# Residential Tenancies Act 1986 Reform- PETS, MINOR FITTINGS, RENT SETTING AND ACCESS TO JUSTICE

| | |
|---|---|
| Advising agencies | Ministry of Housing and Urban Development (HUD) |
| Decision sought | Approval to progress proposed legislative changes to the Residential Tenancies Act (RTA) 1986 that:<br>• clarify the rights and responsibilities of landlords and tenants with regard to keeping pets in rental properties;<br>• clarify rights and responsibilities and improve the process for tenants in relation to adding minor and reasonable fixtures to their rental properties;<br>• provide greater certainty to tenants in relation to their rental costs;<br>• clarify the powers in the RTA to suppress names and make it the default that identifying details will be removed in cases where a party has been successful at enforcing their rights;<br>• enable tenants to assign fixed-term tenancies when this is reasonable and require landlords and property managers to provide breakdown of expenses charged to the tenant in this context; and<br>• make minor compliance requirement changes to optimise the healthy homes standards. |
| Proposing Ministers | Hon Kris Faafoi<br>Associate Minister of Housing (Public Housing) |

## Impact of overall package

### Summary: Problem and Proposed Approach

| **Problem Definition**<br>**What problem or opportunity does this proposal seek to address? Why is Government intervention required?** |
|---|
| The RTA no longer fully meets the needs of tenants and landlords given the changing composition of the market. Further improvements are also required to meet the government's aspiration to improve the wellbeing of New Zealanders and their families regardless of whether they own or rent their accommodation.<br><br>We have already identified the contribution improvements to security of tenure and strengthened enforcement measures can make to the wellbeing of tenants in an earlier companion Cabinet paper and regulatory impact assessment.<br><br>This assessment considers the contribution a further tranche of regulatory changes – regarding rights and obligations in relation to pets, fixtures, rent setting, assignment and access to justice – can make to tenant wellbeing. |

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

The key beneficiaries of the proposed package of changes are tenants and landlords/property managers. There are also broader indirect public good benefits to New Zealand society.

**Tenants and landlords**
Details of benefits to tenants and landlords are outlined in the topic specific sections below.

**Property mangers**
As landlords' agents, property managers will receive similar benefits to landlords because of the proposed changes.

**MBIE (Regulator)**
There are no immediate direct benefits to MBIE from the proposed changes, although the regulator may receive some indirect marginal gains to their administration of the system from regulated parties having a better understanding of their rights and responsibilities arising from the clarification of the law.

**Tenancy Tribunal**
There are no immediate direct benefits to the Tenancy Tribunal (Tribunal) arising from the proposed changes. However, there may be some indirect marginal gains arising from the clarification of the law, in particular in relation to fittings and access to justice which make it easier for adjudicators to deliver consistent decisions. Greater clarity of the law could ultimately lead to a higher number of disputes being resolved outside of the Tribunal in the medium to long term once the changes have embedded into the system.

**NZ public**
Improved tenant wellbeing – as a result of these proposed changes and those addressed in the companion regulatory impact assessment - form 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?**

**Tenants and landlords**
Details of costs to tenants and landlords are outlined in the topic specific sections below. If the overall package of proposals lead to market impacts, the risk of which is outlined below, increased costs to tenants could result particularly in the form of increased rents.

**Property mangers**
As landlords' agents, property managers will receive similar costs to landlords because of the proposed changes.

**MBIE (Regulator)**
The regulator will incur additional annual operating costs associated with information and education development and resourcing, quality assurance and service centre operations. The regulator would incur cost from developing guidance on when fees, conditions and processes relating to consent to assignment, subletting or parting with possession of the premises are reasonable.

**Tenancy Tribunal**
As a result of regulated parties being more aware of their respective rights and responsibilities, there may be some initial additional administrative costs for the Tribunal associated with any increase in disputes. We would expect this to arise in particular from the pets, fittings, assignment and break-lease fee proposals. Given the limited nature of disputes in these areas at present we anticipate any increase is likely to be at the margins.

**Other Government Agencies**
We do not anticipate any direct additional costs for the wider justice sector or other Crown agencies as a result of these proposed changes. While Government agencies such as Land Information New Zealand, Corrections and Education do function as landlords, these agencies together with Housing New Zealand have been consulted on the proposals in this RIA and have not identified material operational implications.

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

*Increased business risks impacting on profit margins:*
The proposed changes may increase landlord's business risks, increase their administrative burden and impact on their profit margins as:

- s 9(2)(f)(iv)
- the perceived or real risk of property damage arising from minor modifications not being adequately remediated at the end of a tenancy
- limitations on the ability to review rental prices more frequently that once per year
- increased ability to assign a tenancy may be perceived as increasing business risk.

This could affect landlord's willingness to rent, the amount of rent charged, and could lead to more stringent vetting of tenants.

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 the Accommodation Supplement, Temporary Additional Support, Income Related Rent Subsidy and transitional housing payments. However, 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 element of the tenancy reform package. Effects on rents may be muted by other factors that reduce costs for landlords, for example, lower interest rates. Increased housing supply because of the government's build programme will in the medium to long term limit landlord ability to increase rents.

*Increased pressure on the Tribunal:*
As a result of the proposals recommended in this paper, as well as broader proposals under consideration as part of the wider RTA reform, there may be increased pressure on the Tribunal because of the risk of additional cases coming before the Tribunal as the proposed legislative changes come into effect and are tested. The volume of these cases is difficult to quantify.

s 9(2)(f)(iv)

## Keeping pets in rental properties

## Summary: Problem and Proposed Approach

**Problem Definition**
**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

s 9(2)(f)(iv)

**Proposed Approach**

s 9(2)(f)(iv)

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

s 9(2)(f)(iv)

**Where do the costs fall?**

s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

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

s 9(2)(f)(iv)

s 9(2)(f)(iv)

# Minor fittings

## Summary: Problem and Proposed Approach

| Problem Definition<br>What problem or opportunity does this proposal seek to address? Why is Government intervention required? |
|---|
| The current RTA section 42 obligation regarding fittings is not achieving its intent. Tenants and landlords either do not know about the current rights and obligations around fittings or are not enforcing them. Some tenants are making alterations to properties without landlord approval. We heard through submissions that it is reasonably common for landlords and property managers to either not apply the existing reasonableness test in the law, or to not consider fittings requests at all. Moreover, very few Tribunal decisions exist on this matter, indicating that tenants are not bringing cases to assert their rights regarding reasonable and minor fittings. The opportunity is to consider whether existing legal rights are working or whether changes to the law are required to embed them. |

| Proposed Approach |
|---|
| We propose clarifying the rights and responsibilities of tenants in relation to adding minor and reasonable fittings to their rental properties by:<br>• Introducing a new process where tenants must request permission to add minor fittings and landlords will have 21 days to place reasonable stipulations around how the work is done or decline the fitting for specified reasons. Landlords that do not respond in this time will be liable for a financial penalty payable to the tenant.<br>• Requiring the tenant to reinstate the property to a reasonably similar condition following any minor fittings at the end of the tenancy and make them generally liable for careless damage, subject to limits as implemented by the Residential Tenancies Amendment Act 2019. s 9(2)(f)(iv) |

## Section B: Summary Impacts: Benefits and costs

| Who are the main expected beneficiaries and what is the nature of the expected benefit? |
|---|
| **Tenants**<br>Tenants will have more certainty around what minor fittings they are able to add to the property and will better realise the existing rights afforded to them in the law.<br><br>Due to the increased ability to realise their existing legal rights, tenants may experience the following benefits: |

- For amenity and wellbeing fittings, an increased ability to feel at home in their properties.
- For health and safety fittings, a reduction of injury hazards, which can be especially important for children, elderly, and disabled tenants.

**Landlords/Property Managers**
While landlords will have greater certainty about tenants' rights and responsibilities, and the process that must be followed there are no material benefits to them relative to the status quo.

**Where do the costs fall?**

**Tenants**
Tenants will continue to be liable for the cost of reversing any minor fittings they have added to a rental property to a reasonably similar state at the end of their tenancy (with the exception of Ultra-Fast Broadband equipment which will be left in place). This does not constitute a change from the status quo.

**Landlords/Property Managers**
Tenants are responsible for reversing any fitting installations unless the landlord agrees to take them on at the conclusion of the tenancy. However, there could be perceived or real increases in costs at the margins due to increased damage and risk to properties.

Landlords and property managers may also incur some additional administrative costs. They may incur increased costs to meet their obligations where they have not previously complied with legislative requirements, because we expect the new approach to lead to higher compliance levels.

This could flow through to market impacts such as increases in rent and/or decreases in the supply of rentals at the margins.

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

As outlined above, the package of proposed changes may increase landlord's business risks, increase their administrative burden and impact on their profit margins due to the perceived or real risk of property damage arising from minor fittings not being adequately reversed at the end of a tenancy. This could affect landlord's willingness to rent, the amount of rent charged, and could lead to more stringent vetting of tenants.

Any risks of minor fittings policy changes leading to these impacts are mitigated by the requirement that the tenant reinstate the property to a reasonably similar condition following any minor fitting at the end of the tenancy. Tenants are also liable for intentional and careless damage up to a cap equivalent to four weeks' rent (with the exception of Ultra-Fast Broadband which remains permanently, and where the installer is liable for any damage caused).

# Rent setting

## Summary: Problem and Proposed Approach

**Problem Definition**
**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

**Rent increases**
Rent increases can leave tenants vulnerable to rental stress, particularly low-income tenants, or tenants who experience change in financial circumstances. In addition, the potential for rent to be increased in retaliation to a tenant exercising their legal rights may be contrary to Government's objectives for reform of the RTA. While rental increases are

part of a wider problem around affordable housing, market supply and demand, there is an opportunity to consider whether changes to how often rental increases are permitted can provide greater certainty and stability in the market.

**Rental bidding**
While rental bidding does not appear to be a common issue in New Zealand, it could become more widespread with the introduction of rent bidding applications. Rental bidding has the potential to exacerbate affordability issues in the market because it leads to higher rents being paid for properties than originally advertised.

Another issue with rental bidding concerns transparency and access to information. Prospective tenants may apply for a property thinking it is within their price range but then after rental bidding has occurred - sometimes without their knowledge - the property is no longer affordable for them. People in these situations have spent time and sometimes money applying for a property they would have likely passed by if they had they known the agreed price would differ from the advertised price. Likewise, prospective tenants with the motivation to pay more for a given property may be disgruntled to find that another tenant paid more for the property, without the same opportunity being extended to them. There is an opportunity to consider whether the existing consumer protection legislation is sufficient to address concerns in this regard, or whether justification exists to place controls on the practice through the RTA.

**Proposed Approach**

**Rent-Setting**
We propose providing greater certainty to tenants in relation to their rental costs by:

- limiting rent increases to once every 12 months; and,
- prohibiting the solicitation of rental bids by landlords.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

**Tenants**
*Rent increases:* The changes will provide tenants with greater certainty and stability around rental costs and provide more time to prepare for potential rent increases. Tenants may feel more comfortable raising maintenance issues with their landlord over the course of a tenancy without needing to consider whether doing so would lead to a retaliatory rent increase.

*Rental bidding:* The changes will provide tenants with greater certainty over rental costs, as the rent advertised will more likely be the rent paid for the property. Tenants will retain some control over their rental cost because they will be allowed to offer to pay more rent where they wish to.

**Landlords/Property Managers**
Landlords will not receive any direct benefits from proposed changes to the duration between rental price increases or the limitations on rental bidding.

**Where do the costs fall?**

**Tenants**
*Rent increases:* There should be no significant change in tenants anticipated rental costs over time as a result of the change. On average tenants are likely to face larger rental adjustments when their rents are reviewed but these reviews will take place at less frequent intervals (12 monthly). This should balance out over time and deliver an outcome that is similar to that which would occur under the status quo.

*Rental bidding:* We do not expect any costs to tenants to result from rental bidding changes.

**Landlords/Property Managers**
*Rent increases:* There should be no significant cost to landlords as a consequence of how frequently rents can be adjusted. While the duration between rent reviews may increase on average, landlords will be able to adjust their rents for the longer period between reviews. Landlords will also continue to be able to apply to the Tribunal for authorisation to increase the rent outside of the legislated window where they can demonstrate that they have made improvements to the property.

Rental bidding: Those landlords that have engaged in rental bidding (which may only be 15 percent of the market) may experience some reduction in future income as a result of the proposed change if they are no longer able to rely on rental bidding as a market clearing mechanism. This is likely to be at the margins, however, the proposed change is not preventing landlords advertising their property at a fair market rate, nor is it preventing tenants from offering a higher rental than that which the landlord or property manager advertises.

Landlords and their agents who have previously been relying on rental bidding as a market clearing mechanism and in their tenant selection processes may incur costs as they change their business model to reflect the legislation changes. They will need to complete their due diligence in determining an accurate rent for their property and carry out a more thorough tenant selection process.

**Industry**
Rent bidding phone applications, such as RentBerry, have announced that they will soon be introduced to New Zealand. RentBerry purports to be a transparent rental application and price negotiation platform for tenants and landlords. There have not yet been any rental auction applications which have started in New Zealand but in time these may appear. Some applications have already started which automate the rental application and vetting process, including the booking of property viewings. If the solicitation of rental bidding by landlords and their agents is prohibited, companies who are already developing rent bidding applications for the New Zealand market, will suffer a loss of development costs.

| **What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?** |
| --- |
| Restrictions on reviewing rent increases are not expected to have a significant impact on overall rental income. We anticipate market pressures will continue to be a more significant determinant of overall rental prices. |

# Access to justice

## Summary: Problem and Proposed Approach

| **Problem Definition**<br>**What problem or opportunity does this proposal seek to address? Why is Government intervention required?** |
| --- |
| A lack of clarity and consensus on Tribunal powers to suppress identifying details in published decisions has been identified. Name suppression should occur when there is a legitimate interest that outweighs open justice and transparency, for example if publication will cause severe hardship to a party. There is an opportunity to clarify the legal powers the Tribunal has in this regard, so that operational policies can then be considered to improve privacy and access to justice, and reduce adverse effects for parties in the tenancy context where it is reasonable to do so. In some circumstances, for example domestic violence, the safety of parties may be being undermined. |

Submitters have raised that it is becoming common practice for property managers and some landlords to search Tribunal rulings as part of their process to vet potential new tenants.

Subscription services exist that compile this information for vetting purposes. We understand that landlords may primarily use these processes to avoid renting to tenants who have breached their responsibilities under the RTA. However, concerns have been raised that tenants whose names appear in one of these searches may be discounted as a candidate for the tenancy regardless of the particulars of the case – whether they breached the RTA, or successfully enforced their rights under it.

The effect of this may be that tenants who have transacted with the justice system could be disadvantaged in the vetting and selection process for future properties. Tenants have told us during consultation that they anticipate these adverse effects and that this acts as a disincentive for them to take a case to enforce their rights. If the disincentive to bring a case is strong, the meaningful ability to enforce rights and access a remedy may effectively be absent and tenants' access to justice may be at stake in some cases. The opportunity is to consider whether this is compromising the enforcement approach of the RTA which partly relies on parties self-enforcing their rights and if so, whether change is justified to correct for this.

**Proposed Approach**

We propose increasing protection of privacy and access to justice in the residential tenancy system by:

- clarifying that identifying details can be removed from Tribunal decisions if this is in the interests of the parties and the public interest; and
- making it the default that in cases where a party has wholly successfully enforced their rights or defended a claim against them, and publishing will lead to adverse consequences, identifying details will be removed.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

**Tenants**

Legal powers will be clarified in relation to name suppression so that operational policies can then be considered to improve privacy and reduce adverse effects for tenants enforcing their rights where it is reasonable to do so.

Access to justice will be improved through changing the default so that identifying details are removed when a party successfully brings a claim or defends a case.

**Landlords**

While there may be instances where a landlord could benefit from the removal of identifying details from Tribunal decisions, we expect privacy and access to justice benefits will primarily accrue to tenants.

**Where do the costs fall?**

**Tenants**

We do not expect any costs to tenants to result from privacy changes.

**Landlords**

We do not expect any costs to landlords and property managers to result from privacy changes.

**Tenancy Tribunal**

The clarification of Tribunal powers to suppress information will provide a platform for operational policies to be considered to improve privacy. Subject to the development of

these operational policies, this could lead to an increase in the frequency of identifying details being removed.

Changing the default so that identifying details will be removed when a party successfully brings a case or defends a claim is likely to lead to increased frequency of identifying details being removed.

If the frequency does increase, we have received preliminary advice on the operational impacts this would create to the system whereby decisions are currently published (the Resolve system). Currently, removing identifying details would need to be a manual action. If it was to become more common it would be likely that changes would be required to Resolve to make the process less labour intensive. Our initial advice is that this kind of change would be possible but would likely incur some cost.

