



Briefing

Reform of the Residential Tenancies Act 1986 – Bill, Cabinet paper and timeline			
Date:	24 January 2020	Security level:	In Confidence
Priority:	High	Report number:	BRF19/20010537

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Associate Minister of Housing (Public Housing)	Provide any feedback on the attached Bill, Cabinet paper and Departmental Disclosure Statement.	27 January 2020.
	Undertake Ministerial and cross-party consultation on the attached Bill, Cabinet paper and Departmental Disclosure Statement.	28 January 2020 to 4 February 2020, to enable lodging on 7 February for LEG Committee consideration on 11 February 2020.
	Agree to clarify the Regulator's ability to request a tenancy agreement.	28 January 2020.
	Provide feedback to officials on your preferred Select Committee and timing.	4 February 2020.

Contact for discussion			
Name	Position	Telephone	1st contact
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a) ✓
Kate Rickerby	Policy Advisor, Tenures and Housing Quality	04 832 2434	

Other agencies consulted
N/A.

Minister's office to complete

- Noted
- Seen
- Approved
- Needs change
- Not seen by Minister
- Overtaken by events
- Declined
- Referred to (specify)

Comments

Please note Ministers suggested wording changes for redrafting, and then send back to this office. ~~For~~

Date returned to MHUD:

27/01/2020



Briefing

Reform of the Residential Tenancies Act 1986 – Bill, Cabinet paper and timeline

For: Hon Kris Faafoi, Associate Minister of Housing (Public Housing)
Date: 24 January 2020 **Security level:** In Confidence
Priority: High **Report number:** BRF19/20010537

Purpose

- To provide you with the draft Residential Tenancies Amendment Bill (the Bill), Cabinet paper, Departmental Disclosure Statement, advice on timelines for the reform of the Residential Tenancies Act 1986, and to seek your agreement to a minor policy issue.

Recommended actions

- It is recommended that you:
 - Provide** any feedback you would like officials to incorporate into the draft Residential Tenancies Amendment Bill (the Bill), Cabinet paper and Departmental Disclosure Statement before Ministerial and cross-party consultation by close of play Monday 27 January 2020. Agree / Disagree
 - Note** that Ministerial and cross-party consultation on the attached Bill, Cabinet paper and Departmental Disclosure Statement need to be completed by your office by 4 February 2020, to enable lodging on 7 February 2020 for LEG Committee consideration on 11 February 2020. Noted
 - Agree** to undertake Ministerial and cross-party consultation on the attached Bill, Cabinet paper and Departmental Disclosure Statement. Agree / Disagree
 - Note** that if changes are required to the Bill following ministerial and cross-party consultation, this would likely mean that lodging cannot occur on 7 February 2020 due to the further drafting and Bill of Rights Act vetting that would then be required. Noted
 - Note** that we have provided the Bill to the Ministry of Justice so that they can undertake a Bill of Rights vet, but this process is not yet complete. Noted
 - Note** that Cabinet authorised you to make minor policy decisions on issues arising during the drafting process [SWC-19-MIN-0142]. Noted
 - [Redacted]** s 9(2)(h) Noted

h)

s 9(2)(h)

Agree / Disagree

i) **Note** that a communications plan for the introduction of the Bill will be developed in consultation with your office, including the approach to fibre proposals which were not included in the 17 November 2019 announcements.

Noted

j) **Note** that this Bill would normally referred to the Social Services and Community Committee.

Noted

k) **Indicate** whether you intend the Bill be referred to;
i. the Social Services and Community Committee; or
ii. another Select Committee (please advise).

Discuss
w James

Yes/No
Yes/No

KF
27/1/20

l) **Note** that we do not recommend a Select Committee process shorter than four months, and we propose that you work with the Chair and consider the breadth, complexity and likely engagement on the reform if you would like the process to be less than six months.

