

# Regulatory Impact Statement: Residential Tenancies Act 1986: Change of compliance timeframes for the healthy homes standards for private landlords and public housing providers

## Coversheet

| Purpose of Document  |  |
|--|--|
| Decision sought:   | <i>Analysis produced for the purpose of informing final decisions to be taken by Cabinet</i> |
| Advising agencies:   | <i>Te Tūāpapa Kura Kāinga –The Ministry of Housing and Urban Development</i>                 |
| Proposing Ministers:   | <i>Minister of Housing</i>   |
| Date finalised:  | <i>10 November 2022</i>  |
| Problem Definition   |  |
| <p>Some landlords are struggling to comply with the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (healthy homes standards) within the original compliance timeframes, which were set in 2019. Global supply chain and freight issues stemming from the impacts of COVID-19 have led to a reduction in supply and availability of a wide range of imported goods and caused challenges for landlords. There are also constraints in trade availability for some works and in some regions. This has affected both private landlords and public landlords – Kāinga Ora-Homes and Communities (Kāinga Ora) and community housing providers (CHPs). There is also an ongoing impact for some landlords from the consequences of the COVID-19 lockdowns. Kāinga Ora also faces challenges gaining access to some properties to undertake works.</p> |  |
| Executive Summary  |  |
| <p><b>Why Government intervention is required</b></p> <p>The Government is proposing to extend the compliance dates for private landlords and public housing providers for the healthy homes standards. The context has changed since the original compliance timeframes were decided. The proposed extension reflects the reality of the current constraints in trade availability, and the supply chain and freight issues for some building products. The proposed extension also takes into account the access issues and ongoing impacts of the COVID-19 lockdowns experienced by Kāinga Ora. There can be a range of issues that prevent Kāinga Ora from accessing homes including anti-social behaviour, safety issues, scheduling difficulties, or tenants’ stress about trades access.</p>  |  |

While the Kāinga Ora compliance programme has significantly increased over the last twelve months compared to earlier periods, Kāinga Ora expects that the weekly number of homes completed will decline as it gets closer to 1 July 2023. This is because it will be engaging with customers who have more complexity around access. Kāinga Ora predicts that there will be 5-10 percent of properties still to comply on 1 July 2023.

The current challenges mean that despite making reasonable efforts to comply, some landlords have not been able to comply with some healthy homes standards within 90 days of the start of a tenancy. This is particularly relevant where a property is entering the rental market for the first time. These challenges risk properties being left empty between tenancies if landlords, waiting for products and/or labour to be available, cannot achieve full compliance within 90 days. The proposed extension is therefore fair and reasonable based on the impacts of COVID-19 and the changed context since the original compliance timeframes were decided.

### **Options considered**

HUD officials considered four options. Option 1 (the status quo) describes what would happen if the timeframes are not changed. All other options change the compliance date for private landlords after the start of a new or renewed tenancy. Option 2 provides a final compliance date extension to public housing providers, with no change in the final compliance date for private landlords. Options 3 and 4 extend the final compliance date for private landlords by the same amount of time as for public housing providers.

The options exclude changes to boarding houses which have had to comply already and properties which have already passed their compliance dates.

### **HUD's preferred option**

Option 4 changes the rolling deadline for private landlords from 90 to 120 days at the start of a new or renewed tenancy, as well as extending the final deadline for private landlords and public housing providers by a year. Option 4 ensures that the timeframes do not impose an unreasonable compliance burden for landlords while also considering the need to ensure landlords comply as soon as realistically possible.

Option 4 strikes a balance between giving landlords additional time to implement the healthy homes standards (based on factors outside their control) and mitigating the potential impacts on tenants. Option 4 will allow landlords to continue to work towards healthy homes compliance, with less concern about the potential regulatory response if they are unable to comply in time.

### **Impact of the preferred option and nature of impacts on different population groups**

The stakeholders with an interest in the healthy homes standards include landlords and tenants, community housing providers, property managers, developers, industry specialists, and Māori housing advocates. All stakeholders have an interest in ensuring that the standards are effective and align with the policy intent of the regulations. There is also wider public interest in having successful compliance with the healthy homes standards, as part of growing Aotearoa's warm, safe, and dry rental stock. Impacts for particular population groups are discussed below.

#### *Tenants of non-compliant homes eligible for the change of compliance timeframes*

People who rent homes that are not yet compliant with healthy homes standards because the healthy homes compliance date has not passed are the people primarily affected by this proposal. They could be impacted, in the short-term, from the negative health and

social effects of living in a substandard property for longer than previously anticipated. The negative effects will disproportionately impact vulnerable populations of tenants, who already experience inequitable health outcomes.

However, some tenants with access difficulties can benefit from the time extension. There can be a range of issues that prevent Kāinga Ora from accessing homes including anti-social behaviour, safety issues, scheduling difficulties, or tenants' stress about trades access. Kāinga Ora will continue to undertake educational programmes to create awareness of the benefits of healthy homes standards. This, combined with the educational and informational programmes run by the Ministry of Business, Innovation and Employment (MBIE), may help to address the stress and concerns that some tenants express. The time extension will also help tenants who have scheduling difficulties to fit the works in with less time pressure.

#### *Landlords who haven't complied and whose healthy homes compliance date has not passed*

These landlords will receive the benefit of having more time to plan and undertake the works and repairs needed to comply. This will be particularly beneficial for landlords with an extensive portfolio of rental properties such as Kāinga Ora and other public housing providers who are facing the challenges on a bigger scale. The extension removes the burden for landlords and property managers about the possible regulatory response when the landlord is unable to comply in time because of issues outside of their control. It will also reduce the potential administrative burden for the Tenancy Tribunal.