**Industry**
Subscription services exist in the market that compile information about tenants including Tribunal cases for vetting purposes. The overall pool of information available to these businesses to sell to their clients will reduce due to privacy proposals and this could impact on their business  However, as the proposals only increase privacy in instances where party has successfully enforced their rights or defended a claim against them, these services will still have access to Tenancy Tribunal decisions in all instances where a party has been at fault.

| **What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?** |
|---|
| *Increased pressure on the Tribunal:*<br>As outlined above, the proposals may result in increased pressure on the Tribunal.<br><br>The proposed privacy changes will provide a platform for operational policies to be considered to improve privacy. Subject to the development of these operational policies, this could lead to an increase in the frequency of identifying details being removed. Changing the default so that identifying details will be removed when a party successfully brings a case or defends a claim is likely to lead to increased frequency of identifying details being removed.<br><br>Tribunal operational workload is also likely to increase if the volume of name suppression orders increases. Any decision to anonymise would need to be made during a hearing or through a formal process on the papers after the hearing. Operational policies would need to be developed to stipulate exactly how these processes would work. If the quantity of applications to anonymise through a formal process after the hearing was high, this could result in more substantial increases to Tribunal workload. If a decision to anonymise is made during a hearing, only marginal increases in Tribunal workload should result. |

# Assignment

## Summary: Problem and Proposed Approach

| **Problem Definition**<br>**What problem or opportunity does this proposal seek to address? Why is Government intervention required?** |
|---|
| The current law is creating a discrepancy between tenancies where assignment of a tenant's interests has been prohibited outright through the tenancy agreement, and all other situations where assignment requests must be considered on a case-by-case basis and not be declined unreasonably. This means that when a clause prohibiting assignment is included in the tenancy agreement, tenants are not able to assign their interest if their circumstances change over the course of the tenancy even if this is reasonable in the circumstances. |

The opportunity is to consider whether the reform's objective of promoting good faith relationships could be better met by standardising how all requests for assignment are considered.

| Proposed Approach |
| --- |
| We propose to remove the discrepancy that exists between tenancies where assignment has been prohibited outright through the tenancy agreement and all other tenancies where assignment requests must be considered on a case-by-case basis and not be declined unreasonably. |

## Section B: Summary Impacts: Benefits and costs

| Who are the main expected beneficiaries and what is the nature of the expected benefit? |
| --- |
| **Tenants**<br>Tenants who suffer an unforeseen change in circumstances and need to assign their interest in a fixed-term tenancy to another person would not have the merits of that request treated differently on the basis of whether or not a clause in their tenancy agreement prohibits assignment.<br><br>**Landlords**<br>Landlords will not receive any direct benefits. |

| Where do the costs fall? |
| --- |
| **Tenants**<br>We do not expect any increases in costs to tenants.<br><br>**Landlords**<br>There will be some increased costs and administrative burden to landlords incurred when they must accept a reasonable assignment request. There may also be increases to perceived risk of costs. This is, however, mitigated by the fact that reasonable recovery of costs is allowed under section 44(5) of the RTA. |

| What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated? |
| --- |
| No specific risks outside of those outlined in the overall package section above. |

# Fees charged upon consent to assignment, subletting or parting with possession of the premises

## Summary: Problem and Proposed Approach

| Problem Definition<br>What problem or opportunity does this proposal seek to address? Why is Government intervention required? |
| --- |
| The RTA already prohibits landlords and property managers from charging unreasonable fees when a fixed-term tenancy is ended early. In practice this may be difficult to enforce as there is no requirement in the law to disclose how a fee has been calculated. Tenants cannot challenge whether a specific component of a fee they are required to pay is reasonable if they do not have visibility of that cost. Tenants often have little bargaining power in relation to these fees and they can decrease rental affordability, choice and mobility. Consumer choice is limited as they would be unlikely to be aware of process and policies around fees to be charged upon consent to assignment, subletting or parting with possession of the premises at the outset of a tenancy. |

There is an opportunity to require landlords and property managers to provide breakdowns of fees and processes upon consent to assignment, subletting or parting with possession of the premises to increase transparency and compliance with current obligations.

**Proposed Approach**

We propose to empower tenants to enforce the current laws on fees charged upon consent to assignment, subletting or parting with possession of the premises, by:

- requiring landlords and property managers to provide breakdowns of these fees and processes when and if they are charged, to increase transparency and compliance with current obligations; and
- in addition, guidance could be issued on what fees are likely to be reasonable and landlords and property managers would be required to provide this alongside the breakdowns.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

**Tenants**

Tenants will be empowered to assess and enforce compliance with the laws around fees charged upon consent to assignment, subletting or parting with possession of the premises, leading to increased compliance and ultimately less unreasonable fees being charged to tenants.

**Landlords**

Landlords will not receive any direct benefits.

**Where do the costs fall?**

**Tenants**

We do not expect any additional costs to tenants.

**Landlords/ Property Managers**

There will be some administrative cost to landlords and property managers to prepare and provide the required breakdowns to tenants.

Landlords and property managers may also incur some additional administrative costs to meet their obligations where they have not previously complied with current legislative requirements, because we expect the new approach to lead to higher compliance levels. This could flow through to market impacts such as increases in rent and/or decreases in the supply of rentals at the margins.

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

No specific risks outside of those outlined in the overall package section above.

# Optimising the healthy homes standards

## Summary: Problem and Proposed Approach

**Problem Definition**

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

Landlords already have obligations under the standards to keep various records and provide them on the request of the Chief Executive (or this power delegated to another official). The opportunity is to better enable tenants to self-resolve compliance with the standards in an efficient way by allowing tenants to also request these same documents, so that they can assess compliance with the healthy homes standards and enforce their

rights if necessary. One element of the compliance approach to the healthy homes standards is tenants enforcing their rights.

Currently landlords have duplicate compliance statement requirements under the 2016 insulation requirements and also as a consequence of the Healthy Homes Guarantee Act 2017. Having two compliance statements increases the complexity of the tenancy agreement for landlords and tenants without providing additional information. We expect this will increase the likelihood of non-compliance with tenancy agreement requirements. There is an opportunity to streamline this process by removing duplication and requiring only one statement.

**Proposed Approach**

We propose to make minor changes to optimise the healthy homes standards by:

- allowing tenants to request compliance documents from landlords: and
- requiring only one compliance statement.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

**Tenants**

Tenants will be able to request compliance documents, empowering them to assess and enforce compliance. Benefits from decreasing complexity by requiring only one compliance statement will sit with landlords and not affect tenants.

**Landlords**

Landlords administrative burden will be decreased, and complexity of obligations will reduce due to requiring only one compliance statement. We expect this will lead to reduced costs to landlords.

**Where do the costs fall?**

**Tenants**

We do not expect any costs to tenants to result from optimising the healthy homes standards.

**Landlords**

Landlords may incur some administrative costs due to the new requirement to provide tenants with compliance documents upon request. While acknowledged here for completeness, the cost to a landlord's time to provide documentation they are already required to hold will not be material.

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

No specific risks outside of those outlined in the overall package section above.

**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)*.

## Overall package

## 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.<br><br>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.<br><br>*The Reform of the Residential Tenancies 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.<br><br>Those submissions have been carefully considered and have informed the refinement and final analysis of the proposals outlined in this regulatory impact assessment. Our preferred approach also reflects further feedback from other government agencies. |

| Quality Assurance Reviewing Agency: |
| --- |
| The Ministry of Housing and Urban Development Regulatory Impact Assessment review panel. |
| **Quality Assurance Assessment:** |
| The Ministry of Housing and Urban Development Regulatory Impact Assessment review panel has reviewed the Regulatory Impact Assessment (RIA), *Residential Tenancies Act Reform: Improving Security of Tenure and Compliance*, prepared by the Ministry of Housing and Urban Development and considers that the information and analysis fully meets RIA quality assurance criteria. |

# Impact Statement: Residential Tenancies Act 1986 Reform- PETS, MINOR FITTINGS, RENT SETTING AND ACCESS TO JUSTICE

## Section 1: General information

**Purpose**

HUD is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis has been produced to inform policy decisions to be made by Cabinet.

This regulatory impact assessment provides an analysis of options that involve changes to the Residential Tenancies Act 1986. The Act is intended to:

- 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 disputes arising between landlords and tenants
- establish a fund in which bonds payable by tenants are held
- repeal the Tenancy Act 1955 and the Rent Appeal Act 1973 and their amendments.

The options for changing the legislation are assessed against the status quo and are intended to:

- clarify the rights and responsibilities of tenants to accommodate pets in their rental properties
- clarify the rights and responsibilities of tenants in relation to adding minor and reasonable fittings to their rental properties
- provide greater certainty to tenants in relation to their rental costs
- ensure good practice privacy principals are applied in the residential tenancy system
- clarify rights and responsibilities of tenants in relation to assignment of rental properties and improve compliance with current laws on fees charged upon consent to assignment, subletting or parting with possession of the premises
- optimise the healthy homes standards.

**Key Limitations or Constraints on Analysis**

*Modelling:*

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:

- 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 the proposals in this document.

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. We did not, however, find a suitable proxy.

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 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 changes considered in this regulatory impact assessment generally impose indirect rather than direct quantifiable costs on landlords. Some costs have been estimated, for example, s 9(2)(f)(iv) We do not consider that increases in these costs can be modelled across the market in a robust way. These impacts depend on tenant and landlord choices, and the particulars of a given situation, and behaviour at the macro level cannot be predicted. s 9(2)(f)(iv) or fittings changes, tenants and landlords that are already abiding by the current legal obligations will not be impacted.

An additional layer of assumptions would need to be made concerning how much of an imposition landlords may perceive these changes to be, specifically 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 of would be.

Landlords choosing to sell investment properties would only result in negative impacts for the market if that action caused 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. Likewise, we cannot infer with any certainty whether landlords that choose to stay in the market would raise rents by the level that modelling may indicate. This is because their ability to do so would be hindered to some extent by tenants' 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.

Consequently, our options assessment has not been informed by an analysis that fully quantifies the costs and benefits of the proposed changes. Where required we have made a qualitative assessment that is grounded in the professional judgement of subject matter experts, which is further informed by careful consideration of the views provided through a comprehensive stakeholder engagement process. This approach is consistent with the prior changes to the Residential Tenancies Act (1986) that did not impose direct costs on landlords and with other rights based legislative reforms.

HUD is also committed to ensuring it establishes a robust monitoring, evaluation and review process that enables us to assess whether or not the proposed changes deliver the anticipated net benefits. HUD's System Performance Group, which came into operation on 1 July 2019, will undertake work to agree an approach to measuring the impact of the proposed changes to the law s 9(2)(f)(iv)

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.

*Options ruled out of scope:*
Rent control (following the model used in Germany) was ruled out of scope for the reasons outlined at section 3.3. There are substantial differences between the New Zealand and German rental markets including standardisation of properties and length of tenancies that mean that the German model would not be workable here.

Prohibiting break-lease fees was ruled out of scope given that this matter was previously assessed and ruled out in the development of the Residential Tenancies (Prohibiting Letting Fees) Amendment Act 2018.

**Responsible Manager:**

s 9(2)(a)

Claire Leadbetter
Manager, Tenancy and Housing Quality
Housing Branch, Policy Group
Ministry of Housing and Urban Development

10/10/2019

# Impact of overall package

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

The RTA regulates New Zealand's rental market and is more than 30 years' old. 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.[4]

There are an estimated, 604,100 households who rent in New Zealand.[5] The number of children under 15 years of age living in rental accommodation increased from 26 percent in 1986 to 43 percent in 2013.[6]

The numbers of elderly living in rented housing have also increased. The censuses of 2001 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 tenant households rent from private landlords, with approximately 11 percent (67,228 households)[7] 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.[8]

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.[9]

The regulatory system enables tenants, landlords and property managers to resolve any difficulties with their rental situations directly, or via mediation or adjudication (Tribunal).

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 Tribunal proceedings on behalf of a party.

---

[4] Statistics New Zealand (2016) *Changes in home-ownership patterns 1986–2013: Focus on Māori and Pacific people*, June 2016.

[5] Statistics New Zealand (2018), *Estimated Households in Private Occupied Dwellings (Quarterly)*, Sept 2018, Infoshare – Population/Demography Dwelling and Household Estimates – DDE.

[6] Statistics New Zealand (2016), *Ibid.*

[7] MSD (2018) *Housing Quarterly Report - June 2018*, Ministry of Social Development, p 5.

[8] MBIE, Analysis of bond data as at 27 May 2019.

[9] BRANZ (2017) *The New Zealand Rental Sector*, by Massey University SHORE and Whariki Research Centre with University of Otago, Report ER22, p 9. 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.

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

The RTA regulates the residential tenancy market. It includes provisions relating to rental accommodation, fittings and rental price durations, publishing of Tribunal decisions, assignment and sub-letting, but is silent on rights and obligations relating to rental bidding and pets.

## 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 604,000 households in the rental market.

We have already identified the contribution that improvements to security of tenure and strengthened enforcement measures can make to the wellbeing of tenants in an earlier companion Cabinet paper and regulatory impact assessment. This assessment considers the contribution a further tranche of regulatory changes can make to tenant wellbeing throughout the duration of tenancies.

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

**Out of Scope**

*Housing Supply:* This assessment does not consider initiatives designed to increase the supply of affordable housing or rental accommodation.

*Boarding Houses:* Due to the different dynamics created by communal living, the proposals covered by this assessment will not apply to Boarding Houses. HUD intends to progress separate policy work on the 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 standards are met, HUD is proposing to give further consideration to whether regulation is necessary in partnership with the Ministry of Justice in due course. However, as the Government already has a comprehensive reform programme underway, it has agreed to defer this work while it addresses higher priority issues.

*Tenancy Tribunal:* The parts of the RTA that relate to the Tribunal's composition and procedures are out of scope for this reform package. 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 earlier Cabinet paper and regulatory impact assessment covered the provision of legislative tools to MBIE 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 & Dependencies**
*Related Tenancy Act Reforms:* Policy proposals relating to improving security of tenure and strengthening enforcement measures provide the foundation for the proposed legislative changes considered in this assessment.

### 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 (MBIE), the Tribunal, the wider justice sector, and government agencies with an interest in the relationship between housing and wellbeing, including Te Puni Kōkiri, the Ministry of Social Development and the Treasury.

**Consultation**
Options for meeting the policy objectives canvassed by this regulatory impact assessment along with other reforms to the Residential Tenancy Act were the subject of a comprehensive public consultation process undertaken from August to October 2018 (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 4,787 submissions.

**Māori & Pasifika**
Māori, Pacific 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.

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 advocating for Māori housing interests at the national level - about which stakeholders should be invited to participate in workshops on the reform around the country. This 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, we do not know what proportion of the 4,787 viewpoints received represented the interests of Māori.

# Keeping pets in rental properties

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

s 9(2)(f)(iv)

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

s 9(2)(f)(iv)

s 9(2)(f)(iv)

## 2.3 What is the policy problem or opportunity?

s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

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

s 9(2)(f)(iv)

## 2.5 What do stakeholders think?

The topic of pets attracted particularly high levels of interest during the consultation process. The question "should a landlord be able to refuse a tenant's request to keep a pet without giving a reason?" was the most frequently answered question across both written submissions and the web survey. 250 of the 454 written submissions addressed this issue and 2,539 of the 2,842 survey respondents answered this question. Some general themes were evident, most notably:

- Landlords think that decisions around allowing pets should be at their discretion. They were concerned about the damage that pets can do to rental properties, the costs of remedying this damage, and whether tenants will be held liable. They supported introducing a pet bond. Eighty-three percent of landlords considered that landlords should be able to decline pet requests without giving reasons.
- Tenants thought that pet ownership should not be a privilege reserved only for homeowners. They noted that pets can have positive impacts on wellbeing. Tenants that have pets or want to get pets find it very difficult to secure appropriate rental properties. Seventy-two percent of tenants considered that landlords should not be able to decline pet reasons without giving reasons.

s 9(2)(f)(iv)

Landlords were asked of their experiences of tenants keeping pets at their rental property. Many had had poor experiences, including damage to property and smell or soilage. Some of these landlords noted the tenants had failed to repair or clean, resulting in costs to the landlord. Other landlords indicated they had not had any issues arising from tenants keeping pets.

Tenants were asked of their experiences of seeking agreement to keep a pet in a rental property. Some considered it was difficult to find a property where the landlord would agree to them keeping pets. Other tenants had no issues in keeping pets.

## Section 3: Options identification

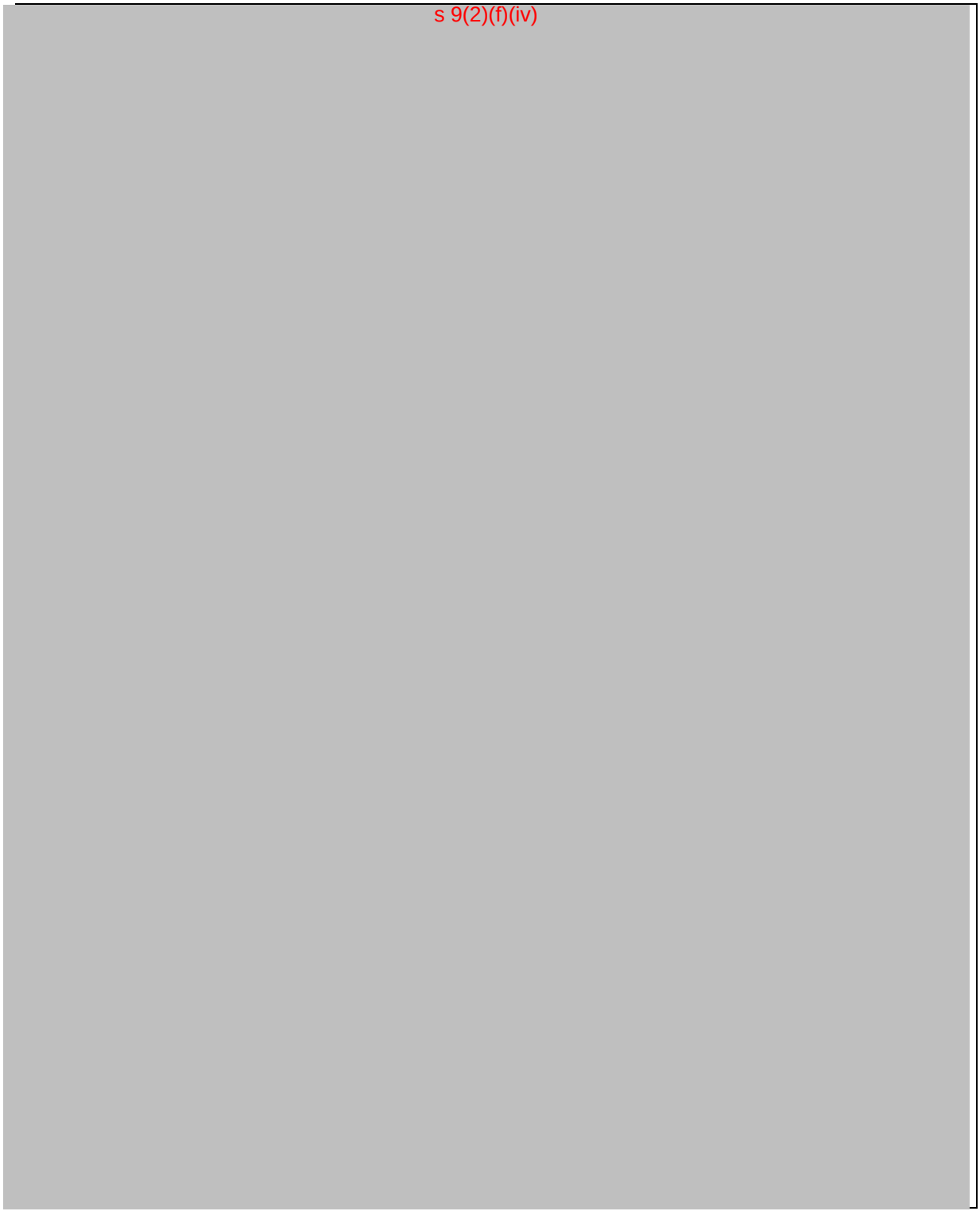
### 3.1 What options are available to address the problem?

