party to the tenancy agreement has committed an unlawful act. In the context of the RTA these damages are a penalty to punish wrongdoing and deter others, as well as compensating the other party for that wrongdoing. But these penalty levels have not been increased since 2006 and are low relative to current rent payments. The amounts also represent the maximum that can be awarded by the Tribunal and are reserved for the most injurious and egregious breaches, with most awards for exemplary damages being much less than the maximum.

2.3 What is the policy problem or opportunity?

The Government aspires through its *Plan for a modern New Zealand we can all be proud of* to improve the wellbeing of New Zealanders and their families by ensuring that everyone has access to warm, dry and safe accommodation regardless of whether they own or rent.

In this context the Government has banned the charging of letting fees to tenants and promulgated regulations under the Healthy Homes Guarantee Act that will ensure that all rental properties meet minimum standards in relation to heating, insulation, ventilation, draught stopping and the prevention of moisture ingress by 2024. These initiatives together with other reform's underway have the potential to improve amenity for many of the 604,100 households in the rental market. However, the extent to which the benefits sought through this programme can be realised will depend on the extent to which new requirements are complied with.

Considering security of tenure and enforcement and compliance as a package provide the opportunity to consider how these initiatives can both directly relate to improve outcomes and synergise other aspects of the Government's plan. The changes being considered to improve security of tenure have the potential to provide tenants with a stronger platform to participate in the justice system and to enforce their legal rights without fear of the negative repercussions of a tenancy ending. Likewise, changes to enforcement and compliance may bring about more voluntary compliance with the law placing less emphasise on tenants to drive compliance in the first place.

In summary, the matters under consideration have the potential to result in both direct benefits in isolation and to help achieve the policy intent of the government's policy programme.

Security of Tenure

An increased proportion of New Zealand households now reside in rental accommodation and are renting into later stages of their lives. The censuses of 2006 and 2013 show the estimated number of renting households where occupants were over 60 years of age in New Zealand increased from 14,181 to 40,764. This is an increase of 187 percent. Those who are renting at this stage of life are likely to continue renting on a long-term basis given that earning potential decreases closer to the age of retirement and this flows through to a decreased ability to purchase a home. Older New Zealanders may be more likely to require closer monitoring of their health and continuity of health care or may require more certainty over their longer-term living situation, if they are on a fixed income. In these circumstances security of tenure is particularly important to the wellbeing of older New Zealander's that rent. However, all households that are renting will benefit from less involuntary transience.

Provisions in the RTA relating to the types of tenancy agreements, the reasons tenancies can be terminated, and notice periods are not conducive to improving security of tenure to the extent desired by the Government.

Uncertain security of tenure undermines tenant wellbeing

Compared to other jurisdictions, New Zealand has minimal tenure security provisions.^{viii} Insecure tenure can make tenants reluctant to put down roots in their community, and make it less likely that they will raise concerns about the quality of their property or exercise their rights.

Insecure tenure can have a negative impact on health, education and employment outcomes. For example, people who move often are less likely to be affiliated with a primary health care provider (doctor, nurse or medical centre). This is likely to be of more importance to those with higher health needs, children and older people. International evidence links a lack of secure sustainable housing with low academic performance, and negative health outcomes for young children.^x For example, research carried out by the NZ Council for Educational Research and Ministry of Education shows that 10 percent of children are mobile (attending five to seven schools) and 2 percent of children are very mobile (attending eight or more schools). Mobile and very mobile students are more likely to receive special education services and show up in truancy data.^x

Housing features strongly as a social determinant of mental health in the Inquiry into Mental Health and Addiction. The report stressed that inadequate housing, high housing costs and homelessness are risk factors for poor mental health and recognised the role housing has to play in promoting mental wellbeing. Insecure tenure has a disproportionate impact for Maori as they are over represented in homelessness and housing statistics.

Tenants can have their tenancy terminated in a wide variety of ways

As noted above, the RTA provides the various ways in which a tenancy can be terminated. This includes the landlord's ability to terminate a tenancy for any reason, with 90 days' notice. The RTA provides landlords with a lot of choice about whether to terminate a periodic tenancy, and the only instance when a tenant can challenge such a termination is if they believe it has occurred in retaliation to them exercising their legal rights. However, in this situation tenants may not feel that a challenge is likely to succeed as it may be difficult to prove a termination is retaliatory in nature if no reason for it was provided. While there is record of Tenancy Tribunal decisions awarding penalties for retaliatory notice, it is unknown how many tenants have avoided applying for this in the first instance because of the perceived difficulties in proving to the civil standard what a landlord's motivations are in the absence of any reason for the termination being conveyed.

The consequences of a terminated tenancy

Any move will have several consequences for the tenant:

- they will incur transaction costs for the process of finding a new tenancy, and moving into it;
- they may have difficulty finding a new tenancy in their community, especially in a tight rental market.

If the tenant makes a choice to move, they will have had the opportunity to weigh up these costs with the benefits. The negative consequences of insecure tenure are noted above, including impacts on health, education and employment outcomes.

There is some evidence that tenancies are being terminated involuntarily

Citizens Advice Bureaux New Zealand (CABNZ) provided a submission to the public consultation on the proposed reforms to the RTA. This submission noted:^{xi}

- Citizens Advice Bureau (CAB) around New Zealand respond to over 14,000 enquiries related to renting issues each year;
- Lack of security of tenure is a significant issue raised by CABs' clients;
- Some situations of no cause terminations and the impact on clients;
- Some situations of 42 days' notice and the impact on clients.

We do not have data about why periodic tenancies end in New Zealand. The RTA allows landlords to terminate tenancies unilaterally, without reference to the Tenancy Tribunal. Tenancy Services does not collect information from landlords or tenants on why a periodic tenancy ends.

The 2018 General Social Survey (Social Survey)^{xii} found that 30 percent of those renting at the time of the survey had lived in the residence for less than one year, compared to 8 percent of owner-occupied properties. 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. 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 Social Survey does not indicate on what grounds the tenancies were ended by the landlords.

The New Zealand Rental Sector Survey (the Rental Survey)³ of 2015 found that 46 percent of tenants had moved in the previous two years. Of those, 30 percent of tenants (and 36% in Auckland) moved because the landlord sold the house. This indicates the notice period for the sale of a tenancy is relevant to a significant number of tenants.

Renters United provided a comprehensive submission to the public consultation on the proposed reforms to the RTA. This submission drew on consultation which led to its 2017 report *The People's Review of Renting and its Plan to Fix Renting*. While the submission did not provide data on how many tenancies are being ended involuntarily, Renters United has heard from individuals about their experiences. Some renters feel anxious about having to move house frequently.^{xiii} Some renters have had notice given in relation to a landlord's family member requiring the property to live in, only for the family member to never occupy, or to occupy for a short period before the property is rented again.^{xiv}

The Manawatū Tenants' Union provided examples throughout its submission of tenants being negatively affected by termination of their tenancy. For example, termination after a tenant raised concerns about the facilities; in another situation, a landlord gave notice for a family member to move in, but a friend moved in instead.^{xv}

³ The New Zealand Rental Sector Survey surveyed 1099 tenants and 406 landlords from the four main cities in 2015, followed up with interviews with 863 tenants and 38 landlords.

Counterfactual for Security of Tenure

The counterfactual for security of tenure is the status quo, with all the problems outlined above. The regulatory system will perpetuate an environment where landlords may face limited incentives to comply with the RTA's requirements and tenants may face limited incentives to challenge them on it. The status quo will not realise the Government's ambition for its plan for a modern NZ housing market that meets the needs of all New Zealand residents.

There is no preferred length of tenure for tenancies. The focus is on tenants having greater control over when tenancies end. However, the Ministry's Statement of Strategic Intentions 2019-23 includes the following goal: "Increase in the proportion of people who have lived in one house for at least the last five years".

Compliance and Enforcement

Measures designed to improve the wellbeing of tenants while protecting the rights of landlords depend on both landlords and tenants meeting their legal obligations. The current regulatory system provides insufficient incentives to ensure compliance with these obligations, particularly where new requirements – such as, for example, the new Health Homes Standards – increase compliance costs.

At present the Regulator – MBIE – does not have the range of tools it requires to improve compliance across the sector. Penalty provisions and levels are insufficient for the Tenancy Tribunal to address non-compliance. Limits on the Tribunals' jurisdiction means the Regulator and regulated parties do not have access to a specialist tribunal that can address all relevant tenancy matters in a timely, cost-effective manner.

Many rental homes are, for example, cold and damp because of insufficient insulation, inadequate heating, drainage and ventilation, excess moisture and poor draught stopping^{xvi}. Cold, damp and mouldy homes are strongly associated with negative health issues for occupants, including respiratory and cardiovascular conditions toxic reactions, allergies, pneumonia and asthma, and other infections^{xvii}. Low income, elderly, children, disabled persons, Māori and Pacific people are more likely to live in or suffer from the effects of cold and damp homes. As a result, these groups are at greater risk of negative social outcomes.

Government also makes a significant fiscal investment in rental housing in terms of in-kind transfers (public housing) and cash transfers to support New Zealanders access to quality housing (e.g. accommodation supplement, income-related rent subsidy, etc). Expenditure for housing support was \$2.5 billion (year ended 30 September 2018).

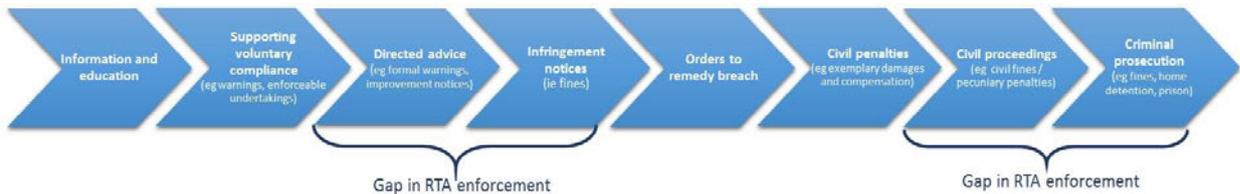
Government's regulatory enforcement efforts in the residential tenancy space is primarily focussed on prevention, rather than punishment. General compliance activities of advice and warnings, together with MBIE taking some of the most serious cases to the Tenancy Tribunal, has achieved a reasonable degree of compliance. However, non-compliance with the RTA standards remains an issue, and can have serious implications for achieving the Government's goals for healthy, safe and secure rental environments.

For example, MBIE has identified longstanding issues related to poor record keeping, information asymmetry issues between landlords and property managers in addressing RTA breaches, lack of clearly applied standards for core business operations (e.g. property inspections, lodging bonds, etc). The results of its December 2018 survey of 180 property management companies found that only 25 percent of property managers were compliant with RTA requirements.

Within the RTA regime, general deterrence and education are more important than pursuing wide-scale punishment of breaches of the RTA to achieve compliance. The current RTA deterrence activity of the Regulator is focussed on acting on the more serious breaches of the RTA, and where it is in the public interest to do so. However, the level of penalties available to MBIE for these serious breaches are considered too low to support the deterrence efforts of the Regulator.

An effective regulatory strategy is built on having a balanced approach between helping market participants understand their legal obligations and how to comply with them and taking credible and timely action when non-compliance is identified. The RTA regulatory regime has not struck a good balance and is overly weighted towards education and information strategies to drive compliance. The RTA Regulator is not empowered to seek to deter and punish breaches of the RTA in a way that is timely, proportionate and appropriate to the breach. At one end of the regulatory spectrum, it can issue warnings and provide education and compliance advice, and at the other end it can take civil proceedings to the Tenancy Tribunal, which can impose low-to-moderate penalties and orders.

Array of Tools Available to Regulators



Tenancy Tribunal Operations

The Tenancy Tribunal’s does not have the jurisdiction to require any party 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 Tribunal work orders, the compensation levels to reflect damage and repairs, and the proposed increase in penalty levels (exemplary damages and pecuniary penalties). There is a strong case for increasing the Tribunal’s jurisdiction limit.

Currently the Regulator must lodge a separate application for each property where an unlawful breach has occurred, even though the same landlord/property manager is responsible for same breach. For example, an application by MBIE in respect of the Rent Centre Ltd.’s failure to lodge bond⁴ resulted in 116 individual applications.

⁴ Ministry of Business, Innovation and Employment on behalf of the tenant s 9(2)(a) s 9(2)(a) v THE RENT CENTRE LIMITED [2018] NZTT 4129065.

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 enabling multiple breaches on a single application.

Currently a landlord or tenant can take action for a breach of the RTA within 12 months of the unlawful act happening. However, the Regulator can take enforcement action up to 12 months from the date the breach is discovered and MBIE is made aware of the issue (s.124B (1) refers). The Regulator cannot seek any penalty for these older breaches due to the 12-month limitation period for making Tribunal applications (s.109(2) refers, 12 months from the date the unlawful act was committed).

The compliance integrity of the RTA is compromised by the current limitation periods in the RTA, as the Regulator is unable to seek a penalty for some serious breaches of the RTA. This in turn reduces the public's confidence in the protections provided to tenants and landlords by the RTA and gives lawbreaking landlords greater comfort that RTA breaches will have no consequences for them.

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.

Counterfactual for Compliance and Enforcement

The counterfactual is a situation where the introduction of healthy home standards and other RTA changes government has made to support a better-quality rental environment will be undermined by a lack of compliance. Errant landlords will face minimal incentive to comply with new RTA requirements as insufficient penalties will provide limited deterrence and the Regulator will have limited options to work with landlords to rectify breaches.

A lack of compliance with new Healthy Homes Guarantee Act will mean that renters continue to experience cold, damp and under-insulated homes, and the net benefits from improved healthy homes standards are, in part, forgone due to a lack of effective enforcement options.

In addition, the absence of a wider range of penalties and legal remedies being available to the Regulator, will mean that tenants and the Regulator will continue to have to take all breaches of the RTA to the Tenancy Tribunal for resolution. The Tenancy Tribunal dealt with 38,194 applications in 2017, and the 2018 consultation identified ongoing concerns with the timeliness of access to the Tribunal services to resolve disputes, and the ability to provide effective redress in the form of enforceable penalties.

Ultimately, a lack of effective penalties and remedies will undermine confidence in the justice system and the Regulator's ability to enforce RTA requirements to establish a good faith relationship between tenants and landlords and support the delivery of quality rental housing.

A lack of enforcement to address poor quality rental housing and those landlords who do not comply undermines the very sizeable government investment of \$2.5 billion annually to support access to quality. Ineffective regulatory levers in the rental sector increases the risk that a growing proportion of this expenditure is ineffective, as it is not fulfilling its aim of ensuring New Zealanders have access to safe, secure quality homes.

2.4 Are there any constraints on the scope for decision making?

Out of Scope

Boarding Houses: Due to the different dynamics created by communal living, the security of tenure proposals covered by this assessment will not apply to Boarding Houses. The proposed strengthened enforcement measures will, however, apply. HUD intends to progress separate policy work on regulation of Boarding Houses under the RTA, given the special characteristics of this segment of the residential tenancy market.

Property Managers: While the proposed measures will need to be taken into account by property managers and are likely to influence their behaviour, we have not considered options targeted at regulating the activities of property managers as a distinct group of stakeholders in the residential tenancy system. Given the property management sector has assumed responsibility for managing a sizable number of New Zealand rental properties and has a key role to play in ensuring RTA standard are met, HUD understands the benefit from giving further consideration to whether regulation is necessary in partnership with the Ministry of Justice. However, as the Government already has a comprehensive reform programme underway, it has agreed to defer this work.

Tenancy Tribunal: The parts of the RTA that relate to the Tenancy Tribunal's composition and procedure are out of scope of this RTA reform. The Government did not consider an examination of that breadth could be given due regard within the timeframe afforded to the targeted reform of the RTA in 2018–2019.

Compliance Management: The reforms provide MBIE with legislative tools that enable it to discharge its regulatory functions more efficiently and effectively and recognises its role in implementing the proposed changes. The reform process has not included an assessment and review of MBIE's compliance management strategy, which will be a matter for the Regulator to progress separately.

Links and Dependencies

Related Tenancy Act Reforms: Several other policy proposals – that will be the subject of separate regulatory impact assessments – relating to pets, minor fittings and the frequency of rent increases are dependent on the proposals covered by this assessment and will likely only be fully realised if tenants feel more secure in their rental accommodation and more confident and willing to exercise their rights.

Healthy Home Standards: The proposals covered in this regulatory assessment that are designed to strengthen enforcement are critical to the successful achievement of the government's Healthy Homes Standards introduced under the Health Homes Guarantee Act 2017, which result in additional compliance costs for some landlords.

Legislative Guidelines:

The proposed penalty changes have been developed with reference to the guidelines for creating infringement offences, criminal offences and pecuniary penalties issued by the Legislation Design and Advisory Committee (LDAC), as well as the policy framework for new infringements produced by the Ministry of Justice (MoJ).

HUD officials have also consulted with the Principal Adjudicator of the Tenancy Tribunal, compliance and enforcement staff at the Regulator as well as Ministry of Justice officials on the proposed changes to RTA regulatory offences and increases in maximum penalty levels.

Based on the guidance documentation and consultation, HUD officials consider the various proposed breaches of the RTA are appropriately dealt with by way of a mix of warnings, enforceable undertakings, notices, exemplary damages, infringements, pecuniary penalties and criminal offences.

The proposed infringement fees are set at levels equal to or lower than the maximum recommended in the LDAC guidelines and MoJ policy guidance of \$1,000. Proposed infringement fee amounts are consistent with infringement fees currently proposed for similar offences in a number of regulatory regimes.

Proposed pecuniary penalties are well below the maximum amounts available for similar offences in other regulatory regimes of a \$50,000 maximum for a body corporate. There is no legislative guidance on the amounts available for exemplary damages, and the increases proposed are mostly based on adjustments to account for inflation in rent since these levels were last reviewed. Where increases over and above the amount of inflation are proposed, the increases are considered modest in comparison to the maximum penalties that would apply for similar regulatory offences in a criminal jurisdiction.

2.5 What do stakeholders think?

Key Stakeholders

The key stakeholders impacted by the proposed changes are tenants and landlords/property managers (including Housing NZ) along with the Regulator, the Tenancy Tribunal, the wider justice sector, and government agencies involved in the relationship between housing and wellbeing, including Te Puni Kokiri, the Ministry of Social Development and the Treasury.

Given the size of New Zealand's rental market and the potential improvements in outcomes for tenants and increased risk of detection with more tools and penalties to address non-complying landlords, there is a reasonable level of interest in the proposals.

Consultation

HUD undertook a comprehensive public consultation process from August to October 2018 about reforms to the RTA ([Reform of the Residential Tenancies Act 1986](#)). This process also included a series of workshops with targeted representative stakeholders as well as public web-based survey. Overall, HUD received the views of 4,8784 tenants, landlords/homeowners, property managers, social housing providers and others.

The Discussion Document and survey set out questions about the options proposed. HUD did not directly ask stakeholders about their views of problems with the status quo. However, the answers about the options indicate whether stakeholders consider change is warranted, and by implication, about the status quo.

A submissions analysis report has been prepared which conveys qualitative insights from all market participants together with quantitative analysis of the nearly 100 questions that were asked. Due to the depth and complexity of insights received, HUD has only summarised stakeholder views at a high level in the following sections. However, HUD intends to publicly release the 329-page submissions analysis report in full once Cabinet has made decisions on the reform.

Improving Security of Tenure while protecting landlords' interests

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. This indicates dissatisfaction with the status quo. Renters expressed concern about the costs of moving and the current perceived lack of fairness in decision making.

Landlords and property managers were concerned to keep flexibility for the landlord to terminate tenancies, for example, around no cause tenancies and to be able to offer vacant possession if a house is being sold. This indicates comfort with the status quo.

Compliance and Enforcement

Tenants fear retaliation from landlords. Tenants also fear black-listing if they were to take a case to a tribunal. Some submitters sought regulation of property managers and licencing of landlords.

Landlords noted that the Tribunal does not work well for them. They told us that often awards are not enforceable or collectable. Landlords suggested that if there were additional regulation, fines or audits applicable to landlords then the same should be applied to tenants.