#### *Landlords who have already complied with healthy homes standards*

Landlords who have already complied with the healthy homes standards will not be impacted by this change. There will not be any costs or benefits to them.

There are ongoing educational and information programmes to help landlords understand how the healthy homes standards can help maintain the value of their investment and retain tenants. These programmes may help reduce any frustration that a compliant landlord may feel.

#### *What stakeholders think*

The supply chain and freight issues caused by the impacts of COVID-19 have been widely reported by media and have been experienced by people in several ways over the last two years. Shortages of building and construction materials have been monitored by the Government, the industry and the media.

Targeted conversations have occurred with organisations about the pressures present in the current building market. These have included property manager groups, landlord advocacy groups and Kāinga Ora. In general, the stakeholders HUD talked with considered there was a problem in the building market. Property managers were supportive of an extension. Kāinga Ora supports the proposal to extend the compliance timeframes and favours the one-year extension option.

## **Limitations and Constraints on Analysis**

### *Scope of the options*

The scope of this analysis is limited to considering the compliance timeframes for the healthy homes standards. It does not consider any changes to the standards themselves, or to the types of properties required to comply with the standards.

While some of the options focus solely on amending the Residential Tenancies (Healthy Homes Standards) Regulations 2019, other options propose amendments to the Residential Tenancies Act 1986, to enable the extension of the final compliance date.

#### *Time constraints*

The proposed changes to the standards are expected to come into effect immediately, which is after the date that some private landlords and all boarding houses must comply with the healthy homes standards. This means that there are significant time constraints in preparing this analysis. The first properties, including all boarding houses, were required to comply from last year on 1 July 2021. For the private rental market, properties are required to comply as new tenancies start or are renewed through to 1 July 2024. From 1 July 2024, all tenancies are required to comply with the standards.

#### *Limited and targeted consultation*

Due to the significant time constraints, stakeholder engagement was limited and targeted. HUD considered this a proportionate approach due to the fact that landlords need prompt relief as they are already having to comply with their healthy homes standards obligations when tenancies start or are renewed. Targeted conversations with some stakeholders' representatives is the most efficient way to test the size of the issues, as they represent the voices and interests of those sectors of the rental market responsible for the implementation of the healthy homes standards, i.e., private and public landlords, and property managers.

#### *Lack of comprehensive data*

The bond data for private rentals provide a limited understanding of the magnitude of tenants whose healthy homes timeframes have not yet been triggered. HUD also commissioned Kantar Public to undertake research with renters and landlords to assist HUD in monitoring awareness of and the compliance with the standards and to evaluate both short and long-term outcomes achieved through their implementation. However, the sample of these surveys are not statistically significant and do not provide an indication of the magnitude of landlords and tenants potentially affected.

#### *Assumptions regarding the issues raised*

The key assumption underpinning our understanding of the problem is that the information provided to HUD by stakeholders is accurate and representative of the rental market for both private landlords and public housing providers. HUD has considered evidence from a range of stakeholders, representing the private and public housing sectors, and industry specialists to substantiate the extent and severity of the issues that have been brought to HUD's attention, and the information and evidence we have been provided has informed our proposed changes in the compliance timeframes.

#### *Overall impact of limitations and constraints on this analysis*

While there have been a number of limitations and constraints on this analysis, officials do not consider these limitations or constraints to have a significant impact on the quality of analysis provided.

**Responsible Manager(s) (completed by relevant manager)**

*Claire Leadbetter*

*Manager, Tenancy and Tenures*

*Policy and Legislation Design*

*Te Tūāpapa Kura Kāinga – The Ministry of Housing and Urban Development*



*10 November 2022*

**Quality Assurance (completed by QA panel)**

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|-------------------|--|
| Reviewing Agency: | Te Tūāpapa Kura Kāinga – The Ministry of Housing and Urban Development |
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| Panel Assessment & Comment: | The Regulatory Impact Analysis panel at Te Tūāpapa Kura Kāinga has undertaken an assessment of the attached Regulatory Impact Assessment and considers that it meets the Quality Assurance criteria. The panel acknowledges that consultation has been targeted and there are gaps in its reach, particularly regarding the perspectives of tenants. However, it considers that a targeted approach to consultation is commensurate with the scale of regulatory change proposed and that additional consultation would not have meaningfully changed the analysis or the conclusions reached. |
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# Section 1: Diagnosing the policy problem

## What is the context behind the policy problem and how is the status quo expected to develop?

### Key features of the regulatory system

1. On 1 July 2019, the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (the healthy homes standards) came into force to improve the quality of our rental stock by ensuring that tenants have a warm and dry rental home. The healthy homes standards aim to make a significant change to the quality of New Zealand rental homes by setting minimum requirements for heating, insulation, ventilation, draught-stopping and moisture ingress and drainage.
2. When the healthy homes standards were designed in 2018, officials considered several factors when setting the compliance dates. A primary consideration was ensuring that landlords do not compete for building materials and tradespeople at the same time and that there would be sufficient capacity in the building industry to undertake the required additional work. Furthermore, there was a desire from the Government that public rentals, such as properties managed by Kāinga Ora and CHPs, should comply ahead of privately owned rental properties. Therefore, the compliance dates were staggered depending on the type of tenancy a landlord manages.
3. The compliance timeframes for the healthy homes standards are determined by the type of tenancy or the type of landlord. Private landlords have a rolling compliance date of between 1 July 2021 and 1 July 2024. Their compliance date is triggered when a new tenancy is entered, or the tenancy is renewed, and must comply with the healthy homes standards within 90 days of that date. Currently, the following are the compliance timeframes:

| <b>Type of tenancy or landlord</b>             | <b>Date of compliance</b>  |
|--|--|
| <b>Private landlord, residential tenancy</b>   | The rental property has to comply with the standards within 90 days of the renewal or start of a new tenancy after 1 July 2021.<br><br>By 1 July 2024 all rental homes must comply with the healthy homes standards. |
| <b>Boarding house tenancy</b>                  | The boarding house had to comply with the standards by 1 July 2021.  |
| <b>Tenancies under public housing provider</b> | The rental properties have to comply with the standards by 1 July 2023.  |

4. Public and community housing landlords that manage a large housing stock were given a fixed compliance date rather than a rolling date based on tenancy turnover. Because of the volume of properties they manage, having a fixed date helps them to undertake this work in an efficient manner. All boarding house tenancies needed to comply by 1 July 2021 and Kāinga Ora and registered CHPs need to comply by 1 July 2023.
5. When the compliance dates were being designed, tenancies lasted around 20 months on average. However, the length of tenancies has increased since 2018, to an average of 26.73 months in 2021. The number of tenancies ending each year is also decreasing (from 151,072 in 2018 to 140,166 in 2021). The compliance dates took into consideration at least one rotation of tenants and for houses to be vacant so landlords could undertake

the healthy homes standards works, without impacting on tenants. Some private landlords and most Kāinga Ora homes have met the healthy homes standards while houses are occupied. However, the extended period in which tenants are currently staying might have deterred landlords from bringing their properties up to the healthy homes standards, if they had been relying on a tenancy turnover period to undertake some of the works.

#### *Impact of construction sector challenges in delivering the required healthy homes works*

6. However, a range of headwinds have impacted the ability for landlords to meet these deadlines and have made the above timeframes insufficient. The construction sector has faced a number of supply side challenges stemming from the impacts of COVID-19 that have forced landlords to compete for building materials and tradespeople. Global supply chain issues and freight over-costs have led to a reduction in the availability of a wide range of imported goods. Also, the labour market in the construction sector has been operating at full capacity, creating shortages of tradespeople to undertake healthy homes works.
7. Even though there are some positive signs in the sector, such as the easing of global shipping constraints, increased use of product substitutions, and the reopening of borders enabling freer labour flows, sector participants are still reporting project delays and increasing costs. These issues are mainly present for properties entering the rental market for the first time as some of these would have to undertake works and repairs in order to comply with all the standards at once. There are also specific issues with accessing trade capacity for some interventions and regions, for example, carpenters to conduct window repairs to meet the draught stopping requirements.
8. A key issue for private landlords is the supply of heat-pumps. Medium and small heat pump installers usually order the devices as needed so if there are any delays at any stage of the supply chain, it could significantly affect their ability to install them on time. Stakeholders from the rental sector have consistently reported that trying to buy a suitable heat pump and get it installed within 90 days is very ambitious in the current environment.

#### *Impacts of construction sector challenges and access issues for Kāinga Ora*

9. Kāinga Ora has a property portfolio of over 65,000 properties. The programme to assess properties and upgrade them is a multi-year project. There is an ongoing impact from the consequences of the COVID-19 lockdowns – Kāinga Ora lost approximately 240,000 direct labour hours and their compliance programme was set back by about 6 months. This was time that could have been used to obtain assessments of properties or undertake works. This was also a lost opportunity for private landlords who wanted to undertake compliance work proactively. Auckland spent a total of 10 weeks at Alert Level 4 in 2020 and 2021, while the rest of New Zealand spent seven weeks at Alert Level 4.
10. Data received from Kāinga Ora shows that it has increased delivery rates from 180 homes per week in June 2021, to over 610 homes per week in the last quarter (July-September 2022). Kāinga Ora estimates that they need to complete 600-700 properties every week to meet the current compliance timeframes.
11. Kāinga Ora expects that the weekly number of homes completed will decline as it gets closer to 1 July 2023. This is because it will be engaging with customers who have more complexity around access. There can be a range of issues that prevent Kāinga Ora from accessing homes including anti-social behaviour, safety issues, scheduling difficulties, or tenants' stress about trades access.

12. Kāinga Ora predicts that there will be 5-10 percent of properties still to comply on 1 July 2023. This estimate does not account for any further issues in relation to trades constraints and supply of materials due to supply chain issues.

*How the status quo might develop if no action is taken*

13. If the compliance dates remain unchanged, landlords trying to comply with the healthy homes standards might be at risk of breaching their obligations due to ongoing issues outside of their control. There is no certainty for landlords about what the regulatory outcome will be in that situation.

14. Currently, where private landlords have not complied with their deadline and this is brought to the regulator's attention, the regulator will seek information to establish what efforts the landlord has taken to comply to help inform the appropriate response. Landlords are encouraged to keep records of the steps they have taken to comply in case this is sought by the regulator.

15. If non-compliance from Kāinga Ora is drawn to the regulator's attention after the existing 1 July 2023 compliance deadline, the regulator could seek to understand the steps taken by Kāinga Ora and the challenges it faces as New Zealand's largest landlord. While it is possible the regulator may decide it is not in the public interest to take enforcement action in the particular circumstances, the decision would need to be made by the regulator at the time.