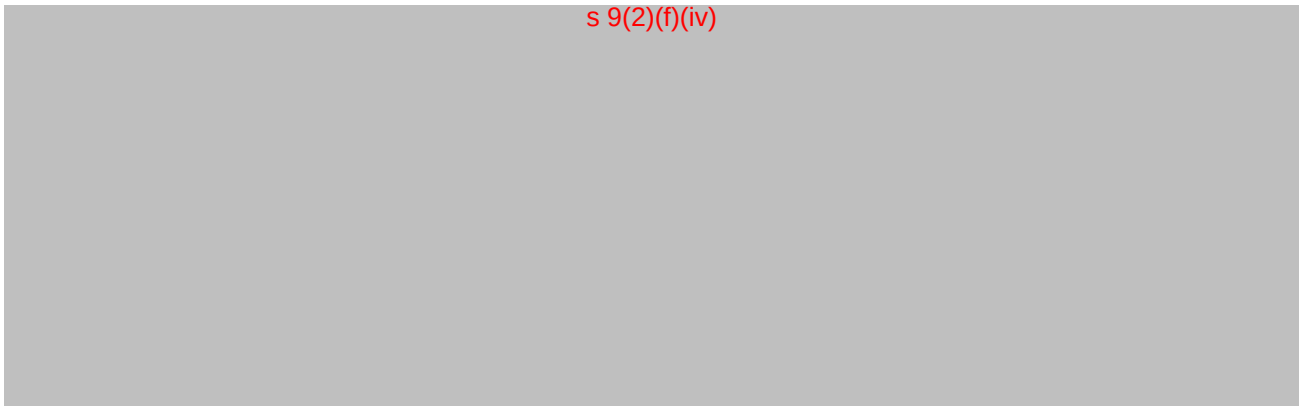
s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)


s 9(2)(f)(iv)


s 9(2)(f)(iv)

s 9(2)(f)(iv)

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
    - improve security and stability for tenants while maintaining adequate protection of landlords' interests
    - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
    - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[20]

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.

[20] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

**Pets**

s 9(2)(f)(iv)

| | s 9(2)(f)(iv) |
|---|---|
| **Effectiveness** | |

| | |
|---|---|
| | s 9(2)(f)(iv) |
| **Proportionality** | |

| | |
|---|---|
| | s 9(2)(f)(iv) |
| **Certainty** | |
| **Flexibility** | |
| **Durability** | |
| **Fairness** | |

| | |
|---|---|
| | s 9(2)(f)(iv) |
| | |
| **Overall assessment** | |

## 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? |
|---|
| s 9(2)(f)(iv) |

# Minor fittings

## Section 2: Problem definition and objectives

| 2.1 What is the context within which action is proposed? |
|---|
| The proportion of children, older people and disabled people living in rental accommodation is increasing. There are unique needs that households with children, older and disabled people have for adding fittings to improve safety and accessibility. The censuses of 2001 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. More broadly, there is an increasing demand from tenants for access to technology, including Ultra-Fast Broadband, to support employment as well as social and business interactions. |

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

Section 42 of the RTA stipulates that tenants must only affix any fixture, make any renovation, alteration, or addition to the premises with permission, and that landlords must not withhold consent to this unreasonably.

## 2.3 What is the policy problem or opportunity?

The current RTA section 42 obligation is not achieving its intent. Tenants find it difficult to get landlord agreement to add minor fittings such as picture hooks and baby proofing.

Submissions indicate that some tenants are making alterations to properties without landlord approval and that it is reasonably common for landlords and property managers to either not apply a reasonableness test, or not consider fittings requests at all. Further, we note that very few Tribunal decisions exist on this matter indicating that tenants are not bringing cases to assert their rights regarding reasonable fittings.

Submitters considered that the following factors are likely to be causing this problem:

- There is a lack of clarity about when a fitting is reasonable;
- Landlords and property managers do not always provide timely responses to fittings requests;
- Tenants either do not know about their rights or are not enforcing them; and
- Landlords may not be aware of their obligations.

Based on stakeholder feedback and further policy analysis, we consider that the optimal future state should embed the intent of the current legislative obligations and the policy opportunity in this context is achieve this. Doing so is likely to advance the Government's priorities for improving the wellbeing of New Zealanders. We expect that clarifying tenants' ability to add minor fittings to properties will have a positive impact in this area by, for example, reducing injury hazards. This can be especially important for children, elderly, and disabled tenants.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

### 2.5 What do stakeholders think?

In the discussion document, modifications were referred to in this area of policy. The term referring to this set of proposals has now been changed to minor fittings because this better reflects the scope and policy intent of this area of the reform.

The discussion document sought feedback on options for how the law can better help landlords and tenants agree to tenants making reasonable modifications or minor changes to their rental properties, or whether tenants should be able to make certain changes without consulting their landlord.

Several general themes were evident, most notably:

- Landlords were of the view that the context of the particular tenancy, property and modification were key when a modification was requested. Clear and good faith communication was important. Landlords were principally concerned about damage and costs that could result from the installation and reversal of a modification.
- Tenants told us that the ability to make minor and reasonable modifications is strongly related to their ability to feel at home in their property.
- Both tenants and landlords were concerned about safety. Modifications could be important for tenants' ability to make their property safe, for example when baby or earthquake proofing was needed. Landlords were concerned that safety could be compromised if a modification was made or reversed in a substandard manner. Modifications that could affect the structural integrity of the building were of particular concern.

The framing and language used in this area of the reform during consultation may have given the impression that more major kinds of changes were intended to be in scope than proposed in this paper. This may have led to higher levels of concern than there may otherwise have been.

We asked tenants what their experiences of trying to make modifications were: 41 percent had a negative experience trying to make a modification that they thought was reasonable. 24 percent were not allowed to make the modification and 12 percent said it was difficult or slow. 7 percent of tenants that responded were not aware they could request a modification under the current law.

76 percent of landlords indicated they had previously granted permission to tenants to modify a property. 54 percent of landlords indicated they had previously declined a request to modify a property.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

*Status Quo*

This option would see the existing rights and processes under Section 42 of the Act continued. This would mean that tenants must get landlords' permissions to add a fitting in writing. Landlords could not withhold that consent unreasonably but would not be obliged to reply within a certain time.

*Option* **[Preferred option]**

We have developed a single regulatory option *"A new process to embed existing legal rights"* that has leveraged discussion on two separate proposals in our consultation document in view of better embedding the intention of existing Section 42 in the least cost way. The option has been designed in a way that seeks to improve the clarity around what a minor fitting is, addresses inaction from parties in response to fitting requests in a proportionate way and allow for landlords' expertise to be factored into decisions.

The approach first involves specifying what a minor fitting in this context is. We consider that the law should establish that a fitting is only minor fitting if it presents a low risk of damage to the property, is of a nature that allows the property to be easily returned to a reasonably similar condition at the end of the tenancy, has no impacts on third parties and requires no consents under law. Guidance on the interpretation of these requirements will likely draw attention to the following specific fittings as being within scope:

- Securing furniture or appliances to protect against earthquake risk or to make a property child safe,
- Installing a baby gate
- Affixing child safe latches to cupboards,
- Installing picture hooks
- Installing shelving
- Installing television aerials or wireless broadband equipment
- Installing gardens when these can be returned to the original state at the conclusion of the tenancy
- Installing curtains and window coverings
- Installing internal locks providing they are compliant with relevant fire safety laws
- Installing accessible tapware, where this has low impacts and will be reversed at
- s 9(2)(f)(iv)

The process will be that tenants must make a request for a fitting that meets the legal criteria. Landlords would only be able to decline the request for specified reasons which are likely to include:

- High risk around installation and removal given specific attributes of the property
- Remediation back to a similar state not reasonably possible given specific attributes of the property
- Will disturb hazardous materials
- Will require legal consents or compromise existing obligations the landlord has
- Will compromise the structural integrity, waterproofing or fundamental safety or character of the building
- Will have an unreasonable impact on third parties

Landlords would also have an opportunity to add reasonable stipulations around how the fitting occurs which would be enforceable and may include directions to use or not use certain products to hang pictures, using a licensed tradesperson or allowing the landlord to do the work themselves or the placement of certain fitting given the landlords knowledge of the property. If a dispute between a landlord and tenant about whether a stipulation was reasonable could not be self-resolved, the Tribunal would be an option to get a decision. Landlords would be required to respond to a request for a fitting within 21 days and failure to do so would be an unlawful act and result in a financial penalty.

At the conclusion of a tenancy where a fitting has been made, tenants must return the property to the original state unless the landlord agreed to take on the fitting. If this did not occur, the tenant would be liable to cover the cost of reversal. A financial penalty would

apply to tenants who had failed to reverse the fitting unless the landlord agrees that they would like it to remain. s 9(2)(f)(iv)

*Other options considered but not progressed – Specific rights for disabled people*
Some submitters requested processes that explicitly give disabled tenants' rights to make reasonable accessibility fittings.[21] We have not, however, proposed any specific processes to apply to disability fittings as we do not consider that landlords should be exposed to additional risk around fittings based solely on whether their tenant is living with a disability. Parties will still be free to negotiate such fittings.

We also note that officials have recommended other actions to incentivise the provision of accessible rentals through the Ministry of Housing and Urban Development and Housing New Zealand's Action Plan for improving accessibility across the New Zealand Housing System. We consider that this is the optimal approach, rather than making changes through the RTA reform to give disabled tenants specific rights.

*Other options considered but not progressed – deemed consent to fittings following non-response*
We considered whether a variation of the regulatory option that overcame problems of non-response by landlords and property managers by deeming consent at the conclusion of the 21-day period would be effective. Following concerns raised by submitters we have withdrawn this option as we agree that deeming consent could have significant impacts. For example, should a tenant misinterpret the scope of a minor fitting and request something with significant impacts, the consequences of this proceeding by right would be disproportionate to the omission the landlord made by not responding within the given timeframe.

*What did stakeholders think?*
During consultation, minor fittings were referred to as modifications. The term referring to this set of proposals has now been changed to "minor fittings" because this better reflects the scope and policy intent of this area of the reform.

The discussion document sought feedback on options for how the law can better help landlords and tenants agree to tenants making reasonable modifications or minor changes to their rental properties, or whether tenants should be able to make certain changes without consulting their landlord.

Several general themes were evident, most notably:

- Landlords were of the view that the context of the particular tenancy, property and modification were key when a modification was requested. Clear and good faith communication was important. Landlords were principally concerned about damage and costs that could result from the installation and reversal of a modification.
- Tenants told us that the ability to make minor and reasonable modifications is strongly related to their ability to feel at home in their property.
- Both tenants and landlords were concerned about safety. Modifications could be important for tenants' ability to make their property safe, for example when baby or earthquake proofing was needed. Landlords were concerned that safety could be compromised if a modification was made or reversed in a substandard manner. Modifications that could affect the structural integrity of the building were of particular concern.

[21] For example, the Human Rights Commission and the Disabled Persons Assembly.

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
    - improve security and stability for tenants while maintaining adequate protection of landlords' interests
    - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
    - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[22]

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.

[22] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

# Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

### Fittings

| | Status Quo | Option: A new process to embed existing legal rights |
|---|---|---|
| **Effectiveness** | 0<br>Insights from submissions and examination of Tribunal decisions show that the status quo is not achieving the policy intent. If no change to the law is made, it is still possible that a consequence of the RTA Reform will be an increase in the use of existing rights as awareness is raised of them. This could be increased further by additional information and education about these rights. Finally, other changes made through this reform to make tenancies more secure could increase the use of the status quo as tenants are expected to become more confident exercising their rights.<br>However, consultation indicated that parties simply not knowing about their rights was only one element of the problem (less than 8 percent). Relying on the status quo would not remove incentive that landlords and property managers may be under to avoid risk (real or perceived) by declining requests for fittings without regard to the existing law. Landlords and property managers may continue to do this by not responding to requests at all as the Act does not include repercussions for this. | +<br>This approach is expected to be more effective than the status quo because:<br>• It includes parameters in the law about what a minor fitting must be to quality and will elaborating on this with guidance resulting in parties having greater visibility of the rights and obligations that surround a given fitting.<br>• By placing a time limit on the amount of time a landlord may take to consider a request and introducing a corresponding financial penalty for breaching this, the ability for requests to be declined through inaction will be removed. This is expected to result in more requests to add minor fittings advancing to conversation between parties on the merits of a specific request, which links in to our wider objective for the Reform to promote good-faith tenancy relationships. |

| | Status Quo | Option: A new process to embed existing legal rights |
|---|---|---|
| **Proportionality** | **0**<br>The existing obligation landlords have to not decline a tenant's request to affix any fixture or make any renovation, alteration or addition to the premises unreasonably is considered proportionate.<br>In practice, the operation of the law is not proportionate as the existing obligations are not achieving their intent. | **0**<br>This approach does not extend or detract either parties' rights over the property relative to the status quo. Fittings that would be permitted under the status quo are permitted under this option and fittings that would be reasonably declined under the status quo can still be declined under this option. Tenants will still meet all costs associated with the fitting.<br><br>By allowing landlords to place reasonable stipulations on how a fitting is installed, the approach allows landlords experience with the property to be taken into account to minimise specific risks that may not otherwise be apparent to the tenant.<br><br>The option places a new obligation on landlords to respond to tenants' requests with 21 days or face a financial penalty. Given that the RTA already anticipates business being conducted within a 21-day period through the obligation it places on landlords to appoint an agent if uncontactable for 21 days, this time frame is considered fair relative to existing obligation landlords have. |
| **Certainty** | **0**<br>Low awareness of existing rights and obligations indicates a low level of certainty with the status quo. | **+**<br>The approach improves certainty to both tenants and landlords by:<br>• Specifying what characteristics a fitting must have in order to fall within the rights tenants have to make it<br>• Specifying what matters a landlord may have regard to when declining a tenant's request<br>• Specifying what the maximum amount of time is that a fitting request should be under consideration for. |
| **Flexibility** | **0**<br>The reasonableness test under the status quo provides a large amount of flexibility regarding both scope and timeframes. | **-**<br>Relative to the status quo both tenants and landlords will have less flexibility as the approach will shift from being predominantly high level and enabling to being slightly more prescriptive. |
| **Durability** | **0**<br>The status quo is not considered to have worked optimally in the current supply constrained market. | **+**<br>By standardising the attributes, a fitting will have to fall within scope and the rights and timelines that will apply to a fitting request, the response is considered more durable than the status quo. Given the protections that will continue to be afforded by the option, the risk of overcorrecting for the problem if market characteristics shifted is considered low. |
| **Fairness** | **0**<br>The status quo would be fair both parties if the existing rights it provides were used and understood. | **+**<br>Fairer than the status quo – balancing tenants' and landlords' interests, rights and obligations. |
| **Overall assessment** | 0 | **+**<br>**Preferred option** – delivers net benefits compared to the status quo. |

## 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?**

We propose embedding the existing rights and responsibilities that tenants and landlords have in relation to tenants making minor and reasonable fittings by implementing a new legal process for govern how agreement is obtained for this work.

Minor fittings will be defined as those that present a low risk of damage to the property, are of a nature that allows the property to be easily returned to a reasonably similar condition at the end of the tenancy, have no impacts on third parties and require no consents under law. This would provide clarity to the existing "reasonableness" test that exists in the RTA but will not oblige landlords to permit a fitting that wouldn't likely need to under the status quo. Guidance on the specific fittings considered to meet these criteria will be provided and a list of these fittings is included in elaboration on this option later in the document.

Tenants will be required to make a request in writing to the landlord should they wish to add a fitting that falls in the scope of their rights. Landlords would only be able to decline the request for specified reasons which will include:

- High risk around installation and removal given specific attributes of the property
- Remediation back to a similar state not reasonably possible given specific attributes of the property
- Will disturb hazardous materials
- Will require legal consents or compromise existing obligations the landlord has
- Will compromise the structural integrity, waterproofing or fundamental safety or character of the building
- Will have an unreasonable impact on third parties.