The overall theme shared by all groups of respondents is that MBIE should have greater power, including to:

- Carry out audits of landlords or property managers
- Take a single case in respect of multiple breaches of the RTA
- Enter into enforceable undertakings with landlords
- Issue improvement notices
- Issue infringement notices for straightforward breaches
- Apply to the Tenancy Tribunal to award exemplary damages.

Many submitters made observations that are not within scope of the RTA work on enforcement, for example commenting that the Tribunal is too slow, that the process can be stressful and that it is biased towards tenants.

Māori and Pasifika

Māori, Pacific people and disabled people are disproportionately represented in the renting population. At the time of the 2013 Census, 56.9 percent of Māori and 66.9 percent of Pacific people were living in rented homes. A 2017 report by Pasifika Futures estimated that the number of Pacific people living in rented homes has increased to 71 percent.^{xviii}

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 which resulted in Te Matapihi hosting an invitation to participate in 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.

Section 3: Options identification

3.1 What options are available to address the problem?

IMPROVING SECURITY OF TENURE WHILE PROTECTING LANDLORDS' INTERESTS

In considering the regulatory options for improving security of tenure for tenants who are meeting their obligations, while maintaining adequate protection of landlords' interests, this assessment examines five key issues:

- *Issue 1:* What grounds should be available to landlords to terminate a periodic tenancy?
- *Issue 2:* At what point should landlords be required to provide evidence demonstrating the validity of a termination ground?
- *Issue 3:* How much notice should landlords need to give tenants when terminating a periodic tenancy?
- *Issue 4:* How much notice should tenants need to give to leave a periodic tenancy?
- *Issue 5:* Should changes be made to the types of tenancy agreements available in the market?

Issue 1: What grounds should be available to landlords to terminate a periodic tenancy?

Status quo (Landlords can end a periodic tenancy for non-specified reasons)

Currently, landlords can terminate a periodic tenancy for a range of specified reasons under the RTA. Termination notices may be issued by a landlord for three of the specified grounds without the Tenancy Tribunal's involvement:

- The owner (or their family member) is moving in to the premises;
- The premises is needed for an employee, and this is noted in the tenancy agreement; and
- The owner has sold the property and is required to give the purchaser vacant possession.

There are also a range of termination grounds that a landlord may use to terminate a tenancy relating to breaches of the RTA (for example, rent arrears, breaches of the tenancy agreement, or property damage). To end a tenancy for one of these grounds, a landlord must apply to the Tenancy Tribunal, who has discretion over whether the tenancy should be terminated.

In addition to the specified grounds, the RTA allows a landlord to end a tenancy "in any other case". This is sometimes referred to as a no cause termination, as a landlord is not required to provide the tenant with a reason for the tenancy being terminated.

The ability for landlords to terminate tenancies for legitimate reasons is important for incentivising landlords to provide private residential rental accommodation, and for ensuring they can effectively manage their business. However, there has been some recent commentary that landlords' ability to terminate a tenancy without providing an explanation - a no cause termination - may be negatively impacting on security of tenure:

- Tenants may feel insecure in their property knowing their tenancy can be terminated at any time, making them reluctant to put down roots in their community.
- Tenants to worry about raising concerns about the property or exercising their rights under the RTA. While the RTA contains provisions that prevent landlords from issuing a termination notice in retaliation for a tenant exercising their rights,

with an associated \$4,000 maximum exemplary damage, some tenants may not be aware of these provisions.

- In hot markets, good tenants may be being issued no cause terminations so that landlords can raise rents.

See sections 2.3 and 2.5, and the commentary below on what stakeholders think for more detail on concerns with the status quo.

Option 1: Only allow terminations for non-specified reasons with Tenancy Tribunal involvement

Under this option, a landlord's ability to terminate a periodic tenancy for non-specified reasons would be restricted. Landlords would:

- Retain the ability to issue a termination notice for one of the specified reasons (following the corresponding process and notice period requirements for the specific ground); and
- Only be able to issue a termination notice for non-specified reasons if certain criteria were met.

Examples of criteria that could be included are (these criteria are not mutually exclusive):

- Allowing a no cause termination to be issued only if there is no prescribed reason in the RTA that would cover the situation that has led to a termination being needed.
- Allowing the Tenancy Tribunal to agree to terminate a tenancy in any other case where they consider it would be inequitable to refuse to make an order terminating the tenancy.
- Specifying situations in the RTA under which a no cause termination can be used (for example, where evidence has been unable to be obtained due to health and safety reasons).
- Imposing a limit on the number of times a landlord can use a no cause termination within a certain time-period.
- Imposing a longer time-period for its use (e.g. 120 days)

Option 2 (Preferred Option): Remove the ability for landlords to terminate a tenancy for non-specified reasons

Under this option, landlords would only be able to terminate a periodic tenancy for one of the specified reasons prescribed in the RTA (following the corresponding process and notice period requirements for the specific ground). The ability to issue no cause terminations would be removed.

Additional specified termination grounds would be added to cover other situations where it might be necessary to end a tenancy once no cause terminations have been removed:

- The owner intends to make the property available for sale within 90 days of the tenant ceasing to occupy it;
- 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);
- the landlord intends to carry out extensive alterations, refurbishment, repairs or development of the premises and it would not be possible for the tenant to continue to live there while the work was undertaken
- the landlord intends to change the use of the premises (e.g. from residential to commercial);

- the premises are to be demolished; or
- the landlord is not the owner of the premises and the landlord's interest in the property ends (for example, the landlord may lease the premises from the owner and the lease ends).

Option 3: Allow landlords to terminate a tenancy for any reason, provided the tenant is provided with an explanation for the termination

Landlords would:

- Retain the ability to terminate a tenancy for the range of specified reasons under the RTA (following the corresponding process and notice period requirements for the specific ground); and
- Could terminate a tenancy for any other reason not specified in the RTA provided the tenant is provided with the reason for the termination.

Penalties would be introduced for the intentional misuse of termination provisions and tenants would have the ability to challenge the use of the termination ground if they considered it was being used falsely or in retaliation to them exercising their rights. The Tenancy Tribunal would have the ability to void the termination, and to award compensation or exemplary damages to the tenant.

What do stakeholders think?

Submitters in favour of removing no cause terminations, many of whom were tenants and other submitters, 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.

Landlords, property managers and social housing providers were in favour of keeping no cause terminations. Landlords and property managers noted 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.

Sixty-eight percent of submitters who answered the question agreed that a landlord could end a tenancy to advertise a property for sale with vacant possession. There was support to varying degrees across all submitters, except from other submitters.

Sixty-eight percent of tenants and 71 percent of landlords identified the potential for the removal of no cause terminations to have negative impacts. From this we infer that despite differing views on the need for these provisions in the first place, there is broad recognition on both sides that the disruptive nature of the change could result in challenges if not managed properly. For example, by making it more difficult to remove problematic tenants leading to increased compliance costs and the potential for fewer rentals and higher rents in turn.

Public housing providers were also asked if there should be additional grounds for terminating a public housing tenancy, if no cause terminations were removed. Fifty-nine percent of respondents did not think there should be additional grounds. Of those who considered there should be additional grounds, they referred to antisocial behaviours and other matters such as changes to eligibility, needs or circumstances of the tenant.

Issue 2: How can we ensure that the termination provisions are being used correctly?

Status quo (Evidence provided at the point of Tenancy Tribunal involvement)

Under the status quo, landlords are required to provide evidence demonstrating the validity of the termination ground at the point of Tenancy Tribunal involvement.

- For grounds which require the involvement of the Tribunal to be exercised, this means that evidence is provided at the time a termination notice is issued.
- For the four landlord-initiated grounds, evidence is not required to be provided alongside the termination notice. Evidence demonstrating the validity of these grounds is only provided if the tenant challenges the use of this ground.

This may be impacting on security of tenure by resulting in higher tenant turnover than is necessary as:

- It is possible that some landlords are using the no cause notice instead of specified provisions in the RTA, because this provision is less confrontational, cannot be challenged, and is more administrative simple, than the alternatives. This may be resulting in some tenancies being terminated which would not have been had the Tenancy Tribunal been involved.
- In relation to no cause terminations, no reason is required to be given to the tenant, restricting their ability to challenge the use of this ground to situations where a tenant considers it is being exercised in retaliation for them exercising their rights.
- Some tenants may be unaware of the provisions which enable them to challenge the use of landlord-initiated termination grounds or may be unwilling or unable to exercise these provisions for other reasons (such as an inability to gather the required evidence or concern over damaging the relationship with their landlord).

See sections 2.3 and 2.5, and the commentary below on what stakeholders think for more detail on concerns with the status quo. CABNZ's submission gives examples of the 42 days' notice being used incorrectly.

Option 1: Evidence to accompany the termination notice

Under this option, landlords would be required to provide evidence to terminate a periodic tenancy for any specified reason under the RTA.

- For grounds which require the involvement of the Tribunal to be exercised, this means that evidence is provided at the time a termination notice is issued.
- For the three specified landlord-initiated termination grounds, evidence would need to accompany the termination notice issued to the tenant. Guidance would be provided on the types of evidence that tenants could reasonably expect to receive.

Option 2: Introduce penalties for the misuse of termination provisions

Under this option, penalties would be introduced for the intentional misuse of termination grounds that do not require Tribunal involvement.

What do stakeholders think?

Stakeholders were split on whether landlords should give tenants evidence about why they are terminating a tenancy. Sixty-two percent of tenants and 90 percent of other submitters agreed that landlords should give evidence. Landlords, property managers and social housing providers generally considered landlords should not give evidence about terminating a tenancy (58-62%).

Those in favour considered it was fair and reasonable, would improve transparency, would reduce abuse and increase accountability. Those opposed considered that the property owner should not have to give evidence as they are exercising their property rights. In addition, those opposed considered that providing evidence could create conflict, open opportunities for retaliation and could be impractical as evidence is disputable. Submitters who responded were in favour of penalties for the misuse of termination provisions. However, the levels of support were lower from social housing providers, landlords and property managers (52-63%), and much higher from tenants and other submitters (74% and 97%).

Issue 3: How much notice should landlords need to give tenants when terminating a periodic tenancy under the current termination grounds?

Status quo (42 days' notice for current landlord-initiated termination grounds)

Under the existing provisions, a landlord can give a tenant at least 42 days' written notice to end the tenancy if one of the following apply where:

- The owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner's family;
- The landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord, that fact being clearly stated in the tenancy agreement, and the premises are required for occupation by such an employee;
- The owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession.

To end the tenancy for any other reason (without applying to the Tenancy Tribunal), a landlord must give the tenant at least 90 days' written notice.

For grounds that can only be exercised upon application to the Tenancy Tribunal, the Tribunal has discretion of the notice period that should apply.

See sections 2.3 and 2.5, and the commentary below on what stakeholders think for information on concerns with the status quo. CABNZ's submission has examples of situations of the impact of 42 days' notice on tenants.

The new landlord-initiated termination grounds are intended to cover the situations which were previously covered by a 90 day no cause termination. The proposals require 90 days' notice for these new termination grounds, as it maintains the current amount of notice for tenants. This issue relates solely to the current termination grounds set out above that require 42 days' notice.

Option 1: 90 days' notice for current landlord-initiated termination grounds

Under this option, to terminate a tenancy for any reason that did not require the involvement of the Tenancy Tribunal, a landlord would be required to provide the tenant with 90 days' written notice. For grounds that can only be exercised upon application the Tenancy Tribunal, the Tribunal has discretion of the notice period that should apply.

Option 2: 63 days' notice for two current termination grounds and 90 days' notice for one current termination ground

Under this option, a landlord must give a tenant 63 days' written notice to end the tenancy if the following current termination grounds apply:

- The owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner's family;
- The landlord customarily uses the premises, or has acquired the premises, for occupation by employees of the landlord, that fact being clearly stated in the tenancy agreement, and the premises are required for occupation by such an employee.

The landlord must give 90 days' written notice under the current termination ground where the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession. This aligns the current sale of property termination ground with the new termination ground – the landlord intends to make the property available for sale within 90 days of the tenant ceasing to occupy it.

What do stakeholders think?

Submitters were divided on the impact that extending the notice periods would have for terminations that do not require Tribunal involvement. 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, would 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. Other submitters had a similar position to tenants.

Sixty percent of landlords considered this change would have negative or unfair implications, and a further 11 percent considered the change would have very negative implications. Concerns expressed included that it would make selling houses more difficult, the time period is too long for planning purposes, that it would increase the risk of unpaid rent and damage being done following the issue of the termination notice, and that it could result in fewer rentals being available. Property managers and social housing providers had a similar position to landlords.

Issue 4: How much notice should tenants need to give to leave a periodic tenancy?

Status quo (21 days' notice)

Currently, a tenant is required to give at least 21 days' written notice to end a periodic tenancy, unless the landlord agrees to a shorter time.

Option 1: 28 days' notice

Under this option, tenants would be required to give 28 days' written notice to end a periodic tenancy, unless the landlord agrees to a shorter timeframe.

Option 2: Less than 21 days' notice

Under this option, tenants would be required to give less than 21 days' written notice to end a periodic tenancy, unless the landlord agrees to a shorter timeframe.

See sections 2.3 and 2.5, and the commentary below on what stakeholders think for information on concerns with the status quo.

What do stakeholders think?

Submissions on tenants' notice periods generally agreed that tenants should provide more than 21 days' notice. Fifty-three percent of tenants, and 60 to 58 percent of landlords, property managers and social housing providers agreed with more than 21 days' notice.

Most suggestions for increasing the notice period submitted that notice periods should be the same for landlord and tenant.

The notice remaining at 21 days was a popular second choice across these submitters (27-40%), with few submitters considering that less than 21 days' notice was desirable. This compares with other submitters, where 65 percent considered the notice period should remain at 21 days.

Issue 5: Should changes be made to the types of tenancy agreements available in the market?

Status quo (periodic and fixed-term agreements)

There are currently two main types of tenancy agreements: periodic and fixed-term.

- *Periodic agreements* have no specified end date, continuing until either the tenant or the landlord gives written notice to end it in accordance with one of the prescribed grounds.
- *Fixed-term agreements* run for the period specified in the agreement. At the end of the fixed term:
 - 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;
 - the tenancy will automatically roll over to a periodic agreement (following an amendment to the RTA in 2010); or
 - the parties can agree to renew or extend the tenancy for a further fixed term.

See sections 2.3 and 2.5, and the commentary below on what stakeholders think for information on concerns with the status quo. Renters United's submission raised a number of concerns about fixed-term tenancies:^{xix}

- Fixed terms can be set to end in busy times for rentals, to accelerate rent rises;
- Refusals to release from fixed term tenancies, even when the renter's situation has changed (for example, loss of job, sickness or family violence);
- Refusals to sublet or reassign the tenancy;
- Renters being unlikely to raise issues with the property near the end of the fixed term, because a lack of security of tenure.

Option 1: Introduce a third, long-term tenancy type into the market

Under this option, in addition to periodic and fixed-term tenancy agreements, a third agreement type would be introduced aimed at tenants and landlords who wish to enter into longer-term agreements.

Key features of this third type of tenancy could be:

- A minimum length of five years.
- The tenancy could only be ended by the landlord if the tenant was in breach of the tenancy agreement. Sale of the property or the landlord requiring the premises for other purposes (such as to live in themselves) would not be grounds for terminating the tenancy.
- Tenants can give three months' notice at any time to end the tenancy.
- The property would not be required to be provided with chattels, decorated walls, floor or window coverings. Tenants would have the right to decorate the property with a requirement to return the property back to its original state.
- Tenants would have greater responsibilities for minor repairs and maintenance.

- A larger bond (for example, 12 weeks)

Option 2: Only offer periodic agreements

Under this option, fixed-term agreements would be removed. All tenancies would be open-ended, only ending if a tenant or landlord gave notice in accordance with the RTA's notice period and termination provisions.

Option 3: Offer periodic and amended fixed-term agreements with amendments

Under this option, both periodic and fixed-term agreements would remain in the market, but changes would be made to fixed-term agreements to improve security of tenure for those tenants who are meeting their obligations.

This option would also amend the existing notice periods and termination grounds for a landlord or tenant wishing to give notice to end the tenancy at the end of the fixed term.

These would align with the preferred options for periodic tenancies, that is:

- A landlord can give notice of at least 90 days for the reasons specified in the RTA in relation to ending periodic tenancies; or
- A tenant can give notice of at least 28 days.

Both parties can continue to agree to renew or extend the tenancy for a further fixed term, or agree to end the tenancy, or the fixed-term tenancy can become a periodic tenancy.

What do stakeholders think?

Seventy-two percent of submitters agreed that landlords could be more likely to offer fixed-term agreements if no cause terminations were removed. Eighty-eight percent of landlords and 49 percent of tenants did not think that the Government should investigate further 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. However, tenants 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 isn't guaranteed.

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.

COMPLIANCE AND ENFORCEMENT

Strengthening Enforcement

Landlords will be induced to comply with existing RTA standards if the cost of non-compliance exceeds the financial benefits to them of that non-compliance. For example, the costs of not meeting the healthy homes standards, smoke alarms obligations, cleanliness and maintenance of the property, building or health and safety requirements carries a maximum exemplary damage amount at the Tenancy Tribunal of \$4,000 (s.45(1A)). This is the maximum, reserved for those landlords seriously failed in meeting these obligations, and very few would be awarded this amount. This compares with a cost-benefit analysis estimate of \$7,500 to \$10,000 (excluding GST) to outfit a house to comply with the healthy home standards, assuming the house was deficient in all areas covered by the standards.^{xx}

The compliance model for the RTA is based on intelligence and risk-based survey assessment, and for some landlords, weighing up the likelihood of being caught and any subsequent penalty, are unlikely to be convinced to make the financial investment

necessary to meet the RTA standards. There is also a risk that the penalty for non-compliance comes to be viewed by a small number of landlords as a cost of business as they are insufficient to deter landlords who are prepared to breach the RTA.

There are non-regulatory factors that may induce landlord compliance, including market reaction with tenants leaving the property or not accepting a rental agreement in the first instance, or seeking compensatory and exemplary damages via the Tenancy Tribunal. However, given the tight rental market, a market response cannot be relied upon to induce non-compliant landlords to meet the RTA standards.

There are three primary options available that could improve compliance in the rental market:

Option One: Improving Information and Education Activities Alone

Improving the use of existing self-resolution mechanisms with better information, advice and education, that increases the knowledge of tenants and provides them with greater support. With improved support and information more tenants will have the skills to self-resolve any breaches in the RTA using existing mechanisms of mediation and Tenancy Tribunal hearings.

The proposed programme would be highly targeted and designed to achieve maximum impact with a comparatively small implementation budget. MBIE would build on relationships with creative and media agencies to determine the most effective channels to reach landlord and tenant audiences. MBIE would also work with third parties such as tenant support groups and the Citizens' Advice Bureau, or take road shows around community events. The level of information and education activity would remain stable until 2024/25 to ensure new landlords and those renewing tenancies for the first time over the next four to five years receive the same information.

Under this option the current enforcement tools and penalty levels would remain in place.

The Regulator has the power to directly seek to remedy a breach by:

- Providing advice on the legal requirements of the RTA
- Issuing the landlord or tenant an informal warning (in the form of a letter)
- Working with landlord or tenant to get them to voluntarily agree an approach and timelines to remedy the breach (*compliance agreement*).

If the breach is serious, deliberate and of sufficient public interest, MBIE does have the option of taking proceedings to the Tenancy Tribunal on behalf of the tenant or landlord. The Tenancy Tribunal can then determine if a penalty that should be imposed, compensation for any harm awarded, or impose an order for a party to undertake work or specific actions to remedy the breach.

The maximum level of exemplary damages that can be ordered by the Tenancy Tribunal is \$4,000 for cases involving health and safety. Most other unlawful acts have maximum penalties of \$1,000 to \$2,000.