16. For private tenancies, the supply chain and trade issues create uncertainty about how quickly a landlord can comply with the healthy homes standards. This is particularly relevant when the rolling deadline of 90 days is triggered. The current compliance timeframe risks properties being left empty between tenancies as landlords wait for products and/or labour to be available.

17. In the absence of government intervention to extend the compliance dates, landlords and tenants may seek resolution through the Tenancy Tribunal. This could strain the limited time and resources of the Tenancy Tribunal

## What is the policy problem or opportunity?

*Nature and scope of the problem*

18. The problem for landlords is the pressure they are under having to comply with their healthy homes obligations within insufficient timeframes given the current environment. If landlords don't comply within the current timeframes, they are at risk of breaching their obligations, where they are not compliant due to factors beyond their control. This could have the following consequences:

- properties may be left empty between tenancies if landlords, waiting for products and/or labour to be available, cannot achieve full compliance within 90 days.
- some landlords may become disengaged if they consider the timeframes are unrealistic and are less likely to even try to comply proactively.

19. Another risk is the potential impact on the administration of the Tenancy Tribunal if there are many cases brought against landlords. However, this will depend on how many tenants are likely to apply to the Tenancy Tribunal at any time, and in those particular circumstances. The Tenancy Tribunal will consider the facts of a situation when making any orders. The Tenancy Tribunal can only order someone to pay exemplary damages when they have committed an unlawful act intentionally, so a landlord who has attempted to comply would not receive an exemplary damages order. However, this will not prevent



applications being made to the Tenancy Tribunal, which may increase waiting times for cases.

### *Scale of the problem*

20. There are no precise figures for homes which have not yet met the healthy homes standards. As of 31 July 2022, there were 349,084 active bonds lodged for private tenants, of which 112,345 started since 1 July 2021. This also excludes renewed tenancies as well as boarding houses and rooms.
21. This means that at least 32.2 percent of tenancies have already been required to comply, because it has been at least 90 days since the tenancy commenced. The actual extent of compliance of these tenancies is unknown. The other 67.8 percent of tenancies are not yet required to comply with the healthy homes standards. However, some landlords will have decided to comply early.
22. HUD commissioned Kantar Public to undertake research with renters and landlords about awareness of and compliance with the healthy homes standards. In the September 2021 survey, 75 percent of renters and 97 percent of landlords had heard of the healthy homes standards. Fifteen percent of landlords indicated their rental property fully met the healthy homes standards, while another 70 percent said they had done things to prepare for the standards. However, landlords and tenants may have different views on whether the standards have been met. To take one example, 76 percent of landlords said their properties had an acceptable heating type, while 69 percent of tenants said their property had an acceptable heating type. The sample of these surveys are not statistically significant and do not provide an indication of the magnitude of landlords and tenants potentially affected.

### *Stakeholder consultation*

23. Targeted conversations have occurred with organisations about the pressures present in the current building market. These have included property manager groups, landlord advocacy groups and Kāinga Ora. The stakeholders who were approached were asked about whether the COVID-19 related issues have persisted and how they have impacted landlords' ability to comply with the healthy homes standards.
24. Property managers perceive that homes that are yet to comply with healthy homes standards are at high risk of not meeting their deadline given the industry constraints described above. Property managers are unlikely to take on any properties that are not already fully healthy homes compliant as they want to avoid any non-compliance risk. This indicates that property managers consider that non-compliant homes may end up breaching healthy homes standards obligations as they might run out of time to do so within the current timeframes.
25. Kāinga Ora has reported that it has put steps in place to manage some of its issues around the supply of heat-pumps. However, Kāinga Ora continues to experience issues around supply of other materials, such as insulation, and the availability of carpenters and heat pump installers. Pressures on materials and trade vary in different parts of the country and depend on suppliers.
26. Kāinga Ora supports the recommendation to extend the compliance timeframes. Their compliance programme has significantly increased over the last 12 months compared to earlier periods. Kāinga Ora expects that the weekly number of homes completed will decline as it gets closer to 1 July 2023. This is because it will be engaging with customers who have more complexity around access. Kāinga Ora predicts that there will be 5-10 percent of properties still to comply on 1 July 2023.

27. The pressures present in the current building market have not been discussed with tenant groups. From past discussions about the healthy homes standards, the general position of tenant groups has been to support the healthy homes standards to apply quickly so that tenants can rent a warm, dry and healthy home.
28. In general, the stakeholders HUD talked with considered there was a problem in the building market. Property manager groups and Kāinga Ora were supportive of the proposed changes.
29. Changes in the compliance timeframes will only be relevant to landlords whose healthy homes compliance date has not yet passed. For example, the changes will exclude boarding houses as they had to comply by 1 July 2021. Changes in legislation will also exclude any other landlord whose compliance date has passed by the time the changes come into effect. This is consistent with the presumption that all laws apply prospectively.
30. The Residential Tenancies (Healthy Homes Standards) Amendment Regulations 2022 provide private landlords of modern homes who have a healthy homes standards compliance date on or after 12 May 2022 and before 12 February 2023 a grace period to comply with the heating standard by 12 February 2023. If changes in the compliance dates become law before 12 February 2023, landlords eligible for the grace period could potentially have an extra 30 days to comply. The grace period was designed taking into account the adverse effects of COVID-19 and the supply chain issues, so these landlords have had a proportional extension already. For this reason, landlords who have not yet complied with the heating standard due to eligibility for the grace period will not be eligible for the timeframe extension and will need to comply with the heating standard by 12 February 2023.