Landlords would also have an opportunity to add reasonable stipulations around how the fitting is added which would be enforceable. This may include matters such as directions to use or not use certain products to hang pictures, using a suitably qualified or experienced tradesperson if the fitting justifies it or the placement of certain fittings given the landlords knowledge of the property.

Landlords would be required to respond to a request for a fitting within 21 days and failure to do so would result in a financial penalty.

At the conclusion of a tenancy where a fitting has been added, tenants must return the property to the original state unless the landlord agreed to take on the fitting. If this did not occur, the tenant would be liable to cover the cost of reversal and a financial penalty would also apply to ensure compliance s 9(2)(f)(iv)

**Rationale**

Our proposed approach embeds existing rights to make fittings in a way that is effective in the modern renting environment. It clarifies what minor fittings are reasonable and establishes minimum standards of responsiveness. It enables fittings that improve safety, enhance the utility of the accommodation and help tenants to feel more at home. These benefits for tenants are balanced by a requirement for them to reinstate the property to a reasonably similar consideration at the end of the tenancy s 9(2)(f)(iv)

s 9(2)(f)(iv)

This approach is favoured because it is considered to be the lowest cost way to embed the existing rights that already exist in law. Landlords will not experience a loss of rights relative to the status quo, but the process will be improved to provide greater clarity to parties and to address issues raised in consultation, such as fittings requests being declined through non-responsiveness.

# Rent setting

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

**Rent increases**

Rents can currently be adjusted once every six months. For fixed-term tenancies this only applies if the agreement states that the rent can be reviewed or increased every six months. We learnt through consultation that 11.6 percent of respondents had experienced rent increases once every six months. Rent increases can leave tenants vulnerable to rental stress, particularly low-income tenants, or tenants who experience a change in financial circumstances.

**Rental bidding**

Tenants and landlords are legally allowed to agree on the amount of rent for a property and rental bidding or auctions are not prohibited by the legislation. Rental bidding can look like:

- prospective tenants offering more rent than was advertised without being prompted
- agents requesting that prospective tenants offer more rent than was advertised
- agents encouraging or seeking competitive bids from applicants
- advertising a property with no rental price
- advertising a property with a rent range
- rental auctions.

Rental bidding has the potential to exacerbate affordability issues in the market because it leads to higher rents being paid for properties than originally advertised. Rental bidding is, above all, a symptom of a tight rental market.

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

**When rents can be increased**

The RTA currently allows landlords to increase rent once every six months (180 days). For fixed-term tenancies this only applies if the agreement states that the rent can be reviewed or increased every six months. If the fixed-term agreement does not state the rent can be increased, then the rent cannot be increased during the term of the tenancy. However, landlords do have the ability to increase rent outside of the usual 180 days in the case of substantial improvements, improved facilities, or variation of terms (section 28 of the RTA). Similarly, the Tribunal may make an order increasing rent if the landlord has suffered expenses in respect of the premises that were not reasonably foreseeable when the rent was last fixed.

Currently, landlords need to give 60 days' written notice of rent increases. This gives tenants five weeks to decide whether to leave or not as a result of the rent increase because they need to give at least 21 days' notice of termination in a periodic agreement. It should be noted that it is proposed this period will increase to 28 days' notice as outlined in the *Residential Tenancies Act Reform – Improving security of Tenure and Compliance Regulatory Impact Assessment.*

A tenant is able to apply to the Tribunal to end their fixed-term tenancy early if their rent has increased by a significant amount. The Tribunal may do this if the increase is an amount that the

tenant could not have expected when they signed the tenancy agreement and will cause them serious hardship. Alternatively, within three months of the rent increase, tenants may apply to the Tribunal to get their rent reduced if it "substantially exceeds" market rent.
There is currently nothing in the RTA which imposes a requirement on landlords to include details about rent increases in tenancy agreements. However, if a landlord wants to increase rent during a fixed-term tenancy this must be stated in the tenancy agreement as per RTA requirements.

**Rental Bidding**
The RTA is silent on rental bidding. There is nothing in the RTA which prohibits rental bidding nor is there guidance on how landlords should let their property regarding rent advertised.

The RTA does contain guidance on "market rent". Market rent - as defined by the RTA - is the rent amount a willing landlord might reasonably expect to receive, and a willing tenant might reasonably expect to pay, for a tenancy. Market rent should be similar to the rent charged for similar properties in similar areas.

If a landlord charges rent that exceeds market rent by a substantial amount, section 25 of the RTA allows tenants to challenge this at the Tribunal and apply for a rent reduction.

There are relevant sections of the Fair Trading Act 1986 (FTA) and Consumer Guarantees Act (1993) that apply to auctions that are conducted by (or on behalf of) anyone who carries on business as an auctioneer. In theory, if rental bidding meets the definition of being an auction (which in some cases it will),[23] these provisions could require some landlords and property managers undertaking rental bidding to do so in an open and transparent manner so that all applicants are aware that they are in a bidding situation and that the tenancy agreement will be awarded to the tenant with the highest bid.

While this would resolve a number of concerns around rental bidding, these protections are unlikely to be applied consistently in the rental bidding context due to technicalities in the law that impact on whether or not a landlord can be deemed to be "in trade". This is because some landlords may be motivated for a range of reasons that will not always be purely commercial. For example, a landlord that buys a house for the purpose of renting it out is likely to be considered "in trade". Alternatively, a landlord who rents out a house they initially bought for their own personal use is unlikely to be considered "in trade".

It will generally be more apparent that a property manager is "in trade". This means that under current law, property managers could be found to be engaging in unfair or misleading conduct where they are not transparent in their undertaking of rental bidding. This would occur where the landlord or property manager has induced a prospective tenant into offering more than the advertised amount through misleading or deceptive conduct thus being a breach of section 13(g) of the FTA, "making a false or misleading representation with respect to the price of any goods or services". This could also potentially amount to "bait advertising" which is prohibited under section 19 of the FTA.

[23] Note, an auction, for the purposes of the Fair Trading Act and the Auctioneers Act, takes place where the property is sold on behalf of a seller, bids for the property are placed with the auctioneer in real time and the property is sold when the auctioneer indicates. Rental bidding however, does not always operate in this way. However, the Auctioneers Act and the Fair Trading Act could apply to rental bidding where a property manager takes rental bids in real time thus acting as an auctioneer. They would then likely be in breach of section 5 of the Auctioneers Act if they are not properly licensed as an auctioneer.

## 2.3 What is the policy problem or opportunity?

**Rent Setting**

*How often should rents be increased?*

There is a perception that tenants are experiencing rent increases too regularly and that this is impacting on the mid-term certainty they have over their living situation. This doesn't appear to be a widespread problem as submissions on the reform indicated that only 11.6 percent of respondents had experienced rent increases at a frequency of once every six months. While this is only a small portion of the total market, for these people the frequency of rent increases may be impacting on their ability to meet the ongoing costs of their accommodation. Rent increases can leave tenants vulnerable to rental stress, particularly low-income tenants, or tenants who experience a change in financial circumstances. In addition, the potential for a biannual rent increase may limit tenant's willingness to exercise their rights due to fear of a retaliatory increase in rent.

While rental affordability is part of a wider problem around unaffordable housing and is primarily a symptom of low supply and high demand for housing, there is an opportunity to consider if the frequency of rent increases tenants face is contributing to poor outcomes in the rental market.

**Rental Bidding**

New Zealand's rental market has been getting more expensive. According to MBIE's bond data the mean rent as of 1 April 2019 was $474. This is, approximately, a 5 percent increase from 1 April 2018 when the national mean rent was $449.[24]

Rental bidding has the potential to exacerbate affordability issues because it leads to higher rents being paid for properties than originally advertised. Rental bidding is, above all, a symptom of a tight rental market. Addressing supply issues is the most effective way to address concerns regarding housing affordability and transparency. Greater supply will result in more competition and options for tenants, resulting in lower prices.

The problems with the practice of rental bidding, also concern transparency and access to information. People may apply for a property thinking it is within their price range but then after rental bidding has occurred, sometimes without their knowledge, the property is no longer affordable to them. People in these situations have spent time and effort applying for a property that they would likely not have done had they known the agreed price would differ from the advertised price. Likewise, tenants with the motivation to pay more for a given property may be disgruntled to find out that another tenant bid the price of that property up without them being extended that opportunity themselves. These information imbalances do not illustrate the good faith behaviour we want to encourage in the market.

Bidding is considered an acceptable way to sell property and goods in most markets such as house auctions and online auctions of goods. However, bidding for a property to rent is different to other auction types and may, therefore, need different controls.

When a landlord rents their property they do not part with their ownership over the asset, rather they are letting someone else live and care for their property, for a weekly price. Because of this, landlords and their agents choose the successful tenant based on non-financial, reasons such as references, renting history and the ability to pay the rent and continue to pay the rent for the course of the tenancy. Landlords bear a risk when it comes to their property being damaged during the tenancy. Therefore, non-financial factors carry significant importance when it comes to the tenant selection process. The applicant who can afford the highest rent will not necessarily be the most desirable tenant. Because of this, it is also considered important to have a good tenancy

[24] There is, of course, regional variation. The Western Bay of Plenty District, for example, has experienced a 13 percent increase in mean rent from $407 at 1 April 2018 to $460 as of 1 April 2019. In contrast, the mean rent in Dunedin only increased by $1 per week over the same one-year period.

relationship in order to have a successful tenancy. Rental bidding is likely to erode such good faith tenancy relationships.

Rental bidding can however be positive for tenants because it allows them to offer more money to secure a property that may be better suited to their needs, such as being closer to their children's school. In a highly competitive market this practice can allow such tenants, who are in a position to, to offer more for a property in order to appear more favourable to landlords.

Rental bidding does not appear to be a common issue in New Zealand (15 percent of submitters on our discussion paper identified themselves as being involved in rental bidding). There is, however, the possibility that rental bidding could become more widespread - particularly if the highly competitive rental market we are currently experiencing continues. An indicator of this is that rental bidding phone applications, such as *RentBerry*, are offering their product in New Zealand.

### 2.5 What do stakeholders think?

*Rent Setting - How often should rents be reviewed?*

There was strong support for rent increases to be limited to once every 12 months. 69 percent of all respondents supported the suggested change. 74 percent of tenants, 63 percent of landlords, 69 percent of property managers and 55 percent of social housing providers supported the proposal.

Many landlords and tenants noted that increasing rents annually is the current common practice. Therefore, they did not have a problem with the suggested change. Many respondents supported limiting rent increases to once every 12 months in order to align with how wages are traditionally increased.

*Rent Setting - Rental bidding*

55 percent of respondents considered rental bidding should be banned, 11 percent thought it should be controlled, while 34 percent thinking nothing should be done about it.

The majority of landlords thought that nothing ought to be done about rental bidding, while the majority of tenants and property managers thought that rental bidding should be banned or controlled.

Tenants who indicated they did not support any sort of control on rental bidding commented that rental bidding provided an option for special cases to show their need for a property, such as having pets, or proximity to schools or employment.

71 percent of respondents thought that landlords and property managers should be prohibited from asking for and receiving rental bids as well as prohibiting prospective tenants from being able to bid for a property. Noting that this question was answered only by those who thought something should be done about rental bidding in the law, tenants were in favour of banning the process because they considered it unfair on those with limited incomes. Tenants also noted their desire for a level playing field for all applicants. Some tenants and landlords indicated that prospective tenants should be able to bid in an open and controlled manner.

# Section 3: Options identification

### 3.1 What options are available to address the problem?

**Rent increases**

*Status Quo*

This option would see the law continuing to allow the rent for tenancy agreements to be increased no more frequently than once every six months. Existing exemptions would remain that allow rents to be increased outside of this window in situations where landlords have made significant improvements to the property or where the terms of an agreement have changed by negotiation.

*Option 1: Limiting rent increases to once per year* **[Preferred option]**
This option would change the law to limit rent increases to once per year for both periodic and fixed-term tenancy agreements. Existing exemptions would remain that allow rents to be increased outside of this window in situations where landlords have made significant improvements to the property or where the terms of an agreement have changed by negotiation.

Landlords will still need to give tenants 60 days' written notice of rent increases and tenants will still have a three month time period after a rent increase when they are able to challenge this rent increase at the Tribunal if they believe it substantially exceeds market rent.

This option would see the law changing to require that rent may be increased no more frequently than once every twelve months. Existing exemptions would remain that allow rents to be increased outside of this window in situations where landlords have made significant improvements to the property or where the terms of an agreement have changed by negotiation.

*Option considered but withdrawn – disclosure of how rental increases are calculated*
We consulted stakeholders on the option of creating a new requirement for landlords to disclose how they will calculate rent increases in new tenancy agreements. The majority of tenants and tenant advocacy groups supported the proposal, while the majority of landlords, property managers and social housing providers did not think the requirement was necessary.

On balance, we have decided to withdraw this proposal. Requiring a landlord to include how and when rents can be increased in the tenancy agreement could provide greater clarity for both tenants and landlords. If tenants have a better understanding of how their housing costs might change, they might be better able to plan for their future. It will also support good faith tenancy relationships as tenants will not be surprised by any increase their landlords make.

However, landlords are already required to disclose a range of information in tenancy agreements such as disclosure obligations regarding a property's compliance with the healthy homes standards and the insurance details applying to the property (as implemented by the Residential Tenancies Amendment Act 2019). Requiring landlords to also include information on the matters they will consider when calculating future rent increases would increase this burden further. In general the aim is to keep tenancy agreements as simple as possible to encourage landlords and tenants to have one, rather than operating outside the law.

Additionally, requiring landlords to factor in all the variables that might lead to an increase in rent at the start of a tenancy could prevent a landlord from being able to recuperate reasonably any unforeseen costs that may arise during a tenancy.

Making landlords include information on how they will calculate rent increases will be complicated for landlords to comply with and may discourage parties from having written agreements. Similarly, making tenancy agreements more complex could result in them being more difficult to understand for tenants.

*Other options considered but withdrawn – length of time period for challenging rent increases at the Tribunal*
We also considered, and consulted on, whether three months from the last rent review or from the commencement of the tenancy is an appropriate amount of time for tenants to apply to the Tribunal for a rent adjustment.

On balance we do not consider any further change is required. The majority of respondents to the relevant question believed that three months was an appropriate amount of time from the last rent review or commencement of a new tenancy. Similarly, our consideration of cases at the Tribunal suggests there does not seem to be a significant problem that warrants legislative change.

Extending the time period, or having no time period for such an application, could result in more cases being taken to the Tribunal. This means that landlords will face an increased period over which rent increases can be challenged. Three months appears to be an adequate period of time to allow tenants to gather recent and relevant evidence of rent for similar properties.

Alternatively, extending the three-month time period could result in some tenants benefiting. It could allow some tenants more time to gather necessary evidence in order to prove their case at the Tribunal and therefore could benefit from receiving payment of excess rent if the Tribunal orders this. However, it is anticipated that this benefit would be small and it is not considered necessary to extend the time period for this group of tenants.

Officials have not found that the three-month time period presents a significant barrier to tenants wishing to exercise their rights in this area of the RTA. Therefore, officials do not recommend a change to the legislation.

*Other options considered but withdrawn – guidance on market rents*
We also consulted on whether the RTA should include guidance on what constitutes 'substantially exceeding market rent.' On balance we do not consider changing the RTA to include guidance on what substantially exceeds market rent means for the purposes of challenging rent increases at the Tribunal is required.

Although the majority of respondents supported the idea of the RTA including guidance on what substantially exceeds market rent means, it appears from Tribunal cases that the main issue is confusion on what evidence is required to prove a case at the Tribunal.

It is not clear that an absence of a definition of "substantially exceeds" is causing a barrier to the interpretation of the market rent provisions. Based on various Tribunal cases the Tribunal appears to use ten percent above market rent as a guideline for what is acceptable. However, it does appear that tenants misunderstanding the provisions and showing up to their hearings without appropriate evidence is hindering the success of some claims. This could be improved through increased information and education activity about the market rent provisions.

Officials also consider that defining "substantially exceeds" may incentivise landlords to increase their rent to the maximum acceptable level so to gain maximum rent while staying within the law. For example, if it was legislated that ten percent was the threshold, there is a risk that rents would be pushed up by landlords setting their rents at nine percent over market rent. Therefore, allowing the Tribunal to retain discretion on what constitutes 'substantially exceeds market rent', mitigates the risk of this unhelpful signalling effect occurring.

*What did stakeholders think?*
There was strong support for rent increases to be limited to once every 12 months. 69 percent of all respondents supported the suggested change. 74 percent of tenants, 63 percent of landlords, 69 percent of property managers and 55 percent of social housing providers supported the proposal.

Many landlords and tenants noted that increasing rents annually is the current common practice. Therefore, they did not have a problem with the suggested change. Many respondents supported limiting rent increases to once every 12 months in order to align with how wages are traditionally increased.

**Rental bidding**
*Status quo*
This option would see the law remain as it is and landlords and tenants could continue to be free to negotiate on rental prices. The Government could consider non-regulatory improvements such

as by ensuring that landlords and property managers are aware of relevant Fair Trading Act 1986 and Consumer Guarantees Act 1993 requirements in regards to rental bidding.

*Option One: Prohibit landlords from requesting bids and advertising properties without a rental price listed* **[Preferred option]**
This option would create a new unlawful act which would prohibit landlords from:

- asking tenants to pay more than the advertised rental price for a property;
- prevent landlords, and their agents, from organising rental auctions to determine the rent payable to secure the tenancy;
- prohibit landlords from offering to make an applicant the successful tenant if they agree to pay slightly more rent for the property; and
- prohibit landlords, and their agents, from advertising a property without a specified rental price listed.