Option Two (Preferred approach): Strengthened enforcement and compliance (supported by information and education about the changes)

Increase the effectiveness of deterrence of tougher financial penalties or possible criminal

prosecution, as well as more enforcement options to enable the Regulator to address moderate and emerging breaches in a timely and proportionate manner.

This option includes a three-pronged approach to strengthening RTA enforcement tools as well as extending the jurisdiction of the Tenancy Tribunal so that breaches of the RTA can be effectively sanctioned, and deterrence bolstered.

The three complementary approaches are:

- Introducing a wider range of enforcement tools to supplement the existing use of warnings and advice and information, which will enable MBIE to take timely and proportionate action when it identifies cases of non-compliance, including;
 - Infringement fees and fines – to address simple breaches of the RTA where the facts are not in dispute, with fees of \$500 and fines ranging from \$1,000 to \$1,500 (and twice as high for landlords with six or more tenancies)
 - Enforceable undertakings – a negotiated agreement between MBIE and a landlord (or tenant) to address minor or technical breaches. If the agreement is not complied with, MBIE can take proceedings to the Tenancy Tribunal.
 - Improvement notices – where MBIE can direct a landlord (or tenant) to take specific actions, in a specified timeframe, to rectify a breach (where these breaches can be easily remedied). If the Notice is not complied with, MBIE can take proceedings to the Tenancy Tribunal.
- Raising the penalty levels for landlords or tenants who fail to meet their obligations, so that the Tribunal can effectively sanction breaches and increase compliance, by:
 - Increasing the maximum penalties that can be imposed by the Tribunal, with an across-the-board increase in exemplary damages to reflect the growth in rental costs since levels were set in 2006 (equivalent to a 60 percent increase)
 - Doubling the penalties for breaches that have a serious impact on tenants' health and safety, as current maximum exemplary damages of \$6,500 after adjusting for inflation are still too low to provide effective deterrence
 - Introducing a new civil pecuniary penalty, payable to the Crown and applicable to only landlords with six or more tenancies, for cases involving very serious breaches that impact on tenant's health and safety or undermine the RTA protections, with a maximum penalty of \$50,000.
- Strengthening the RTA's small number of criminal offence provisions to provide tougher sanctions when there are serious breaches, by;
 - Increasing the level of fines (currently maximum of \$2,000) with an across-the-board adjustment to reflect the change in rental costs between 2006 and 2018
 - Establishing a substantial penalty for landlords or tenants who flagrantly ignore a Tenancy Tribunal order, with a maximum fine of \$10,000 for:
 - Ignoring a Tribunal work order to remediate an issue and there is ongoing risk to the health, safety, security or habitability of buildings or tenants (new offence);
 - Intentionally contravening a Tribunal order restraining further unlawful acts.
 - Increasing the fines for failing to provide tenancy-related documents and records to the Regulator (MBIE) or the Tribunal when requested, as this

failure limits the ability to effectively address breaches. The maximum fine would increase from \$2,000 to \$5,000.

- The current and proposed changes to the penalties and offences are outlined in Appendix B.

Option Three: Strengthened enforcement and compliance, with staged increases of penalties

This option is broadly the same as Option two. However, under this approach, the increases to penalties are more incremental, with no penalty increasing by more than 80 percent. This will provide regulated parties with a more gradual increase in the few instances where the increase proposed is more than 50 percent of the current penalty.

The current and proposed changes to the penalties and offences are outlined in Appendix C.

Option Four: Warrant of Fitness for all private rental properties

A rental Warrant of Fitness (WoF) would require all rental properties to meet specified minimum standards. Non-compliant landlords would not be able to provide rental properties where they fail to provide safe, secure and healthy homes and premises. Breaches and hearings before the Tenancy Tribunal would factor into landlords being able to maintain their WoF.

The WoF system would be administered by MBIE as the Regulator. MBIE would be responsible for establishing the WoF requirements and the timeframes within which residential tenancy inspections need to be completed and any identified remedial work undertaken. MBIE would also establish and codify the inspection criteria and process.

While one option would be for MBIE to licence private providers to undertake WoF inspections, for costing and assessment purposes we have assumed inspections would be undertaken by local authorities (who currently are responsible for a range of building inspection functions). The cost of the inspections and any identified remedial work would be met by landlords.

Improving the efficiency of Tenancy Tribunal Operations

We have assessed the following option for improving the efficiency of tribunal operations against the status quo:

- The current jurisdiction limit of the Tenancy Tribunal would be increased from \$50,000 to \$100,000.
- The Regulator would be able to address multiple breaches on a single application to the Tenancy Tribunal.
- The Regulator would be able to take proceedings to the Tenancy Tribunal and District Court no later than 12 months after the date on which the Regulator becomes aware of the matter and up to five years from the date the breach occurred.

What do stakeholders think?

In terms of the proposals covered in the discussion paper:

- 76 percent of submitters who responded considered it appropriate for MBIE to enter into *Enforceable Undertakings* with landlords. Many noted that enforceable undertakings would be useful to achieve compliance without overloading the Tenancy Tribunal, and would be a sensible and appropriate response that would give landlords time to address any issues before going to the Tribunal.

- 78 percent of submitters who responded considered it appropriate for MBIE to issue *Improvement Notices*. Most submitters thought that the Notices should be used when a landlord is failing to meet serious issues that affect tenant's health and wellbeing or safety. However, several submitters thought such Notices should be used to address minor or administrative breaches. Many submitters thought the penalty for failing to comply with the Notice should be an infringement or the same as the exemplary damages, although a few submitters considered that no penalty should be imposed, and the matter referred to the Tenancy Tribunal.
- 78 percent of submitters who responded thought that MBIE should have the ability to issue *Infringement Notices* for straightforward breaches of the RTA. Infringements were viewed as offering fast, simple, cost effective enforcement – part of a range of tools that offer an appropriate and proportionate response is undertaken. Some submitters considered that any determination on a breach of the RTA, and the imposition of a fine, should be left with the Tenancy Tribunal, and that infringements undermine the role and responsibilities of the Tribunal. Other submitters also questioned why the examples of infringements were only proposed for landlords, and not tenants. Respondents proposed a wide variety of breaches of the RTA for infringements, however the majority of those proposed are not strict liability offences, and therefore not suitable for infringements. In addition:
 - 80 percent of respondents thought that infringements would be effective in holding landlords to account for poor behaviour.
 - 72 percent of respondents thought that infringements would be effective in encouraging positive behaviour by landlords.
- 54 percent of respondents considered the existing *exemplary damages* levels were appropriate as a penalty for an unlawful act. Comments from respondents however focussed on the level of penalties not being reflective of the financial cost of remedying the damages caused by tenants and the penalty being too low to be a sufficient deterrent to affect a change in landlord's behaviour. There was no consensus on what the maximum level exemplary damages should be, but \$10,000 was supported by many.
- 57 percent of respondents did not consider any other breaches of the RTA would meet the threshold to be considered an unlawful act.
- 76 percent of respondents thought that changing the name from exemplary damages to pecuniary penalty would better clarify the purposes of the RTA regime. However, the comments reflect a misunderstanding of the issue, with most respondents seeing it as an issue of semantics, rather than changing the underlying nature of the penalty. Only a few respondents noted that a pecuniary penalty would be paid to the Crown, whereas the exemplary damages are paid the tenant or landlord.
- 76 percent of respondents thought the Regulator should have the ability to apply to the Tenancy Tribunal to award a penalty where unlawful acts have been committed. However, there was no consensus on the amount of such as penalty, with an enormous variation in the amounts proposed from \$200 to \$2 million. Many respondents suggested that the penalty could be linked to the current levels for exemplary damages.

Significantly Changed Options

Types of Tenancy Agreement: The option to require a fixed term to become periodic is a changed version of the option we consulted on which was to give tenants a right to renew a fixed-term agreement (i.e., a right for a fixed term to become another fixed term). This option was seen as problematic as it would require both parties to have more certainty over the year ahead and would not solve the problem of tenants having to sign up to arrangements that are not suited to them. The revised option gives parties a better basis to establish the type of agreement that meets their needs. It also provides tenants with a stronger negotiating platform than what they have currently.

WoF: The option to establish a WoF was not originally consulted on. We have included it after consideration of stakeholder and government agency feedback and to provide a more rounded set of options for assessment.

How much notice should tenants need to give to leave a periodic tenancy?

Originally, we considered an open-ended option to simply extend the number of days notice to more than 21 days, with timeframes that could be considered under this option including:

- 28 days - to align with the maximum amount of bond able to be collected.
- 42 days - a doubling of the timeframes for ending a tenancy for both tenants and landlords.
- 90 days – so that the timeframes for ending a tenancy are the same regardless of who ends the tenancy

After further consideration we have decided to focus our assessment on a 28-day notice period. The longer time periods (42 days or 90 days) were set aside as:

- They could impose more significant costs on tenants that could prevent them from vacating a property if they need to (for example, in the form of double rent payments to secure a subsequent property); and
- The consequences of a tenant ending a tenancy are different to those faced by a tenant from having their tenancy terminated. Landlords can either re-tenant a property, or to factor in a period of time where the property may not be tenanted in to their rent. However, when a tenancy is ended by a landlord, a tenant is required to move out of their home, which given the costs imposed, justifies a greater notice period.

Withdrawn Options

Limitations of tenanted properties when sold

An option that we withdrew following consultation because it was not considered tenable was to place limitations on what happens when a tenanted property is sold. For example, the tenancy would remain in place when a property was sold. If the new owner intended to live in the property themselves, they would have to give notice under the RTA. A tenanted property could not be sold with vacant possession. In submissions, landlords were generally more opposed to this option, as they considered it to be an issue of owner's rights. On the other hand, tenants considered that existing contract should be honoured for fixed-term leases.

Minimum lengths for fixed-term tenancies

We also consulted on introducing a minimum length for fixed-term tenancies (e.g. two years) to overcome the issue of landlords only offering very short-fixed term agreements as a way of maintaining control is 'no cause' terminations were removed. We did not

continue with this as it was found to remove the flexibility that parties need to enter into an agreement that suits their personal circumstances.

Process landlords follow to terminate a periodic tenancy

We considered whether there was a need to make changes to the process landlords should follow to terminate a periodic tenancy.

Under the status quo, landlords can issue termination notices for periodic tenancy without Tenancy Tribunal involvement on several grounds. While the Tenancy Tribunal's involvement is not required to issue terminations under these grounds, a tenant has the right to apply to the Tribunal if they consider that the termination ground has been used disingenuously, or in retaliation to them exercising their rights.

There are also a range of grounds that a landlord may use to terminate a tenancy relating to tenant conduct (for example, rent arrears, breaches of the tenancy agreement, or property damage). To end a periodic tenancy for one of these grounds, a landlord must apply to the Tenancy Tribunal, who has discretion over whether the tenancy should be terminated.

We were concerned that allowing landlords to issue termination notices for landlord-initiated breaches may be impacting on security of tenure as:

- It is possible that some landlords are using the no cause notice instead of specified provisions in the RTA, because this provision is less confrontational, cannot be challenged, and is more administrative simple, than the alternatives. This may be resulting in some tenancies being terminated which would not have been had the Tenancy Tribunal been involved.
- In relation to no cause terminations, no reason is required to be given to the tenant, restricting their ability to challenge the use of this ground to situations where a tenant considers it is being exercised in retaliation for them exercising their rights.
- Some tenants may be unaware of the provisions which enable them to challenge the use of landlord-initiated termination grounds or may be unwilling or unable to exercise these provisions for other reasons.

As a consequence, we considered whether:

- a landlord should be required to apply to the Tenancy Tribunal to end a tenancy, regardless of the ground being used; or
- whether the Tenancy Tribunal's jurisdiction over terminations should be reduced.

We have, however, decided to withdraw these options as the preferred approach to Issue 1 – removing no cause terminations and extending the reasons available for issuing a termination notice – addresses the core security of tenure issue that led to the consideration of these options.

Consideration of relevant experience from other countries

During the policy development process HUD analysts specifically considered the tenancy systems in the state of Victoria in Australia, the province of Ontario in Canada, and Scotland and Ireland.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The overall objective of these reforms is to modernise the law to make renting more stable and secure. The purpose of improving security of tenure is to reduce the number of

involuntary terminations of tenancy rather than to increase tenancy length per se. HUD is working on building its evidence base about rental properties (see section 7.1). Once a baseline of involuntary terminations is established, we will consider what percentage of reduction in involuntary terminations is desirable.

Increased security of tenure has the potential to provide tenants with a stronger platform to participate in the justice system and to enforce their legal rights without fear of the negative repercussions of a tenancy ending. Improving security of tenure and the changes to the compliance and enforcement of the RTA provide the building blocks for the reforms to improve tenants' wellbeing (addressed in a separate Regulatory Impact Assessment).

Improving the security of tenure for tenants has been balanced against landlords' interests, which include being able to terminate a tenancy for legitimate reasons. The options also include creating new systems to respond to lower level antisocial behaviour or rent arrears.

The options for addressing both the security of tenure issues and strengthening enforcement have been assessed against the following criteria:

- *Effectiveness*: Will the option:
 - Improve security of tenure for those tenants who are meeting their obligations while maintaining adequate protection of landlord interest?
And/or
 - Increase compliance (and deter non-compliance) with the RTA requirements for safe, secure and healthy rental properties, given level of current enforcement resources and detection activity.
- *Efficiency*: Does the option minimise unexpected costs to impacted parties? The proposal achieves the intended outcomes for the lowest cost burden on the parties, Regulator and courts.
- *Certainty*: Will the option provide regulated parties with certainty over their legal obligations and promote a regulatory regime that provides predictability over time? Tenants and landlords have certainty as to their legal obligations, the consequences for breaches of those obligations, and the enforcement regime provides predictability over time.
- *Proportionality*: Is the regulatory cost proportionate to the benefits identified? For enforcement options: Penalties for breaches of legal obligations are proportionate to the harm created and penalties are consistent with similar breaches in other regulatory regimes.
- *Flexibility*: Will the option work enable Regulators to adopt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations?
- *Fairness*: Is the option fair and reasonable in the way it treats regulated parties?

For the purposes of assessing the options against the criteria, we have assigned the criteria equal weighting. We consider this appropriate as the assessment is qualitative, rather than quantitative. However, an option must improve effectiveness for tenants compared to the status quo to be viable.

It will be difficult for an option to equally achieve flexibility and certainty. Effectiveness must be balanced with proportionality and fairness.

3.3 What other options have been ruled out of scope, or not considered, and why?

Security of Tenure/Landlords Rights

We ruled out decreasing the protections of the RTA and relying solely on parties to negotiate terms that suit them through contract law. This approach would not have aligned with the Government's plan to improve the legal protections available to tenants and landlords.

Compliance and Enforcement

Introducing a wide range of criminal offences

Most other regulatory frameworks include several offence provisions, allowing a regulator to pursue a criminal prosecution for serious breaches and seek a significant financial penalty. The ability to take criminal proceedings, with the implications of reputational damage and large fines, home detention or a prison sentence, can provide significant deterrence in a regulatory regime. Prosecutions also enable the development of law through the setting of precedents, and amplification aspects of prosecution to drive greater compliance amongst other risk averse individuals governed by the regulatory regime.

The nature of the RTA regulatory framework, primarily a civil justice regulatory regime, means the creation a wide range of criminal sanctions for breaches of the RTA would be in appropriate. Criminalising breaches of the RTA would appreciably undermine the self-resolution aspect of the RTA model, which is based on a good faith relationship between landlord and tenants with access to mediation and adjudication to resolve any disputes that may arise. However, some criminal offences are appropriate to address the most serious and/or repeated breaches of the RTA, and where civil mechanisms have not been successful in remedying the breach.

Inflation-adjustment to penalties and jurisdiction limits

The maximum Exemplary Damages (Schedule 1A of the RTA) available to the Tenancy Tribunal to penalise a wide variety of unlawful acts identified in the RTA have devalued due to inflation over the last 12 years.

It is proposed to update the maximum penalties to recognise the price changes in the rental market over this time. As the increase in penalties does not change the overall values originally agreed by government when it put in place the penalties, the marginal regulatory impact is zero. Accordingly, the inflation adjustment of penalties and jurisdiction limits of the Tribunal are out of scope for the regulatory impact assessment. Increasing exemplary damages to reflect the increase in rental costs will ensure that the penalty available to the Tenancy Tribunal represents a consistent value vis-à-vis rental costs for landlords and tenants as was originally approved by Parliament.

The inflation change used to calculate the increase in current fines/exemplary damages is based on the date a penalty value was originally agreed by Parliament. Most of the RTA penalties, set out in Schedule 1A, were agreed by Cabinet in Sept 2006 (CAB Min (06) 34/5 refers), and were enacted in Residential Tenancies Amendment Bill 2010.

The basis for the inflation adjustment to Exemplary Damages, Fines and the Tribunal's jurisdiction is based on the price changes recorded in MBIE's bond rental database. The Preferred Indicator to measure the rise in rental costs is the amounts lodged in bond database ([www.mbie.govt.nz/Rental Bond Data](http://www.mbie.govt.nz/RentalBondData)). The proposed inflation adjustment is the *national geometric mean rents*, by Territorial Authority, in the bond database – which is 60 percent for the relevant period under consideration (2006–2018). Where new unlawful acts and penalties have been introduced post-2006, they were generally set at levels

based on the 2006 value to maintain relativity with existing values and ensure the integrity of the penalties across the RTA.

An alternative measure, the rental data from Statistics New Zealand (CPI Rents) records half the increase identified in the MBIE Rental Bond data, with CPI (Rents) of 31.6 percent (2006 Q1 to 2018 Q1), which is marginally higher than the general CPI rate of 25.8 percent for 2006-2018. MBIE has previously identified an undercount with the Statistics NZ rental data compared to the Rental Bond database, and accordingly, the preference for considering actual rental costs used generally by MBIE and HUD, is the Rental Bond database.