#### *Root cause of the policy problem*

31. The root cause of the policy problem stems from compounding impacts caused by the effects of COVID-19. When the deadlines were first designed the current timeframes were perceived as sufficient. However, the undersupply of construction materials, as well as the overconsumption of some of them, combined with trades workforce shortages have made the compliance timeframes insufficient.
32. While many of the supply side issues are likely to begin to ease over the next 12 to 24 months, officials consider that an extension in the timeframes for healthy homes standards compliance will address the immediate supply pressures. An extension will provide an adequate timeframe that will enable landlords to continue with healthy homes implementation activities in a measured way.

#### **What policy objectives are sought in relation to the policy problem?**

33. The overarching policy objective in relation to the problem identified is to ensure that landlords have sufficient time to comply with their healthy homes standards considering the current trades constraints, the supply chain issues for some building products, and access issues to some properties. A further objective is to continue to support the implementation of the healthy homes standards in a timely manner, to ensure that tenants have a warm and dry rental home. These two objectives must be balanced against each other.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

34. The key criteria to assess the options are as follows:

- **Impact on tenants** – achieve the intent of the healthy homes standards to provide a warm and dry home to tenants.
- **Proportionality** – provide a coherent and reasonable extension that corrects the “market issue” but gives no further advantage to landlords who have not yet complied. Large scale landlords must keep the momentum gained and must not lose the sense of urgency and efficiencies gained in the process.
- **Fairness/equity between landlords** – this relates to the integrity of the rules for different types of landlords. Supply chain issues are widespread and are affecting all types of landlords.
- **Administrative efficiency** – how easy or complex the change is to implement, whether it is clear to communicate and practical to enforce.

35. The criteria have been given equal weighting.

### What scope will options be considered within?

36. The options considered need to be in accord within the powers delegated by the Healthy Homes Guarantee Act and align with the policy intent of the healthy homes standards.

37. Apart from the status quo, there are no non-regulatory options available because these proposals are solely focused on clarifying the compliance timeframes as set out in the regulations and amending the regulations to reduce the unintended consequences that have occurred as a result.

38. Changes in the compliance timeframes will only be relevant to landlords whose healthy homes compliance date has not yet passed. For example, the changes will exclude boarding houses as they had to comply by 1 July 2021. Changes in legislation will also exclude any other landlord whose compliance date has passed by the time the changes come into effect. This is consistent with the presumption that all laws apply prospectively.

39. The Residential Tenancies (Healthy Homes Standards) Amendment Regulations 2022 provide private landlords of modern homes who have a healthy homes standards compliance date on or after 12 May 2022 and before 12 February 2023 a grace period to comply with the heating standard by 12 February 2023. If changes in the compliance dates become law before 12 February 2023, landlords eligible for the grace period could potentially have an extra 30 days to comply. The grace period was designed taking into account the adverse effects of COVID-19 and the supply chain issues, so these landlords have had a proportional extension already. For this reason, landlords who have not yet complied with the heating standard due to eligibility for the grace period will not be eligible for the timeframe extension and will need to comply with the heating standard by 12 February 2023.

40. Homes owned or managed by New Zealand Defence Force, Ministry of Education, Land Information New Zealand, Department of Corrections and Te Puni Kōkiri are considered to be private landlords in the context of these changes. This means that the proposed changes in the compliance deadlines would also apply to them as if they were private landlords.

## What options are being considered?

41. Officials propose extending the compliance dates to a timeframe that reflects the reality of the current trades constraints and the supply chain issues for some building products.

42. Four options have been considered as follows:

|                              | <b>Rolling deadline after new tenancy</b> | <b>Final compliance date for private landlords</b> | <b>Final compliance date for public housing providers</b> | <b>Other</b>   |
|------------------------------|---|--|---|--|
| <b>Option 1 (Status quo)</b> | 90 days                                   | 1 July 2024  | 1 July 2023   | Relies on existing regulatory response and the regulator to take a pragmatic approach to enforcement |
| <b>Option 2</b>              | 150 or 180 days                           | No change  | 31 December 2023  |  |
| <b>Option 3</b>              | 120 days                                  | 31 March 2025                                      | 31 March 2024   |  |
| <b>Option 4</b>              | 120 days                                  | 1 July 2025  | 1 July 2024   |  |

43. For private landlords, options 3 and 4 change the compliance dates after the start of a new or renewed tenancy from 90 to 120 days, because 120 days is the minimal additional time required in the current operating environment (following proportionality criteria). Options 3 and 4 add the same amount of time to the final compliance date for private landlords as for public housing providers. Those options are designed to equitably reflect the pressures on public and private sector landlords.

44. The only difference between option 3 and option 4 is the amount of time given to extend the final compliance date for private landlords and public housing providers. Option 3 includes an extension of 9 months (to 31 March 2025) whereas option 4, has an extension of one year (to 1 July 2025).

45. All options exclude changes to boarding houses which have had to comply already and properties which have already passed their compliance dates.

### **Option 1 – Status quo**

46. Under this option, the current timeframes would remain the same. This means that despite making reasonable efforts to comply, some private landlords would not be able to comply with some healthy homes standards within 90 days of the start of a tenancy. Kāinga Ora is unlikely to have all of its properties compliant by the final compliance date.