Under this option, tenants would still be allowed to offer, of their own volition, to pay more than the advertised rental price for a property and landlords would be allowed to accept this.

*Option Two: Prohibit landlords from requesting and accepting bids*
This option would create new unlawful acts for both landlords (and their agents) and tenants. The unlawful act for landlords would prohibit landlords from the behaviours outlined in Option One and would also prohibit landlords from accepting any rental bids offered to them voluntarily by tenants.

*Option Three: Requiring landlords to disclose to all other applicants when they have received a rental bid.*
This option would create a requirement for landlords to disclose to other prospective tenants when they intend to take offers of rental bids. This would also require landlords to let other applicants know during the process if they later decide to start accepting, or requesting, bids from prospective tenants.

The options would be complemented by the establishment of penalties that could be imposed by the Tribunal for breaches of the requirements. By way of example the penalties to accompany the proposed unlawful act of engaging in rental bidding as set out in options one and two would allow the Tribunal to order payment of exemplary damages of up to $1,500. It would also be possible for infringement notices to be given with a $500 fee for individual landlords and up to $1,500 for corporate landlords. Decisions around the most appropriate course of action would be made on a case by case basis and infringement notices would likely only be considered if the conduct in question was straightforward and easy to prove.

*What did stakeholders think?*
55 percent of respondents considered rental bidding should be banned, 11 percent thought it should be controlled, while 34 percent thinking nothing should be done about it.
The majority of landlords thought that nothing ought to be done about rental bidding, while the majority of tenants and property managers thought that rental bidding should be banned or controlled.

Tenants who indicated they did not support any sort of control on rental bidding commented that rental bidding provided an option for special cases to show their need for a property, such as having pets, or proximity to schools or employment.

71 percent of respondents thought that landlords and property managers should be prohibited from asking for and receiving rental bids as well as prohibiting prospective tenants from being able to bid for a property. Noting that this question was answered only by those who thought something should be done about rental bidding in the law, tenants were in favour of banning the process because they considered it unfair on those with limited incomes. Tenants also noted their desire

for a level playing field for all applicants. Some tenants and landlords indicated that prospective tenants should be able to bid in an open and controlled manner.

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
    - improve security and stability for tenants while maintaining adequate protection of landlords' interests
    - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
    - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[25]

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.

[25] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

# Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

### Rent setting

*How often may landlords increase rent?*

| | **Status Quo: Once every six months.** | **Option One: Limit rent increases to once every 12 months** (subject to the existing exception that allows for a rent increase where landlords have made significant property improvements or where the terms of an agreement have changed by negotiation). |
|---|---|---|
| **Effectiveness** | **0**<br>Not many respondents to the consultation have experienced rent increases at a six-month interval (approximately 12 percent). Of the remaining respondents, 43 percent had experienced rent increases once per year and the remaining 45 percent submitted "other". Submitters that chose "other" indicated that they experienced rent increases every two or three years. There were also some who noted longer periods between increases, some upwards of ten years.<br><br>Therefore, keeping rent increases as allowable once every six months will likely still result in many landlords only increasing rent once every 12 months or longer. This will retain the current medium-term rent price stability tenants currently have with many only experiencing rent increase once every 12 months, or longer. | **+**<br>The approach provides additional 'medium-term' rent price stability to tenants with periodic tenancy agreements compared with the status quo by extending the minimum period between rent increases. It is unlikely to reduce the overall amount of rent tenants pay in the medium-term as the landlord is still free to increase rents every 12 months to reflect market rates. Landlords will be mostly unaffected according to the messages received in submissions. During hot markets, limiting rent increases to once every 12 months may result in tenants experiencing larger rent increases at each interval. |

| | **Status Quo: Once every six months.** | **Option One: Limit rent increases to once every 12 months** (subject to the existing exception that allows for a rent increase where landlords have made significant property improvements or where the terms of an agreement have changed by negotiation). |
|---|---|---|
| **Proportional** | 0<br>The status quo is considered a proportionate response because as described above, the majority of landlords appear to increase rent at 12 month or longer periods despite their ability to do so more frequently. | +<br>The approach is a proportionate response that delivers a benefit to tenants (improved medium-term rent price stability) without imposing significant costs on tenants, landlords or the regulator (note it is anticipated that any cost to the landlord will be recovered by them through adjustments to rental prices at the designated periodic rent review times). |
| **Certainty** | 0<br>The status quo would provide regulated parties with certainty over their legal obligations because there would be no change to these. This option provides less certainty for tenants of their future housing costs in comparison to option 1 because it allows landlords to increase rent at more regular intervals. | +<br>The approach provides greater certainty around rental costs to tenants and around rental income to landlords compared to the status quo. The option is also relatively certain around parties' legal obligations because the legislative change would be simple, only changing the allowable time period between rent increases and not changing other related time periods (such as the time period of three months during which tenants can challenge rent increases at the Tribunal). |
| **Flexibility** | 0<br>The status quo provides landlords with more flexibility than the status quo because it allows them to raise rents more frequently at once every six months. | -<br>The approach provides landlords with less flexibility than with the status quo, as it places a further constraint (a minimum time period) on their ability to adjust rental prices. This could present risks if circumstances change, for example if landlord costs rise unexpectedly their ability to build this into their rent is constrained to the 12 month period. |
| **Durability** | 0<br>The status quo is able to work across all tenancy types. Allowing rent increases at six-month intervals is not considered optimal in the current hot market. | 0<br>No significant change from the status quo. During hot markets, limiting rent increases to once every 12 months may result in tenants experiencing larger rent increases at each interval. |
| **Fairness** | 0<br>The status quo allows landlords to more easily receive more rent at smaller intervals to reflect the service they provide. It is however not considered fair or reasonable for tenants to have their rent increased so regularly. It is clear from the way the market currently operates that it is more reasonable for rent increases to be at 12-month intervals. | 0<br>No significant change from the status quo. In return for increased rent price stability for tenants, landlords are still able to adjust their rental prices to reflect fair market value when they are allowed to adjust rents. It is considered fairer and more reasonable to align rent increases with employment pay rises which often happen annually. |
| **Overall assessment** | 0 | +<br>**Preferred option** – Delivers net benefits compared with the status quo. The proposal provides a modest improvement in medium-term rent price stability for tenants, with no significant costs to either tenants or landlords. |

**Rent setting**
*Rental Bidding*

| | Status Quo | Option 1: Prohibit landlords from requesting bids and advertising properties without a rental price listed | Option 2: Prohibit landlords from requesting and accepting bids | Option 3: Requiring landlords to disclose to all other applicants when they have received a rental bid |
|---|---|---|---|---|
| **Effectiveness** | **0**<br>It is clear from consultation that rental bidding is not a common occurrence in the New Zealand rental market. Therefore, retaining the status quo will not significantly impact good faith tenancy relationships as few tenants are currently experiencing the practice. | **+**<br>Approach would discourage but not prevent rental bidding. Does not improve transparency if any prospective tenants choose to offer a higher price than that offered to secure the property. It will improve good faith tenancy relationships because tenants will no longer be pressured to bid on rental properties therefore successful tenants will be more likely to trust their landlord. Similarly, prospective tenants will be less likely to miss out on a property due to rental bidding taking place. | **+**<br>Approach would make rental bidding illegal which would help ensure the advertised rental price was the actual rental price for all prospective tenants. It will however be difficult to enforce because tenants may not wish to sour their newly established relationship with their landlord and prospective tenants will likely not be aware that this process has taken place.<br>It will rely on either (a) successful tenants reporting their landlords for engaging in rental bidding, or (b) prospective tenants reporting landlords. | **+**<br>Approach would not suppress rental bidding but would make the process more transparent. This would improve good faith tenancy relationships because tenants would be aware of the letting process they are involved in. It could also have the adverse effect of signalling that the government supports bidding over rental properties which may increase the occurrence of the practice. This option would also be difficult to enforce because it would be difficult to ascertain when a landlord has or has not disclosed adequately. |
| **Proportionality** | **0**<br>The status quo is proportionate to the benefits identified because it would not require a legislative change. | **+**<br>While landlords are unable to benefit from soliciting rental bids, they do not face any implementation costs and are still able to set a fair market rent for their property before advertising it. No costs to tenants. | **-**<br>Tenants receive clear benefit with no direct cost. While landlords are unable to benefit from rental bidding, they do not incur significant implementation costs and are still able to set a fair market rent for their property before advertising it. Some landlords and their agents who have previously relied on rental bidding to determine rent and the successful tenant may have to change their business model which could have some costs.<br>Consultation showed that rental bidding is not a common occurrence therefore such a strict legislative change is disproportionate to the perceived problem. | **-**<br>While the approach offers the benefit of added transparency to prospective tenants, it imposes an additional cost on landlords who would be required to inform other prospective tenants. |
| **Certainty** | **0**<br>The status quo does not provide tenants with certainty over their future housing costs because it is not always apparent when rental bidding will take place over a rental property. The status quo also creates situations where | **+**<br>Landlord's obligations are specified and are expected to discourage rental bidding, but to the extent that rental bidding is still able to take place, there is remaining uncertainty for tenants around their future housing costs. | **++**<br>Provides more certainty than the status quo to both tenants and landlords. No legal scope for increases above advertised rental price to be requested or accepted. | **+**<br>Provides more certainty to tenants than the status quo, in that they will be aware of rental bids when they occur, but still doesn't provide certainty around the final rental price. |

| | Status Quo | Option 1: Prohibit landlords from requesting bids and advertising properties without a rental price listed | Option 2: Prohibit landlords from requesting and accepting bids | Option 3: Requiring landlords to disclose to all other applicants when they have received a rental bid |
|---|---|---|---|---|
| | tenants will apply for a property within their price range but then no longer be able to afford it once rental bidding has taken place. | | | |
| **Flexibility** | **0**<br>The status quo provides flexibility to landlords because it allows them to use rental bidding in their tenant selection and rent determining processes. It also provides flexibility for some tenants by allowing them to offer to pay more rent in order to secure a rental property where they wish to. | **-**<br>Reduces the flexibility available to the landlord compared to the status quo by preventing solicitation of bids or advertising a property without a price. | **--**<br>Reduces the flexibility available to the landlord compared to the status quo by preventing solicitation of bids or advertising a property without a price. It also reduces a tenant's flexibility by preventing them from being able to offer to pay more for a property where they wish to. | **0/-**<br>No significant reduction in flexibility available to the landlord. While landlords have a new requirement to meet there is no change in their ability to consider rental bids as part of their tenant selection process. |
| **Durability** | **0**<br>The status quo can create effective tenancy arrangements in both hot and cold markets by bidding up the rent in a hot market and bidding down in a cold market. However, this does mean that in a hot market, rental bidding has the potential to significantly exacerbate rents. | 0<br>No significant difference from the status quo in terms of future proofing the legislation. | **-**<br>This option is slightly less able to respond to a changing market because it prevents tenants and landlords from being able to negotiate on rent to reflect the state of the market. | **-**<br>This option will be slightly more difficult for landlords to achieve in a hot market because there may be a significant amount of applicants that they will need to contact in order to let them know that rental bidding is taking place. |
| **Fairness** | **0**<br>Non-intervention with rental bidding may give the impression that the government supports the practice of rental bidding. This may increase the occurrence of the practice and increase unfairness in the market. | **+**<br>Approach does not improve transparency of rental bidding that occurs. It does however promote fairness by allowing tenants to offer to pay more rent to secure a property where they might usually be overlooked due to discrimination, or in situations where they require that specific property due to its location near to a school, for example. | **+**<br>This option improves fairness for tenants because they know that when they apply for a property the rent advertised will be the rent paid. Landlords are still able to advertised and receive a fair market rent but they will need to carry out their due diligence in determining this rent amount. | **0/+**<br>All tenants have the same opportunity to offer a 'fair market' price, in the event rental bidding occurs.<br><br>This may give the impression that the government supports the practice of rental bidding. |

| | Status Quo | Option 1: Prohibit landlords from requesting bids and advertising properties without a rental price listed | Option 2: Prohibit landlords from requesting and accepting bids | Option 3: Requiring landlords to disclose to all other applicants when they have received a rental bid |
|---|---|---|---|---|
| **Overall assessment** | | **+**<br>**Preferred option –** Delivers modest net benefits compared with the status quo. Would discourage but not prevent rental bidding. Does not deliver a more transparent process. The ability for tenants to offer to pay more rent in order to secure a property in certain circumstances is considered beneficial. | **0/+**<br>Delivers marginal net benefits compared with the status quo. Would make rental bidding illegal but would be difficult to enforce and could be considered a disproportionate response to the problem identified. | **0/+**<br>Delivers marginal net benefits compared with the status quo. Would make any rental bidding that takes place more transparent. Risk that this approach alone would encourage an increase in rental bidding. It may also be difficult for landlords to comply in some scenarios. |

## 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?**

**The preferred approach**

*Rent-Setting:* We propose providing greater certainty to tenants in relation to their rental costs by:

- Limiting rent increases to once every 12 months.

*Rental bidding*: We propose providing greater certainty to tenants in relation to their rental housing costs and improving good faith tenancy relationships by:

Creating a new unlawful act which would prohibit:

- advertising rental properties with no rental price listed
- requesting applicants pay more in order to secure a rental property
- organising an auction over a rental property
- offering to make an applicant the successful tenant if they agree to pay more rent for the property.

**Rationale**

While our proposed approach does not prohibit all forms of rental bidding, it does reduce the likelihood of it occurring. This is because it prevents landlords and their agents from soliciting rental bids but allows tenants to offer to pay more for a property of their own volition. Limiting rent increases to once every 12 months for periodic tenancies, is not anticipated to change the overall cost of rental accommodation (or impact adversely on landlords' income, but it will provide more stability and certainty for tenants about the medium-term rental costs.

# Access to justice

## Section 2: Problem definition and objectives

**2.1 What is the context within which action is proposed?**

Privacy in the tenancy space has recently been receiving high levels of attention in the media, and concerns have been raised by stakeholders including tenant advocates.

It is becoming common practice for property managers and some landlords to search Tribunal rulings as part of their process to vet potential new tenants. Subscription services are available that compile this information for vetting purposes. We understand that landlords may primarily use these processes to avoid renting to tenants that have breached their responsibilities under the RTA. However, anecdotally, we hear from tenant advocates and property managers that tenants whose names appear in one of these searches may be discounted as a candidate for the tenancy regardless of the particulars of the case – whether they breached the RTA or successfully enforced their rights under it.

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

In New Zealand, the Privacy Act 1993 sets a framework for how personal information must be dealt with. It applies broadly to all "agencies" which includes landlords, tenants and property managers.[26] The Office of the Privacy Commissioner investigates complaints around breaches of privacy and raises awareness.

26 The Privacy Act 1993 defined agency as any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department. Section 95 reads as follows: The Tribunal may, on the application of any party to the proceedings or on its own initiative, and after having due regard to the interests of the parties and to the public interest, make an order prohibiting the

Section 95 of the RTA outlines that Tribunal proceedings are usually to be held in public. On the face of it, Section 95 (3) can be interpreted as providing a right for a party to apply to suppress personal information, or for the Tribunal to do this on its own initiative, if it is deemed to be in the interests of the parties and the public interest.[27]

Suppression powers may become more important in the context of tenants self-enforcing the healthy homes standards or exercising new rights proposed in the context of this reform more generally.

Comparable Tribunals in New Zealand and overseas[28] tend to publish as the default but allow for removal of identifying details depending on the circumstances. Employment Relations Authority hearings are open with decisions published, but the Authority can prohibit publication of decisions or names if it sees fit.[29]

## 2.3 What is the policy problem or opportunity?

Suppression should occur when there is a legitimate interest that outweighs open justice and transparency, for example if publication will cause severe hardship to a party. However, a lack of clarity and consensus on powers for the Tribunal to suppress identifying details in published decisions has been identified.

We have been advised by the Principal Tenancy Adjudicator that section 95 of the RTA has been interpreted as requiring publication of the decision and not providing for identifying details to be removed. This interpretation is that a report or description of the proceedings can be withheld or redacted but not the Tribunal decision itself. We understand that identifying details have been removed in exceptional circumstances but that there is concern that there is not a solid legal basis for this.

In some circumstances, for example domestic violence, the safety of parties may be being undermined. In a sample taken of Tribunal rulings involving domestic violence, names of victims and information about the violence have not been redacted or removed from decisions. This may be indicative that consideration of removal of identifying details is not a widespread Tribunal practice. We note that generally in a Court situation, names may be suppressed if publication would be likely to cause undue hardship to the victim or endanger the safety of the victim.

There is an opportunity to clarify the legal powers the Tribunal has in this regard so that operational policies can then be considered to improve privacy and reduce adverse effects for parties in the tenancy context where it is reasonable to do so.

Submitters have raised that it is becoming common practice for property managers and some landlords to search Tribunal rulings as part of their process to vet potential new tenants.

Subscription services exist that compile this information for vetting purposes. We understand that landlords may primarily use these processes to avoid renting to tenants who have breached their responsibilities under the RTA. However, concerns have been raised that tenants whose names appear in one of these searches may be discounted as a candidate for the tenancy regardless of

[27] Section 95 (3) reads as follows: The Tribunal may, on the application of any party to the proceedings or on its own initiative, and after having due regard to the interests of the parties and to the public interest, make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings at any hearing before it (whether held in public or in private); but no such order shall prohibit the publication of any decision of the Tribunal.

[28] For example, in the State of Victoria, Australia and Scotland decisions are published with names as the default.

[29] Section 10, Employment Relations Act 2000.

the particulars of the case – whether they breached the RTA or successfully enforced their rights under it.