Section 4: Impact Analysis

The following sections assess each option against the status quo using the criteria outlined in section 3.1. The following key has been used to summarise the findings of our assessment:

Key:

| | | | | | |
|----|---|---|--|----|--|
| + | better than doing nothing/the status quo | 0 | about the same as doing nothing/ the status quo | - | worse than doing nothing/the status quo |
| ++ | much better than doing nothing/the status quo | | | -- | much worse than doing nothing/the status quo |

IMPROVING SECURITY OF TENURE

Issue 1: What grounds should be available to landlords to terminate a periodic tenancy?

| | Status quo | Option 1: Only allow terminations for non-specified reasons with Tenancy Tribunal involvement | Option 2: Remove the ability for landlords to terminate a periodic tenancy for non-specified reasons (<i>Preferred option</i>) | Option 3: Allow landlords to terminate a tenancy for any reason, provided the tenant is provided with an explanation for the termination |
|--------------------------------------|------------|--|---|--|
| Effectiveness (for tenants) | 0 | <p style="text-align: center;">+</p> <p>Tenants would receive greater security of tenure knowing that their tenancy could only be ended for reasons other than those specified in the RTA at the Tenancy Tribunal's discretion. However, the magnitude of the security of tenure improvements is uncertain as:</p> <ul style="list-style-type: none"> It is unclear how widely used pervasive the use of no cause terminations are, and therefore the extent of the benefits associated with their restriction. Landlords can still terminate tenancies for landlord-initiated reasons, which may be having bigger impacts on tenure security. The 2017 New Zealand Rental Sector Survey found that the second most common reason given by tenants for moving property was that the landlord had sold the property (a situation which is likely to be more prevalent in hot markets). Feedback received from landlords during consultation has suggested that, given there is a cost associated with changing tenants, landlords do not wish to terminate tenancies where they have good tenants, so security of tenure benefits may be perceived rather than actual. Tenants may face increased scrutiny during the application process, and during the duration of the tenancy, which could make it more difficult for certain groups to obtain tenancy, and impact on the tenant's ability to feel at home in the property. | <p style="text-align: center;">++</p> <p>This option would provide tenants with the greatest level of certainty over the reasons for which their tenancy could be ended, and therefore would be likely to provide the greatest improvements to tenant security of tenure. However, for the same reasons discussed in relation to option 1, the magnitude of the security of tenure improvements for tenants is unclear.</p> | <p style="text-align: center;">0/+</p> <p>Requiring an explanation to be given to accompany the tenancy enables tenants to challenge the use of a ground if they consider it is being used falsely or in retaliation for exercising their rights.</p> <p>However, tenants' willingness to challenge a termination may be restricted if tenants find the process intimidating, are concerned about getting the necessary evidence or think that it will negatively impact on the tenancy relationship if the tenancy continues.</p> <p>This option would ensure that the RTA did not unintentionally prevent terminations for legitimate reasons, while providing tenants with clarity over why their tenancy is being ended.</p> |
| Effectiveness (for landlords) | 0 | <p style="text-align: center;">-</p> <p>The RTA would include provisions enabling landlords to terminate tenancies for legitimate reasons, with a backstop in case the prescribed reasons did not capture all required termination grounds. However, the termination provisions under this option may be less effective for landlords than under the status quo if landlords:</p> | <p style="text-align: center;">-</p> <p>This option would limit some of the choice and control landlords have over their asset and there is a risk that prescribed reasons may not capture all the valid reasons a landlord needs to terminate a tenancy.</p> | <p style="text-align: center;">-</p> <p>Landlords could still issue notices for any reason, but, in some cases, would be faced with increased uncertainty over whether any challenge would be upheld by the Tenancy Tribunal. There may be impacts on the effectiveness of the termination provisions for landlords if there is certain conduct where landlords are unwilling to terminate a tenancy for fear</p> |

| | Status quo | Option 1: Only allow terminations for non-specified reasons with Tenancy Tribunal involvement | Option 2: Remove the ability for landlords to terminate a periodic tenancy for non-specified reasons (<i>Preferred option</i>) | Option 3: Allow landlords to terminate a tenancy for any reason, provided the tenant is provided with an explanation for the termination |
|-------------------|------------|--|---|---|
| | | <ul style="list-style-type: none"> are unable or unwilling to exercise a termination ground for fear of retaliatory action or lack of evidence. Feedback from consultation indicates that landlords consider the no cause terminations as an essential tool for managing tenants who display antisocial behaviour in a non-confrontational way. incur additional costs or there are delays to the termination as a result of going through the Tribunal to terminate a tenancy where Tribunal involvement would not have previously required have less certainty over whether a termination request will be validated. | | <p>of retaliatory action when they provide a reason to the tenant, or if the Tribunal process delays the termination.</p> <p>Feedback from landlords as part of the consultation process indicates that landlords consider the no cause terminations as an essential tool for managing tenants who display antisocial behaviour in a non-confrontational way.</p> |
| Efficiency | 0 | <p style="text-align: center;">-</p> <p>The restriction on no cause terminations may result in less churn in the market, reducing moving costs for tenants, however, as it is unclear how prevalent the use of no cause terminations is, it's unclear to what extent these benefits would be felt.</p> <p>This option may incentivise landlords to increase rents or subject tenants to more stringent vetting processes, which may increase costs to tenants without providing significant security of tenure benefits. If some tenants are unable to secure accommodation in the private residential market, this may result in increased costs to government.</p> <p>This option may place increase pressure on the Tribunal, and landlords may face additional costs and delays to terminating a tenancy if Tribunal involvement was required to use a termination ground where it had not been required previously (the magnitude of this would depend on the Tribunal's availability to hear cases).</p> <p>If landlords are unwilling or unable to use these processes to end a tenancy, it may result in undesirable tenancies lasting for longer than they would under the status quo, or using false termination grounds. Penalties would need to be introduced to incentivise landlords to comply.</p> <p>It is also possible that this restriction results in a reduction in periodic tenancies in the market.</p> | <p style="text-align: center;">-</p> <p>This option carries the same expected benefits and costs in terms of efficiency as for option 1, but these would be expected to be greater in magnitude given this option places greater restrictions on the termination grounds.</p> | <p style="text-align: center;">+</p> <p>This option would be expected to reduce churn in the market, by removing the inability of tenants to challenge their tenancy termination. However, as with the other options, it is not clear how significant the benefits associated with this would be.</p> <p>Both tenants and landlords may face additional costs associated with this option (as outlined in option 1), but the costs are likely to be more proportionate to the associated benefits.</p> <p>Where a termination has been issued based on tenant conduct grounds, tenants will have the opportunity to rectify their behaviour for future tenancies.</p> |
| Certainty | 0 | <p style="text-align: center;">+</p> <p>Tenants would have a clear understanding of the reason for which their tenancy has been terminated, and certainty that reasons other than those specified would only be able to be ended where the Tribunal considers termination is necessary.</p> <p>Landlords would have certainty relating to the specified grounds, however, would have less certainty over whether the use a non-specified ground would be accepted by the</p> | <p style="text-align: center;">++</p> <p>Provides both tenants and landlords with certainty over reasons for which a periodic tenancy can be terminated.</p> | <p style="text-align: center;">+</p> <p>While tenants would be unsure whether any non-specified actions would lead to tenancy termination, they would have greater certainty over the reason for which their tenancy has been terminated, and options to challenge the validity of any notice.</p> |

| | Status quo | Option 1: Only allow terminations for non-specified reasons with Tenancy Tribunal involvement | Option 2: Remove the ability for landlords to terminate a periodic tenancy for non-specified reasons (<i>Preferred option</i>) | Option 3: Allow landlords to terminate a tenancy for any reason, provided the tenant is provided with an explanation for the termination |
|------------------------|------------|---|---|--|
| | | Tenancy Tribunal as a valid reason for the tenancy termination. | | Landlords could still issue notices for any reason, but would be faced with increased uncertainty over whether any challenge would be upheld by the Tenancy Tribunal. |
| Proportionality | 0 | - This option would help to reduce concerns that a tenancy could be ended at any time and for any reason. However, as it is not clear how frequently no cause terminations are used, it is not clear whether changes are needed to provide significant security of tenure benefits. This option may lead to increased rents and greater scrutiny of tenants by landlords, which could affect tenants' ability to secure suitable accommodation in the private residential rental market, and may outweigh any security of tenure benefits. | - This option carries similar costs and benefits to option 1, but these would be expected to be greater in magnitude given this option places greater restrictions on the termination grounds. | + This option would strike a balance between addressing the concerns relating to the threat of a no cause termination, while ensuring that landlords did not face undue restrictions on their ability to terminate a tenancy. While this option may lead to increased rents and greater scrutiny of tenants by landlords, these changes would be expected to be of a smaller magnitude than options 1 and 2, and would be more likely to be justified given the associated benefits for security of tenure, and the ability to challenge the validity of a termination ground. |
| Flexibility | 0 | 0 This option would enable tenancies to be terminated for reasons directly linked to tenant conduct, or for reasons necessary to ensure adequate protection of the landlord's interest in the property, in both hot and cold markets. In a supply-constrained market, good tenants may receive security of tenure benefits from the restriction on the use of no cause terminations, as landlords would be prevented from using this ground to raise rents. Such benefits are less likely to occur in a demand driven market, as good tenants are likely to be less at risk of being issued no cause terminations to raise rents. Landlords would have a greater ability to mitigate any actual or perceived loss of control over their asset through increased rents in supply-constrained markets. | 0 This option carries similar impacts to option 1, but these would be expected to be greater in magnitude given this option places greater restrictions on the termination grounds. | 0 This option would enable tenancies to be terminated for reasons directly linked to tenant conduct, or for reasons necessary to ensure adequate protection of the landlord's interest in the property, in both hot and cold markets. |
| Fairness | 0 | + Restricting the ability of landlords to issue termination notices for reasons other than those specified in the RTA may improve security of tenure for tenants, making them feel more comfortable exercising their rights, and make them more confident putting down roots in their communities. Landlords would be able to terminate tenancies for prescribed reasons, with a backstop ensuring they had the ability to prove to the Tenancy Tribunal a tenancy needed to be terminated for other reasons. There would be greater confidence that the use of a non-specified reason was necessary than under the status quo, and tenants would have visibility of the reason for their tenancy termination, and the ability to challenge the use of that ground. | + Tenancies would only be able to be ended for reasons directly linked to tenant conduct, or for reasons necessary to ensure adequate protection of the landlord's interest in the property. This option would also ensure tenants have visibility of the reason for their tenancy termination, and the ability to challenge the validity of any termination ground. There is however the possibility that: <ul style="list-style-type: none"> the prescribed termination reasons may not capture all the valid reasons a landlord needs to terminate a tenancy; and tenants may face higher levels of scrutiny by landlords, and/or higher rents, without receiving significant security of tenure benefits. | 0/- Landlords would have the ability to end a tenancy for reasons linked directly to tenant conduction, or for reasons necessary to ensure adequate protection of their interest in the property. While tenants would have visibility of the reason for the termination and the ability to challenge the validity of the ground, it does not limit the range of reasons the landlord can utilise to terminate a tenancy. |

| | Status quo | Option 1: Only allow terminations for non-specified reasons with Tenancy Tribunal involvement | Option 2: Remove the ability for landlords to terminate a periodic tenancy for non-specified reasons (<i>Preferred option</i>) | Option 3: Allow landlords to terminate a tenancy for any reason, provided the tenant is provided with an explanation for the termination |
|---------------------------|------------|--|---|---|
| | | <i>Risk:</i> There is the possibility that some tenants may face higher levels of scrutiny by landlords, and/or higher rents, without receiving significant security of tenure benefits. | | |
| Overall assessment | 0 | 0 No significant net benefit over and above the status quo. | ++ Preferred Option – delivers net benefits compared to the status quo. Allowing landlords to only terminate a tenancy for a prescribed reason will improve security of tenure for good tenants, who will have confidence that - providing they are meeting their obligations - the reasons for which their tenancy can be terminated are restricted. This improved security of tenure may mean that tenants feel more confident exercising their rights and will be encouraged to put down roots in their communities. However, it is worth noting that the magnitude of the security of tenure benefits is hard to quantify, given that it is not clear how pervasive the use of no cause terminations is, and termination grounds would exist for certain situations other than those directly linked to tenant conduct. | + This option would ensure that the RTA did not unintentionally prevent terminations for legitimate reasons, while providing tenants with clarity over why their tenancy is being ended. It delivers net benefits compared to status quo but not to the same extent as option 2. |

Issue 2: How can we ensure that the termination provisions are being used correctly?

| | Status quo | Option 1: Evidence to accompany the termination notice | Option 2: Introduce penalties for the misuse of termination provisions (<i>Preferred option</i>) |
|--------------------------------------|------------|---|--|
| Effectiveness (for tenants) | 0 | <p style="text-align: center;">+</p> <p>In relation to the specified termination grounds that do not require Tenancy Tribunal involvement, tenants would receive improved security of tenure as the provision of evidence alongside the termination notice:</p> <ul style="list-style-type: none"> would reduce the risk of grounds being exercised incorrectly. would reduce information asymmetries that may be inhibiting the ability of a tenant to challenge the validity of the termination ground. <p>Greater confidence in the validity of a termination notice may also improve tenant/landlord relationships.</p> <p>However, the extent of these improvements will be impacted by:</p> <ul style="list-style-type: none"> the extent to which misuse of the grounds is a problem. We understand this is an issue, however, we are not aware of the size of the problem. Where grounds are currently being used correctly, the provision of evidence would make no difference to the security of tenure received by those tenants. the extent to which a lack of evidence is inhibiting a tenant from challenging the termination ground. Other factors, such as a lack of awareness of the provisions, or an unwillingness to take Tribunal proceedings due to the publication or a Tribunal order or impact on tenancy relationships if the tenancy were to be sustained, may be preventing tenants from challenging a termination ground and may not be resolved through the provision of evidence. Decisions made in relation to no cause terminations. The requirement for landlords to provide evidence for specified reasons would have a limited impact on security of tenure if landlords retain the ability to issue no reason terminations. | <p style="text-align: center;">+</p> <p>Where this option incentivises non-compliant landlords and property managers to comply, we would expect to see security of tenure benefits for tenants.</p> <p>However, the extent of the benefits is unclear as it is not clear how pervasive the issue of misuse of termination provisions is. Furthermore, the effectiveness of this option relies on tenants challenging the use of the termination ground. As discussed elsewhere in this RIS, other factors may impact on the willingness and ability of tenants to do so.</p> |
| Effectiveness (for landlords) | 0 | <p style="text-align: center;">0</p> <p>Landlords who are currently issuing specified landlord-initiated termination provisions only when they have satisfied the threshold to do so, would be largely unaffected by this change. They would retain the ability to issue terminations for these grounds, and while there is a possibility that there may be some additional costs associated with the provision of evidence, required evidence is likely to be of a low-cost, readily available nature.</p> <p>Requiring evidence to be provided alongside a termination notice issued for landlord-initiated reasons may increase the likelihood of the RTA achieving its intended purpose as it would reduce the likelihood of the specified provisions being misused. However, the benefits here may be limited if landlords are still had the ability to issue no cause terminations.</p> | <p style="text-align: center;">0</p> <p>Landlords who are currently issuing specified landlord-initiated termination provisions only when they have satisfied the threshold to do so, would be largely unaffected by this change.</p> <p>They would retain the ability to issue terminations for these grounds. In some cases, there may be additional Tribunal costs if tenants are the prospect of being awarded a penalty encourages tenants to challenge the issue of a notice where they otherwise would not have.</p> |
| Efficiency | 0 | <p style="text-align: center;">+</p> <p>As with the status quo, this option focuses the Tribunal effort on, and restricts the associated costs accrued to landlords and tenants to, situations where there are disputes over the use of a termination ground. It is possible that the provision of evidence may result in fewer cases to the Tribunal.</p> <p>The provision of evidence could prevent these grounds from being used incorrectly, resulting in less churn in the market and subjecting tenants to lower moving costs over the duration of their renting life. However, we do not have clear evidence as to the size of this problem; therefore, it is unclear how extensive these benefits would be.</p> <p>Depending on the level of evidence required, additional costs could therefore be added to the process without providing tenants with security of tenure benefits.</p> | <p style="text-align: center;">+</p> <p>As with the status quo, this option focuses the Tribunal effort on, and restricts the associated costs accrued to landlords and tenants to, situations where there are disputes over the use of a termination ground.</p> <p>It is possible that the prospect of a penalty will give some tenants greater confidence that the ground has been used correctly, which may result in fewer challenge cases taken. However, it is also possible that more cases may result if the penalty incentivises some tenants to challenge a ground where they would otherwise not have.</p> <p>This option also carries the advantage of ensuring that the costs are only incurred to parties who engage in the misuse of termination provisions. Landlords who are currently issuing specified</p> |

| | Status quo | Option 1: Evidence to accompany the termination notice | Option 2: Introduce penalties for the misuse of termination provisions (<i>Preferred option</i>) |
|------------------------|------------|---|--|
| | | It is also worth noting that, the shorter notice periods and ability to issue the ground without the Tribunal involvement may make the landlord-initiated grounds more favourable than other provisions under the RTA. If changes are made to these processes, the marginal impact of these changes may be lower. | landlord-initiated termination provisions only when they have satisfied the threshold to do so, would not be at risk of incurring a penalty. |
| Certainty | 0 | <p>0</p> <p>Requiring landlords to provide evidence alongside their termination notice would not provide tenants or landlords with any additional certainty over the reasons for which a tenancy may be ended. The provision of evidence does also not change the threshold that a landlord needs to meet to exercise a ground, or the ability for a tenancy to be challenged.</p> <p>However, if there are situations where tenancies are being issued incorrectly, it is possible that the provision of evidence would provide tenants with greater certainty that the tenancy was being used correctly. However, the extent of any benefits depends on:</p> <ul style="list-style-type: none"> <i>The size of the problem:</i> We understand that some landlords may be issuing termination notices for these grounds, specifically the landlord moving in to the premises, incorrectly. However, we do not have clear evidence of how pervasive this issue is, and tenants already can challenge the issue of a termination ground. <i>The nature of any evidence required, and the incentives this creates:</i> The provision of evidence does not change the threshold that a landlord needs to meet to exercise a ground. In issuing a termination ground, a landlord is stating that they consider they have met the grounds to use the relevant provision. <p>It is important that a tenant's right to information is balanced against a landlord's need to protect their interest and their right to privacy when selecting what evidence would be required, but in doing so, it may be difficult to establish evidence which would have a significant impact on security of tenure outcomes. For example, if a statutory declaration was required, this would be unlikely to provide much more certainty over the validity of the ground than the status quo.</p> <p><i>Risk:</i> There are some risks associated with this option:</p> <ul style="list-style-type: none"> There is a risk that a termination could be voided based on a technicality, meaning landlords have less certainty over whether a termination would go ahead. There are also risk that landlords could try to use grounds for which evidence gathering is easiest. | 0 |
| Proportionality | 0 | <p>-</p> <p>The provision of evidence could prevent these grounds from being used incorrectly, however, as we do not have clear evidence as to the size of this problem; therefore, it is unclear how extensive these benefits would be.</p> <p>While the provision of evidence may make some tenants more willing or able to utilise the existing termination challenge provisions, it is not clear to what extent a lack of evidence ground is inhibiting a tenant from challenging the termination ground. Other factors, such as a lack of awareness of the provisions, or an unwillingness to take Tribunal proceedings due to the publication or a Tribunal order or impact on tenancy relationships if the tenancy were to be sustained, may be preventing tenants from challenging a termination ground and may not be resolved through the provision of evidence.</p> <p>Depending on the level of evidence required, additional costs could therefore be added to the process, and there may be impacts on a landlord's privacy, that are not justified given the lack of security of tenure benefits that would be achieved.</p> | + |

| | Status quo | Option 1: Evidence to accompany the termination notice | Option 2: Introduce penalties for the misuse of termination provisions (<i>Preferred option</i>) |
|---------------------------|------------|--|--|
| Flexibility | 0 | 0 This option carries the same impacts as the status quo in relation to flexibility. | 0 This option carries the same impacts as the status quo in relation to flexibility. |
| Fairness | 0 | -As with the status quo, tenants would still have a reason as to why their tenancy was being terminated and could challenge the use of this ground. However, <ul style="list-style-type: none"> • There would be a reduction in the existing information asymmetry as tenants may have more information about the landlord's right to use the termination ground. • Landlords who are already using the termination grounds correctly would be faced with additional costs (such as delays to the process, and potentially financial costs) associated with tenancy termination. • There may be privacy implications associated with the provision of certain evidence. • This approach is inconsistent with the general approach under the RTA which assumes adherence with the legislation by both tenants and landlords, unless proved otherwise in the Tribunal. | + As with the status quo: <ul style="list-style-type: none"> • Landlords would retain the ability to terminate tenancies for legitimate business reasons; and • tenants would still have a reason as to why their tenancy was being terminated, and could challenge the use of this ground. However, this option carries the additional advantages of: <ul style="list-style-type: none"> • incentivising greater levels of compliance to ensure that the legislation achieves its intent regarding tenancy terminations; and • only penalises those landlords who are misusing the termination provisions. Landlords who are already using the termination grounds correctly would not risk incurring the penalty. |
| Overall assessment | 0 | 0 No significant benefits over and above the status quo. | + Preferred Option – delivers net benefits compared to the status quo. |

Issue 3: How much notice should landlords need to give tenants when terminating a periodic tenancy for the reasons currently specified in the RTA?

