In Confidence

Office of the Associate Minister of Housing (Public Housing)

Chair, Social Wellbeing Committee

REFORM OF THE RESIDENTIAL TENANCIES ACT 1986 – MINOR FITTINGS, RENT SETTING AND ACCESS TO JUSTICE

Proposal

1. This paper seeks agreement to a range of discrete changes to the Residential Tenancies Act 1986 (RTA). My proposals will improve the process for adding minor fittings to rental properties, increase certainty around rent and improve access to justice, amongst other matters.

Executive Summary

2. Following Cabinet's agreement to proposals to improve security of tenure and compliance in the tenancy market I am proposing further changes to modernise the law and better align it with our *Plan for a modern New Zealand we can all be proud of*. I propose to:

    2.1. create a presumptive right that tenants can add minor fittings to the property such as brackets to secure furniture or appliances against earthquake risk or picture hooks, and landlords can only decline these for specified reasons. Landlords will be required to respond to a request within 21 days;

    2.2. prohibit the solicitation of rental bids by landlords and limit rent increases to once every twelve months;

    2.3. clarify the powers in the law to suppress names from published decisions of the Tenancy Tribunal (Tribunal) and create a right for identifying details to be removed where a party has wholly or substantially successfully enforced their rights or wholly or substantially successfully defended a case;

    2.4. specify that landlords can only decline a request to assign a fixed-term tenancy to another person when this is reasonable in the circumstances. and require a breakdown of any fees charged upon assignment, subletting or parting with possession of the premises; and

    2.5. require landlords to provide documents demonstrating compliance with the healthy homes standards to tenants if requested and to remove duplication of requirements landlords have in this regard.

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3. These are the right changes to meet the Government's aspiration of improving the wellbeing of New Zealanders and their families regardless of whether they own or rent their accommodation. Tenants will have an improved ability to feel at home in their properties, while landlords will be able to legitimately protect their properties and their interests.

4. Should Cabinet agree to these changes, they will be drafted into a Bill along with proposals already confirmed to improve security of tenure and compliance and those in a companion paper before the Committee today to clarify the rights and obligations around keeping pets in rental properties. I intend to introduce this Bill to Parliament in March 2020.

Background

5. On 25 September 2019, Cabinet Social Wellbeing Committee (SWC) noted background information on the reform of the Residential Tenancies Act 1986 (RTA) and the progress we have already made by banning letting fees and ensuring homes are warm and dry. Cabinet was also briefed on trends in composition of rental markets and the vital role that landlords play in providing residential rental accommodation [SWC-19-MIN-0142 refers].

6. I advised Cabinet that public consultation on the reform ran for seven weeks from 27 August to 24 October 2018 and was supported by stakeholder workshops in Auckland, Tauranga, Wellington and Christchurch. Significant interest was received in the consultation with 4,787 viewpoints received. Fifty percent of these identified as representing landlords, 41 percent as tenants, six percent as property managers and the remaining three percent comprised social housing providers and other interest groups.

7. On 25 September 2019, SWC agreed to several big shifts that will improve tenants' security of tenure and better incentivise compliance by landlords with the law [SWC-19-MIN-0142 refers]. This paper builds on that platform and proposes changes in response to other matters we consulted the public on as well as discrete issues that have come to my attention more recently.

Embedding rights and obligations around adding minor fittings to rental properties

8. Currently, if tenants want to make changes to improve the liveability of their rental property, such as hanging pictures, installing shelving or making reasonable safety improvements, they must get written consent from their landlord and the landlord must not unreasonably withhold it.[1]

9. Consultation showed that parties do not generally know about or understand this right. Searches of the Tribunal database show that there are very few cases that cover these issues, suggesting that tenants are not asserting their rights.

1 Section 42 of the Residential Tenancies Act 1986.

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10. In consultation, tenants stated that the ability to make minor and reasonable fittings is strongly related to their ability to feel at home in their property. However, 41 percent of tenants stated that they had a negative experience trying to do so. Of this group, 24 percent were not allowed to make the fitting and a further 12 percent said it was difficult or slow. Seven percent were not aware this was possible and five percent did not expect to be able to. Thirteen percent had a mixed experience. Tenants also considered that requests were generally managed better when dealing with their landlord directly, rather than through a property manager.