This effect of this may be that tenants who have transacted with the justice system could be disadvantaged in the vetting and selection process for future properties. Tenants have told us during consultation that they anticipate these adverse effects and that this acts as a disincentive for them to take a case to enforce their rights. If the disincentive to bring a case is strong, the meaningful ability to enforce rights and access a remedy may effectively be absent and tenants' access to justice may be at stake in some cases.

The opportunity is to consider whether this is compromising the enforcement approach of the RTA which partly relies on parties self-enforcing their rights and if so, whether change is justified to correct for this.

### 2.5 What do stakeholders think?

Privacy and access to justice were not specifically consulted on in the RTA reform process, however, following stakeholders raising concerns, officials have undertaken further analysis. In particular, the Tenants Advocacy Network has raised issues about the adverse impacts of tenant's names being published in Tribunal decisions. They proposed that all decisions be anonymised.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

*Status quo*

Under this option, section 95 of the RTA would remain as it is. The uncertainty and lack of clarity that has been identified as to when the Tribunal may anonymise its written decisions would remain. It would likely continue to be applied only very rarely in exceptional circumstances. Adjudicators would likely remain uncertain of the legal basis of its use and whether it redaction would withstand challenge.

Parties to Tribunal proceedings would likely have their privacy compromised in some situations. Identifying details may not be removed from Tribunal decisions when this is in the interests of the parties and the public interest, including where publishing a party's name would cause extreme hardship.

Property managers and some landlords would likely continue to search Tribunal rulings, and use subscription services that compile this information, as part of their process to vet potential new tenants. Use and number of subscription services in the market could increase if there continues to be demand for these. These searches may capture not just legitimate vetting to avoid a tenant that has breached their obligations under the RTA, but also tenants that have successfully enforced their rights. Tenants who have transacted with the justice system, even if just to enforce rights, may be disadvantaged in vetting and selection processes for new tenancies.

Parties would continue to face a disincentive to enforcing their rights at the Tribunal resulting in a situation where considerations of open justice taking take precedence over a party's access to justice.

*Options*

We have considered three options against the status quo:

- Option One: Change legislation to clarify that identifying details can be removed from decisions if the adjudicator considers this is justified and generally educate the market about the right to apply for this if they consider their circumstances warrant it.

- Option Two **[Preferred option]**: Implement option one and also change legislation to make it the default that in cases where a party has successfully enforced their rights or successfully defended a case identifying details about the successful party will not be published.
- Option Three: Anonymise all Tribunal Decisions.

Both options one and two would clarify, for the avoidance of doubt, how and when the section 95 powers to suppress identifying details apply. This would remove any doubt that identifying details can be redacted when this is in the interests of the parties and the public interest, including where publication will cause extreme hardship. It would include new information and education to parties about their right to apply for identifying details to be removed and how they would go about this in practice.

As part of this, HUD would also work with MBIE and the Tribunal to see if there are ways to optimise the process whereby parties who are subject to a Tribunal hearing are informed of their rights and aware that they can apply to prevent the publication of identifying information.

**[Preferred option]** Option two would go further by adding a separate process that would apply when a party has successfully enforced their rights or successfully defended a case.
The default position would be changed to non-publication of identifying details when:

- the party has successfully enforced their rights or successfully defended a case;[30] and
- the decision maker is satisfied that if the identifying details about the successful party were published it could lead to adverse consequences for the party involved.[31]

The scope of this approach would not include where a party has breached their obligations under the RTA because of the legitimate public interest in this information. The approach should also not include where a party has brought a claim and been unsuccessful as this could have the effect of increasing the frequency of vexatious claims.

Option three would mean that all Tribunal decisions are anonymised. Decisions would still be published but identifying details of the parties would always be removed prior to publication.

*What did stakeholders think?*
Privacy was not specifically consulted on in the RTA reform process, however, following stakeholders raising concerns, officials have undertaken further analysis. In particular, the Tenants Advocacy Network has raised issues about the adverse impacts of tenant's names being published in Tribunal decisions. They proposed that all decisions be anonymised.

[30] The party would have to be wholly successful or successfully defend all claims for the policy intent of this to apply and identifying details removed. If there are elements of the decision where the party has breached their obligations, then there is a public interest in details being published.

[31] This threshold would need to be reasonably low. The Tribunal would need to be able to consider the risk that landlords will use Tribunal data inappropriately to discriminate against tenants who enforce their rights in the Tribunal as an adverse consequence.

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
    - improve security and stability for tenants while maintaining adequate protection of landlords' interests
    - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
    - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[32]

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.

[32] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

### Privacy

| | Status Quo | Option 1: Clarify the RTA to remove any doubt that identifying details can be removed when this is in the interests of the parties and the public interest | Option 2: Clarify the RTA to remove any doubt that identifying details can be removed and, make it the default that in cases where a party has successfully enforced their rights or defended a claim against them, identifying details will be removed | Option 3: Anonymise all Tribunal decisions |
|---|---|---|---|---|
| **Effectiveness** | **0**<br>Parties access to justice and privacy are being undermined because powers to suppress identifying details when the circumstances warrant it are not clear. This is compromising the enforcement approach of the RTA, which partly relies on parties self-enforcing their rights.<br>In some circumstances, for example domestic violence, the safety of parties may be being undermined. | **+**<br>More effective than the status quo to protect privacy in the tenancy context.<br>This would increase clarity, awareness and use of the power that the Tribunal currently has to remove identifying details.<br>Does not, however, provide certainty at the outset of the proceedings that details will be removed in any given situation, so will not be as effective as option 2 to remove the disincentive to parties enforcing their rights<br>While it will be open for adjudicators to decide to remove identifying details under the legal tests, some applicants may still need to apply for suppression, and some may have difficulty doing this. | **++**<br>More effective than the status quo and option 1 to protect privacy in the tenancy context and remove adverse effects of enforcing rights.<br>Would be effective to give parties confidence at the outset of a Tribunal process that their identifying details will be removed if the relevant legal tests are met, thus providing an increased ability to remove disincentives to enforcing rights in comparison to option 1.<br>Likely to capture a wider scope of cases in comparison to option 1. | **0**<br>This would be effective to remove the adverse consequences and disincentives that parties have told us exist to them enforcing their rights.<br>However, it is likely to undermine landlords' interests as it would remove the ability for them to legitimately vet prospective tenants. It would also be counter to the general public interest in having this information available.<br>The publishing of decisions with identifying details where a party has breached their RTA obligations provides an overall deterrence effect which would be lost. |

| | Status Quo | Option 1: Clarify the RTA to remove any doubt that identifying details can be removed when this is in the interests of the parties and the public interest | Option 2: Clarify the RTA to remove any doubt that identifying details can be removed and, make it the default that in cases where a party has successfully enforced their rights or defended a claim against them, identifying details will be removed | Option 3: Anonymise all Tribunal decisions |
|---|---|---|---|---|
| **Proportional** | 0<br>The status quo is not a proportional approach. Costs to individuals if their privacy is not appropriately protected can be very high depending on the circumstances. | +<br>This option will deliver substantial benefits to parties that meet the requirements and have their identifying details suppressed.<br>Improves rights to privacy but does not undermine landlords' legitimate interests in accessing information.<br>Is not expected to address the issues identified to the same extent as option 2.<br>Some cost to the Tribunal to operationalise.<br>This maintains the open nature of the Tribunal and the assumption that decisions are published. | +<br>Proportional as it is expected to address the issues identified in a cost-efficient way.<br>Improves rights to privacy but does not undermine landlords' legitimate interests in accessing information.<br>Some cost to the Tribunal to operationalise, likely higher than the costs for option 1 as the volume of cases that would need to be anonymised would likely be higher.<br>May be viewed as disproportionate because it changes the default of publishing all details in a way that could be viewed as counter to the principles of open justice and transparency. This is mitigated by the policy design of targeting only successful parties and only removing identifying details, rather than withholding the whole decision. | - -<br>Not proportional as it would undermine the principles of open justice and transparency. The approach does not specifically target the problems identified and the cases in which they are present, but rather takes a blanket approach to all Tribunal decisions.<br>May incur high costs to operationalise. |
| **Certainty** | 0<br>The Tribunal has identified that there are high levels of uncertainty as to how the current legal tests apply under the status quo.<br>Parties to a proceeding have low predictability as to how the legal tests will apply and whether their identifying details will be removed in any particular case. | +<br>Increases certainty of how the RTA powers to remove identifying details apply. There may still be some variability as to how legal tests are applied.<br>Parties will not however, have certainty at the outset of the proceeding and will still have to apply for name suppression. The adjudicator may also decide on their own volition that it is appropriate in the particular case. | +<br>Provides high certainty that identifying details will be removed where the circumstances warrant it but still depends on whether the legal tests are met. | ++<br>Provide complete certainty and predictability that identifying details will be removed. |
| **Flexibility** | 0<br>The status quo delivers low flexibility because there is a lack of clarity as to how adjudicators can appropriately exercise discretion under section 95 of the RTA. | +<br>While the approach primarily aims to achieve certainty and clarity, adjudicator discretion to applying the legal tests would still play some role depending on the circumstances. The approach therefore delivers appropriate flexibility. | +<br>While the approach primarily aims to achieve certainty and clarity, adjudicator discretion to applying the legal tests would still play some role depending on the circumstances. The approach therefore delivers appropriate flexibility.<br>In comparison to option 1, higher flexibility is achieved as the scope of powers | - -<br>No flexibility as this is a blanket approach. |

| | Status Quo | Option 1: Clarify the RTA to remove any doubt that identifying details can be removed when this is in the interests of the parties and the public interest | Option 2: Clarify the RTA to remove any doubt that identifying details can be removed and, make it the default that in cases where a party has successfully enforced their rights or defended a claim against them, identifying details will be removed | Option 3: Anonymise all Tribunal decisions |
|---|---|---|---|---|
| | | | provided for would be wider and would be able to be applied in a wider range of situations. | |
| **Durability** | 0<br>Not durable as there is a lack of consistent application and lack of clarity as to the legal tests that must be applied. | +<br>Improved durability in comparison to the status quo. | +<br>Improved durability in comparison to the status quo.<br>However, changing the default may target an issue that is exacerbated in the current hot market and may not be as relevant in different market conditions. | - -<br>Not likely to be durable and could be susceptible to challenge for the following reasons.<br>The approach would remove a tool that landlords and property managers use to legitimately vet tenants and remove some ability to protect their interest and their asset by not renting to tenants that have breached their RTA obligations in the past.<br>Also likely to be viewed as undermining open justice and transparency. |
| **Fairness** | 0<br>A lack of fairness exists as parties are not having identifying details removed when this would be fair, reasonable and sometimes also pivotal to protecting safety and other interests. | +<br>High levels of fairness for all parties as this allows for the protection of privacy when appropriate while still ensuring that landlords are able to legitimately protect their interests.<br>Brings the Tribunal in line with the approach taken by comparable bodies such as the Employment Relations Authority as per the Employment Relations Act. | ++<br>High level of fairness for all parties as this allows for the protection of privacy when appropriate while still ensuring that landlords are able to legitimately protect their interests.<br>Higher levels of fairness in comparison to option 1 as this goes further to remove adverse effects and disincentives for successful parties.<br>Information from the decisions in scope of this approach does not have a legitimate vetting use so removal from the public domain is not unfair to landlords and property managers. | - -<br>Lack of fairness to landlords and property managers as it will remove their ability to legitimately assess whether prospective tenants are likely to meet their RTA obligations. |

| | Status Quo | Option 1: Clarify the RTA to remove any doubt that identifying details can be removed when this is in the interests of the parties and the public interest | Option 2: Clarify the RTA to remove any doubt that identifying details can be removed and, make it the default that in cases where a party has successfully enforced their rights or defended a claim against them, identifying details will be removed | Option 3: Anonymise all Tribunal decisions |
|---|---|---|---|---|
| **Overall assessment** | | + Delivers net benefits compared with the status quo. | ++ **Preferred option:** Delivers net benefits compared with the status quo. More effective than option 1 primarily as it is more effective to remove adverse consequences and disincentives for parties that have successfully enforced their rights under the RTA. | - - Overall this is worse than the status quo. |

## 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?**

**Preferred approach**

We propose ensuring good practice privacy principals are applied in the residential tenancy system by:

- Clarifying that identifying details can be removed from Tribunal decisions if this is in the interests of the parties and the public interest; and
- Making it the default that in cases where a party has successfully enforced their rights or defended a claim against them, and publishing will lead to adverse consequences, identifying details will be removed.

**Rationale**

Our proposed approach will improve privacy in the tenancy context and lead to improved enforcement if the RTA generally.

The Tribunal powers to remove identifying details will be clarified. This will enable operational policies to be developed to ensure name suppression can occur when there is a legitimate interest that outweighs open justice and transparency, for example if publication will cause severe hardship to a party.

The disincentive that parties face to enforcing their rights will be mitigated leading to higher enforcement and compliance with the RTA. Parties will no longer anticipate that if they enforce their rights at the Tribunal, they could face disadvantage in future tenancy applications given that this information would be publicly available and is commonly used to vet prospective tenants.

# Assignment

## Section 2: Problem definition and objectives

**2.1 What is the context within which action is proposed?**

Fixed-term tenancies are thought to be the most common offering in the market. From time-to-time tenants may seek to assign their interests to someone else due to circumstances that could not be have been foreseen at the start of the agreement. A discrepancy exists between tenancy agreements that have clauses blocking assignment and those that don't which can lead to a divergence of outcomes for people in the market.

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

Fixed-term agreements give both tenants and landlords increased certainty when compared to periodic agreements as neither party is generally able to break the lease before the agreed end date.

Section 44 (3) of the RTA states that a landlord must not withhold consent to assignment, subletting and otherwise parting with the property unreasonably. This only applies if there is no clause in the tenancy agreement prohibiting subletting as per the RTA requirements. Landlords also must not attach unreasonable conditions about when subletting, assignment and otherwise parting with the property occurs. The policy intent of section 44 (3) is to facilitate good faith and reasonable decision making.

A new section 44 (2A) was added from 1 October 2010 by the Residential Tenancies Amendment Act 2010 which makes it an unlawful act if the tenant sublets or otherwise parts with possession in contravention of a provision prohibiting subletting or parting with possession, or without the landlord's consent, for which exemplary damages may be awarded of up to $1,000. At the point these changes were made it does not appear that any changes to the ability to prohibit

assignment, subletting or otherwise parting with the property through the tenancy agreement were contemplated.

### 2.3 What is the policy problem or opportunity?

The current law is creating a discrepancy between tenancies where assignment of a tenant's interests has been prohibited outright through the tenancy agreement and all other situations where assignment requests must be considered on a case-by-case basis and not be declined unreasonably.

This means that when a clause prohibiting assignment is included in the tenancy agreement, tenants are not able to assign their interest if their circumstances change over the course of the tenancy even if this is reasonable in the circumstances. The opportunity is to consider whether the reforms objective of promoting good faith relationships could be better met by standardising how all requests for assignment are considered.

Landlords and property managers may be incentivised to insert clauses prohibiting assignment to reduce administrative burden and reduce perceived or real risks to their predictability and stability of rental income. For property managers, incentives might be further heightened to take this approach across whole portfolios. On the other hand, some submitters told us that landlords usually let tenants break fixed-term agreements to avoid having unhappy tenants in their property.

### 2.5 What do stakeholders think?

In submissions, 88 percent of landlords and 49 percent of tenants did not think that the Government should investigate further removing fixed-term tenancies from the market. Officials have recommended in phase 1 of this package of proposals that fixed-term tenancies remain in the market given the security of tenure benefits.

In this context, mitigations to address the messages from tenants in submissions have been considered. These were that while fixed-term agreements can provide certainty and security, being committed to a fixed-term tenancy can sometimes be problematic, financially and otherwise, if circumstances change.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

*Status Quo*

The extent of clauses prohibiting assignment of a tenant's interest in a fixed-term tenancy to someone else outright may increase, decrease or remain at current levels. Tenants who encounter unforeseen circumstances over the course a fixed-term and need to assign their interest to another viable candidate for the property would have no option other than to apply to the Tribunal and demonstrate that the hardship they will experience by staying in the tenancy trumps the hardship the landlord would experience from them breaking it.

*Option* **[Preferred option]**

We have designed a single regulatory option to remove the discrepancy that exists where tenancy agreements with a specific clause cannot be assigned but tenancy agreements without that clause can be assigned when it is reasonable to do so. This option would bring all assignment requests under the existing section 44(3) requirement that landlords shall not withhold consent to assignment unreasonably, nor attach any unreasonable conditions to it. This would standardise the process to be followed in all situations where a tenant wishes to assign their interest in the tenancy to another viable candidate.

The section 44(3) requirement is an existing legal test and would remain unchanged. All assignment requests would simply be brought under this existing reasonableness requirement. This is currently decided by the Tribunal on a case by case basis.

As part of this option, guidance would be issued on when a request to assign a tenancy is reasonable.

An assessment of whether declining an assignment request is unreasonable will need to occur on a case by case basis and is likely to be guided by the following parameters:

a. whether there is a legitimate and pressing reason why the tenant wants to assign, sublease or otherwise part with possession
b. the length that the fixed-term would continue if upheld
c. the impact that assignment will have on the landlord, both in terms of lost revenue and administrative burden, and considering also that they are able to mitigate this by recovering reasonable expenses under section 44(5)
d. whether the landlord can show with reference to evidence that the new tenant that the current tenant has found is not a viable option and/or there is a reasonably foreseeable chance that they will not meet their obligations under the RTA
e. any other matter the Tribunal considers relevant.

A Court of Appeal case has considered this in the context of a similar obligation in the Property Law Act 2007 regarding commercial leases.[33] In that case, it was considered that refusal to give consent must be connected to the original tenant and must directly affect the subject matter of the contract.