47. Tenants of private, Kāinga Ora and CHP landlords would be able to take their landlord to the Tenancy Tribunal seeking an award for exemplary damages and for the compliance work to occur within the original timeframes. However, if a delay is out of control of the landlord, the ability to take a case to the Tenancy Tribunal is unlikely to result in the work being undertaken faster.

48. The original timeframes may encourage landlords to undertake work proactively, which benefits tenants. However, if the work is not achievable in the timeframe, landlords may become disengaged and less likely to even try to comply.

49. HUD's assessment of the need for the status quo to change was shared by Kāinga Ora and property managers.

***Option 2 – Extension from 90 to 150/180 days for private landlords and six month extension for public housing providers***

50. Option 2 includes the following changes in the compliance timeframes:

- For private landlords, changing the rolling deadline for when the requirements come into force, which will mean that a tenanted property must be compliant within either 150 or 180 days of the start of every new or renewed tenancy instead of 90 days.
- For private landlords, the final compliance date of 1 July 2024 would be retained.
- For public housing providers (Kāinga Ora and CHPs) to change their deadline so all Kāinga Ora and CHP residential tenancies are required to meet the standards by 31 December 2023, instead of 1 July 2023.

51. This option can be achieved through an amendment to the relevant regulations.

***Option 3 – Extension from 90 to 120 days for private landlords and nine month extension for private landlords and public housing providers***

52. Option 3 includes the following changes in the compliance timeframes:

- For private landlords, changing the rolling deadline for when the requirements come into force, which will mean that a tenanted property must be compliant within 120 days of the start of every new or renewed tenancy instead of 90 days.
- Also for private landlords, to change the final deadline so all residential tenancies will have to be compliant by 31 March 2025 at the latest (unless they have had to comply earlier), instead of 1 July 2024.
- For public housing providers (Kāinga Ora and CHP's) to change their deadline so all Kāinga Ora and CHP residential tenancies are required to meet the standards by 31 March 2024, instead of 1 July 2023.

53. This option will require an amendment to the Residential Tenancies Act 1986, as well as the regulations.

***Option 4 – Extension from 90 to 120 days for private landlords and one year extension for private landlords and public housing providers***

54. Option 4 includes the following changes in the compliance timeframes:

- For private landlords, to change the rolling deadline as to when the requirements come into force, which will mean that a tenanted property must be compliant within 120 days of the start of every new or renewed tenancy instead of 90 days.
- Also for private landlords, to change the final deadline, so all residential tenancies will have to be compliant by 1 July 2025 at the latest (unless they have had to comply earlier), instead of 1 July 2024.

- For public housing providers (Kāinga Ora and CHP's) to change their final deadline so all Kāinga Ora and CHP residential tenancies are required to meet the standards by 1 July 2024 instead of 1 July 2023.

55. This option will require an amendment to the Residential Tenancies Act 1986, as well as the regulations.

## Impacts of the options on stakeholders

### *Impacts on tenants*

56. The healthy homes standards lead to better health, education, and economic outcomes for tenants. The research shows a link between cold, damp and mouldy homes and negative health outcomes, particularly for illnesses such as asthma and cardiovascular conditions. By improving the quality of rental homes, New Zealanders who rent will experience improved health, as well as lower medical costs and lower levels of hospitalisations.

57. Options 2, 3 and 4 may have a negative impact on people who rent homes that are not yet compliant with healthy homes standards. They could be impacted, in the short-term, from the negative health and social effects of living in a substandard property for longer than previously anticipated.

58. The negative effects will disproportionately impact vulnerable populations of tenants, who already experience inequitable health outcomes. For example, children, low income, elderly, and disabled persons, and Māori and Pacific peoples, who rent in the lowest quality houses. This is based on research that shows the direct links between negative health and social outcomes caused by living in cold and damp homes. Fifty-two percent of Māori households rent, compared to 35 percent of Pākehā (2018 census).

59. However, the short-term focus of the extension options limits the impacts on tenants. In addition, if the cause of a delay is out of control of the landlord, the delay is unavoidable whatever the compliance date is (i.e. the delay would occur under the status quo as well).

60. Some tenants with access difficulties can benefit from the time extension. There can be a range of issues that prevent Kāinga Ora from accessing homes including anti-social behaviour, safety issues, scheduling difficulties, or tenants' stress about trades access. Kāinga Ora will continue to undertake educational programmes to create awareness of the benefits of healthy homes standards. This, combined with the educational and informational programmes run by MBIE may help to address the stress and concerns that some tenants express. The time extension will also help tenants who have scheduling difficulties to fit the works in with less time pressure.

### *Impacts on landlords*

61. For landlords, Options 2, 3 and 4 provide additional time to complete works to comply with the healthy homes standards. These landlords will receive the benefit of having more time to plan and undertake the works and repairs needed to comply. This will be particularly beneficial for landlords with an extensive portfolio of rental properties such as Kāinga Ora and other public housing providers who are facing the challenges on a bigger scale.

62. This makes regulatory burden more realistic for landlords and property managers and clarifies the potential regulatory implications when the landlord is unable to comply in time

because of issues outside of their control. It will also reduce the potential administrative burden for the Tenancy Tribunal.