11. The landlord position is that the context of the tenancy, property and fitting are all relevant when a minor fitting is requested, and clear and good faith communication is important. Landlords are principally concerned about damage and costs that could result from the installation and reversal of a minor fitting. Landlords supported tenants making low impact changes but in general opposed allowing any fitting installations to happen without permission and/or notification.

12. Both parties were concerned about safety issues. Parties noted that minor fittings could be important to protect when baby-proofing or earthquake-proofing is needed. However, landlords were also concerned that safety could be compromised if a minor fitting was added or reversed in a substandard manner.

I propose changes to realise the intent of the existing rights and obligations

13. I do not consider that the existing legal right is functioning optimally. I propose changes to better realise the rights that tenants already have by introducing a new category for justified minor fittings with a new process for parties to follow. Nothing within this category will allow tenants to make changes to their property that would not already be accommodated under the existing law. Tenants will continue to be responsible for all costs involved and will be required to reverse a minor fitting when a tenancy ends unless the landlord agrees that this is not needed.

14. For a minor fitting to be within scope of this new category it must have the following attributes:

    14.1. it presents a low risk of damage to the property;

    14.2. it is of a nature that allows the property to be easily returned to a reasonably similar condition at the end of the tenancy;

    14.3. it does not pose a health and safety risk that is not able to be sufficiently mitigated, including during installation and removal;

    14.4. it has no impacts on third parties; and

    14.5. it requires no consents under law.

15. Guidance will be provided to parties on the specific minor fittings considered to meet these criteria. My initial view of this is that the following are likely to be acceptable:

15.1. installing minor accessibility fittings that improve safety for disabled people such as visual alerts for fire, security alarms and doorbells, where this has low impacts and will be reversed at the conclusion of the tenancy;

15.2. securing furniture or appliances to protect against earthquake risk or to make a property child safe;

15.3. washing machines and dishwashers;

15.4. installing a baby gate;

15.5. affixing child safe latches to cupboards;

15.6. installing shelving;

15.7. installing television aerials or wireless broadband equipment;

15.8. installing gardens when these can be returned to the original state at the conclusion of the tenancy;

15.9. installing curtains and window coverings; and

15.10. installing internal locks provided they are compliant with relevant fire safety laws.

16. Tenants will be required to make a request for a minor fitting within the new category and landlords will need to respond to them within 21 days or face a maximum penalty of $1,500. Landlords will only be able to decline these requests in circumstances where they can advance a case that the work proposed:

16.1. is not considered to have low risks for installation and removal or cannot be remediated back to a reasonably similar state;

16.2. will disturb hazardous materials;

16.3. poses a health and safety risk that is not able to be sufficiently mitigated, for example by using an experienced tradesperson;

16.4. will require legal consents;

16.5. will compromise existing obligations the landlord has, for example, under the Unit Titles Act 2010;

16.6. will compromise the structural integrity, waterproofing or fundamental safety or character[2] of the building; or

16.7. will have an unreasonable impact on third parties.

2 For example, painting the house may compromise the fundamental character depending on the scale of change.

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17. If a landlord refuses a tenant's request to install a minor fitting for reasons other than those set out in the RTA it would be an unlawful act with a corresponding penalty of up to $1,500.

18. A landlord would also have an opportunity to add reasonable conditions around how the work is completed. For example, landlords would be able to request that they do the work themselves or that the tenant employs a suitably experienced person to undertake it if the nature of the work warrants it. Landlords could request that the work is undertaken in an alternative location.

19. If a tenant considers that a landlord has withheld permission unreasonably or has placed a condition on the request that is unjustified, they may apply to the Tribunal for remedy.

20. A landlord must respond to a minor fitting request within 21 days. A maximum penalty of $1,500 would apply if they do not do this, without a reasonable excuse.

21. At the conclusion of a tenancy where a fitting installation has been made, tenants must reverse the fitting at their own cost unless the landlord agreed that this is not warranted. If this does not occur, the tenant would be liable to cover the cost of reversal. In addition, I propose exemplary damages of up to $1,500 may be applicable to tenants who fail to reverse the fitting installation. This will ensure tenants are incentivised to not make minor fittings the landlord's problem at the end of the tenancy.

