

19 October 2018

Residential Tenancies Act Reform
Ministry of Housing and Urban Development
PO Box 82
Wellington 6140

Submission on Reform of the Residential Tenancies Act 1986: Discussion document

Thank you for the opportunity for Auckland Regional Public Health Service (ARPHS) to provide a submission on the "Reform of the Residential Tenancies Act 1986 - Discussion document".

The following submission represents the views of ARPHS and does not necessarily reflect the views of the three District Health Boards it serves. Please refer to Appendix 1 for more information on ARPHS.

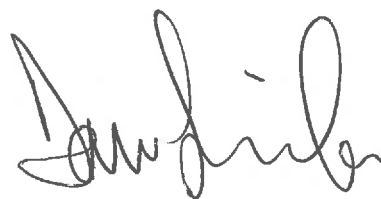
The primary contact point for this submission is:

Amy Strawbridge
Senior Policy Analyst
Auckland Regional Public Health Service
021 548 359
Strawbridge@adhb.govt.nz

Yours sincerely



Jane McEntee
General Manager
Auckland Regional Public Health Service



Dr David Sinclair
Medical Officer of Health
Auckland Regional Public Health Service

Overview and recommendations

1. Thank you for the opportunity for the Auckland Regional Public Health Service (ARPHS) to provide a submission on the Ministry of Housing and Urban Development (MHUD) “Reform of the Residential Tenancies Act 1986 - discussion document”.
2. ARPHS supports the Ministry’s proposals to improve security and stability for renters through reform of the Residential Tenancies Act 1986 (RTA). The proposed changes to the RTA, together with the introduction of the “Healthy Homes Standards” are important steps towards improved housing conditions and security for individuals and families. These changes, if adequately implemented and enforced, will help to fundamentally change renting and encourage professionalisation of the rental market in New Zealand.
3. Legislation and the market need to adapt to the fact that a large part of the population is now spending longer periods of their life in rental accommodation, with the number of New Zealanders who rent their homes increasing substantially.¹ Housing is a major determinant of health, and the link between health and housing is well established.² With all of these factors comes the need to improve all aspects of housing, including quality and security for tenants.
4. Rental housing is one of the biggest challenges facing the Auckland region. Auckland has one of the highest proportions of rental housing in the country with 40% of existing dwellings being part of the rental pool and close to 50% of children living in rental accommodation.³ Strong population growth, with an increase of approximately 40,000 people each year, and a significant shortfall in the supply of affordable housing, means demand is at an all-time high. In addition, Auckland has a high proportion of households living in poverty who face multiple barriers to finding and maintaining secure rental accommodation.⁴
5. Tenants living in low-income households are less likely to raise issues with their landlord because they fear losing their tenancy or risk higher rent.⁵ Secure and affordable housing improves the ability of households, particularly those in greatest need, to provide a healthy and stable environment for their children and engagement with school. It also reduces the

¹ BRANZ (2017). The New Zealand rental sector. Retrieved from: BRANZ.

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

² The Royal Australasian College of Physicians (2017). Make it the norm: Equity through the social determinants of health. Retrieved from: RACP. <https://www.racp.edu.au/docs/default-source/default-document-library/make-it-the-norm-pres-letter.pdf?sfvrsn=4>

³ Johnson A, Howden-Chapman P, Eaqub S. *A Stocktake of New Zealand’s Housing*. February 2018

⁴ The Royal Australasian College of Physicians (2017). Make it the norm: Equity through the social determinants of health. Retrieved from: RACP. <https://www.racp.edu.au/docs/default-source/default-document-library/make-it-the-norm-pres-letter.pdf?sfvrsn=4>

⁵ Chisholm, E., Howden-Chapman, P. & Fougere, G. (2017) Renting in New Zealand: perspectives from tenant advocates, Kotuitui: New Zealand Journal of Social Sciences Online

possibility of people occupying unsuitable structures such as garages and garden sheds as interim accommodation.