| | Status quo | Option 1: 90 days' notice for current landlord-initiated termination grounds (Preferred option) | Option 2: 63 days' notice for two current termination grounds and 90 days' notice for one current termination ground |
|-------------------------------|------------|--|---|
| Effectiveness (for tenants) | 0 | ++ Doubling the time that tenants have to find an alternative property will improve the choice and control they have over the next housing situation. There is a greater likelihood that tenants will be able to find accommodation that is both suitable to their needs, and within a locality that enables them to maintain their community networks. It also reduces the risk of termination provision favouritism and acts as a disincentive for landlords to use false grounds to expedite the termination process. The benefits are likely to be widely felt. According to the 2017 New Zealand Rental Sector Survey, the second most common reason that tenants had moved was that the landlord had sold the property. <i>“Our data show a big increase in the number of tenants forced to leave their rental accommodation because the landlord had sold the property – up from 13% in 2011 to 36% in 2015 in Auckland (30% in 2015 across the four cities).”</i> ⁵ | + This option has similar impacts to Option 1. Tenants will have more time to find an alternative property, which will improve the choice and control they have over the next housing situation. There is a greater likelihood that tenants will be able to find accommodation that is both suitable to their needs, and within a locality that enables them to maintain their community networks This option is less effective for tenants than Option 1, as they have 63 days' rather than 90 days' notice for two of the current termination grounds. This is still an improvement on the status quo, which is 42 days. However, the different notice period lengths give landlords an incentive to choose the termination ground with the shorter notice period, whether or not it is accurate. This risk may be mitigated by the new unlawful act of intentional misuse of termination grounds. |
| Effectiveness (for landlords) | 0 | - Landlords would retain the ability to terminate tenancies for the specified landlord-initiated reasons, however, landlords would face greater risks of increased costs than under the status quo as: <ul style="list-style-type: none"> As tenants would retain their ability to leave the property (with the requisite notice) after being issued a termination notice from the landlord, there is a longer period where landlords could be exposed to lost rent; The settlement process for a property that required vacant possession would need to account for the additional six weeks. While we would expect the market to adjust over time, during the bedding in period, rental properties may be seen as less desirable than owner-occupied dwellings to non-investors, which may impact on the sale price. Landlords who wish to move in to the property themselves (or move a family member in) may need to arrange interim accommodation for longer periods of time than currently. New property owners may also face extra interim accommodation costs. | - Landlords would retain the ability to terminate tenancies for the specified landlord-initiated reasons, however, landlords would face greater risks of increased costs than under the status quo. See Option 1 for more information. However, the risk of increased costs is less for this option than Option 1, in relation to the two termination grounds which are increased from 42 days to 63 days. |
| Efficiency | 0 | + Tenants would receive improved security of tenure as the additional time provided to secure alternative accommodation would give them greater levels of choice and control over their housing situation. However, it is also possible that rents may increase if landlords seek to recoup any actual (or perceived) costs associated with this change (see discussion below), As noted above, landlords may face some additional costs if the notice periods for specified landlord-initiated reasons are doubled. However, these are likely to be outweighed by the security of tenure benefits received by tenants as: <ul style="list-style-type: none"> Landlords will be able to factor in such costs when setting the rent for the property; We would expect the market to adjust to changes over time, so that a three-month settlement process becomes the norm. | + As with Option 1, tenants would receive improved security of tenure as the additional time provided to secure alternative accommodation would give them greater levels of choice and control over their housing situation. The improvement is slightly less than under Option 1 in relation to the two termination grounds with 63 days' notice. It is also possible that rents may increase if landlords seek to recoup any actual (or perceived) costs associated with this change (see discussion below), As noted above, landlords may face some additional costs if the notice periods for current landlord-initiated reasons are increased. However, these are likely to be outweighed by the security of tenure benefits received by tenants as: <ul style="list-style-type: none"> Landlords will be able to factor in such costs when setting the rent for the property; We would expect the market to adjust to changes over time, so that a three-month settlement process becomes the norm. |
| Certainty | 0 | + Both tenants and landlords would continue to have certainty over the amount of time that must be given to end a tenancy for specified landlord-initiated reasons. | 0 / - Tenants and landlords may be confused about which notice period applies to the current termination grounds. This may be exacerbated as the list of landlord-initiated reasons is increasing, with the new termination grounds being introduced. |

⁵ https://www.branz.co.nz/cms_show_download.php?id=606738ff7cb47451e094ad80f39cc912fa18f7a8

| | Status quo | Option 1: 90 days' notice for current landlord-initiated termination grounds (Preferred option) | Option 2: 63 days' notice for two current termination grounds and 90 days' notice for one current termination ground |
|------------------------|------------|--|--|
| | | However, some tenants may have greater levels of certainty over their housing situation if this option means that they do not need to move in to short-term accommodation before a suitable long-term housing option is found. | However, aligning the current termination ground in relation to the sale of the property (property sold with vacant possession) at 90 days with the new termination ground in relation to sale (intend to make the property available for sale) will mitigate some of that confusion. Having those two termination grounds with different notice periods would create uncertainty and confusion. |
| Proportionality | 0 | <p style="text-align: center;">+</p> <p>This option would help to address the concerns raised by:</p> <ul style="list-style-type: none"> doubling the amount of time tenants have to secure alternative rental accommodation, improving the choice and control they have over their future housing situations. removing the incentives for landlords use these grounds to expedite the termination process. <p>The ability for landlords to terminate tenancies for legitimate reasons unrelated to tenant behaviour, and without incurring undue costs, is important for incentivising landlords to continue to provide rental properties. Landlords may face some additional costs from this option, specifically:</p> <ul style="list-style-type: none"> The risk of rental losses if tenants vacate the property before the end of the 90-day period; From delays to the settlement process if a property is sold and the new owner requires vacant possession; or If the landlord of their family member is required to pay for interim accommodation until they can move in to the property. <p>However, as discussed above, in relation to settlement timeframes, we would expect to see the market adjust over time, and landlords could factor in periods of unpaid rent when setting the rent for the property.</p> <p>While this does mean that, in some cases, tenants would see rent increases because of this option, the overall benefits to tenants are likely to be substantial given the nature of the market and the number of tenants likely to be issued a termination notice for these reasons.</p> | <p style="text-align: center;">0 / +</p> <p>This option would help to address the concerns raised by increasing the amount of time tenants have to secure alternative rental accommodation, improving the choice and control they have over their future housing situations. However, in contrast to Option 1, this option does not remove the incentives for landlords to use two of the current termination grounds to expedite the termination process.</p> <p>The ability for landlords to terminate tenancies for legitimate reasons unrelated to tenant behaviour, and without incurring undue costs, is important for incentivising landlords to continue to provide rental properties. As noted in Option 1, landlords may face some additional costs. However, the risk will be slightly less than Option 1 for the two termination grounds that require 63 days' notice.</p> <p>While in some cases, tenants would see rent increases because of this option, the overall benefits to tenants are likely to be material given the nature of the market and the number of tenants likely to be issued a termination notice for these reasons.</p> |
| Flexibility | 0 | <p style="text-align: center;">0</p> <p>The need for this option is greater in tight markets than cool markets given the nature of the issues. In cooler markets:</p> <ul style="list-style-type: none"> the need for this change is likely to be less as: <ul style="list-style-type: none"> six weeks is likely to be sufficient time for most tenants to find alternative accommodation. there is less likelihood of a property being sold. landlords will face a higher risk of being subject to rent losses from tenants leaving the tenancy before the 90 days is up. Their ability to raise rents to account for this risk will also be more constrained than in a hot market. | <p style="text-align: center;">0</p> <p>As with Option 1, the need for this option is greater in tight markets than cool markets. In cooler markets:</p> <ul style="list-style-type: none"> the need for this change is likely to be less as: <ul style="list-style-type: none"> six weeks is likely to be sufficient time for most tenants to find alternative accommodation. there is less likelihood of a property being sold. landlords will face a higher risk of being subject to rent losses from tenants leaving the tenancy before the 63 or 90 days is up. Their ability to raise rents to account for this risk will also be more constrained than in a hot market. |
| Fairness | 0 | <p style="text-align: center;">+</p> <p>As discussed above, landlords would face some additional costs associated with this option, however, they have a greater control over the mitigation of the costs than tenants do of the costs a 42-day notice subjects them to.</p> <p>Ensures that where a tenancy is ended for reasons not related to tenant conduct, tenants have a greater chance of securing suitable alternative accommodation, and reduces the likelihood of them incurring costs to cover short-term accommodation while searching for a property.</p> <p>It also reduces the incentive for landlords to issue a termination ground incorrectly to take advantage of the shorter termination timeframe (although it should be noted that a change here would not reduce the incentive to use landlord-initiated provisions entirely given they can be exercised without Tribunal involvement).</p> | <p>As discussed above, landlords would face some additional costs associated with this option, however, the risk of these costs is less than under Option 1. Landlords also have a greater control over the mitigation of the costs than tenants do of the costs related to a 42-day notice.</p> <p>This option increases the ability of tenants to secure suitable alternative accommodation, and reduces the likelihood of them incurring costs to cover short-term accommodation while searching for a property. This increased ability is less than in Option 1 in relation to the two 63-day termination grounds.</p> <p>As it maintains two different notice periods, this option does not reduce the incentive for a landlord to issue a termination ground incorrectly to take advantage of the shorter notice period.</p> |

| | Status quo | Option 1: 90 days' notice for current landlord-initiated termination grounds (Preferred option) | Option 2: 63 days' notice for two current termination grounds and 90 days' notice for one current termination ground |
|--------------------|------------|--|---|
| Overall assessment | 0 | <p style="text-align: center;">+</p> <p>Preferred Option – delivers net benefits compared to the status quo.</p> | <p style="text-align: center;">0 / +</p> <p>Delivers some benefits compared to the status quo. However, Option 1 provides clearer benefits to tenants, and reduces the incentive for landlords to issue a termination ground incorrectly. This option may create confusion for landlords and tenants about which termination notice period applies. Aligning the two termination grounds relating to sale of property reduces the risk of confusion in relation to those grounds.</p> |

Issue 4: How much notice should tenants need to give to leave a periodic tenancy?

| | Status quo | Option 1: 28 days' notice (Preferred Option) | Option 2: Less than 21 days' notice |
|--------------------------------------|------------|---|--|
| Effectiveness (for tenants) | 0 | - <p>Tenants retain the ability to vacate a periodic tenancy when the accommodation is no longer suitable for their needs, however they would need to factor in an additional weeks' notice.</p> <p>There may be additional costs incurred by some tenants if they are required to pay double rent for longer, or are required to continue paying rent on their existing tenancy at the same time as incurring moving costs (such as bond payments and rent in advance).</p> <p>The likelihood of tenants being subject to this situation is higher in hot markets, as tenants have less negotiating power over their tenancy start date. However, it is worth noting that:</p> <ul style="list-style-type: none"> Tenants will receive security of tenure benefits because of the other changes proposed as part of this reform. This should result in less churn in the market, reducing the competition for available rentals, giving tenants a greater ability to negotiate start dates for new tenancies. According to the BRANZ Rental Sector Survey, the most common reason that tenants had moved was to improve the quality of their accommodation. Because of the Healthy Homes Standards, which came into effect on 1 July 2019, we would expect to see a reduction in the number of tenants moving to secure better quality accommodation. | + <p>Under this option:</p> <ul style="list-style-type: none"> Tenants would retain the ability vacate a periodic tenancy when the accommodation is no longer suitable for their needs; and There would be less likelihood of tenants being subject to double rent payments, helping to reduce the risk of financial constraints impacting on the choice and control of their future housing options. <p>However, it is worth noting that, if notice periods for tenants were reduced, we would expect to see landlords account for this when making decisions about setting and increasing rents, and that changes in rent could result in greater costs being incurred to tenants over the lifetime of the tenancy than any benefit in terms of reduction in moving costs.</p> |
| Effectiveness (for landlords) | 0 | + <p>This change would increase the likelihood of landlords having sufficient time to find suitable replacement tenants, and help to limit the potential period a landlord could be exposed to lost rent. These issues are likely to be more prevalent in cooler markets, or when notice is given at times of the year where demand for new tenancies is lower (such as over the Christmas period).</p> <p>This change may also help with the overall rebalancing of rights and responsibilities that tenants and landlords have as part of the RTA reform.</p> | - <p>This option would reduce the time available for landlords to find suitable replacement tenants, increasing the likelihood of a property being untenanted (and therefore, increasing the likelihood of landlords facing periods of lost rent). It is likely that landlords would seek to mitigate this risk by raising rents, or seeking to select tenants who are more likely to remain in a property long term.</p> |
| Efficiency | 0 | 0 <p>This option would not impact on efficiency overall when compared to the status quo, but would shift the balance of inefficiency slightly towards tenants.</p> <p>Landlords would have a greater likelihood of finding suitable replacement tenants, and would therefore be less likely to be subject to periods of lost rent.</p> <p>Tenants would have to factor in the additional weeks' notice when looking to vacate their rental property. This could increase the likelihood of them being required to pay double rent to secure a property.</p> <p>It may be more difficult for some tenants to have a contingency to account for this additional cost than it would be for landlords to account for periods of where the property is untenanted through rent-setting.</p> | 0 <p>This option would not impact on efficiency overall when compared to the status quo, but would shift the balance of inefficiency slightly towards landlords.</p> <p>Tenants would be less likely to face financial stress when moving properties for tenant-initiated reasons.</p> <p>Under this option, it would be more likely that landlords would be unable to find suitable replacement tenants before the existing tenants were to vacate the property, increasing the risk of them being subject to periods of lost rent. Some landlords may seek to mitigate this risk by raising rents, which may negate any financial benefits tenants would gain at the point of moving. It is also possible that any rent increase would result in tenants paying more over the course of the tenancy than the cost saved at the point of moving.</p> |
| Certainty | 0 | 0 <p>Both tenants and landlords would continue to have certainty over the amount of time that tenants must give to end a tenancy.</p> <p>Landlords would have greater certainty over the tenancing of their property, as they would have a greater period of time to find replacement tenants.</p> <p>However, some tenants may have reduced certainty over their housing situation if this option means that they face a smaller set of options for alternative accommodation (for example, if</p> | 0 <p>Both tenants and landlords would continue to have certainty over the amount of time that tenants must give to end a tenancy.</p> <p>Some tenants may have greater levels of certainty over their housing situation if a shorter time period provides them with a greater set of options for alternative accommodation (for example, by minimising any period where double rent is required). However, landlords would have a shorter</p> |

| | Status quo | Option 1: 28 days' notice (Preferred Option) | Option 2: Less than 21 days' notice |
|---------------------------|------------|--|--|
| | | they are required to take a less suitable property at a lower rent to manage any required double-rent payments). | timeframe to arrange new tenants before the existing tenants departed, providing them with less certainty over the continual tenancing of their property. |
| Proportionality | 0 | <p style="text-align: center;">0 / +</p> <p>Increasing the notice period tenants are required to give when they wish to terminate a periodic tenancy:</p> <ul style="list-style-type: none"> decreases the likelihood of landlords losing rental income from a property being vacant between tenancies may increase the cost for tenants of moving between properties, which in some cases, could impact on a tenant's ability to move between properties or select a property that best meets their needs. <p>Increasing the notice period that tenants are required to give may help to address some of the concerns raised by some landlords that the reform is skewing the balance of rights and responsibilities in favour of tenants.</p> | <p style="text-align: center;">0 / -</p> <p>Decreasing the notice period tenants are required to give when they wish to terminate a periodic tenancy:</p> <ul style="list-style-type: none"> increases the likelihood of landlords losing rental income from a property being vacant between tenancies may decrease the cost for tenants of moving between properties. <p>Reducing the notice period that tenants are required to give may heighten the concerns raised by some landlords that the reform is shifting the balance of rights and responsibilities in the favour of tenants.</p> |
| Flexibility | 0 | <p style="text-align: center;">0</p> <p>In cooler markets:</p> <ul style="list-style-type: none"> The need for this option by landlords is likely to be greater, as there is a greater likelihood of them being unable to find suitable alternative tenants within the 21-day window. Tenants are likely to be less impacted by an increased notice period, as there would likely be greater flexibility over the start date of a tenancy. <p>In tight markets:</p> <ul style="list-style-type: none"> The benefits to landlords would be less than under cooler markets, as they would be more likely to find alternative tenants within the time period. However, some landlords who are unable to fill a vacancy within 21 days would benefit from this change. Tenants would be more likely to face increased costs because of this change (as they face an increased likelihood of needing to pay double rent to secure a property). | <p style="text-align: center;">0</p> <p>In cooler markets:</p> <ul style="list-style-type: none"> Landlords are likely to be more heavily impacted by this option, as they would be less likely to be able to find alternative tenants within a reduced timeframe, and have less ability to raise rents to factor in periods where the property is untenanted. Tenants are less likely to receive the benefits of a shorter notice period, as they would likely be able to negotiate a later starting date for their subsequent tenancy. <p>In tight markets:</p> <ul style="list-style-type: none"> Landlords are more likely to be able to find suitable tenants within a reduced window (although several aspects of the advertising process will be the same regardless of the market) Tenants would be more likely to benefit from shorter notice periods as they have less negotiating power over the starting date of their subsequent tenancy, increasing the risk of them being required to pay double rent to secure a suitable property. |
| Fairness | 0 | <p style="text-align: center;">0 / +</p> <p>See commentary under Proportionality.</p> | <p style="text-align: center;">0 / -</p> <p>See commentary under Proportionality.</p> |
| Overall assessment | 0 | <p style="text-align: center;">+</p> <p>Preferred Approach— delivers net benefits compared to the status quo. It reduces the period a landlord may be exposed to lost rent. The extra week provides landlords with additional time to secure new tenants for a property (particularly in times where this may be difficult, such as over the Christmas period). It also Recognises that tenants are receiving extra tenure security under changes proposed through this reform, while ensuring that they are not exposed to undue costs that would make it difficult to vacate a property when required.</p> | <p style="text-align: center;">0 / -</p> <p>While this option greater flexibility to tenants, it is more than offset by the additional costs to landlords.</p> |

Issue 5: Should changes be made to the types of tenancy agreements available in the market?