22. I expect that this system will better realise existing rights in law. Landlords and property managers will be required to consider tenants' requests on their merits within 21 days and would no longer be able to prohibit any changes to the property, such as the hanging of pictures, outright in the tenancy agreement.

23. For any changes to the property that are outside of the scope of the new system, I propose that the current rights and obligations in section 42 of the RTA remain. These provisions include that landlords must not unreasonably withhold consent to a fixture, renovation, alteration or addition to a rental property.

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Restricting rental bidding

32. Rental bidding is when a prospective tenant offers more than the advertised rent for a property, either because they are encouraged to or make their own decision to do so. The RTA currently allows landlords and tenants to agree on the amount of rent for a property and rental bidding or auctions are not prohibited by the legislation.

33. Rental bidding can look like:

    33.1. prospective tenants offering more rent than was advertised without being prompted;

    33.2. agents requesting that prospective tenants offer more rent than was advertised;

    33.3. agents encouraging or seeking competitive bids from prospective tenants;

    33.4. agents advertising a property with a rent range;

    33.5. agents advertising a property with no rental price listed; or

    33.6. rental auctions.

34. Rental bidding does not appear to be a common issue in New Zealand. However, 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.

35. 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 to them. People in these situations have spent time and money applying for a property they would have likely passed by 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. These information imbalances do not illustrate the good faith behaviour we want to encourage in the market.

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36. Fifty-five percent of respondents considered rental bidding should be banned, eleven percent thought it should be controlled in some way and thirty-four percent thought 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 did not support controls on rental bidding commented that rental bidding provided an option for some to show their need for a property, such as having pets, or proximity to schools or employment.

37. In order to give greater certainty to tenants in relation to the rental costs, I propose the following changes to prohibit:

    37.1. the solicitation of rental bids by landlords and their agents;

    37.2. advertising rental properties with no rental price listed;

    37.3. organising auctions over a rental property; and

    37.4. offering to make an applicant the successful tenant if they agree to pay more rent for the property.

38. I expect that this approach will help to encourage good faith behaviours between landlords and tenants because landlords and their agents will no longer be allowed to put pressure on prospective tenants to offer more money for a rental property, or encourage them to bid against other applicants for the property. I also expect that it will improve tenants' choice and control over their housing because it allows tenants to decide what properties they apply for, based on their financial capability. It will also allow tenants to offer more for a property if they wish to secure extra services, such as having a pet, or having the landlord organise mowing the lawns.

39. Tenants will still be able to offer more rent for the property of their own accord. This behaviour is not prohibited. However, the prohibitions above reduce the likelihood of rental bidding occurring.

40. I recommend creating corresponding penalties to accompany the new unlawful act of engaging in rental bidding. The Tribunal could order payment of exemplary damages of up to $1,500 per incident for a breach of this nature. The Regulator will also be able to give infringement notices with a $500 fee for landlords with five or fewer tenancies and $1,000 for landlords with six or more tenancies.

Limiting rent increases to once per year

41. Rents can currently be increased once every six months. For fixed-term tenancies this only applies if it is stated in the agreement. Rent increases can leave tenants vulnerable to rental stress, particularly low-income tenants, or tenants who experience change in their financial circumstances. While rental increases are part of a wider problem around affordable housing and market supply and demand, there is scope to consider whether changes to how often rental increases are permitted can provide greater certainty and stability to tenants.

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42. The more often rent can be increased, the more tenants may feel uncomfortable raising maintenance issues with their landlord over the course of a tenancy due to fear that this may lead to a retaliatory rent increase.

43. There was strong support in consultation to limiting rent increases to once every twelve months. Sixty-nine percent of all respondents supported the suggested change. Seventy-four percent of tenants, sixty-three percent of landlords, sixty-nine percent of property managers and fifty-five percent of social housing providers supported the proposal. Many landlords and tenants noted that increasing rents annually is the current common practice and therefore did not have a problem with the suggested change.

44. I propose to limit rent increases to once every twelve months for periodic agreements (except for Income Related Rent in public housing). This will not change the overall cost of rental accommodation or impact adversely on landlords' income (if landlords plan ahead). However, it will provide tenants with greater medium-term certainty of their housing costs and more time to prepare for any increase in rent. In addition, this approach is likely to reduce the likelihood of tenants being unexpectedly priced out of their rental properties mid-way through a given year, providing them with more security and stability of tenure.