6. There is considerable disparity in rates of renting with higher rates experienced by Māori and Pacific peoples.⁶ For Māori, the proportion of households renting privately increased from 41% in 1991 to 77% in 2013. There is an urgent need to improve rental security for Māori.⁷ Improving housing security and stability for Māori is critical to achieve more equitable health and wellbeing outcomes.
7. There are many tenants in Auckland living in substandard or overcrowded rental conditions, moving further away from work or social supports, or compromising on other essential expenses in order to attain and afford housing. More than 42,000 people in New Zealand live in what is termed 'precarious and insecure housing'.⁸ This goes some way to explain why poor quality accommodation in the 'boarding house' style, including garages, sheds and sleep-outs, is commonly available and often on a property scale smaller than that envisaged for formal 'boarding house' controls.
8. Introducing changes to the RTA legislation (along with the introduction of the Healthy Homes Standards) may lead to a reduction in the number of properties available for rent, in the short term. Therefore consideration needs to be given to ensuring alternatives for displaced people and families, if substandard housing is removed from the accommodation pool as a result of legislative changes. However the long term aim should be a shift to improved outcomes for a growing rental population as well as benefits for landlords through better relationships with their tenants.

Recommendations

The submission provides the following recommendations:

- Support for the proposed extension of the notice period, from 42 to 90 days, which landlords must give tenants under a periodic agreement;
- Support for the removal of "no cause" terminations from periodic agreements, obliging landlords to provide tenants with a reason for terminating an agreement;
- Support for the proposal that tenants should be required to give no less than 3 weeks' notice of termination of a tenancy. Further provision should be made for tenants to be allowed to give shorter notice periods if landlords are in breach of their obligations;
- Supports the option of having only open ended tenancies. However, if fixed term tenancies remain, these should be for a minimum of two years, including tenants' right of renewal, to provide for longer rental agreements;

⁶ Johnson A, Howden-Chapman P, Eaquad S. *A Stocktake of New Zealand's Housing*. February 2018

⁷ Johnson A, Howden-Chapman P, Eaquad S. *A Stocktake of New Zealand's Housing*. February 2018

⁸ The Royal Australasian College of Physicians (2017). Make it the norm: Equity through the social determinants of health. Retrieved from: RACP. <https://www.racp.edu.au/docs/default-source/default-document-library/make-it-the-norm-pres-letter.pdf?sfvrsn=4>

- To extend the function of Tenancy Services to cover: provision of education around landlord and tenant responsibilities; support for resolving issues; provision of pathways to social, health and financial services as appropriate;
- Support for the ability for tenants to make minor modifications with approval from their landlord. This should also include a clear definition of “reasonable modifications” and a basic list of adjustments tenants can make which don’t require approval. Tenants should be under an obligation to reverse any modifications at the end of the a tenancy if requested by the landlord;
- Support for banning rent bidding because it disadvantages vulnerable groups in the population and contributes to increasing rents;
- Support for limiting the frequency of rental increases to no more than once per every twelve month period, and recommending that rental increases are linked to general inflation;
- Agreement that it is appropriate for MHUD/MBIE to have the power to enter common spaces of boarding houses to ensure the operators are meeting their obligations;
- Clarification of the definition of boarding houses across all relevant legislation is required;
- Greater enforcement of tenancy laws is required through additional regulation mechanisms. This should include the introduction of a Warrant of Fitness (WoF) for boarding and rental properties (see Appendix 2) and the authority for MBIE to issue infringement notices and associated penalties;
- Suggests linking financial incentives to obtaining a WoF (for both boarding and rental houses) through making payment of the accommodation supplement directly to boarding house operators and landlords subject to having obtained this;
- Support for the ability for tenants to make defined reasonable adjustments to the terms of tenancy if personal circumstances change; and
- Recommends that all property managers who represent a property agency should be licensed, including meeting minimum standards and adhering to a code of practice.