| | Status quo | Option 1 Introduce a third tenancy type in to the market | Option 2 Offer only periodic agreement | Option 3 Require fixed-term agreements to roll over on to periodic (<i>Preferred option</i>) |
|-----------------------------|------------|--|--|---|
| Effectiveness (for tenants) | 0 | 0 / + <p>This option provides tenants with a broader range of options than under the status quo. Tenants who were willing and able to take advantage of this option would be provided with greater tenure security and have a greater ability to make the property their home than under the existing two options. It is also possible that this offering may encourage some new landlords to enter the market, providing some additional supply benefits.</p> <p>However,</p> <ul style="list-style-type: none"> it is not clear that is significant demand for this option to lead to security of tenure benefits across the market – based on feedback through the consultation process, many tenants appear to be unwilling to sign up to longer-term tenancies This option does not address the security of tenure issues that arise from the existing periodic and fixed-term agreements, which we would expect to continue to be the dominant types of tenancy agreement in the market. Tenants who wished to take advantage of this arrangements would face significantly larger up-front costs in securing a property. Given the longer nature of the arrangements, landlords would be likely to be more selective as to who they are willing to rent their property to. | - <p>Overall, we would expect there to be a reduction in security of tenure by removing fixed-term agreements from the market.</p> <p>Offering only periodic agreements in the market:</p> <ul style="list-style-type: none"> removes the risk of tenants being required to sign up to a fixed-term agreement when they would prefer a periodic one; reduces the risk of tenants being locked in to a cycle where their fixed-term ends every year at times when it is difficult to find accommodation; provides tenants with the greatest level of control over when they wish to terminate a tenancy. <p>However, by removing fixed-term agreements from the market:</p> <ul style="list-style-type: none"> Tenants would no longer have a choice over the type of tenancy agreement they wish to enter in to. The current protections tenants in fixed-term agreements have against being required to move if their landlord sells the property or if the landlord wants to move in to property would be removed. Tenants would have less certainty over the end date of their tenancy, with landlords being able to terminate the tenancy at any time (provided they met the criteria within the RTA). Rents would be likely to increase as landlords seek to mitigate the increased uncertainty they face over the duration of the tenancy. Tenants may face increased scrutiny when trying to secure a rental property. <p>Tenants who already prefer periodic agreements may face some benefits in the form of a greater pool of properties to choose from when selecting a tenancy. However, it is likely that some of these tenants would be subject to increased rents and/or greater levels of scrutiny when seeking rental accommodation.</p> | ++ <p><i>Note this analysis assumes that no cause terminations are removed.</i></p> <p>Both periodic and fixed-term agreements would be available in the market, providing options for parties who value either flexibility or security.</p> <p>Tenants on fixed-term agreements would have greater choice and control over their housing situation than under the status quo as tenants would have the right to stay in the property after the end of the initial fixed-term. Landlords would no longer be able to require tenants to sign up to a further fixed-term or face termination, or to terminate the tenancy at the end of the fixed-term (unless they met certain specified conditions).</p> <p>While the default would be for the agreement to become periodic, tenants and landlords would be free to negotiate to enter in to another fixed-term should that be beneficial for both parties. However, if parties could not agree on a subsequent fixed-term, or if only one party wanted the agreement to be a fixed-term agreement, the agreement would roll over on to a periodic agreement.</p> <p>This option should also prevent tenants being locked in to agreement types that are not suited for their needs.</p> <ul style="list-style-type: none"> Tenants who are signed on to a fixed-term agreement but would prefer a periodic tenancy would have confidence knowing that they are able to move on to a periodic tenancy following the end of the initial fixed-term. Tenants who would prefer to sign up to a further fixed-term agreement to obtain the additional security of tenure benefits associated with this agreement type will still be able to negotiate with the landlord to enter in to this. However, they will have the confidence knowing that, if their landlord does not wish to enter in to another agreement, that they are able to remain in the property after the initial fixed-term ends and until they wish to move on, or the landlord uses one of the prescribed termination grounds. <p>This option would also reduce the risk of having large numbers of fixed-term agreements ending at similar times and will give tenants more flexibility over when they wish to move properties after the initial term.</p> <p>While this option should provide tenants with significant security of tenure benefits compared to the status quo, it is possible that:</p> <ul style="list-style-type: none"> some landlords may raise rents to counter the reduced income certainty after the initial fixed-term. |

| | Status quo | Option 1 Introduce a third tenancy type in to the market | Option 2 Offer only periodic agreement | Option 3 Require fixed-term agreements to roll over on to periodic (<i>Preferred option</i>) |
|--------------------------------------|------------|--|---|--|
| | | | | <ul style="list-style-type: none"> some landlords may subject tenants to higher levels of scrutiny at the tenant selection stage, given that it is likely the tenants will remain in the property for longer. Once the agreement becomes periodic, tenants will lose the security of tenure benefits associated with a fixed-term - the tenancy would be able to be terminated if the house was sold, or if the landlord or a family member wished to move in to the property. There may be some changes to the duration of initial fixed-terms. While we understand that most fixed-term tenancies last for a period of 12 months, some landlords may seek to extend this to ensure they are able to have income security over a greater period of time. However, we would expect any extension to be limited as we understand that both tenants and landlords have reservations about entering in to longer fixed-term agreements given that they cannot be ended without the Tribunal's involvement. |
| Effectiveness (for landlords) | 0 | <p style="text-align: center;">+</p> <p>This option provides landlords with a broader range of options than under the status quo. While landlords are not prohibited from offering longer-term arrangements under the status quo, this option set would allow them to do so with fewer upfront costs.</p> <p>However:</p> <ul style="list-style-type: none"> it is not clear that is significant demand for this option – feedback received through the consultation process indicated that many landlords like to use a shorter fixed-term initially as a trial period. This option does not address the security of tenure issues that arise from the existing periodic and fixed-term agreements, which we would expect to continue to be the dominant types of tenancy agreement in the market. Given the longer nature of the arrangements, landlords would be likely to be more selective as to who they are willing to rent their property to. | <p style="text-align: center;">--</p> <p>Landlords who already offer periodic agreements would be largely unaffected by this proposal (and in fact, may face some additional benefits from a larger pool of prospective tenants).</p> <p>However, this option will result in increased uncertainty for landlords who prefer fixed-term agreements, many of whom will rely on regular cash-flow and certainty over a specific period to meet their mortgage obligations. We would expect to see an increase in rents as landlords seek to mitigate this risk, and tenants may face increased non-price discrimination (i.e. more stringent checks and the beginning of a tenancy, increased inspections) that could impact on tenant/landlord relationships</p> <p>These landlords however may receive some additional flexibility, as termination grounds that were not previously available to them (for example, the ability to move in to the property), would now be able to be used.</p> | <p style="text-align: center;">-</p> <p>Landlords who already offer periodic agreements would be largely unaffected by this proposal (and may face some additional benefits from a larger pool of prospective tenants).</p> <p>Landlords who prefer to offer fixed-term agreements will have the ability to offer an initial fixed-term, providing them with income certainty over this period.</p> <p>They will retain the ability to negotiate with their tenant to enter in to a subsequent fixed-terms, however, they may not be able to do so in all instances, or may need to offer concessions to secure this (for example, lower rents, or shorter fixed-terms).</p> <p>It is possible that landlords may seek to mitigate this risk by increasing rents, and tenants may face increased non-price discrimination (i.e. more stringent checks and the beginning of a tenancy, increased inspection).</p> <p>This option may benefit good landlords and property managers, as tenants may be more willing to enter in to subsequent fixed-terms with parties who have invested in the tenancy relationship.</p> |
| Efficiency | 0 | <p style="text-align: center;">0</p> <p>On balance, this option is not expected to impact on efficiency when compared to the status quo.</p> <p>See commentary under Effectiveness for Tenants and Effectiveness for Landlords.</p> | <p style="text-align: center;">-</p> <p>This option would not provide parties with choices over the types of agreements that they enter in to, and would, on balance, be expected to reduce security of tenure for tenants.</p> <p>The current protections tenants in fixed-term agreements have against being required to move if their landlord sells the property or if the landlord wants to move in to property would be removed. Tenants would have less certainty over the end date of their tenancy, with landlords being able to terminate the</p> | <p style="text-align: center;">++</p> <p>Compared to the status quo, this option would be expected to improve security of tenure outcomes while minimising unexpected costs to impacted parties.</p> <ul style="list-style-type: none"> Options would be available for parties who wish to enter in to flexible or secure arrangements, and parties remain free to negotiate the agreement that best suits their specific situations. This option would be expected to reduce churn in the market, as tenants on fixed-term agreements would no longer be required to move on from a property where the term had ended |

| | Status quo | Option 1 Introduce a third tenancy type in to the market | Option 2 Offer only periodic agreement | Option 3 Require fixed-term agreements to roll over on to periodic (<i>Preferred option</i>) |
|------------------|------------|--|--|--|
| | | | <p>tenancy at any time (provided they met the criteria within the RTA).</p> <p>Landlords who prefer to offer fixed-term agreements may seek to compensate for the loss of income certainty through increased rents (for example, by raising rents in student markets to account for expected vacancies over the summer months). This may result in increased costs to tenants, but they would not receive significant security of tenure benefits.</p> <p>We would expect to see a reduction in Tribunal cases from parties seeking to terminate tenancies early, as landlords would have a greater set of termination options available to them than under a fixed-term, and tenants would be able to vacate the premises at any stage. However, in tight markets where alternative accommodation is difficult to secure, there may be increased challenges to termination provision use from tenants.</p> <p>However, it should be noted, that the extent of these impacts will be impacted by decisions taken in relation to other issues outlined in this RIA.</p> | <p>(provided they were meeting their obligations and there were no other prescribed reasons why the tenancy should not continue beyond this point). This should result in fewer moving costs for tenants over the course of their time in the rental market.</p> <ul style="list-style-type: none"> This option reduces the likelihoods of tenants being required to sign up to agreements that do not meet their needs. Where a tenant was signed up to an initial fixed-term (and would have preferred periodic) they will have certainty knowing that they will be able to require the agreement to become periodic at the end of the initial fixed-term. This may help to reduce churn (if the tenant otherwise would have sought to move part way through the tenancy), and result in a reduction in Tenancy Tribunal cases (as tenants may be less likely to seek to break a fixed-term). Given the incentives that exist for landlords to offer fixed-terms, we would expect tenants who wish to enter in to subsequent fixed-term arrangements to obtain the additional security of tenure benefits that are associated with this option to be able to do so. This option would also help to break the yearly cycle of fixed-term tenancies that exist in some markets, which, over time, should reduce the inflated demand that occurs currently at some points in the year. <p>However, there is the potential for landlords who prefer to offer fixed-term agreements to be disadvantaged by this option. Landlords will no longer have the certainty that they will be able to offer ongoing fixed-term agreements, affecting the certainty they have over the income stream. However, it should be noted that:</p> <ul style="list-style-type: none"> Landlords will retain the ability to negotiate with their tenants to enter in to subsequent fixed-terms if this is important to them (for example, they could offer a rent reduction, or a shorter fixed-term). Landlords can compensate for this risk (through increased rents) Some landlords are already comfortable with a fixed-term agreement becoming periodic where they have good tenants. <p>Tenants may also find themselves subject to more stringent vetting when entering in to a fixed-term, given landlords know they will not be able to require the tenant to terminate at the end of the fixed-term.</p> |
| Certainty | 0 | 0 | - | + |
| | | While those tenants who did move on to the new tenancy type would receive certainty benefits, we would expect periodic and fixed-term offerings to remain the primary agreements in the market (as discussed above), so this | Under this option, we would expect parties to have greater certainty over their obligations as there would only be one type of agreement in the market. | Landlords and tenants who currently prefer to enter in to periodic agreements would not be impacted by this proposal. Tenants who enter fixed-term agreements would have greater certainty than under the status quo, as they would have certainty |

| | Status quo | Option 1 Introduce a third tenancy type in to the market | Option 2 Offer only periodic agreement | Option 3 Require fixed-term agreements to roll over on to periodic (<i>Preferred option</i>) |
|------------------------|------------|--|---|---|
| | | option is not expected to carry additional certainty benefits over and above the status quo. | <p>For those landlords and tenants who currently prefer to enter in to periodic agreements, there would be no change in the certainty received from entering in to a periodic agreement. However:</p> <ul style="list-style-type: none"> Landlords who prefer to offer fixed-term agreements will face increased uncertainty. We would expect to see an increase in rents as landlords seek to mitigate this risk, and tenants may face increased non-price discrimination (i.e. more stringent checks and the beginning of a tenancy, increased inspections) that could impact on tenant/landlord relationships. Tenants who prefer to enter fixed-term agreements will face less certainty over the duration of their tenure within a property, as there are security of tenure benefits. | <p>that, provided they are meeting their obligations, they will be able to remain in the property after the initial fixed-term (as the default will be that the agreement goes periodic).</p> <p>Landlords who prefer to offer fixed-term agreements will still have certainty over the type and duration of the initial fixed-term (providing them with income certainty over this time), but, if they are unable to negotiate a subsequent fixed-term, will face less certainty than they do under the status quo (where they have the ability to end a tenancy if the tenant does not wish to enter in to a subsequent fixed-term).</p> |
| Proportionality | 0 | 0 See commentary under Effectiveness for Tenants and Effectiveness for Landlords. | - As discussed above, this option would not be expected to be proportionate to the issues raised. While there would be some advantages – tenants would have maximum flexibility, and there would be no ‘cycle’ of fixed-terms it would be expected to result in a reduction in security of tenure overall. The current protections tenants in fixed-term agreements have against being required to move if their landlord sells the property or if the landlord wants to move in to property would be removed. Tenants would have less certainty over the end date of their tenancy, with landlords being able to terminate the tenancy at any time (provided they met the criteria within the RTA). Landlords who prefer to offer fixed-term agreements may seek to compensate for the loss of income certainty through increased rents (for example, by raising rents in student markets to account for expected vacancies over the summer months). This may result in increased costs to tenants, but they would not receive significant security of tenure benefits. As discussed above, it will be possible to mitigate some of these concerns through the design of the termination and notice period provisions, however, it would be difficult to provide the same level of certainty that fixed-terms offer if only periodic agreements were offered without significantly impacting on the incentives of landlords to continue to supply residential rental properties. | + This option is expected to: <ul style="list-style-type: none">Ensure that options remain available for parties who wish to enter in to flexible or secure arrangementsEnable parties to negotiate the arrangements that best meet their needs, but give tenants greater negotiating power at the end of a fixed-term tenancyReduce the likelihood of tenants being locked in to arrangements that best suit their needs (given the changes in the process surrounding the end of fixed-terms);Reduce the amount of churn that takes place, by ensuring that tenants who are meeting their obligations and wish to remain in a property after the initial fixed-term can do soMitigate the risk of fixed-terms operating on a cycle in certain markets creating inflated demand at certain times of the year. However, it is possible that those landlords who previous offered rolling fixed-term agreements will increase rents to compensate for the lost income certainty, and given the longer nature of the arrangements, landlords would be likely to be more selective as to who they are willing to rent their property to. |
| Flexibility | 0 | 0 Under this option, options would continue to be available for those parties who prefer flexibility in the tenancy arrangements, and there would be additional options | - Under this option, only one type of tenancy would be offered, providing parties with less choice over their tenancy arrangements. | + This option provides options for both tenants and landlords who prefer security and those who prefer flexibility. |

| | Status quo | Option 1 Introduce a third tenancy type in to the market | Option 2 Offer only periodic agreement | Option 3 Require fixed-term agreements to roll over on to periodic (<i>Preferred option</i>) |
|---------------------------|------------|--|--|--|
| | | <p>available for those wishing to enter in to longer-term arrangements.</p> <p>The arrangements would work in both 'hot' and 'cold' markets, with demand for fixed-term offerings from tenants expected to be greater when supply is constrained. However, as discussed above, it is not expected that there would be significant uptake of the new tenancy option.</p> | <p>Even in situations where it would be mutually beneficial for tenants and landlords to enter in to a longer-term arrangement, it would not be possible for them to do so.</p> | <p>Landlords and tenants remain free to negotiate an arrangement that best meets their needs, but:</p> <ul style="list-style-type: none"> • Tenants have greater flexibility, and greater negotiating power, over what happens to the arrangements at the end of the fixed-term. • It reduces the likelihood of tenants being locked in to an agreement that does not meet their needs (as they will have greater negotiating power over what happens at the end of a fixed-term), which should also result in fewer Tribunal cases seeking to break fixed-term agreements. |
| / | 0 | <p style="text-align: center;">+</p> <p>This option set provides parties with the greatest range of options, ensuring there are options for parties who value flexibility, short-medium term security, and long-term security. This option also carries the advantage of rebalancing the rights and responsibilities of tenants and landlords where parties have entered in to longer term arrangements.</p> <p>However, as discussed above, it is not clear that there is significant demand for this option, so we would expect that issues relating to fairness that arise currently to remain under this option.</p> | <p style="text-align: center;">-</p> <p>Under this option:</p> <ul style="list-style-type: none"> • Parties would not have the ability to sign up to fixed-term agreements, even in situations where that arrangement is beneficial to both parties • This may result in more churn than under the status quo, as the security of tenure benefits associated with fixed-term tenancies would be removed. • However, it is possible that those landlords who previous offered rolling fixed-term agreements will increase rents to compensate for the lost income certainty. | <p style="text-align: center;">++</p> <p>Requiring fixed-term agreements to roll over on to periodic agreements unless certain conditions are met:</p> <ul style="list-style-type: none"> • Decreases the likelihood of tenants being locked in to agreements that are not suited to their needs long-term. • Improves the negotiating power tenants have at the end of the fixed-term tenancy • Provides landlords with an initial period of income certainty, while ensuring that tenants who are meeting their obligations can remain in a property after an initial fixed-term if they wish. • Reduces the likelihood of tenants having their agreement come to an end in periods of inflated demand at certain times of the year. <p>However, it is possible that those landlords who previous offered rolling fixed-term agreements will increase rents to compensate for the lost income certainty.</p> |
| Overall assessment | 0 | <p style="text-align: center;">0/+</p> <p>Delivers net benefits compared with the status quo but not as much as option 3.</p> | <p style="text-align: center;">-</p> <p>Delivers a negative impact compared with the status quo.</p> | <p style="text-align: center;">++</p> <p>Preferred Option – delivers net benefits compared to the status quo.</p> |

COMPLIANCE AND ENFORCEMENT

Strengthening Compliance and Enforcement

| | Status Quo | Option 1: Increased information and support alone | Option 2: Strengthening deterrence and compliance (supported by information and education about the changes) (<i>Preferred option</i>) | Option 3: Strengthened enforcement and compliance, with staged increases of penalties | Option 4: Warrant of Fitness |
|----------------------|------------|--|---|---|---|
| Effectiveness | 0 | 0/ + <p>This option would only be marginally more effective than the status quo. A communications programme might be expected to raise awareness of regulated parties' rights and responsibilities and the options available for redress.</p> <p>However, this option does not address the gaps in the regulatory tools available to the Regulator. Moreover, the current penalty levels are too low to deter irresponsible landlords from taking appropriate action to ensure their property meets the standards required by the RTA – the levels are such that any penalty imposed can easily be absorbed another cost of doing business.</p> | ++ <p>Tools to support enforcement by the Regulator (MBIE) Introduction of new compliance tools (namely, enforceable undertakings, infringement fees and improvement notices) will address the gaps in the Regulator's compliance and enforcement toolbox.</p> <p>The proposed changes are consistent with the compliance and enforcement tools available in other regulatory systems that address the risk of harm, and health and safety of individuals.</p> <p>Strengthening deterrence with higher Tribunal penalties An increase in the maximum level of exemplary damages available to the Tenancy Tribunal as a penalty will strengthen compliance with existing RTA obligations (through amplification and publicity of Tribunal cases). The introduction of pecuniary penalties, for the most serious breaches, further strengthens the ability for the Tribunal to impose tougher financial penalties on the worst lawbreakers.</p> <p>Tougher sanctions for serious offences Enhances the integrity of the RTA if offenders are prosecuted when they repeatedly breach their obligations and requirements, or intentionally contravene Tenancy Tribunal orders relating to serious breaches. Very few prosecutions are expected as most breaches will be addressed using civil sanctions. However, new fine levels enable credible sanctions to be imposed by the Courts in the event of serious breaches, enhancing compliance.</p> <p>Power to request documents Enhances the Regulator's ability to identify problems earlier and allows the Regulator to work in a more proactive manner. It will encourage parties to comply with the rules.</p> | + <p>Broadly the same as Option 2, but the lower increases of penalties for some of the exemplary damages and criminal offences may make this option less effective.</p> | ++ <p>Requiring landlords to obtain a Warrant of Fitness is a much more effective means of ensuring residential rental properties meet minimum standards than the status quo.</p> <p>The Regulator (and its agents) would be able to adopt a systematic approach to ensuring compliance with the government's healthy homes standards (over time). Identification of non-compliant properties would not be dependent on tenant complaints.</p> |
| Certainty | | 0 <p>Increases awareness of rights and obligations may make it more likely that some tenants will seek redress through the regulatory or tenancy tribunal. However, it does not increase the level of certainty around the consequences of non-compliance</p> | + <p>Greater enforcement tools will provide clear signals to landlords about the importance of meeting the RTA requirements and creates clarity in the Regulator's response for different levels of non-compliance. Higher penalties for some breaches will create greater assurance that appropriate and relevant sanctions are imposed on people intentionally breaching the RTA.</p> | + <p>See Option 2.</p> | + <p>Requiring WoF inspections with prescribed consequences for not meeting the standards provides a higher level of certainty for landlords than the status quo.</p> |

| | Status Quo | Option 1: Increased information and support alone | Option 2: Strengthening deterrence and compliance (supported by information and education about the changes) (<i>Preferred option</i>) | Option 3: Strengthened enforcement and compliance, with staged increases of penalties | Option 4: Warrant of Fitness |
|----------------------|------------|---|---|--|--|
| Proportionate | 0 | 0 Added cost expected to raise awareness of both landlords and tenants which is positive, but it is unlikely to deliver significant net benefits without stronger compliance incentives. | ++ The proposed regulator enforcement tools allow for a graduated, proportionate and consistent approach to non-compliance, enabling the Regulator to adjust their response to meet the 'harm' or risks arising from non-compliance, without the imposition of a criminal conviction. The availability of higher penalties at the Tribunal and Courts will enable the most serious breaches to receive a financial penalty that is proportionate to the harm/risk of harm created. They also help maintain the integrity of the RTA's civil dispute resolution process as the more serious breaches are still addressed in the civil jurisdiction (and do not result in a criminal conviction). | ++ See Option 2. Some unlawful acts and offences have low penalties relative to the seriousness of the breach. This option limits penalty increases to a maximum of 80 percent of the current penalties. While the relativity of penalty to breach would improve, it would not improve significantly. | - The cost of implementing this approach are disproportionate to the anticipated benefits. Landlords would need to meet significant additional inspection and regulatory system administration costs over and above the cost of ensuring their properties met the healthy homes standards. ⁶ |
| Efficiency | 0 | 0/- The cost of increasing awareness, without improving the incentives to comply is unlikely to generate a positive return on the (communications) investment. | ++ Efficiency in the administration of the RTA by the Regulator is enhanced as breaches can be addressed more quickly. If breaches can be dealt with by infringement fee or an improvement notice, it reduces the need for parties or the Regulator to take issues to the Tenancy Tribunal (reducing costs and time for landlords and tenants). Efficiency is unchanged for serious breaches, as these can still be considered at the Tenancy Tribunal. A criminal prosecution will be administratively more complex and time consuming, compared to a case at the Tribunal. However, a criminal case enables the Regulator to address the most persistent and serious offenders, and the amplification effect of a successful conviction could drive greater compliance. | + See Option 2. Less efficient if, as a result of a review in two years' time penalties levels under this option are found to be insufficient and further legislative change is required to increase them to the level identified under Option 2. | - The implementation of a systematic inspection programme covering all residential rental housing stock in New Zealand would be a significant undertaking and would most likely take several years to complete an initial inspect of the rental housing stock. It would require Councils and the Regulator to engage additional staff to give effect to the proposal. By way of indicative example, only it is likely to require over 170 FTE staff to complete the WoF inspection process for the existing rental housing stock over a 3-year period. ⁷ |
| Flexibility | | 0 Provision of information and support alone does not provide any additional flexibility the Regulator in terms of how it addresses instances of non-compliance, nor does it provide any additional flexibility to regulated parties in how they meet their obligations. | + Provides the Regulator with greater flexibility in the way it responds to non-compliance by providing a wider range of intervention tools. | + See Option 2. | - While a WoF requirement provides a clear means of determining whether a property is compliant with a given standard, it does not provide any additional flexibility to the Regulator in terms of how it manages detected non-compliance. Specified WoF requirements are likely to clarify requirements but – if they the specifications are prescriptive rather than performance based – could reduce the options |

⁶ Our initial indicative estimate suggests the cost of conducting a WoF inspection of New Zealand's residential housing stock could be in excess of \$143 million (assuming 447,090 inspections (based on the number of lodged bonds) @ 2 hours each (including travel time, and completion of a WoF report) at \$160 an hour (Rate based on Auckland City Council's hourly rate for a planner, junior engineer, subdivision, urban design, building, compliance, monitoring, investigation, environmental health or licensing work). Note this is likely to underestimate inspection costs as not all properties require a bond. This figure also excludes the additional costs that would be incurred by the regulator establishing and administering the WoF system.