45. I propose that existing exemptions in law that allow landlords to increase rent outside of the legislated window remain. This means that where landlords have made significant improvements to the property or varied the tenancy agreement in response to a request from a tenant, they will still be able to increase the rent outside of the twelve-month window that I propose.

Improving tenant and landlord access to justice and privacy

46. There is a lack of clarity and consensus on powers for the Tribunal to suppress identifying details in published decisions. This lack of clarity is problematic because if anonymisation is not possible when the circumstances warrant this, a disincentive exists to parties enforcing their rights at the Tribunal.

47. I understand that it is becoming common practice for landlords and property managers to search Tribunal rulings as part of their vetting processes and subscription services are available in the market that compile information from Tribunal rulings for landlords. The effect of this is that even when a tenant has been wholly or substantially successful in enforcing their rights, they may be discriminated against in future applications for rental properties.

48. I recognise the principles of open justice and transparency in our justice system. However, I do not consider that open justice should take precedence over a party's access to justice. There is little public interest in knowing the names of a party that has successfully enforced their rights at the Tribunal.

49. I propose to clarify the law to remove any doubt that identifying details can be removed from Tribunal decisions if this is in the interests of the parties and the public interest.

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50. Further, I propose changing the default position in the law so that parties' identifying details are not published in situations when:

    50.1. the party has wholly or substantially successfully enforced their rights or wholly or substantially successfully defended a case;

    50.2. the party makes an application or request for identifying details to be removed; and

    50.3. the Tribunal does not consider that any specific attributes of the case or the conduct of the party seeking anonymisation mean there would be public interest in the identifying details being published.

51. For the above test to apply, the party would have to be wholly or substantially successful or wholly or substantially defended all claims for identifying details removed. If there are elements of the decision where the party has breached their obligations, then there is a public interest in those details being published.

52. I propose that the existing criminal offence for breaching a suppression order would apply to the new scope of suppression orders above. This offence has a maximum penalty of $3,000. This would apply when a person knowingly or recklessly published identifying information that was subject to a suppression order. It would not apply to a person who hosts material on websites or other electronic retrieval systems that can be accessed by a user unless the specific information has been placed or entered on the site or system by that person.

53. I expect that these proposals will bring greater consistency and clarity to this area of law, and ultimately lead to improved privacy practice and access to justice. In addition, by removing a disincentive to parties exercising their rights at the Tribunal, I expect that the healthy homes standards and other rights afforded through this reform of the RTA will be better realised.

Standardising the process of assigning interest in a fixed-term tenancy

54. Assignment is when a tenant transfers their interest in a fixed-term tenancy to another tenant. This often occurs following an unforeseen change to their circumstances. 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 in all other situations where assignment requests must be considered on a case-by-case basis and not be declined unreasonably. A blanket prohibition through a clause in the tenancy agreement may not be fair and reasonable, but I have been advised that it is likely these are common.

55. I propose amending the RTA so that assignment requests can only be declined if this is reasonable in the circumstances, regardless of whether a clause prohibiting assignment is included in the agreement. The onus would be on the tenant to provide all necessary information to inform a decision, but the landlord would be able to choose to run this process themselves if they wish. If there is no reasonable cause to decline a suggested assignee the landlord would also have the option of ending the tenancy, at which point they could select any tenant from the market if they prefer, rather than the suggested assignee.

56. Public housing providers would be exempt from this proposal. Public housing providers would retain the ability to prohibit assignment through a clause in the tenancy agreement because of the specific eligibility criteria, and specific targeting of public funding.

Increasing transparency of costs in unforeseen circumstances

57. The RTA allows landlords and property managers to recover expenses reasonably incurred upon giving a tenant consent to assignment, subletting or parting with possession of the premises. However, the RTA does not require disclosure of how a fee has been calculated. As a result, tenants may find it difficult to challenge the reasonableness of a specific component of the fee.

58. I propose requiring landlords and property managers to provide breakdowns of all costs, conditions and processes they are applying upon giving a tenant consent to assignment, subletting or parting with possession of the premises. This proposal supports the current law prohibiting the charging of unreasonable fees.