Improving security and stability of tenure

9. ARPHS supports the proposed extension of the notice period for ending periodic agreements from 42 to 90 days and the removal of ‘no cause’ terminations in order to provide an increased level of protection for tenants. Landlords should be required to provide tenants with a legitimate reason, and where appropriate, evidence, about why they are terminating a tenancy.
10. It is also recommended that tenants be required to give a minimum of 3 weeks’ notice. Tenants should be allowed to give shorter notice periods if landlords are in breach of their obligations.
11. Findings from the Healthy Homes Initiatives Auckland highlighted that consistent engagement with, and advice to, landlords has been required in a large number of instances

where repairs and improvements are needed to a property.⁹ As a result the Healthy Homes co-design report concluded that legislation alone will not be enough to drive a change in landlord's behaviour.¹⁰

12. Increased education for tenants, landlords and property managers about rights and responsibilities and increased advocacy services are essential to support the objectives of the proposed reforms. Tenancy Services should be extended to cover landlord and tenant responsibilities, ensuring homes are safe and dry, resolving issues, and pathways to social and health services as appropriate; and pathways to financial assistance.
13. ARPHS recommends a new mechanism for regulation of the RTA in addition to the Tenancy Tribunal, to provide MBIE with additional statutory enforcement options and make it easier for tenants to have improvements made to the dwelling. This is discussed further in the section, 'Enforcing tenancy laws'.

Length of tenancies

14. ARPHS supports and encourages revisions to the RTA which allow for tenants to have longer rental agreements and supports the option of having only open-ended tenancies. If fixed term tenancies remain, specifying a minimum length of two years is recommended. Strong security of tenure has been achieved in a number of European countries through the use of longer term tenancies and rules around termination of tenancies which support tenants.¹¹
15. A recent stocktake of New Zealand's housing (Howden-Chapman et al 2018) notes a downward trend in the number of new bonds, or closed bonds, consistent with longer tenancies and less turnover in the private rental housing market. While the most common type of tenancy agreement is 12 months, the most common type of tenure is just over two years.¹² As discussed in the stocktake report, if tenants and landlords had more certainty of long-term tenancies and social norms changed to require higher quality standards, this might provide greater encouragement for both tenants and landlords to take a long-term view on rents and maintenance.
16. Research undertaken by BRANZ in 2017 emphasised "older people and people with young children expressed the most dissatisfaction with insecure tenure". Insecure tenure impacts on all aspects of individual and family wellbeing including health, education and community participation. People who move often are less likely to be affiliated with a primary health care provider (doctor, nurse or medical centre). Research carried out by the NZ Council for Educational Research and Ministry of Education shows that residential mobility is often associated with a change of school, increasing the disruption to children's lives.¹³

⁹ The Southern Initiative. *Healthy Homes Initiatives Auckland – Co-design: testing ideas to make homes warmer and drier*. October 2016-February 2018

¹⁰ The Southern Initiative. *Healthy Homes Initiatives Auckland – Co-design: testing ideas to make homes warmer and drier*. October 2016-February 2018.

¹¹ Consumer Affairs Victoria (2015) *Fairer, Safer Housing: Security of tenure Issues Paper, Residential Tenancies Act Review*

¹² Johnson A, Howden-Chapman P, Equb S. *A Stocktake of New Zealand's Housing*. February 2018

¹³ Johnson A, Howden-Chapman P, Equb S. *A Stocktake of New Zealand's Housing*. February 2018

Modifications to properties

17. Being able to make a house feel like a home through making small changes is important to many tenants, and also reflects the changing nature of renting, potentially now for a significant period of an individual or families life.¹⁴ Being able to make small modifications to a house is particularly important for older people and those with physical and mental disabilities. ARPHS supports the provision for tenants to be able to make minor modifications, subject to approval from their landlord. Additionally, the RTA could provide for some very minor modifications that would not require permission (e.g. the use of picture hooks, planting a garden and affixing furniture to walls).
18. An obligation for tenants to reverse any modifications made during the duration of their tenancy when it ends (outside of the list of agreed basic modifications which don't need approval) should also ensure both parties are reasonable in their expectations. A clear definition of a "reasonable modification" will help to ensure all parties are in agreement.