⁷ Assumes each inspector can complete 880 inspections per annum. 447,090 rental units/3 years/ 880 inspections per annum = 170 FTE staff. This excludes additional regulator and Council staff to oversee and administer the programme. It also does not allow for turnover in rental stock or any provision for reinspection on a periodic basis. Note this e Note this is likely to underestimate the number of inspectors required as property numbers are based on bond lodgements but not all properties require a bond.

| | Status Quo | Option 1: Increased information and support alone | Option 2: Strengthening deterrence and compliance (supported by information and education about the changes) (<i>Preferred option</i>) | Option 3: Strengthened enforcement and compliance, with staged increases of penalties | Option 4: Warrant of Fitness |
|---------------------------|------------|--|---|---|---|
| | | | | | available to the landlord to meet their regulatory requirements, compared with the status quo. |
| Fairness | | 0 Provision of information and support alone raises awareness but does not change the existing rights and responsibilities of regulated parties compared to the status quo. | + Enables the Regulator to respond in a more nuanced manner that is proportionate to risks associated with the non-compliance and the intent of the regulated party. | + See Option 2. | + All landlords would be assessed against, and need to comply with, a common standard. All tenants would have access to housing that complied with established minimum standards. |
| Overall assessment | 0 | 0/+ Marginally more beneficial than the status quo, but not as efficient or effective as option 2. | ++ Preferred Option - Improves effectiveness, efficiency and certainty. Is proportionate and offers greater certainty to both landlords and tenants compared with the status quo. | + Improves effectiveness, efficiency and certainty. Is proportionate and offers greater certainty to both landlords and tenants compared with the status quo. May not be quite as effective as Option 2. | 0 The proposed approach is unlikely to deliver significant net benefits above the status quo. The benefits of stronger regulatory compliance achieved through WOF inspection requirements are outweighed by the additional regulatory costs. |

Improving the Efficiency of Tenancy Tribunal Operations

| | Status quo | Increase the Tenancy Tribunal's jurisdiction to \$100,000 ⁸⁸ , extend the period the Regulator can take proceedings to the tribunal, and enable the Regulator to address multiple breaches on a single application to the Tribunal. |
|---------------------------|------------|--|
| Effectiveness | 0 | + |
| | | The proposed mix of options is more effective than the status quo – particularly extending the Tribunal's jurisdiction. |
| Efficiency | 0 | + |
| | | The Tribunal and the Regulator's efficiency will be significantly improved over that provided by the status quo. Serious breaches can potentially involve costly building work orders as well as penalty and costs. By raising both the jurisdiction of the Tenancy Tribunal to \$100,000 and enabling the Regulator to take multiple breaches on a single application it is expected that there will be less need to transfer cases to the District Court (which increases the costs and decreases the timeliness of resolution of tenancy issues for the justice sector). |
| Certainty | 0 | 0 |
| | | Proposals do not represent a significant change in the level of certainty delivered by the Tribunal over the status quo. |
| Proportionality | 0 | + |
| | | The benefits of the proposed changes in terms of improved Tribunal efficiency and effectiveness significantly outweigh the regulatory costs. Increasing the Tenancy Tribunal's jurisdiction to \$100,000 will reduce costs for parties, as taking a case the Tribunal is less expensive than the District Court. The Regulator will be able to take proceedings from 12 months after becoming aware of the unlawful event, but within five years of the breach or offence being committed for proceedings seeking exemplary damages or a pecuniary penalty or to lay filing charging document at the District Court for an offence. The current limitation period of 12 months from the date of the breach continues to apply for infringement offences. This balances the ability of the Regulator to take action with allowing landlords and tenants to not be subject indefinitely to an enforcement risk. |
| Flexibility | | 0/ + |
| | | Provides the Regulator with additional flexibility in how it chooses to address non-compliance. A range of enforcement tools is likely to result in more effective compliance as the Regulator is able to take action proportionate to the breach. |
| Fairness | | 0 |
| | | No change from the status quo. |
| Overall assessment | 0 | ++ |
| | | Preferred Approach. The proposed changes will significantly improve the efficiency of the Tenancy Tribunal's operations. Extending the Tribunal's jurisdiction complements the increased penalty levels providing regulated parties and the Regulator with access to its specialist dispute resolution services. Likewise extending the timeframe the Regulator must bring cases to the Tribunal is a measured improvement in holding regulatory parties to account, while enabling multiple breaches to be addressed in a single application is administratively more efficient and common-sense. |

⁸⁸ The proposed increase in the Tribunal's jurisdiction reflects the changes in rental costs between 2006 and 2018, the level of compensation for repairs to properties, value of work orders to remedy breaches in standards and the proposed increase in penalty levels.

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Our proposed approach to improving security of tenure for tenants who are meeting their obligations while maintaining adequate protection of landlords' interests involves:

- Removing the ability for landlords to end a periodic tenancy for any reason and instead allowing periodic agreements to end for legally specified reasons only;
- Updating the specified reasons a landlord can use as the basis for issuing a termination notice without the Tenancy Tribunal's involvement;
- Increasing the notice periods landlords and tenants must give when terminating a periodic tenancy;
- Requiring fixed term agreements to automatically become periodic agreements after the initial fixed term unless both parties agree otherwise, or the agreement is terminated in accord with established notice provisions.

We propose strengthening enforcement to help improve compliance with legislative requirements by:

- Introducing a wider range of enforcement tools that can be used by MBIE (as the Regulator) to address non-compliance;
- Raising the penalty levels the Tenancy Tribunal can apply when landlords or tenants fail to meet their obligations;
- Strengthening the RTA's offence provisions to provide tougher sanctions when there are serious breaches;
- Increasing the Tenancy Tribunal's jurisdictional limit from \$50,000 to \$100,000;
- Enabling the Regulator to take proceedings to the Tenancy Tribunal and District Court no later than 12 months after the date on which the Regulator becomes aware of the matter, and up to five years from the date the breach occurred; and
- Enabling the Regulator to lodge a single application covering multiple breaches by a single landlord or property manager.

These proposals form part of the broader RTA reform package aimed at modernising the legislation so that it is reflective of a modern renting environment and rebalancing the rights and responsibilities that tenants and landlords have during the lifecycle of a tenancy.

That package as a whole contributes to the Government's aspiration to improve the wellbeing of New Zealanders and their families by ensuring that everyone has access to warm, dry and safe accommodation regardless of whether they own or rent.

Security of Tenure

The proposed approach strikes the right balance by making relatively modest but real improvements in regulatory provisions that will strengthen security of tenure for tenants while protecting the interests of landlords. Our approach includes measures that are designed to mitigate the risks arising from the removal of no cause terminations.

Strengthening Compliance and Enforcement

The introduction of an array of regulatory tools – enforceable undertakings, improvement notices and infringement fees – are expected to improve compliance across the system, as they will enable the Regulator to address moderate to serious breaches of the RTA in a timely and proportionate way, reducing the costs of taking a case to the Tribunal.

The Tenancy Tribunal will also have access to impose greater penalties to address non-compliance, in the form of exemplary damages. The Tribunal will have the ability to impose civil pecuniary penalties for some specific breaches, as a higher financial penalty can provide a credible penalty to deter non-compliance. Increased penalties will ensure that non-compliance on some RTA requirements do not become a way of doing business because the penalties are less of a financial burden than the cost of compliance (which provides an incentive for non-compliance).

Strengthening the criminal offences in the RTA will have the lowest overall impact on compliance because it is targeted at the worst and most serious offenders. Most landlords and tenants will comply with the RTA with the use of information and advice and use of the self-resolution of disputes through mediation and adjudication by the Tenancy Tribunal. The highest penalties and prosecution in a criminal jurisdiction are reserved for very serious or repeated breaches of the RTA. In the absence of a credible criminal prosecution option, there is a risk that the worst offenders could continue to flagrantly disregard their obligations and operate with relative impunity. This could negatively impact on compliance with RTA for those who are not amendable to social and business norms and lower level sanctions. The amplification effect and signalling of severe penalties in the form of a criminal conviction will also help support improved compliance across the sector.

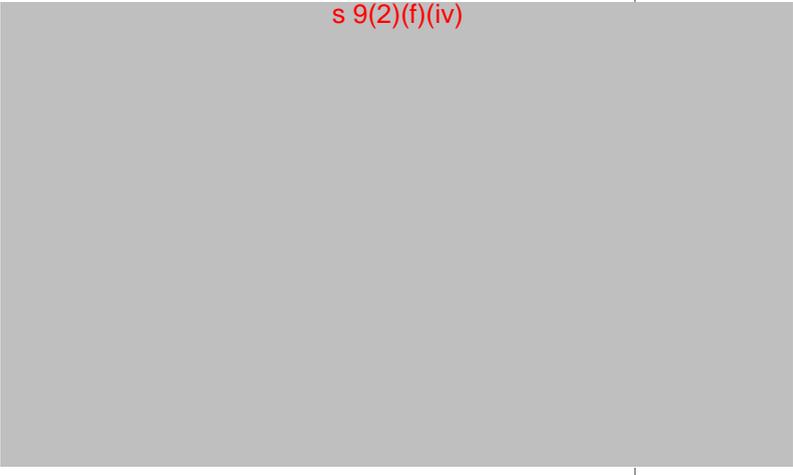
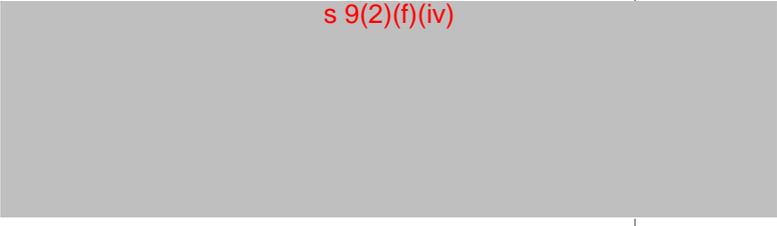
The proposed changes will significantly improve the efficiency of the Tenancy Tribunal's operations. Extending the Tribunal's jurisdiction complements the increased penalty levels providing regulated parties and the Regulator with access to its specialist dispute resolution services. Likewise, extending the timeframe the Regulator has to bring cases to the Tribunal is a measured improvement in holding regulatory parties to account, while enabling multiple breaches to be addressed in a single application is administratively more efficient.

5.2 Summary table of costs and benefits of the preferred approach

| Affected parties | Comment: | Impact | Evidence certainty |
|------------------|----------|--------|--------------------|
|------------------|----------|--------|--------------------|

Additional costs of proposed approach, compared to taking no action

| | | | |
|--------------------------------|---|-----|--------|
| Regulated parties - Tenants | <p><i>Security of Tenure - No direct monetary costs, but there is a risk that rents could increase if landlords seek to offset their additional business risks. There is also a small risk of additional indirect cost from needing to provide an additional week's notice to terminate a periodic tenancy.</i></p> <p><i>Compliance and Enforcement:</i> The enforcement changes do not impose any additional obligations on tenants, so there is no additional cost impact for parties. While it does increase the penalty for non-compliance, particularly serious non-compliance, this has no impact on costs for regulated parties who meet current regulatory requirements.</p> | Low | Medium |
|--------------------------------|---|-----|--------|

| | | | |
|--|--|------------|--------------------|
| <p>Regulated Parties - Landlords (and Property Managers)</p> | <p><i>Security of Tenure:</i> Removing 'no cause' terminations has the potential to generate additional compliance costs arising from increased disputes over the rationale for termination and underperforming tenants remaining in tenancies for longer than the landlord want. The proposed increased notice period presents the risk of lost income if the tenant chooses to exercise their right to terminate the tenancy earlier than they would otherwise.</p> <p><i>Compliance and Enforcement</i> The enforcement changes do not impose any additional obligations on landlords and property managers, so there is no additional cost impact for parties. While it does increase the penalty for non-compliance, particularly serious non-compliance, this has no impact on costs for regulated parties who meet current regulatory requirements.</p> | <p>Low</p> | <p>Medium</p> |
| <p>Regulator</p> | <p>Operational costs associated with updating operational policies and procedures, staff training and communicating the changes to key external stakeholders.</p> <p style="text-align: center; color: red;">s 9(2)(f)(iv)</p>  | | <p>Medium-High</p> |
| <p>Tenancy Tribunal and Wider Justice Sector</p> | <p><i>Security of Tenure:</i> No direct costs. Risk of additional administrative costs associated with any increase in disputes arising from these changes, they are likely to be offset in part by the impact of the proposed enforcement and compliance measures, which are anticipated to result in a rebalancing in workload.</p> <p style="text-align: center; color: red;">s 9(2)(f)(iv)</p>  | | <p>Medium</p> |

| | | | |
|----------------------------------|--|--------------------------|---------------------------|
| | <ul style="list-style-type: none"> • <i>Improved deterrence of, and compensation for, breaches:</i> Increases in penalty levels for damages together with the introduction of new penalties that can be applied by the Tenancy Tribunal will help deter breaches and ensure appropriate compensation can be provided when breaches do occur. • <i>Provides a Level Playing Field:</i> Enforcement of standards will create a level playfield for all landlords, removing any financial advantage gained by those who choose to rent properties that do not meet the RTA standards. • <i>Reputational Benefits:</i> An overall improvement in compliance enhances the reputation of all landlords. | | |
| Regulator | <p><i>Security of Tenure:</i> No direct benefits</p> <p><i>Compliance and Enforcement:</i> Access to a broader range of compliance intervention tools will enable a more efficient and effective graduated response to non-compliance by tenants or landlords. There are also efficiency and effectiveness benefits from enabling the lodgement of single applications and clarifying limitation periods.</p> | None High | Medium Medium |
| Tenancy Tribunal | <p><i>Security of Tenure:</i> No direct benefits</p> <p><i>More Effective Dispute Resolution:</i> Access to higher penalty levels and additional powers to enforce its decisions enables the Tribunal to respond more effectively when it finds a regulated party is non-compliant.</p> <p><i>Rebalanced Workload:</i> More effective compliance intervention by the Regulator (utilising new enforcement tools) may result in a reduction in certain cases being referred to the Tribunal, although there may be an increase in cases arising from other aspects of the reform such as the removal of no cause terminations.</p> | Low Medium Low | High Medium Low |
| Wider government and Public Good | <p><i>Government Investment:</i> The Government makes a significant investment in the private rental housing, both in terms of fiscal investment (\$2.5 billion annually in housing support) and in terms of ensuring a sound and fair rental market, underpinned by strong regulatory environment, which enables landlords and tenants to interact in the market</p> | Medium | Medium |

| | | | |
|--------------------------------|---|--------|---------------|
| | with confidence. Improvements in the enforcement of the RTA requirements will ensure that these significant investments are effectively protected. <i>Improved tenant wellbeing</i> - arising from improved security of tenure and compliance – forms part of the social foundations that provide the basis for improved health, education and employment outcomes. These outcomes have broader public good benefits to New Zealand society and may reduce demand on remedial social services provided by government and non-government organisations. | Low | Low to Medium |
| Total Monetised Benefit | | - | - |
| Non-monetised benefits | | Medium | Medium |

5.3 What other impacts is this approach likely to have?

Potential Risks and uncertainties: The proposed changes may increase landlord's business risks and impact on their profit margins as:

- They will have more constraints on the reasons to end a tenancy
- The exercise of termination notices may be more frequently tested at the Tribunal once a reason is provided
- They will have less ability to lock tenants into fixed-term tenancies where this is not desired by the tenant and this could impact on investment certainty, in geographic areas where demand for rental properties does not span a full calendar year
- Increased notice periods for landlords present a risk to their income in the event the tenant chooses to leave earlier by exercising their shorter notice period
- Strengthened enforcement measures result in increased compliance costs for non-compliant landlords.

This could affect landlord willingness to rent, and the amount of rent charged, and could lead to more stringent vetting of tenants. Consequently, there could be negative impacts on security of tenure for some tenants and at the margin a potential increased need for public housing.

If the changes result in market rent increases, this may also result in increased costs to the Crown at the margin, due to increases in Accommodation Supplement, Temporary Additional Support, Income Related Rent Subsidy and transitional housing payments.

The likelihood of rental supply contracting because of the proposed changes is considered low.

The likelihood of the proposed changes resulting in rental increases is uncertain. There are a wide number of factors that affect rent so it would be difficult to attribute any change in market rent to any one factor or elements of the tenancy reform package. Effects on rents may be muted by other factors that reduce costs for landlords such as. For example, lower

interest rates. Increased housing supply because of the government's build programme will in the medium to long term limit landlord's ability to increase rents.

The risks are partially mitigated by other elements of the reform package. The risk of a reduction in income arising from the increase in notice period the landlord needs to provide is partially mitigated by the proposed increase in the tenant's notice period from 21 to 28 days. The risks arising from the removal of no cause terminations are partially mitigated by the inclusion of additional grounds for termination and new systems for dealing with antisocial behaviour and rent arrears.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

HUD's proposed approach is aligned with the guidance provided in *Government Expectations for Good Regulatory Practice (April 2017)*.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Legislative Change

The preferred options will be given effect through the Residential Tenancies Act Reform, to be referred to Select Committee s 9(2)(f)(iv)

The infringement forms, reminder notices as well as the required content for the inclusion in the Improvement Notices and Enforceable Undertakings will be given effect through regulations made under the RTA. There are no additional regulations required to give effect to the security of tenure proposals.