Optimising the healthy homes standards

59. Landlords have obligations under the healthy homes standards to keep various records and provide them on the request of the regulator of the RTA. Currently, landlords are not required to provide these records to tenants upon request in the same way. I propose to require landlords to provide to tenants with the same compliance documents upon request within 21 days. Failure to do so would be an unlawful act. This will improve the ability of tenants to assess compliance with the standards and enforce their rights if necessary.

60. Landlords also have duplicate compliance statement requirements under the insulation requirements in the Residential Tenancies Amendment Act 2016 (the 2016 insulation requirements) and the Healthy Homes Guarantee Act 2017. The RTA currently requires landlords to include a signed compliance statement regarding the 2016 insulation requirements. The Healthy Homes Guarantee Act 2017 introduced a new healthy homes compliance statement in addition to the existing statement.

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61. I propose to streamline the compliance requirements landlords have by only requiring one compliance statement. I consider the 2016 insulation compliance statement is no longer required because this information can be included in the healthy homes compliance statement. Having two compliance statements increases the complexity of the tenancy agreement for landlords and tenants without providing additional information. I expect that this will decrease complexity of the tenancy agreement and reduce administration for landlords. In turn, this will increase the likelihood of compliance.

Consultation

62. The following agencies were consulted on the development of this Cabinet paper, the Ministries of Justice, Business, Innovation and Employment, Social Development, Health, Education, Pacific Peoples and Primary Industries; Te Puni Kōkiri; the Departments of the Prime Minister and Cabinet (Policy Advisory Group, Child Wellbeing Unit, and Child Poverty Unit) and Corrections; the New Zealand Defence Force; the Treasury; Land Information New Zealand; the Office of the Privacy Commissioner and Kāinga Ora-Homes and Communities.

63. The Privacy Commissioner is supportive of the proposed privacy amendments to clarify the Tribunal's ability to suppress individual's names. The Commissioner notes the proposals will assist individuals to enforce and uphold their rights. The Commissioner is thankful for the constructive engagement on these reforms from officials.

64. I have consulted with the Minister of Housing on this Cabinet paper and she has agreed that this Cabinet paper be lodged.

Financial Implications

Landlords and property managers

65. Landlords and property managers will not be subjected to material direct costs as a result of the proposals in this paper. Tenants have existing legal rights to install minor fittings which are not expanded on through my proposals. However, landlords and property managers are likely to face additional administrative costs in relation to new processes around minor fittings, requests for lease assignment and providing breakdowns of fees.

66. Some landlords may generally consider that the package of tenancy initiatives (including those outlined in the first Cabinet paper) will increase the risk to their business and this could affect landlord willingness to rent, and the amount of rent charged. However, noting that there are a wide number of factors that affect rent it would be difficult to attribute any change in market rent to the proposals in this paper alone and any impacts on rents may be muted by other factors that reduce costs for landlords, such as lower interest rates.

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Government

67. As outlined in the paper Reform of the Residential Tenancies Act 1986 – Improving Fairness in the Act (Improving Fairness in the Act), additional funding will be required for the successful implementation of aspects of the RTA reform.
s 9(2)(f)(iv)

68. s 9(2)(f)(iv)

69. There are also likely to be resourcing implications for the Ministry of Justice because of the potential for an increase in the number of cases coming before the Tribunal, for example disputing a minor fitting installation request. The volume of these cases is difficult to quantify because we cannot with accuracy predict increases in disputes about rights, obligations, rent and privacy.

Joint comment from Treasury and the Ministry of Social Development

70. The Treasury and the Ministry of Social Development (MSD) support the proposed reforms and think they could have significant positive wellbeing effects for renting New Zealanders. As outlined in the paper Improving Fairness in the Act, The Treasury and MSD consider that the reforms include a risk of negatively impacting on the rental market. The Treasury and MSD view is that this risk is of a higher likelihood and magnitude than the papers currently suggest.
s 9(2)(f)(iv)

71. s 9(2)(f)(iv)

Ministry of Housing and Urban Development view on joint comment

72. The Ministry of Housing and Urban Development (HUD) does not consider that these costs can be accurately modelled. There is no relevant international experience in comparable markets that is unaffected by competing factors to draw on and building a relevant model from the bottom up for domestic context would require multiple layers of assumptions that, in the view of HUD officials, cannot be undertaken with an acceptable level of accuracy.