Rental bidding

19. ARPHS supports prohibiting both the request and acceptance of rental bids (option 2). Rental bidding disadvantages vulnerable populations and contributes to increasing rental prices. This supports the overarching principles of security and equity, and is also consistent with residential tenancy legislation internationally, including recent changes introduced in Victoria and proposed in New South Wales.¹⁵

Rent increases

20. The cost of housing in Auckland relative to incomes is higher than anywhere else in New Zealand.¹⁶ Rent increases are particularly concerning when compounded with a significant level of social deprivation in the Auckland region.
21. ARPHS supports limiting rental increases to no more than once per twelve month period and recommends that rental increases be limited to a rate no higher than the rate of general inflation. This should be linked to a clear definition of "reasonably more" than market rent. These changes will help to improve security for tenants, and again are consistent with international residential tenancy legislation. Limiting rent increases, and providing clearly defined boundaries will go some way in reversing instances of frequent and unreasonable rent increases.¹⁷

Boarding Houses

22. The need to improve the quality and condition of boarding houses has been acknowledged in the Ministry's discussion document and ARPHS supports this objective through proposals to increase controls on boarding houses. This includes the introduction of a WoF for boarding houses and their operators including a fit person assessment check, and allowing for MHUD to have the authority to enter common spaces of boarding houses to ensure the

¹⁴ BRANZ report on the New Zealand Rental Sector (2017)

¹⁵ Consumer Affairs Victoria (2015) Fairer, Safer Housing: Security of tenure Issues Paper, Residential Tenancies Act Review

¹⁶ BRANZ report on the New Zealand Rental Sector (2017)

¹⁷ Johnson A, Howden-Chapman P, Eaqub S. *A Stocktake of New Zealand's Housing*. February 2018

operators are meeting their obligations. In addition, clarification of the definition of boarding houses across all relevant legislation is required.

23. Auckland Council has estimated there are approximately 160 boarding houses in Auckland. However without a compulsory registration or licencing scheme it is difficult to determine the actual number of residences operating as boarding houses. Many of these are in poor condition, which pose significant health and safety risks to tenants. For example, Auckland Council undertakes a programme of proactive boarding house inspections, which was implemented in July 2015. Several rounds of proactive inspections undertaken by Auckland Council together with the New Zealand Fire and Emergency Service and MBIE from 2016 highlighted the need for improved boarding house conditions for a substantial number of properties in breach of environmental health requirements (non-compliance included poor cleanliness, mould growth, and overcrowding), the Building Act 2004, the Resource Management Act 1991 and the Residential Tenancies Act 1986.¹⁸
24. Proactive inspections have led to increased compliance levels relating to building safety, environmental health, and sanitation and resource management regulations, through issuing of statutory notices rather than prosecution.
25. Boarding houses generally provide rental accommodation for vulnerable, low income people who are more likely to experience exploitation by landlords. Approximately 55 percent of residents in traditional boarding houses reported a health or disability issues. Insanitary conditions are also a concern.¹⁹ Boarding house tenants often don't have knowledge of their rights, and in many instances do not feel comfortable exercising their rights or laying a complaint due to a lack of alternative accommodation options, or fear of retaliatory action by their landlord or fellow tenants.²⁰
26. The introduction of a WoF and licensing scheme for boarding houses and their operators would allow for registration and monitoring of boarding houses including enforcement action if necessary. Compulsory registration of boarding houses would provide MHUD/MBIE and Auckland Council with improved data on the number, type and location of boarding houses, with regular monitoring to improve boarding house conditions for the tenants. Gaining certification under a WoF programme should involve meeting minimum standards and a more rigorous application of the 'fit and proper person' operator requirement.