Landlords would still be able to charge the tenant reasonable expenses incurred under section 44(5). For example, landlords could charge the cost of performing a credit check on the candidate presented.

**What did stakeholders think?**

In submissions, 88 percent of landlords and 49 percent of tenants did not think that the Government should investigate further removing fixed-term tenancies from the market. Officials have recommended in phase 1 of this package of proposals that fixed-term tenancies remain in the market given the security of tenure benefits.

In this context, mitigations to address the messages from tenants in submissions have been considered. These were that while fixed-term agreements can provide certainty and security, being committed to a fixed-term tenancy can sometimes be problematic, financially and otherwise, if circumstances change.

[33] *Corunna Bay Holdings Ltd v Robert Gracie Dean Ltd* [2002] 2 NZLR 186 (CA).

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
    - improve security and stability for tenants while maintaining adequate protection of landlords' interests
    - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
    - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[34]

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.

[34] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

# Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

### Assignment

| | Status Quo | Option 1 – change the law so that landlords can only decline a request to assign a property when this is reasonable in the circumstances, regardless of whether there is a clause prohibiting assignment in the agreement. |
|---|---|---|
| **Effectiveness** | 0<br>The current law is creating a discrepancy between tenancies where assignment has been prohibited outright through the tenancy agreement and tenancies where assignment requests must not be declined if they are reasonable.<br>This means that when a clause prohibiting assignment is included in the tenancy agreement, tenants are not able to assign even if this is reasonable in the circumstances.<br>This approach is not considered conducive to good faith tenancy relationships. | +<br>This approach would be effective to ensure all changes in circumstance are treated the same way and considered on a case by case basis on their merits.<br>By addressing the discrepancy in assignment requirements, option 1 brings consistency to the law and modernises the regulatory regime. It also promotes good faith relationships and a more appropriate balancing of tenant and landlord rights and responsibilities. |
| **Proportionality** | 0<br>The status quo places an unreasonable cost burden on tenants if they are unable to assign their tenancy in circumstances when this would be reasonable, such as when they have presented an eligible alternative.<br>Under the status quo landlords are able to protect their interests, particularly their predictability of | +<br>Mitigates disproportionate costs in cases where due to unforeseen circumstances tenants may need to assign the tenancy and have found an eligible tenant to take their place but are prohibited through the tenancy agreement of making this change.<br>There will be some increased costs and administrative burden to landlords incurred when they must accept a reasonable assignment request. This is, however, mitigated by the fact that reasonable recovery of costs is allowed under section 44(5) of the RTA. |

| | Status Quo | Option 1 – change the law so that landlords can only decline a request to assign a property when this is reasonable in the circumstances, regardless of whether there is a clause prohibiting assignment in the agreement. |
|---|---|---|
| | income, by prohibiting assignment. This provides certainty that the tenant will remain for the length of the fixed-term tenancy, subject to the ability to apply to the Tribunal to have the length shorted under section 66 of the RTA. | Landlords are able to legitimately protect their interests as they will be able to decline a request to assign that is not reasonable. There may however, be some increased risks at the margin due to a lack of complete information being available at the point when a decision about assignment occurs.<br>The reasonableness of an assignment request is an existing legal test and would be assessed on a case by case basis, but landlords will be able to decline under this test if they can demonstrate that the prospective tenant is not a viable option. |
| **Certainty** | **0**<br>Landlords and tenants both have certainty that assignment will not occur if a clause prohibits this. There is, however, a lack of overall predictability to the regulatory regime as it applies to assignment given that assignment requests are treated differently based on whether a clause has prohibited them or not. | **0**<br>Some uncertainty as to how the reasonableness test may apply in any given situation. However, this uncertainty is already present under the status quo legal test. The proposal also includes consideration of guidance on when a request to assign will be reasonable. This may further mitigate uncertainty.<br>This increases uncertainty for landlords as they would no longer be able to prohibit assignment outright. Decreases in financial certainty are mitigated by the fact that landlords can recover reasonable costs under the current section 44(5) of the RTA.<br>There are overall predictability benefits to option 1 given that all assignment requests would be treated in the same way. |
| **Flexibility** | **0**<br>The status quo provides flexibility to landlords to prohibit assignment when they choose to, but at the expense of flexibility for tenants to assign in situations when their circumstances have changed, and this would be reasonable. | **+**<br>Bringing all assignment requests under the existing legal test of reasonableness provides appropriate flexibility for both parties to consider requesting and accepting assignment requests on a case by case basis and under the reasonableness framework.<br>Landlords lose the flexibility to prohibit assignment outright through the tenancy agreement.<br>Tribunal adjudicators would retain appropriate discretion to assess any claims at the Tribunal on a case by case basis. |
| **Durability** | **0**<br>The status quo is not reasonably durable. | **++**<br>The option isn't considered any more or less durable than the status quo. |
| **Fairness** | **0**<br>Lack of fairness exists as it could be seen as somewhat arbitrary that reasonable assignment requests can be declined if the tenancy agreement prohibits them.<br>The policy intent of the current section 44 (5) of the RTA that states that requests shall not be unreasonably declined is essentially being circumvented in these cases. | **++**<br>The option increases fairness in comparison to the status quo.<br>Modern renting law focusing on good faith relationships should treat all changes in circumstance in a similar way, and the presence of clauses prohibiting assignment are preventing this.<br>Assignment requests would be considered on a case by case basis and on the merits of the specific request. Blanket approaches prohibiting assignment regardless of the circumstances would not be allowed. |
| **Overall assessment** | 0 | **+**<br>**Preferred option:** Provides net benefits in relation to the status quo. |

## 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? |
|---|
| **Preferred approach**<br>We propose to remove the discrepancy that exists between tenancies where assignment has been prohibited outright through the tenancy agreement and all other tenancies where assignment requests must be considered on a case-by-case basis and not be declined unreasonably.<br><br>**Rationale**<br>The discrepancy between tenancies where assignment of a tenant's interests has been prohibited outright through the tenancy agreement and all other situations where assignment requests must be considered on a case-by-case basis and not be declined unreasonably will be removed. The approach to assignment requests will be standardised to bring all requests under the latter existing legal test.<br><br>This will promote good faith relationships given that each assignment request will be considered on a case by case basis and on its merits. |

# Fees charged upon consent to assignment, subletting or parting with possession of the premises

## Section 2: Problem definition and objectives

| 2.1 What is the context within which action is proposed? |
|---|
| The RTA requires any fee charged fees charged upon consent to assignment, subletting or parting with possession of the premises (also sometimes referred to as "break-lease fees) to be reasonable. During consultation on the RTA reform submitters raised concerns that there is large variance in the fees charged in this context. Recent cases at the Tribunal show that the amount charged has been found to be unreasonable and has been lowered in some situations.[35] |

| 2.2 What regulatory system, or systems, are already in place? |
|---|
| Section 44 (5) of the RTA allows landlords to recover reasonable expenses incurred in assignment, subletting or parting of possession. Section 44 (3) also states that landlords cannot attach unreasonable conditions to agreement to sublet, assign, or otherwise part with possession. During consultation on the RTA reform submitters raised concerns that there is large variance in the fees charged in this context. Recent cases at the Tribunal show that the amount charged has been found to be unreasonable and has been lowered in some situations.[36]<br><br>The Residential Tenancies (Prohibition of Lettings Fees) Amendment Act 2018 made it illegal for property managers to charge prospective tenants a fee for securing a rental property. However, no changes were made to the rules around charged fees to existing tenants that are seeking to break a fixed-term tenancy.<br><br>Recent Tribunal cases (including following the prohibition on letting fees) confirm that the Tribunal has considered that a fee charged upon consent to assignment, subletting or parting with possession of the premises representing more than the actual costs to the landlord for re- |

[35] In [2019] NZTT Waitakere 4189433 the break-lease fee was lowered from $805 to $211. In [2019] NZTT Christchurch 4180494 the fee was lowered from $454.25 to $120.

[36] In [2019] NZTT Waitakere 4189433 the break-lease fee was lowered from $805 to $211. In [2019] NZTT Christchurch 4180494 the fee was lowered from $454.25 to $120.

advertising and finding new tenants is not reasonable. The Tribunal has lowered the amounts that tenants must pay in these cases such as these.[37]

In some other recent cases,[38] a full fee charged upon consent to assignment, subletting or parting with possession of the premises has been upheld without an assessment of its correlation to the actual costs incurred. In these cases is appears that an assessment of the reasonableness of these fees may have not been undertaken as tenants did not make a direct claim that they were unreasonable.

### 2.3 What is the policy problem or opportunity?

The RTA already prohibits landlords and property managers from charging unreasonable fees when a fixed-term tenancy is ended early, but in practice this may be difficult to enforce as there is no requirement in the law to disclose how a fee has been calculated. Tenants can't challenge where a specific component of a fee they are required to pay is reasonable if they don't have visibility of that cost. Tenants often have little bargaining power in relation to fees charged upon consent to assignment, subletting or parting with possession of the premises and they can decrease rental affordability, choice and mobility. Consumer choice is limited as they would be unlikely to be aware of process and policies around these fees at the outset of a tenancy.

There is an opportunity to require landlords and property managers to provide breakdowns of fees and processes to increase transparency and compliance with current obligations.

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

**Links & Dependencies**

*Fair Trading Act unfair contract term provisions:* The Fair Trading Act prohibits unfair contract terms in standard form consumer contracts. In some circumstances, break-lease fees have been interpreted as being unfair contract terms. There is some crossover with this prohibition and the existing obligations under the RTA that state that landlords can recover from the tenant any expenses reasonably incurred as part of a fixed-term tenancy ending early. We expect that the break-lease fee proposals will embed the intent of both the respective Fair Trading Act and RTA obligations and have consulted with the relevant MBIE officials.

### 2.5 What do stakeholders think?

In submissions, 88 percent of landlords and 49 percent of tenants did not think that the Government should investigate further removing fixed-term tenancies from the market. Officials have recommended in phase 1 of this package of proposals that fixed-term tenancies remain in the market given the security of tenure benefits.

In this context, mitigations to address the messages from tenants in submissions have been considered. These were that while fixed-term agreements can provide certainty and security, being committed to a fixed-term tenancy can sometimes be problematic, financially and otherwise, if circumstances change.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

[37] In [2019] NZTT Waitakere 4189433 the break-lease fee was lowered from $805 to $211. In [2019] NZTT Christchurch 4180494 the fee was lowered from $454.25 to $120.

[38] For example, [2019] NZTT Christchurch 4182294 and [2019] NZTT Christchurch 4169813.

*Status quo*
Section 44(5) of the RTA allows landlords to recover reasonable expenses incurred when a tenant seeks to assign their interest, sublet or part with possession. Section 44(3) also states that landlords cannot attach unreasonable conditions to agreement to sublet, assign, or otherwise part with possession.

The Tribunal has interpreted this as meaning that a fee that represents more than the actual costs to the landlord for re-advertising and finding new tenants are not reasonable.

Because tenants are likely to have difficulty ascertaining if a fee is reasonable if they cannot see the components of it, fees above which would likely be considered reasonable according to the legal tests under section 44(5) may continue to be changed under the status quo option.

*Option* **[Preferred option]**
One regulatory option has been considered against the status quo. This is to require landlords and property managers to provide breakdowns of the component parts of a fees charged upon consent to assignment, subletting or parting with possession of the premises to increase transparency and compliance with current obligations. In addition, guidance may be issued around what costs, conditions and processes are reasonable.

*Other options considered but withdrawn –prohibiting the charging of any break-lease fees*
Officials considered prohibiting the charging of any break-lease fees but this was withdrawn for the reasons outlined below at section 3.3.

**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 options for addressing all of the issues covered by this assessment have been assessed against the following criteria:

- *Effectiveness:* Will the option make an effective contribution to the policy outcomes and objectives sought, in particular:
  - improve security and stability for tenants while maintaining adequate protection of landlords' interests
  - ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
  - modernise the legislation so it can respond to changing trends in the rental market.

- *Proportionality:* Is the regulatory cost proportionate to the benefits identified? 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, the consequences for breaches of those obligations, and promote a regulatory regime that provides predictability over time?

- *Durability:* Will the option work effectively across the variety of tenancy types and enable efficient and effective tenancy arrangements in both hot and cold markets?

- *Flexibility:* Will the option enable regulators to adapt 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 this option fair and reasonable to regulated parties?[39]

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?

Officials also considered prohibiting the charging of any break-lease fee. This matter was previously assessed in the development of the Residential Tenancies (Prohibiting Letting Fees) Amendment Act 2018. In that context, it was concluded that because it was the outgoing tenant that was seeking to break their agreement with the landlord, it is appropriate that recovery of reasonable costs sit with the tenant.

Continuing to allow reasonable fees to be charged also means that landlords and property managers will be less likely to unreasonably withhold consent for tenants to change their fixed-term tenancy agreements because they will not be left out of pocket in doing so.

For these reasons, a prohibition of any break-lease fee has not been considered further.

[39] We have not included 'efficiency' in the assessment criteria as proposals are not primarily intended to address efficiency-related issues nor do they have significant efficiency impacts. Moreover, any efficiency related impact can be factored into our consideration of proportionality.

# Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

The following sections assess each option against the status quo using the criteria outlined in section 3.2.

The following key has been used to summarise the findings of our assessment.

| Key: | |
|---|---|
| + + | Much better than doing nothing/the status quo |
| + | 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 worse than doing nothing/the status quo. |

**Fees charged upon consent to assignment, subletting or parting with possession of the premises**

| | Status Quo | Option 1 – require landlords and property managers to provide breakdowns of the component parts of fees charged upon consent to assignment, subletting or parting with possession of the premises to increase transparency and compliance with current obligations |
|---|---|---|
| **Effectiveness** | **0**<br>The RTA already prohibits landlords and property managers from charging unreasonable fees upon consent to assignment, subletting or parting with possession of the premises, but in practice this may be difficult to enforce as there is no requirement in the law to disclose how a fee has been calculated. | **++**<br>Option 1 will be effective to increase transparency and is expected to increase compliance with current legal obligations to only charge reasonable fees.<br>This option means that when tenants due to unexpected circumstances want to exit a fixed-term tenancy, they will be more likely to be able to do so (within the current legal parameters), without facing unreasonably high costs.<br>We expect that this will further mitigate some of the issues that submitters raised with fixed-term agreements, noting that the RTA reform security of tenure package is also expected to mitigate these. In particular the adverse financial consequences that tenants can face when circumstances unexpectedly change, and they want to exit a fixed-term agreement.<br>Maintains adequate protection of landlords' interests as reasonable fees are still able to be charged. |
| **Proportional** | **0**<br>The status quo places an unreasonably high cost burden on tenants in the situations where they are charged an unreasonable fee charged upon consent to assignment, subletting or parting with possession of the premises but cannot assess or enforce compliance with the law. | **++**<br>Legal obligations would not change so this option does not represent a high degree of change in relation to the status quo. There will be some administrative cost to landlords to provide the breakdowns to tenants. This is considered to be justified and proportionate to the benefit that tenants will receive from their increased ability to assess and enforce compliance with the existing laws.<br>There are also overall benefits to the regulatory regime due to increased enforcement and compliance of the law in this area. |
| **Certainty** | **0**<br>Tenants have low certainty as to what the components of a fee charged upon consent to assignment, subletting or parting with | **++**<br>High degree of clarity as to what legal obligations are, and transparency as to what is being charged in relation to the status quo. Obligations are therefore more likely to be observed and enforced. |

| | Status Quo | Option 1 – require landlords and property managers to provide breakdowns of the component parts of fees charged upon consent to assignment, subletting or parting with possession of the premises to increase transparency and compliance with current obligations |
|---|---|---|
| | possession of the premises are, unless they proactively request a breakdown.<br>While the legal framework does provide some certainty, tenants may not have the tools needed to assess compliance and enforce the law. The consequences of breaching legal obligations are therefore unclear and variable.<br>This likely means that across the market there are high levels of variability in overall compliance with the law. | The proposal includes issuing guidance as to when a fee charged upon consent to assignment, subletting or parting with possession of the premises is reasonable which further increases certainty.<br>Overall predictability and consistency of the regulatory regime will be promoted over time. We expect a deterrence effect will be created to parties breaching the fee requirements given that awareness of both the obligations and what is being charged will increase, and enforcement of any non-compliance should also increase. |
| **Flexibility** | **0**<br>Landlords must operate within the framework of only charging reasonable fees, but within this framework there is a high level of flexibility as to how they can meet these requirements. | 0/+<br>Landlords will lose some flexibility given they will be obligated to provide breakdowns. This is considered justified, particularly given that this aims to simply steer the market towards higher levels of compliance with current obligations.<br>Operational policies will provide details about how the breakdowns must be provided, but flexibility should be allowed for in this.<br>Tenants may lose some flexibility to negotiate to exit a fixed-term agreement. Because landlord's ability to charge a high break-lease fee will be decreased, there may be some decrease in willingness to negotiate to end a fixed-term agreement when unforeseen circumstances arise. Existing frameworks around ending a tenancy, and the RTA reform assignment proposal, should mitigate this. |
| **Durability** | **0**<br>The status quo is not reasonably durable. | ++<br>The option isn't considered any more or less durable than the status quo. |
| **Fairness** | **0**<br>While the legal requirements are considered to be fair, a lack of fairness exists given that they may be difficult to enforce.<br>Enforcement may be dependent on the ability and willingness of the tenant to proactively gather the relevant information, and landlord willingness to provide it in a timely manner. | + +<br>Provides a significant increase in fairness. Tenants will be empowered to assess and enforce compliance. The barrier of information asymmetry will be mitigated.<br>Option 1 promotes good faith relationships and increases transparency. |
| **Overall assessment** | **0** | ++<br>**Preferred option:** Provides net benefits in relation to the status quo. |

## 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?**

**Preferred approach**

We propose to empower tenants to enforce the current laws on fees charged upon consent to assignment, subletting or parting with possession of the premises, by:

- Requiring landlords and property managers to provide breakdowns of fees and processes when and if they are charged to increase transparency and compliance with current obligations.
- In addition, guidance could be issued on what fees are likely to be reasonable and landlords and property managers would be required to provide this alongside the breakdowns.