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Legislative Implications

73. The proposals in this paper will require legislation to be introduced to Parliament to amend the RTA. A Bill has been included on the Government's 2019 Legislation Programme for this purpose with a s 9(2)(f)(iv) I expect that legislation will be ready for introduction in the first quarter of 2020.

Impact Analysis

74. The Regulatory Impact Analysis (RIA) requirements apply to the proposals in this paper. The Ministry of Housing and Urban Development has undertaken an assessment of the attached Regulatory Impact Assessment titled, Pets, Minor Fittings, Rent Setting and Access to Justice and considers that the RIA fully meets applicable quality assurance criteria.

Human Rights

75. The proposals in this paper are considered to be consistent with New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view on whether these proposals are consistent with the Bill of Rights Act 1990 will be made once legislation is drafted.

76. The proposals contained in this Cabinet paper engage section 14 freedom of expression enshrined in the Bill of Rights Act 1990. Specifically, the withholding of names and identifying details of parties to claims creates a limit on the right to seek and receive information. Any limit on the right is considered to be justified as it is proportionate to achieving the objective of enabling parties to access justice. The proposal also addresses privacy concerns that parties may have in regard to their safety.

Gender Implications

77. The proposals contained in this Cabinet paper have no gender implications.

Disability Perspective

78. Disabled people and their families, including children, have a critical need for housing which is safe and healthy. They are also more likely to live in rental housing, due to comparably lower incomes.

79. The minor fittings proposals improve the process for making low impact accessibility changes. I acknowledge that the proposals do not go as far as some disability organisations requested during consultation which was a specific and explicit right to make changes to a property needed due to a disability. I consider that the optimal approach to improve accessibility in rental properties is to focus on incentives, funding and awareness and work is currently underway within the Ministry of Housing and Urban Development focusing on this. Other work on accessibility is also underway through an updated Disability Action Plan.

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Publicity

80. The Office of the Associate Minister for Housing (Public Housing), in consultation with the Prime Minister's Office and the Office of the Minister of Housing, will manage any publicity.

Proactive Release

81. I intend to proactively release this paper, subject to any required due diligence around the need for certain material to be redacted. I expect that proactive release will occur within the 30 business days provided for in Cabinet Office Circular [CO (18) 4].

Recommendations

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

1. **Note** that the Government initiated a Reform of the Residential Tenancies Act 1986 (the Act) in July 2018 [SWC-18-Min-0080];

2. **Note** that this paper is the third of three that the Associate Minister of Housing (Public Housing) has brought to Cabinet in 2019 on the Reform of the Act and provides for measures to improve tenants' wellbeing and enable them to feel more at home in their properties, while ensuring that landlords are able to protect their asset and their interests;

3. **Note** that Cabinet agreed to changes to improve fairness in the Act on Monday 30 September 2019 [SWC-19-MIN-0142 refers];

Adding minor fittings to rental properties

4. **Note** that the current rights and obligations around minor fittings in the Act are not functioning optimally because of a lack of clarity as to when a fitting is reasonable and a general lack of knowledge and understanding of the law;

5. **Agree** that decisions around adding minor fittings should be reasonable and based on the particular circumstances;

6. **Agree** that minor fittings have the following attributes:

   6.1. present a low risk of damage to the property;

   6.2. is of a nature that allows the property to be easily returned to a reasonably similar condition at the end of the tenancy;

   6.3. does not pose a health and safety risk that is not able to be sufficiently mitigated, including during installation and removal;

   6.4. have no impacts on third parties; and

   6.5. require no consents under law;

7. **Agree** that tenants must request permission to install a minor fitting and that landlords would only be able to decline a request in circumstances where the proposed fitting:

   7.1. is not low risk for installation and removal;

   7.2. means that remediation back to a similar state is not reasonably possible;

7.3. will disturb hazardous materials;

7.4. poses a health and safety risk that is not able to be sufficiently mitigated;

7.5. will require legal consents;

7.6. will compromise existing obligations the landlord has;

7.7. will compromise the structural integrity, waterproofing or fundamental safety or character of the building; or

7.8. will have an unreasonable impact on third parties;