Noted

m) **Indicate** which Select Committee length you intend to seek;
i. less than four months (not recommended);
ii. four months; or
iii. more than four months (please indicate intended length).

ii. four months; or

Hold position
Yes/No
Yes/No
Yes/No

Discuss w James

KF
27/1/20

C. Leadbetter

Claire Leadbetter
Manager, Tenures and Housing Quality

24/01/20

KF

KF 27/1/20

Hon Kris Faafoi
Associate Minister of Housing (Public Housing)

25/1/2020

Cabinet has agreed to amendments to the Residential Tenancies Act 1986

3. On 30 September 2019, Cabinet agreed to amend the RTA to improve security of tenure and to strengthen enforcement [SWC-19-MIN-0142]. On 18 October 2019, Cabinet agreed to further amendments around minor fittings, installing fibre broadband in rental properties, setting and increasing rent, and access to justice [SWC-19-MIN-0146].
4. We have been working with Parliamentary Counsel Office (PCO) on drafting the Bill to implement Cabinet's decisions. You have instructed that the Bill have its First Reading in the first sitting block of 2020. We are aiming to have the Bill approved by the Cabinet Legislation Committee (LEG) on 11 February 2020 and introduced to Parliament on 17 February 2020. A timeline is provided at annex 1.

The draft Residential Tenancies Amendment Bill, Cabinet paper and Departmental Disclosure Statement

5. The draft Residential Tenancies Amendment Bill, Cabinet paper and Departmental Disclosure Statement have been provided to you, attached.
6. In order to meet the planned timeframes, we recommend that Ministerial and support party consultation on these three documents is undertaken by your office between 28 January to 4 February. Officials are available to support discussions and incorporate changes over this period.
7. If changes are required to the Bill following ministerial and cross-party consultation, this would likely mean that lodging cannot occur on 7 February due to the further drafting and Bill of Rights Act vetting that would then be required.
8. The Bill and Cabinet paper incorporate the minor policy issues that you agreed to in BRF19/20110498 and BRF19/20010532. The fibre proposals that you agreed to in BRF119/20010532 have also been incorporated.
9. The Cabinet paper seeks approval to introduce the Bill to Parliament and seeks agreement to fibre proposals.
10. The Departmental Disclosure Statement complements the general policy statement in the Bill. This will be published on the disclosure statements website managed by PCO in due course.
11. We have provided the Bill to the Ministry of Justice so that they can undertake a Bill of Rights vetting process, but this process is not complete.

MBIE feedback

Version 9.0 of the Bill has several outstanding issues

12. We are still working through several issues that arose in agency consultation. We anticipate being able to resolve the following issues before the Bill is provided to LEG for approval to introduce:
 - a. the definition of "associated person". This definition is included for the purpose of determining if a landlord has six or more tenancies. The proposed definition, taken from the Credit Contracts and Consumer Finance Act 2003, is very broad. We are considering a more restricted definition;
 - b. the new provisions for termination of social housing tenancies in new section 53B. The proposed provisions do not perfectly align with the Public and Community Housing Management Act 1992 and with how social housing works in practice. We are working with our Kāinga Ora colleagues on any appropriate changes;

- c. one of the triggers for the requirement for landlords to provide for the installation of fibre connections is if it is *possible* to install the connection at the premises. We are working with PCO on whether further clarification would be beneficial that “possible” in this context means that it needs to be possible under the Telecommunications Act 2001 regime to connect the premises to a fibre hand over point in order to access the network.

13. [Redacted] s 9(2)(f)(iv)

14. [Redacted]

We propose a clarification [Redacted] s 9(2)(h)

15. In our briefing to you on 17 January 2020 [BRF19/20010532 refers], we noted an outstanding issue raised by the Regulator. Section 133 of the RTA empowers the Regulator or Tenancy Tribunal to require landlords to provide the Regulator or the Tenancy Tribunal with the tenancy agreement. It is an offence to fail to provide the tenancy agreement within 10 working days, without reasonable excuse. Under the Bill, the maximum penalty will be increased from \$2,000 to \$3,600. [Redacted] s 9(2)(h)

16. [Redacted] s 9(2)(h)

17. [Redacted] s 9(2)(h)

[Redacted] We consider this is a minor policy issue that you as Associate Minister of Housing (Public Housing) can approve under the authorisation from Cabinet [SWC-19-MIN-0142]. In anticipation of your approval, we have included this amendment in version 9.0 of the Bill. *Agreed*

Communications for introduction of the Bill

- 18. The Ministry of Housing and Urban Development will develop a communications plan in consultation with your office ahead of introduction of the Bill to Parliament on 17 February 2020. ✓
- 19. We anticipate this will include a draft press release for you to use on the day of introduction, additional questions and answers, and key messages. ✓

Discuss

- 20. As you know, fibre broadband proposals were not included in the 17 November 2019 announcements. You have now agreed to a revised approach to achieve the intent of the proposals included in the Cabinet paper [SWC-19-MIN-0146 refers]. PCO has drafted the Bill accordingly. The Communications plan will therefore include fibre proposals.