## How do the options compare to the status quo/counterfactual?

|                          | <b>Option One – status quo</b>   | <b>Option 2 – change rolling deadline to 150/180 days and extend final timeframes for KO/CHP by 6 months</b>  | <b>Option 3 – change rolling deadline to 120 days and extend final timeframes for 9 months</b>  | <b>Option 4 – change rolling deadline to 120 days and extend final timeframes for 12 months</b>  |
|--------------------------|--|---|---|--|
| <b>Impact on tenants</b> | <p>0</p> <p>Keeping the current timeframes will not change when the standards are met for tenants where supply chain or trade issues are preventing a landlord from complying in time. The status quo may encourage landlords to undertake proactive work to comply ahead of the deadline. For tenants whose landlords do not comply within their current timeframes, they would have to take their landlords to the Tenancy Tribunal to investigate each case. The regulator may also act depending on the particular case.</p> | <p>-</p> <p>Some tenants will wait longer for their rental home to comply with the standards. This will delay the benefits of the healthy homes standards for some tenants. Renters of lower quality houses, who already experience inequitable health outcomes, will be further affected by a delay in meeting the healthy homes standards. This wait is likely to be aligned with realistic dates for landlords to comply where there are supply chain or trade issues.</p> | <p>--</p> <p>Some landlords (reactive or cash-poor ones) might delay proactive work to comply ahead of the deadline, or in preparation for any turnover. This will delay the benefits of the healthy homes standards for some tenants. Renters of lower quality houses, who already experience inequitable health outcomes, will be further affected by a delay in meeting the healthy homes standards.</p> | <p>--</p> <p>Worse than status quo. Some landlords (reactive or cash-poor ones) might delay proactive work to comply ahead of the deadline, or in preparation for any turnover. This will delay the benefits of the healthy homes standards for some tenants. Renters of lower quality houses, who already experience inequitable health outcomes, will be further affected by a delay in meeting the healthy homes standards.</p> |
| <b>Proportionality</b>   | <p>0</p> <p>Status quo does not provide a reasonable timeframe to get done all healthy homes works and repairs and puts landlords who are diligently trying to comply at risk of enforcement measures.</p>   | <p>+</p> <p>Provides some relief to both types of landlords. Does not fully mitigate compliance risks for either.</p>   | <p>+</p> <p>A nine-month extension effectively leaves landlords only a seven month window to comply with the standards due to the shutdown or, slowdown of trade services over the holiday period.</p>  | <p>++</p> <p>Provides a suitable buffer for landlords to meet compliance standards if supply chain and access issues continue or worsen within the next year.</p>  |



|   |   |   |  |   |
|---|---|---|--|---|
| <b>Fairness/<br/>Equity<br/>between<br/>landlords</b> | <p>0</p> <p>Not doing any changes would also be fair as all types of landlords would be affected equally by the status quo.</p> | <p>-</p> <p>Provides a final deadline extension to KO/CHP but not to private landlords. Change to rolling deadline only benefits specific private owners.</p>   | <p>++</p>  | <p>++</p>   |
| <b>Administrative<br/>efficiency</b>                  | <p>0</p> <p>No impact.</p>  | <p>-</p> <p>The rolling deadline change and 6-month extension could be confusing to communicate. Does not maintain consistency with the usual HHS deadlines of 1 July.</p> <p>Can be achieved through amending the regulations.</p> | <p>-</p> <p>A nine-month extension could be problematic and confusing to communicate and will not maintain the consistency with the usual HHS deadlines of 1 July.</p> <p>Requires a legislative amendment, which is a more complex process.</p> | <p>++</p> <p>This “round” extension is easy and clear to communicate and maintains consistency with all dates regarding HHS since first introduced.</p> <p>Requires a legislative amendment, which is a more complex process.</p> |
| <b>Overall<br/>assessment</b>                         | <p>0</p>  | <p>--</p>   | <p>0/+</p>   | <p>++</p> <p>Preferred option as it best fulfils criteria and addresses the problem, meets the policy objectives, and delivers better outcomes than doing nothing</p>   |

**Example key for qualitative judgements:**

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

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

63. Officials recommend option 4.
64. For private landlords, options 3 and 4 change the compliance dates after the start of a new or renewed tenancy from 90 to 120 days, which is the minimal additional time required in the current operating environment (following proportionality criteria). Option 2 changes this compliance date from 90 to 150 or 180 days, allowing for an increased buffer. Options 3 and 4 both add the same amount of time to the final compliance date for private landlords and public housing providers, reflecting an equitable approach. Option 2 adds 6 months to the final compliance date for public housing providers, with no change for private landlords.
65. The only difference between option 3 and option 4 is the amount of time given for the final compliance date to private landlords and public housing providers.
66. Option 1 proposes no change to compliance dates, and instead relies on the existing regulatory response. This does not provide a reasonable timeframe for healthy homes works and repairs to be completed. Further, this does not mitigate the risk of challenge at the Tribunal for private landlords or public housing providers.
67. Officials recommend Option 4, bringing the final compliance for private landlords to 1 July 2025 and Kāinga Ora and CHPs to 1 July 2024. From the beginning of the healthy homes standards, stakeholders have been working to “1 July” dates for all deadlines, including the previous government’s smoke alarm and insulation regulations. This consistency has helped educational and enforcement efforts to stick this date in people’s minds and will be easier to communicate than the alternatives contained in options 2 and 3.
68. A six- or nine-month extension will in practice only provide Kāinga Ora with a four or seven month period to address the remaining properties once the effect of the holiday period on access to trades and tenant’s homes is considered. Neither option would allow for a concentrated push towards the end date because of the interruption of the holiday period.
69. This would also affect momentum with conversations with tenants who have concerns about allowing access to their homes for the work to be done. There are about 5 to 10 percent of hard to access tenants whose premises Kāinga Ora is struggling to get access to. There can be a range of issues that prevent Kāinga Ora from accessing homes including anti-social behaviour, safety issues, scheduling difficulties, or tenants’ stress about trades access.
70. Giving both sectors a full year will mitigate any further potential issues with Kāinga Ora meeting the dates as it gives them a more suitable buffer if supply chain and access issues continue or worsen within the next year. Also, having to do a further extension in addition to this one could cause confusion in the sector. From the introduction of the healthy home standards, the deadlines have always ended on 1 July. A one-year extension maintains this consistency of messaging, while nine months could lead to confusion over when the new compliance date is.