8. **Agree** that it will be an unlawful act for a landlord to refuse a tenant's request to install a minor fitting for reasons other than those set out in the Act;

9. **Agree** that the new unlawful act set out in Recommendation 7 will have corresponding exemplary damages of up to $1,500;

10. **Agree** that landlords may place reasonable conditions around how the minor fitting is installed;

11. **Agree** that a landlord must respond to a request for a minor fitting within 21 days, and that failure to do so without reasonable excuse would be an unlawful act with corresponding exemplary damages of up to $1,500;

12. **Agree** that, at the end of a tenancy where a minor fitting has been agreed to, the tenant must reinstate the property to a reasonably similar standard unless otherwise agreed with the landlord;

13. **Agree** that if a tenant does not remediate the property as required by Recommendation 11, the tenant will become liable for the cost of the remediation and the failure would be an unlawful act with corresponding exemplary damages of up to $1,500;

s 9(2)(f)(iv)

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Setting and increasing of rent

18. Note that 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;

19. Agree to prohibit landlords from:

  19.1. asking tenants to pay more than the advertised rental price for a property;

  19.2. organising rental auctions to determine the rent payable to secure the tenancy;

  19.3. offering to make an applicant the successful tenant if they agree to pay more rent for the property; or

  19.4. advertising rental properties with no rental price listed;

20. Note that tenants will still be able to offer to pay more than the advertised rental price for a property and landlords would be able to accept this;

21. Agree to make it an unlawful act for landlords to engage in the conduct outlined in Recommendation 18, with exemplary damages of up to $1,500 which can be issued only once per incident of the behaviour outlined;

22. Agree to make engaging in the conduct outlined in Recommendation 18 a strict liability infringement offence subject to a fee of $500 or a maximum fine of $1,000 for a landlord with five or fewer tenancies, and a fee of $1,000 or a maximum fine of $2,000 for a landlord with six or more tenancies;

23. Note that most rent increases take place at intervals of once every twelve months or longer and that support was raised in consultation for standardising this practice across the market;

24. Agree to change the law on limiting rent increases from once every 180 days to once every twelve months, except for Income Related Rent in public housing as provided for in the Public and Community Housing Management Act 1992;

Access to justice and privacy

25. Note that the Act can be interpreted as providing for the Tenancy Tribunal to anonymise its written decisions, but Tenancy Adjudicators and the public are unclear about how and when this can apply;

26. Agree to clarify, for the removal of doubt, the Tenancy Tribunal's general power to suppress identifying details from the Tenancy Tribunal decision if this is in the interests of either party and the public interest;

27. Agree to introduce a new default position that identifying details will be removed from

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Tenancy Tribunal decisions in the following circumstances;

27.1. where a party has wholly or substantially successfully enforced their rights or wholly or substantially defended a case;

27.2. that party makes an application or request for identifying details to be removed; and

27.3. the Tribunal does not consider that any specific attributes of the case or the conduct on the party seeking anonymisation mean there would be public interest in the identifying details being published.

28. **Agree** that the existing criminal offence for breaching a suppression order, with a maximum penalty of $3,000, apply to the above clarified and proposed suppression orders;

Assignment and fees charged upon consent to assignment, subletting or parting with possession of the premises

29. **Note** that a discrepancy exists where tenancy agreements can include a clause to prohibit assignment, but assignment requests under tenancy agreements without that clause can only be declined under the Act when it is reasonable to do so;

30. **Agree** that assignment requests can only be declined if this is reasonable in the circumstances, regardless of whether a clause prohibiting assignment is included in the agreement but that public housing providers retain the ability to prohibit assignment in the tenancy agreement;

31. **Note** that while the Act allows landlords and property managers to recover expenses reasonably incurred upon giving a tenant consent to assignment, subletting or parting with possession of the premises, it is difficult for tenants to ascertain if a fee is reasonable if the details of the costs are not disclosed;

32. **Agree** that landlords and property managers must provide breakdowns of all costs, conditions and processes they are applying upon giving a tenant consent to assignment, subletting or parting with possession of the premises, and that failure to do so would be an unlawful act subject to $750 exemplary damages;