**Rationale**

Our proposed approach increases transparency and addresses information asymmetry issues by ensuring that tenants have information about the component parts of any fee charged upon consent to assignment, subletting or parting with possession of the premises. This empowers them to assess and enforce compliance with the current laws. Overall, we expect that the instances of tenants paying unreasonable fees upon gaining consent to assignment, subletting or parting with possession of the premises to decrease.

# Optimising the healthy homes standards

## Section 2: Problem definition and objectives

**2.1 What is the context within which action is proposed?**

The Residential Tenancies (Healthy Homes Standards) Regulations 2019 came into force on 1 July 2019. These Regulations set out healthy homes standards (standards) to make rental homes warmer and drier. The standards create specific and minimum standards for heating, insulation, ventilation, draught stopping, moisture ingress and drainage in rental homes. The standards introduce additional responsibilities and obligations on landlords and tenants. The standards clarify existing insulation standards for rental properties that came into force in 2016.

**2.3 What is the policy problem or opportunity?**

Landlords already have obligations under the standards to keep various records and provide them on request to the Chief Executive. The opportunity is to better enable tenants to self-resolve compliance with the standards in an efficient way by allowing tenants to also request these same documents, so that they can assess compliance with the healthy homes standards and enforce their rights if necessary.

Currently landlords have duplicate compliance statement requirements under the 2016 insulation requirements and also as a consequence of the Healthy Homes Guarantee Act. Having two compliance statements increases the complexity of the tenancy agreement for landlords and tenants without providing additional information. We expect this will increase the likelihood of non-compliance with tenancy agreement requirements. There is an opportunity to streamline this process by removing duplication and requiring only one statement.

**2.5 What do stakeholders think?**

In the healthy homes consultation process, tenants and tenant advocacy groups overall felt strongly about the need to strengthen tenants' ability to enforce their rights under the Residential Tenancies Act. A large number of submissions discussed the need for the healthy homes standards to be more enforceable and accessible to tenants than existing housing regulations, in order to achieve meaningful compliance. Many tenants suggested this could be achieved by compelling landlords to retain relevant documents to demonstrate compliance with the healthy

homes regulations. Landlords were generally less willing to impose such additional administrative obligations under the regulations, however also valued clear compliance information and enforcement procedures.

There was also a theme from healthy homes standard stakeholders that tenancy agreement requirements should be simplified and streamlined as much as possible.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

*Proposals*

We propose to make minor changes to optimise the healthy homes standards by:

- allowing tenants to request compliance documents from landlords: and
- requiring only one compliance statement.

The two proposals identified are considered minor and expected to deliver benefits in comparison to the status quo. They will empower tenants to assess and enforce compliance and reduce the complexity of the tenancy agreement requirements, as outlined above and in the below conclusions section at 5.1. In addition, removing duplication of legislative requirements around compliance statements will reduce cost for landlords.

Detailed options analysis was undertaken in the context of the development of the healthy homes standards. These proposals simply optimise the decisions already made in a minor way, having taken stakeholder views into account and undertaken further analysis. For these reasons a full options identification and analysis has not been undertaken.

## 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?

**Preferred approach**

We propose to make minor changes to optimise the healthy homes standards by:

- Allowing tenants to request compliance documents from landlords: and
- Requiring only one compliance statement.

**Rationale**

The proposed approach gives tenants improved ability to self-resolve compliance with the healthy homes standards in an efficient way. By allowing them to request compliance documents, they will have an improved ability to assess compliance and enforce if necessary, which is one element of the overall approach to compliance for the healthy homes standards.

By simplifying tenancy agreements through removing duplicate compliance statement requirements, complexity will decrease and the likelihood of non-compliance will decrease.

# Overall Package

## 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?**

**Rationale**

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.

***Confidence***

We consider 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. While we have not been able to model the impact of the policy proposals we have considered international good practice and taken careful account of the views of key stakeholder groups.

***Stakeholder Views***

Our consultation process generated a high level of interest from both tenants and landlords. These two groups often held different positions on a number of the issues and options we have addressed in this assessment.

Those stakeholder views have been carefully considered and have informed the refinement of the proposals outlined in this regulatory impact assessment. We have taken care to ensure where we have clarified, or provided new' rights, we have also included measures to mitigate risks as well as corresponding incentives. As a result, we consider the proposals strike an appropriate balance that take account of the reasonable interests of both tenants and landlords.

We have also been mindful of the impact these proposed changes have on the regulator and the potential for them to impact on the Tribunal. Their feedback - and that of other government agencies with an interest into the rental housing market – has helped shape our preferred approach and the proposed approach to implementation.

## 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 | s 9(2)(f)(iv) | | |
| | *Fittings:* Tenants will be liable for the cost of any remedial work required as a result of any minor fittings they have added to a rental property. | Low to Medium [42] | Medium |
| | *Rent Setting:* There should be no significant change in tenants anticipated rental costs over time as a result of the change. On average tenants are likely to face larger rental adjustments when their rents are reviewed, but these reviews will take place at less frequent intervals (12 monthly). This should balance out over time and deliver an outcome that is similar to that which would occur under the status quo. | Low | Medium to high |
| | *Privacy:* We do not expect any costs to tenants to result from privacy changes. | N/A | High |
| | *Assignment and break-lease fees:* We do not expect any costs to tenants to result from changes to assignment and break-lease fees. Optimising the healthy homes standards: We do not expect any costs to tenants to result from optimising the healthy homes standards. | N/A | High |
| Regulated parties: Landlords (& Property Managers) | s 9(2)(f)(iv) | | |
| | *Fittings:* As tenants have an existing legal right to add reasonable fittings, there are no additional costs for landlords relative to the status quo. However, indirect costs could fall to landlords and | Low | Medium |

s 9(2)(f)(iv)

[42] As this is an existing requirement under Section 42 of the RTA the costs the impact is zero relative to the status quo, but outlined here as low to medium to convey costs that may be expected from increased use of existing rights at the maco level.

| | | | | |
|---|---|---|---|---|
| | property managers from the requirement to consider each request on a case-by-case basis.<br><br>*Rent Setting:* There should be no significant cost to landlords as a consequence of how frequently rents can be adjusted. While the duration between rent reviews may increase on average, landlords will be able to adjust their rents for the longer period between reviews. Those landlords that have engaged in rental bidding (which may only be 15 percent of the market), may experience some reduction in future income as a result of the proposed change. This is likely to be at the margins however – the proposed change is not preventing landlords advertising their property at a fair market rate, nor is it preventing tenants from offering a higher rental than that which the landlord or property manager advertises. Landlords and their agents who have previously been relying on rental bidding as a market clearing mechanism will need to change their business model which may incur some initial costs when the changes come into force.<br><br>*Privacy:* We do not expect any costs to landlords to result from privacy changes.<br><br>*Assignment:* There will be some increased costs and administrative burden to landlords incurred when they must accept a reasonable assignment request. There may also be increases to perceived risk of costs. This is, however, mitigated by the fact that reasonable recovery of costs is allowed under section 44(5) of the RTA.<br><br>*Fees charged upon consent to assignment, subletting or parting with possession of the premises:* There will be some administrative cost to landlords and property managers to prepare and provide the required breakdowns to tenants. Landlords and property managers may also incur some additional administrative costs. They may incur increased to meet their obligations where they have not previously complied with current legislative requirements, because we expect the new approach to lead to higher compliance levels.<br><br>*Optimising the healthy homes standards:* Landlords may incur some administrative costs due to the new requirement to provide tenants with compliance documents upon request. While acknowledged here for completeness, the cost to a landlord's time of providing documentation they are already required to hold will not be material. | Low<br><br>N/A<br><br>Low to Medium<br><br>Low<br><br>Low | High<br><br>N/A<br><br>Medium<br><br>High<br><br>High | |
| Regulator (MBIE) | The regulator will incur some one-off operational costs associated with updating operational policies and procedures, staff training and | Low | Medium | |

| | | | |
|---|---|---|---|
| | communicating the changes to key external stakeholders. s 9(2)(f)(iv) [redacted] | | |
| Tenancy Tribunal | There may be some initial additional administrative costs for the Tribunal associated with any increase in disputes arising in particular from the pets and fittings proposals as a result of regulated parties being more aware of their respective rights and responsibilities. Given the limited nature of disputes in these areas at present we anticipate any increase is likely to be at the margins.<br><br>The proposed privacy changes will provide a platform for operational policies to be considered to improve privacy. Subject to the development of these operational policies, this could lead to an increase in the frequency of identifying details being removed. If the frequency does increase, operational costs would be incurred. | Low<br><br>Low/Medium | Low to Medium<br><br>Low |
| Wider government | We do not anticipate any direct additional costs for the wider justice sector or other Crown agencies as a result of these proposed changes. | Low | Medium |
| **Total Monetised Costs** | | s 9(2)(f)(iv) [redacted] | Medium |
| **Non-monetised costs** | | *Low* | Medium |

| **Expected benefits of proposed approach, compared to taking no action** | | | |
|---|---|---|---|
| Regulated parties: Tenants | s 9(2)(f)(iv) [redacted] | | |
| | *Fittings:* Tenants will have more certainty around what minor fittings they are able to add to the property and will better realise the existing rights afforded to them in the law. | Medium | Medium |

| | | | |
|---|---|---|---|
| | *Rent setting – rent increases:* The changes will provide tenants with greater certainty and stability around rental costs and provide more time to prepare for potential rent increases. Tenants may feel more comfortable raising maintenance issues with their landlord over the course of a tenancy without needing to consider whether doing so would lead to a retaliatory rent increase. | Low | Medium |
| | *Rent setting - rental bidding:* The changes will provide tenants with greater certainty over rental costs as the rent advertised will more likely be the rent paid for the property. Tenants will retain some control over their rental cost because they will be allowed to offer to pay more rent where they wish to. | Low | Medium |
| | *Privacy:* Legal powers will be clarified in relation to name suppression so that operational policies can then be considered to improve privacy and reduce adverse effects for tenants enforcing and when tenants have successfully enforced their rights where it is reasonable to do so or defended a case, the default will be that identifying details will be removed. | High | Medium |
| | *Assignment and break-lease fees:* Tenants who suffer an unforeseen change in circumstances and need to assign their interest in a fixed-term tenancy to another person would not have the merits of that request treated differently on the basis of whether or not a clause in their tenancy agreement prohibits assignment.<br><br>Tenants will also be empowered to assess and enforce compliance with the laws around fees charged upon consent to assignment, subletting or parting with possession of the premises, leading to increased compliance and ultimately less unreasonable fees being charged to tenants. | Low | Medium |
| | *Optimising the healthy homes standards:* Tenants will be able to request compliance documents, empowering them to assess and enforce compliance. Benefits from decreasing complexity by requiring only one compliance statement will sit with landlords and not affect tenants. | Low | Medium |
| Regulated parties: Landlords (& Property Managers) | s 9(2)(f)(iv) | | |

| | | | |
|---|---|---|---|
| | s 9(2)(f)(iv) | | |
| | *Fittings:* While landlords will have greater certainty about tenants' rights and responsibilities, and the process that must be followed there are no material benefits to them relative to the status quo.<br><br>*Rent Setting:* Landlords will not receive any direct benefits from proposed changes to the duration between rental price increases or the limitations on rental bidding.<br><br>*Privacy:* While there may be instances where a landlord could benefit from the removal of identifying details from Tribunal decisions where this is justified, we expect privacy benefits will primarily accrue to tenants.<br><br>*Assignment and break-lease fees:* Landlords will not receive any direct benefits.<br><br>*Optimising the healthy homes standards:* Landlords administrative burden will be decreased and complexity of obligations will reduce due to requiring only one compliance statement. | Low<br><br>Low<br><br>Medium<br><br>Medium | N/A<br><br>Medium<br><br>High<br><br>Medium |
| Regulator (MBIE) | There are no immediate direct benefits to MBIE from the proposed changes, although the regulator may receive some indirect marginal gains to their administration of the system from regulated parties having a better understanding of their rights and responsibilities. | Low | Medium |
| Tenancy Tribunal | There are no immediate direct benefits to the Tribunal arising from the proposed changes, although there may be some indirect marginal gains arising from the clarification of the law, in particular in relation to fittings which make it easier for adjudicators to deliver consistent decisions. | Low | Medium |
| NZ Public | *Public Good Benefits:* Improved tenant wellbeing – as a result of these proposed changes and those addressed in the companion regulatory impact assessment - form part of the social foundations that enable tenants to realise improved health, education and employment outcomes. These outcomes have broader public | Low-Medium | Medium |

| | | | |
|---|---|---|---|
| | good benefits to New Zealand society and may reduce demand on remedial social services provided by government and non-government organisations. | | |
| **Total Monetised Benefit** | | N/A | N/A |
| **Non-monetised benefits** | | *Medium* | Medium |

### 5.3 What other impacts is this approach likely to have?

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

- s 9(2)(f)(iv)
- The perceived risk of property damage arising from minor fittings not being adequately remediated at the end of a tenancy
- Limitations on the ability to review rental prices
- Perceived risks associated with a more liberal approach to assignment

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 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 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.

s 9(2)(f)(iv)

The other risk risks arising from fittings are partially mitigated by the requirement for tenants to reinstate the property to a reasonably similar condition following any minor fittings at the end of the tenancy and making them generally liable for careless damage

s 9(2)(f)(iv)

More broadly the restrictions on reviewing rentals are not expected to have a significant impact on overall rental income. We anticipate market pressures will continue to be a more significant determinant of overall rental prices.

**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).*

# Overall package

## 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 by s 9(2)(f)(iv) with the intention of legislative amendments being enacted by

**Timing**

s 9(2)(f)(iv)

**Implementation Management**

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

- The regulator can deliver an effective communications programme that ensures regulated parties and other key stakeholders understand and are supported to implement their new rights and responsibilities and have sufficient time to give effect to them.
- The regulator has the operational policies, processes and systems in place to meet their responsibilities and give effect to the new requirements
- The Tribunal and the wider justice sector together with other government agencies with an interest in the reforms are engaged appropriately. In particular, the Tribunal would need to change operational practices around name suppression
- 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 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 provisions as well as how the new provisions interface with existing enforcement tools (e.g. warnings and advice and Tribunal proceedings).

**Supporting systems**
Depending on decisions the Government makes around anonymisation of parties details in Tribunal decisions and on the operational policies that follow, changes may be required to the information technology systems that schedule and report on Tribunal hearings.
We do not anticipate significant systems development requirements arising from the proposed changes.

The proposed privacy changes will provide a platform for operational policies to be considered to improve privacy. Subject to the development of these operational policies, this could lead to an increase in the frequency of identifying details being removed.
If the frequency does increase, we have received preliminary advice on the operational impacts this would create to the system whereby decisions are currently published (the Resolve system). Currently, removing identifying details would need to be a manual action. If it was to become more common it would be likely that changes would be required to Resolve to make the process less labour intensive. Our initial advice is that this kind of change would be possible but would likely incur some cost.

**Communications**

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.
- if parties go to the Tribunal to settle disputes more often, this may 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.

s 9(2)(f)(iv)

If any of the policy changes in the paper, or the cumulative effect of the package as a whole, lead to 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.

The privacy changes could lead to less discrimination against tenants that have enforced their rights or have a legitimate privacy concern, reducing the risk of homelessness for these people.

*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.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

**Fittings policy risks**

While the Fittings policy simply embeds rights that already currently exist, there may be a perception of increased risks. Any risks are partially mitigated by the requirement that the tenant reinstate the property to a reasonably similar condition following any minor fittings at the end of the tenancy s 9(2)(f)(iv)

There may still be uncertainty around whether tenants reinstate, even if they are legally required to do so. If landlords have to take action to enforce this it may increase costs to them and increase their administrative burden.

Risks for the other sections are noted in the general section above.

# 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. HUD will monitor the implementation of the proposed legislative changes as part of its:

- 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,
- Performance management and monitoring of MBIE's residential tenancy regulatory management functions.

In doing so it 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 came into operation on 1 July 2019, will undertake work to agree an approach to measuring the impact of the proposed changes to the law s 9(2)(f)(iv) 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. Examples of the nature of measures that could be included in this context are:

- s 9(2)(f)(iv)
- **Fittings**: self-reported tenant difficulty in getting a timely response to a fitting request and gaining permission in reasonable circumstances will decrease. This could be measured against the baseline of RTA submissions questions asked, as summarised at 2.5.
- **For both pets and fittings:** No cases, or a substantial decrease in cases, at the Tribunal where pet has been kept or fitting has been added without landlord approval.
- **Rent setting - rental bidding**: no upward trend in the numbers of properties being advertised without a fixed rental price.
- **Privacy**: Subject to the development of operational policies, use of the section 95 process to have identifying details removed increases. Tenants self-report that the disincentive to them enforcing their rights decreases.

We anticipate that this work will be progressed within the existing baseline operating budget.

| 7.2 When and how will the new arrangements be reviewed? |
| --- |
| HUD's ongoing monitoring of the residential tenancy system - which includes the implement of the proposed legislative 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.<br><br>Our assessment will be informed by MBIE's quarterly updates. Monitoring will include tracking trends at Tenancy Services, the Tribunal and the call centre. 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. |