Timing following introduction

- 21. An indicative timeline following introduction is provided at annex 1. Introduction is planned for 17 February, and First Reading on 20 February.
- 22. A Bill with this kind of subject matter would normally be referred to the Social Services and Community Committee. Before referral, you may wish to confirm which Committee will consider the Bill and as part of this, consider the other business that will be before them at the time.
- 23. Following referral, the first Select Committee (Committee) meeting is likely to occur at the start of March.
- 24. A four-month Committee process would conclude at the beginning of July 2020 and a six-month Committee process would conclude at the beginning of September 2020. s 9(2)(f)(i)

Timeline

Select Committee processes

- 25. Following referral to the Committee, you would need to work with the Chair to seek agreement to your preferred process. The process generally takes between four and six months. Indicative timelines are provided at annex one.
- 26. A process less than four months is possible, but you would need to seek agreement to the shorter process at First Reading.¹ We do not recommend this given the breadth, complexity and public interest in the Bill.
- 27. You would need to work with the Chair of the Committee if you would like the process to be shorter than six months. However, factors that may limit the ability to undertake a shorter process include:
 - a. the amount of other business before the Committee at the time;
 - b. whether the Committee will travel and, if so, how extensive this would be;
 - c. appetite for engagement with Select Committee, which is likely to be high. There were high levels of engagement during the Discussion Document consultation period, with 4,391 submissions raised. We also know that other tenancy bills have attracted high numbers of submissions (see annex two for details); and
 - d. the breadth and complexity of the RTA reform.
- 28. You have a choice, subject to the Committee, the Chair, and the other factors outlined above, as to what your preference for the length of the process is.

Next steps

- 29. You need to provide any feedback you would like incorporated on the attached documents before Ministerial and cross-party consultation by close of play Monday 27 January 2020.

¹ As per Standing Order 290.

30. In order to enable to enable lodging on 7 February for LEG consideration on 11 February, you need to undertake consultation with your Ministerial, coalition party and support party colleagues on the Bill, Cabinet paper and Departmental Disclosure Statement during 28 January to 4 February. Officials are available to support discussions and incorporate changes over this period.
31. Officials seek your feedback on the preferred Select Committee to refer the Bill to and timing for the consideration of the Bill by 4 February 2020 so that these matters can be included in the LEG paper.

Annex 1 - Timeline for the reform of the Residential Tenancies Act 1986

Milestone	Dates	Notes
Ministerial and cross-party consultation on the Bill, Cabinet paper and Departmental Disclosure Statement	28 January to 4 February	If changes are required to the Bill following ministerial and cross-party consultation, this will likely mean that lodging cannot occur on 7 February
Lodge Cabinet paper and Bill	7 February	
LEG consideration of Bill	11 February	
Introduction of Bill to Parliament	17 February	Dependent on Cabinet approval

s 9(2)(f)(i)

Annex 2 – number of submissions in other tenancy reforms

Name of Bill/Regulations	Number of submissions
Kāinga Ora – Homes and Communities Bill	86 (24 oral submissions)
Residential Tenancies Amendment (No 2) Bill (contamination and liability)	32
Residential Tenancies (Prohibiting Letting Fees) Amendment Bill	187 (41 oral submissions)
Healthy Homes Guarantee Bill	890: 85 substantive; 7143 standard form submissions (805 unique)
Residential Tenancies Amendment Bill 2016 (smoke alarms and insulation)	715 (110 oral submissions)
Residential Tenancies Amendment Bill 2010 (significant amendments)	58 (33 oral submissions)
Residential Tenancies (Healthy Homes Standards) Regulations 2019	1,777