33. **Agree** that the failure to provide the information outlined in Recommendation 31 would also be a strict liability offence subject to a fee of $500 or a maximum fine of $1,000 for a landlord with five or fewer tenancies, and a fee of $1,000 or a maximum fine of $2,000 for a landlord with six or more tenancies;

Optimising the healthy homes standards

34. **Note** that the Healthy Homes Guarantee Act 2017 will require landlords to produce a statement about their compliance with the healthy homes standards, and the Residential Tenancies Amendment Act 2016 requires landlords to include a statement about various matters in the tenancy agreement, including insulation in the rental property;

35. **Agree** that landlords producing a healthy homes compliance statement need not also produce an insulation statement as currently required by the 2016 amendments;

36. **Agree** to allow tenants to request healthy homes compliance documents from landlords, so that they can assess and enforce compliance if necessary, and that failure to do so within 21 days of a request be an unlawful act subject to exemplary

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damages of $750;

37. **Agree** that the failure to provide the information outlined in Recommendation 35 would also be an infringement offence subject to a fee of $500 or a maximum fine of $1,000 for a landlord with five or fewer tenancies, and a fee of $1,000 or a maximum fine of $2,000 for a landlord with six or more tenancies;

How the penalties fit together

38. **Agree** that an infringement fee or fine or exemplary damages cannot be imposed in respect of the same breach of the Act;

39. **Note** that a tenant may seek compensatory damages, whether or not an infringement fee or fine or exemplary damages has already been imposed in respect of the same breach of the Act;

Financial Implications

40. s 9(2)(f)(iv)

41.

42. **Authorise** the Associate Minister of Housing (Public Housing) to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to Cabinet's agreement to the recommendations above;

43. **Authorise** the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising throughout the drafting process;

44. **Note** that I intend to introduce legislation to Parliament in the first quarter of 2020.

Authorised for lodgment

Hon Kris Faafoi

Associate Minister of Housing (Public Housing)

Date /…./…/

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Appendix 1 – Proposed unlawful acts, offences and penalties

Schedule A – Proposed unlawful acts and exemplary damages

Policy area	Proposed unlawful act	Exemplary Damages ($ - maximum)
Minor fittings	Landlord or property manager fails to respond to a minor fitting request within 21 days, without reasonable excuse	1,500
Minor fittings	Landlord refuses a request to install a minor fitting for reasons outside of those specified in the RTA	1,500
Minor fittings	Tenant fails to return the property to the original state following a minor fitting, unless agreed otherwise with the landlord	1,500
Rental setting	Solicitation of rental bids by landlords and their agents (including organising auctions over a rental property)	1,500
Rental setting	Advertising rental properties with no rental price listed	1,500
Rental setting	Offering to make an applicant the successful tenant if they agree to pay more rent for the property	1,500
Break-lease fees	Failure to provide a breakdown of break-lease fee when charged	750
Healthy homes	Landlord does not provide requested compliance documents to a tenant upon request	750

Schedule B – Proposed infringement offences and penalties

Policy area	Proposed unlawful act	Infringement ($)	
		Fee[4]	Fine[5]
Rental setting	Solicitation of rental bids by landlords and their agents (including organising auctions over a rental property)	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
Rental setting	Advertising rental properties with no rental price listed	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
Rental setting	Offering to make an applicant the successful tenant if they agree to pay more rent for the property	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
Fees charged upon consent to assignment, subletting or parting with possession of the premises	Failure to provide a breakdown of fee upon consent to assignment, subletting or parting with possession of the premises	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
Healthy homes	Landlord does not provide requested compliance	500 (F)	1,000 (F)

4 (F) relates to the Infringement fee or fine that would apply to a landlord with five or fewer tenancies; (S) is the infringement fee or fine that would apply to landlords with six or more tenancies.
5 The fee is the amount imposed via the issuing of an infringement offence notice by the Regulator. The fine is the maximum amount that can be imposed for the same offence by a court following a successful prosecution.

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Policy area	Proposed unlawful act	Infringement ($)	
		Fee	Fine
	documents to a tenant upon request within 21 days	1,000 (S)	2,000 (S)

Schedule C – Existing criminal offence which will apply to processes for suppression orders

Policy area	Criminal offence	Maximum fine ($)
Suppression of identifying details	Breaching a suppression order, aligning with the new proposed orders and with the current offence for breaching an order in the RTA	3,000

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