## What are the marginal costs and benefits of the preferred option?

| Affected groups   | Comment   | Impact       | Evidence certainty |
|---|---|--------------|--------------------|
| <b>Additional costs of the preferred option compared to taking no action</b>    |   |              |                    |
| Tenants   | Some rental properties will not be compliant with the healthy homes standards for longer than anticipated, and the changes will delay the benefits of having a warm, dry, rental home for some tenants. However, this risk is lessened because landlords are seeking to comply proactively as they want to mitigate the risk of having to comply urgently if a tenancy ends at short notice.<br><br>Impacts are lower because the landlord might be at high risk of not being able to comply anyway.<br><br>Kāinga Ora is also continuing their accelerated implementation programme. | Low          | Medium             |
| Government  | None, as required updates and educational programmes will be covered within the budget baselines.   |              |                    |
| <b>Total monetised costs</b>  |   | Low          | Medium             |
| <b>Non-monetised costs</b>  |   | Low - Medium | Medium             |
| <b>Additional benefits of the preferred option compared to taking no action</b> |   |              |                    |
| Tenants   | Those tenants who are experiencing access difficulties to their properties for works to be carried out may benefit from the additional time. Kāinga Ora will be able to carry out information and educational campaigns, to alleviate these tenants' stresses and concerns, and manage practical access issues.   | Low          | Medium             |
| Landlords   | Relief to landlords who are at lower risk of regulatory action. More stable costs for works as landlords won't have to compete all at once for the same goods and services.   | High         | High               |
| Housing market (Landlords and tenants)  | Fewer vacant houses (more ample rental supply) - some landlords were preferring to maintain their rental homes vacant until compliance before renting them out again due to   | Medium       | Medium             |

|                                 |   |        |        |
|---------------------------------|---|--------|--------|
|                                 | the risk of not meeting their 90 day deadline. This means that landlords will keep receiving rents and tenants will have a larger supply of suitable homes to move to.                        |        |        |
| Government                      | Less likely to impose a burden on the Tenancy Tribunal and Tenancy Services by tenants making an application or seeking guidance in the situation where a landlord has been unable to comply. | Low    | Medium |
| <b>Total monetised benefits</b> |   |        |        |
| <b>Non-monetised benefits</b>   |   | Medium | Medium |

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### *Legislative change*

71. The proposed changes will be given effect either through an amendment to the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (the regulations) or through an amendment to the regulations and the Residential Tenancies Act 1986, depending on which option is chosen. Subject to Cabinet approval, and House time (if required), HUD officials expect the changes to come into effect in late 2022.

#### *Implementation risks / transitional issues*

72. Changes in the compliance timeframes will only be available for landlords whose healthy homes compliance date has not yet passed. This is consistent with the presumption that all laws apply prospectively.

#### *Implementation*

73. Changes to the compliance timeframes for the healthy homes standards will be implemented in the same way as the recent amendments to the healthy homes standards in May 2022 and the original healthy homes standards.
74. The change could also create confusion for tenants and advocates about when the healthy homes standards must be complied with, making it difficult to hold landlords to account.
75. To mitigate this risk, information and education relating to the changes to the compliance timeframes of the healthy homes standards would need to include education and information on how the changes apply to rental homes by type of tenancy.
76. There are already operational policies, processes, and systems in place in which MBIE and HUD provide information and education on how the changes apply to rental homes. This will be targeted to relevant stakeholder groups, including government agencies, industry specialists, and private landlord, property management, and tenant advocacy groups.

#### *Operational oversight*

77. Operational oversight will be carried out by Tenancy Services in MBIE. They are responsible for the operational oversight of the healthy homes standards.
78. Tenancy Services as the enforcement and compliance office will also be responsible for compliance with these changes in the compliance timeframes. These will fall under the existing enforcement strategy for the healthy homes standards overall.

### How will the new arrangements be monitored, evaluated, and reviewed?

#### *General system-level monitoring and evaluation of the healthy homes standards*

79. HUD is the regulatory steward for the residential tenancy system and is already monitoring the healthy homes standards. HUD will further monitor the implementation of these changes. As part of this ongoing work, HUD policy officials are in regular contact with Tenancy Services within MBIE.

80. HUD has commissioned annual surveys to be undertaken about compliance with the healthy homes standards. There is the potential for future reports to include questions focused on these changes and the reception of them.

*Specific monitoring and evaluation of the changes to the compliance timeframes of the healthy homes standards*

81. To gain an understanding of whether these changes have solved the policy issues raised, HUD will consult with groups representing landlords and property managers as well as Tenancy Services (MBIE) and Kāinga Ora.

82. HUD will work across government and with key stakeholder groups to review the changes to the compliance timeframes of the healthy home standards after implementation. This will enable the Ministry to determine the effectiveness of the changes and identify any issues that prompt the need for policy work leading to further legislative, regulatory, or operational policy change.