Timing

Assuming passage of the legislative amendments s 9(2)(f)(iv)

The exact date for commencement would be subject to agreement by the Government and any transitional arrangements identified through the drafting of legislation.

Implementation Management

MBIE and HUD are progressing the development of the legislative implementation plan that will ensure:

- the Regulator has the operational policies, processes and systems in place to meet their responsibilities and give effect to the new requirements
- the Regulator can deliver an effective communications programme that ensures regulated parties and other key stakeholders understand their new rights and responsibilities and have sufficient time to give effect to them.
- The Tenancy Tribunal and the wider Justice sector together with other government agencies with an interest in the reforms are engaged appropriately
- HUD can meet its regulatory stewardship responsibilities, including monitoring and evaluating the impact of the proposed changes.

Operational Guidance

MBIE, as the Regulator, will review and update its operational policies and procedures to give effect to the proposed security of tenure and strengthened enforcement provisions.

Compliance Management: MBIE will develop internal operational guidelines for compliance and enforcement staff to ensure consistency in the application and effective use of the new tools as well as how the new tools interface with existing enforcement tools (e.g. warnings and advice and Tenancy Tribunal proceedings).

MBIE's operational guidelines will cover the management authority and decision processes for issuing and cancelling infringements (including reasonableness defence), issuing and cancelling improvement notices or enforceable undertakings, as well as approval processes for taking cases to the Tenancy Tribunal and District Court.

s 9(2)(f)(iv)

Supporting systems

We do not anticipate significant systems development requirements arising from the proposed changes.

MBIE already issues infringement notices under several other regulatory regimes and has sound supporting systems and processes for tracking the payment of fees and addressing non-payment. MBIE will work to integrate the RTA infringement programme into these existing systems.

Communications

MBIE will develop and implement a communications programme to ensure that landlords and tenants and other key stakeholder groups understand the new security of tenure and enforcement provisions.

Planning and budgeting for what will be a relatively significant multi-channel communications effort is currently underway. MBIE's initial estimate is that costs for an overall RTA reform information and education programme would include

s 9(2)(f)(iv)

Strengthened enforcement: MBIE will make clear to regulated parties when and how the new tools will be used. MBIE already uses the amplification effect of publicising existing Tenancy Tribunal cases to encourage compliance, and it will use similar approach in publicising the use of these new tools to generate greater compliance.

Compliance and Enforcement Programmes

MBIE will undertake approximately 2000 enforcement interventions per year to support compliance with the RTA (including healthy homes standards). This will include approximately 1500 light-touch cases (for example, seeking evidence about a property and providing a proportionate response based on the seriousness of the non-compliance), 300 investigations and 200 proactive property inspections.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Ongoing operational support

MBIE has identified a need to additional quality assurance to ensure the lawful, appropriate and consistent use of enhanced enforcement functions as well as additional business costs associated with increased legal, debt recovery and service centre support. They estimate these ongoing operational costs at s 9(2)(f)(iv)

6.2 What are the implementation risks?

Issues concerning implementation raised through consultation

The submissions highlighted a number of concerns about implementation:

- if landlords are more discerning in tenant choice, there may be reduced rental options for those needing accommodation, particularly the most needy. This is discussed below.
- the collective effect of the RTA reforms and healthy homes proposals are detrimental to landlords, which will cause landlords to exit the markets. This is also discussed below.
- landlords will take tenants to the Tribunal to end tenancies, which will put greater pressure on the justice system.

s 9(2)(f)(iv)

What are the underlying assumptions or uncertainties, for example, about stakeholder motivations and capabilities, and how will these risks be mitigated?

Risk of increased business risks could result in rental increases, closer vetting of tenants

As noted in section 5.3, there is a risk that the proposed changes may increase landlord's business risks and impact on their profit margins. This could affect landlord willingness to rent, the amount of rent charged and could lead to more stringent vetting of tenants.

If the changes result market rent increases, this may result in increased costs to the Crown at the margin, for example, increases to the Accommodation Supplement. More stringent vetting of tenants may make it difficult for some tenants to find private rentals, and may increase costs to the Crown of public housing.

The likelihood of the proposed changes resulting in rental increases is uncertain. As noted in section 5.3, there are a wide number of factors that affect rent.

As noted in section 5.3, the risks are partially mitigated by other elements of the reform package. The Regulator's information and education campaign will play a key role in ensuring both landlords and tenants have an informed view of the implications of the changes.

There is a risk of increased homelessness, but also a possibility that homelessness may reduce

Homelessness could increase if landlords exit the rental market. This could increase costs to the Crown in spending on Emergency Housing Special Needs Grants, transitional housing and public housing.

However, the likelihood of rental supply contracting because of the proposed changes is considered low. Landlords choosing to sell investment properties would only bring about negative impacts for the market if that action resulted in a net reduction in rental supply, such as when the future owner used the property for a different purpose. Sale from one investor to another would not have material consequences at the macro level.

Alternatively, if the sale of the rental property is to a first homeowner, then the rental property that homeowner was occupying becomes available in the rental market.

On the other hand, there is a possibility of reduced homelessness for tenants already in rental accommodation. The proposed changes will provide tenants with more time to find alternative accommodation given an increase in the termination notice period. The proposed changes may also increase lengths of tenancies overall.

As the likelihood of this risk becoming an issue is low, our proposed mitigation at this stage is to monitor the effects of the reform on rental supply housing. See section 7.1.

Regulated Parties' Understanding:

There is a risk regulated parties do not understand the proposed changes and therefore do not comply with them. This risk will be mitigated by a comprehensive information and education campaign.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

HUD is the regulatory steward for the residential tenancy system. We will monitor the implementation of the proposed legislative changes as part of:

- Monitoring and evaluation of housing related outcomes and intermediate outcomes as signalled in HUD's Statement of Intent;
- Ongoing monitoring and evaluation of the residential tenancy legislation;
- Annual regulatory scanning and planning process; and,
- Management and monitoring of MBIE's residential tenancy regulatory management functions.

In doing so we will draw on the operational data collected by MBIE to fulfil its regulatory management functions. We will also consider what additional evaluation measures we need to put in place to ensure we can provide an informed assessment of the impact of regulatory requirements on regulated parties and the operation of the residential tenancy market.

HUD's System Performance Group, which will come into operation on 1 July 2019, will undertake work to agree an approach to measuring the impact of the proposed changes to the law before the end of the Select Committee process.

Without pre-empting the detailed planning work that will need to be undertaken, we anticipate our approach will involve a baseline survey prior to the changes coming into force to be followed up at set intervals post-implementation to ascertain the impact of the changes. The survey would, inter alia, first establish the percentage of movements in the rental market that are perceived to be involuntary and to follow up at set intervals post implementation of the changes in attempt to ascertain if there has been an improvement in security of tenure for tenants.

There are also some broader macro measures of the system that the System Performance Group will also be creating to better understand the rental market. This will include new work to understand current and historic landlord holding patterns, how many landlords are entering the system, and how many are leaving, and the types, values and locations of properties they are owning and/or buying and selling. This will give us a more comprehensive evidence base from which to make more informed policy decisions.

Compliance and Enforcement: Existing data collection of enforcement activities will be adapted to monitor the use of the new tools in addressing non-compliance. MBIE monitors and reports internally monthly on the outcome and status of all current cases under review by the Tenancy Compliance and Investigation Team. Existing assessments, auditing and inspections will identify improvements in RTA compliance as result of the use of new enforcement tools. HUD intends to undertake a review two years from implementation to consider if the new penalty levels are correct.

We anticipate that this work will be progressed within HUD's existing baseline operating budget.

7.2 When and how will the new arrangements be reviewed?

As noted in section 7.1, HUD will undertake work to agree an approach to measuring the impact of these proposed changes to improve tenant's security of tenure and to strengthen landlords' compliance with the law

HUD's ongoing monitoring of the residential tenancy system - which includes the implement of the proposed legislative and regulatory changes covered by this regulatory impact assessment - will enable us to identify any issues that prompt the need for policy work leading to further legislative or regulatory change.

Our assessment will be informed by MBIE's quarterly updates on the effectiveness of enforcement activity. Key issues identified in the monitoring reports will be communicated, as appropriate, to relevant Ministers, government agencies, landlord and property management representative bodies, tenancy advocacy groups, and the public.

Appendix A: Current unlawful acts, offences and penalties and proposed changes

Proposed changes to offences and penalties under Option 2 (preferred option).

Schedule A – Proposed Infringement Offences and Penalties

| Section | Description - Unlawful acts (Schedule 1A of the RTA) | Infringement (\$) | |
|---------------------------|--|----------------------|------------------------|
| | | Fee ⁹ | Fine ¹⁰ |
| 13(1) & (2) New | Failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse | 500 (F) 1,000 (S) | 1,000 (F) 2,000 (S) |
| 13A(1F)(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) New | 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 | 500 (F) 1,000 (S) | 1,000 (F) 2,000 (S) |
| 16(1) New | Failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse | 500 (F) 1,000 (S) | 1,000 (F) 2,000 (S) |
| 16A(6) | 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) |
| 17 | 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) |
| 18 | Landlord requiring bond greater than amount permitted | 500 (F) 1,000 (S) | 1,500 (F) 3,000 (S) |
| 18A | Requiring unauthorised form of security | 500 (F) 1,000 (S) | 1,500 (F) 3,000 (S) |
| 19(2) | Breach of duties of landlord on receipt of bond | 500 (F) 1,000 (S) | 1,500 (F) 3,000 (S) |
| 23 | 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) |
| 47(1) & (2) | 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) New | 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 - Unlawful acts (Schedule 1A of the RTA) | Infringement (\$) | |
|---------|---|----------------------|------------------------|
| | | Fee ⁹ | Fine ¹⁰ |
| 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) |
| 123A(4) | 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 |
| 12 | Unlawful discrimination | 4,000 | 6,500 |
| 13(1) & (2) New | Failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse | - | 1,000 |
| 13A(1F)() | Fails to comply with providing required information to tenant (e.g. insurance and tenant's liability, healthy homes standards) | 500 | 1,000 |
| 13A(1F)() | Knowingly includes false/misleading statements in required information to tenant (e.g. insurance and tenant's liability, healthy homes standards) | 500 | 2,000 |
| 15(1) New | 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 | - | 1,000 |
| 16(1) New | Failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse | - | 1,000 |
| 16A(6) | Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days | 1,000 | 1,500 |
| 17 | Requiring key money | 1,000 | 1,500 |
| 17A | Requiring letting fees | 1,000 | 1,500 |
| 18 | Landlord requiring bond greater than amount permitted | 1,000 | 1,500 |
| 18A | Requiring unauthorised form of security | 1,000 | 1,500 |
| 19(2) | Breach of duties of landlord on receipt of bond | 1,000 | 1,500 |
| 23 | Landlord requiring rent more than 2 weeks in advance or before rent already paid expires | 1,000 | 1,500 |
| 27(2) | Landlord requiring rent in excess of market rent order, made by Tribunal under s.25 | 200 | 1,000 |
| 29 | 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 | 1,000 |
| 30(2) | Landlord failing to keep proper business records related to payments | 200 | 1,000 |
| 33 | Landlord seizing or disposing of tenant's goods | 2,000 | 3,000 |

| Section | Description - Unlawful acts (Schedule 1A of the RTA) | Exemplary Damages (\$) | |
|----------------------|---|------------------------|----------|
| | | Current | Proposed |
| 38(3) | Landlord's interference with privacy of tenant (interference with reasonable peace, comfort or privacy) | 2,000 | 3,000 |
| 40(2)(ab) | 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 |
| 40(3A)(a) | Tenant failure to observe, without reasonable excuse, the tenant's duties upon termination | 1,000 | 1,500 |
| 40(3A)(c) | Tenant using or permitting premises to be used for unlawful purpose | 1,000 | 3,000 |
| 40(3A)(d) | Tenant's harassment of other tenants or neighbours (interference with reasonable peace, comfort or privacy) | 2,000 | 3,000 |
| 40(3A)(e) | Tenant failing to ensure number of residents does not exceed maximum allowed, without reasonable excuse | 1,000 | 1,500 |
| 44(2A) | Tenant assigns or sublets a tenancy when prohibited to do so, or without the landlord's written consent | 1,000 | 1,500 |
| 45(1A) | 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 | 8,000 |
| 45(1AB) | Landlord providing premises at start of tenancy despite knowledge of contamination | 4,000 | 8,000 |
| 45(2A) | Landlord interfering with supply of services to premises (unless to enable repairs/maintenance or avoid danger) | 1,000 | 4,000 |
| 45(2D) | Landlord's failure to meet obligations to provide insurance policy or to correct information provided | 500 | 1,000 |
| 46(3) | Altering locks without consent of other party, without reasonable excuse | 1,000 | 1,500 |
| 47(1) & (2) | Landlord failing to give notice to tenant or prospective tenant that premises are on the market [duplicate provision of Boarding Houses s.66J(4)] | - | 2,000 |
| 48(3B) New | Landlord to advise tenant of any contamination test results within 7 days of receipt (if landlord used right of entry for testing) | - | 1,000 |
| 48(4)(a) | Unlawful entry by landlord, other than permitted under 48(1)-(3) | 1,000 | 1,500 |
| 48(4)(b) | 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 | 3,000 |
| 54(3) | Retaliatory notice of termination | 4,000 | 6,500 |
| New | Intentional misuse of termination provisions | - | 6,500 |
| 61(5) | 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 | 8,000 |

| Section | Description - Unlawful acts (Schedule 1A of the RTA) | Exemplary Damages (\$) | |
|------------|---|------------------------|----------|
| | | Current | Proposed |
| 66J(4) | Landlord of boarding house interfering with services | 1,000 | 4,000 |
| 66J(4) | Landlord of boarding house failing to advise that premises on the market | 1,000 | 2,000 |
| 66J(7) | Landlord of boarding house failing to meet obligations to provide insurance policy or to correct information provided | 500 | 1,000 |
| 66K(2)(b) | Tenant's interference, etc, with means of escape from fire | 3,000 | 4,000 |
| 66K(4)(b) | Tenant using or permitting premises to be used for unlawful purposes | 1,000 | 1,500 |
| 66K(4)(c) | 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 |
| 66X(5) | Abandonment of premises without reasonable excuse | 1,000 | 1,500 |
| 108(2A) | 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 |
| 123A(4) | Landlord failing to provide required documents to Chief Executive without reasonable excuse | 1,000 | 1,500 |
| 137(2) | Contracting to contravene or evade the provisions of this Act | 1,000 | 4,000 |
| New | Failure to remedy a breach of the RTA or tenancy agreement as agreed by an Enforceable Undertaking with the Regulator | - | 1,000 |
| New | 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 \$ |
|---------------|---|----------------------------|
| 45(1A) | 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) | Landlord providing premises at start of tenancy despite knowledge of contamination | 50,000 |
| 54(3) | Retaliatory notice of termination | 50,000 |
| New | Intentional misuse of termination provisions | 50,000 |
| 137(2) | 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 | 2,000 |
| 109A(5) | Intentionally contravenes a Tribunal order restraining further unlawful acts | 2,000 | 10,000 |
| New 108 | 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. | - | 10,000 |
| 110(1) | Failure to attend Tribunal summons to give evidence or produce documents, without reasonable cause | 2,000 | 5,000 |
| 111 | Giving false evidence | < 3 years prison | No change |
| 114(7) | Hindering or obstructing Tenancy Mediator's power of entry (without reasonable excuse) | 2,000 | 3,000 |
| 123D(9) | Hindering or obstructing an Authorised Person's power of entry (without reasonable excuse) | 2,000 | 3,000 |
| 133(2) | Failure to provide tenancy agreement ¹¹ to Tribunal or Chief Executive within 10 days of notice (without reasonable excuse) | 2,000 | 5,000 |

¹¹ Tenancy agreements includes statements required in terms of s.13A(1F), which have recently been expanded to include insurance information and tenancy liability, compliance with healthy homes standards and insulation. The *Healthy Homes Guarantee Act 2017* also provides for the Chief Executive to develop programmes of inspection and monitoring to assess compliance with healthy homes standards (s.123CA), so records and statements may be required as part of such programmes.

Appendix 2 – Current unlawful acts, offences and penalties with alternative proposed increased penalties

Alternative proposed changes to offences and penalties under Option 3. This appendix includes only the penalties where they differ to the penalties proposed under Option 2.

Schedule A - Proposed increases to exemplary damages

| Section | Description - Unlawful acts (Schedule 1A of the RTA) | Exemplary Damages (\$) | |
|---------------------------|---|------------------------|----------|
| | | Current | Proposed |
| 13(1) & (2) New | Failure to have a written tenancy agreement and/or provide a copy to the tenant, without reasonable excuse | - | 750 |
| 13A(1F)(a) | Fails to comply with providing required information to tenant (e.g. insurance and tenant's liability, healthy homes standards) | 500 | 750 |
| 13A(1F)(b) | Knowingly includes false/misleading statements in required information to tenant (e.g. insurance and tenant's liability, healthy homes standards) | 500 | 900 |
| 15(1) New | 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) New | Failure to notify a change of name and contact address to the other party of the tenancy, without reasonable excuse | - | 750 |
| 27(2) | Landlord requiring rent in excess of market rent order, made by Tribunal under s.25 | 200 | 350 |
| 29 | 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 |
| 30(2) | Landlord failing to keep proper business records related to payments | 200 | 350 |
| 40(3A)(c) | Tenant using or permitting premises to be used for unlawful purpose | 1,000 | 1,800 |
| 45(1A) | 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 |
| 45(2A) | 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 |
| 47(1) & (2) | 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 |
| 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 |
| 66K(2)(b) | Tenant's interference, etc, with means of escape from fire | 3,000 | 4,000 |
| 66K(4)(b) | Tenant using or permitting premises to be used for unlawful purposes | 1,000 | 1,500 |

| Section | Description - Unlawful acts (Schedule 1A of the RTA) | Exemplary Damages (\$) | |
|-----------|---|------------------------|----------|
| | | Current | Proposed |
| 66K(4)(c) | Tenant's harassment of neighbour (interference with reasonable peace, comfort or privacy) | 2,000 | 3,000 |
| 137(2) | Contracting to contravene or evade the provisions of this Act | 1,000 | 1,800 |

Schedule B – Proposed criminal offences and fines

| Section | Description – Offences | Fine (\$) or Sentence | |
|----------------|--|-----------------------|----------|
| | | Current | Proposed |
| 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 |
| New 108 | 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 |
| 110(1) | Failure to attend Tribunal summons to give evidence or produce documents, without reasonable cause | 2,000 | 3,600 |
| 133(2) | Failure to provide tenancy agreement to Tribunal or Chief Executive within 10 days of notice (without reasonable excuse) | 2,000 | 3,600 |

END NOTES

- i Gravitas (2018) *Residential Tenancies Act: Monitoring awareness of changes to insulation and smoke alarm requirements*, Research report prepared for the Ministry of Business, Innovation and Employment by Gravitas Research and Strategy, Auckland, pgs 77-80 [unpublished]
- ii Statistics New Zealand (2016) [Changes in home-ownership patterns 1986–2013: Focus on Māori and Pacific people](#), June 2016
- iii Statistics New Zealand (2019), *Estimated Households in Private Occupied Dwellings (Quarterly)*, June 2019, Infoshare – Population/Demography Dwelling and Household Estimates.
- iv Statistics New Zealand (2016), *Ibid*
- v MSD (2018) [Housing Quarterly Report - June 2018](#), Ministry of Social Development, p 5
- vi MBIE, Analysis of Bond data as at 27 May 2019.
- vii BRANZ (2017) [The New Zealand Rental Sector](#), by Massey University SHORE and Whariki Research Centre with University of Otago, Report ER22, p 9.
- viii See, for example, Bev James & Nina Saville Smith, *Tenure insecurity and exclusion: older people in New Zealand's rental market*, Paper presented to European Network of Housing Researchers' Conference, Uppsala, Sweden, 27-29 June 2018.
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