Enforcing tenancy laws

27. A strong regulatory compliance regime is required. This should focus on education for both landlords and tenants about their rights and obligations including the consequences of non-compliance. Ideally this would allow for a more graduated enforcement response to match the significance of the breach or the degree of harm caused. This may include infringement notices issued by MBIE to the landlord if they do not respond to a tenants request for repairs

¹⁸ Auckland Council Regulatory Committee, Meeting, February 2018.

http://infocouncil.aucklandcouncil.govt.nz/Open/2018/02/REG_20180208_AGN_6977_AT_WEB.htm

¹⁹ Social Services Select Committee Inquiry into boarding houses in New Zealand, and Briefing into long-term caravan park and motor camp accommodation, 2015

²⁰ Ministry of Business, Innovation and Employment (2018) Reform of the Residential Tenancies Act 1986: Discussion document

and could extend to a rental WoF, which would require a healthy homes assessment prior to commencement of a tenancy. The assessment could take account of landlords' track record in responding to requests from tenants for repairs.

28. In addition, financial incentives for property owners to obtain a WoF could be included to enhance compliance. This might include making payment of the accommodation supplement, where the tenant has opted to have this paid directly from the Ministry of Social Development to the landlord, subject to having obtained a WoF. This would help to ensure a greater level of security and housing quality for those who are vulnerable and often living in poor quality accommodation. Historically these increases in the accommodation supplement have been linked to increases in rent. Often these increases occur despite neglect by the landlord to the condition of the property.²¹
29. ARPHS also recommends that all property agents should be licenced in order to enhance protection for tenants and to ensure that conduct is consistent with relevant legislation. Obtaining a property management licence would require a comprehensive knowledge of the Residential Tenancies Act 1986, the Healthy Homes Guarantee Act 2017 and Standards, and would provide clarity on the Agent's obligations in relation to not assisting in the letting of substandard housing.

Conclusion

30. ARPHS recognises the important role that security and quality of housing plays in contributing to our collective vision for equitable health and wellbeing for the people living in Auckland and would like to thank the Ministry of Housing and Urban Development again for the opportunity to provide a submission on the "Reform of the Residential Tenancies Act 1986: discussion document".

²¹ Hyslop, D. & Rea, D. (2018), Motu – Economic and Public Policy Research. Do housing allowances increase rents? Evidence from a discrete policy change

Appendix 1: Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Counties Manukau Health, Auckland and Waitemata District Health Boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.

Appendix 2 – Residential Tenancy Warrant of Fitness (developed and trialed in Wellington)

Assessor Details		Assessment Date:	
Assessor Name:		Assessor ID:	
Organisation:		Phone:	
Property Contact Information		Property Contact Information	
Tenant Name:		Owner Name:	
Property Address:		Contact Address:	
Property Phone:		Owner Phone:	
Email:			
Property Information			
House Age (approx. yr.):		Approximate Size	m ²
Storeys		Number of bedrooms:	
Type	<input type="checkbox"/> detached <input type="checkbox"/> duplex <input type="checkbox"/> terrace <input type="checkbox"/> apartment		
F P Kitchen & Laundry		F P F P F P F P F P Bedrooms	
	Wall and ceiling linings, and floor intact		Opening window, with latch
	Surfaces clear of mould		Window stays (if required)
	Functioning stove and oven		Wall/ceiling linings intact
	Effective ventilation to the outside		Surfaces clear of mould
	Adequate food preparation and storage		Working artificial light
	Working artificial lighting		Safe power & light switches
	Possible water supply		Smoke alarm within 3 m
	Hot water temperature at tap (55°C ±5°C)		Curtains/drapes present
	Waste water drainage with sound connection		
	Visibly safe power outlets and light switches		F P Entrance
	Secure storage (1.2 m high or child-safe lock)		Address clearly labelled and identifiable
			Securely locking door(s)
	F P Bathroom & Toilet		Working light
	Wall and ceiling linings, and floor intact		F P Ceiling
	Surfaces clear of mould		Insulation to requirements (120 mm)
	Operational toilet		No gaps, ticks, or folds
	Sewage connection functional		No dampness in insulation
	Functioning bath or shower		Clearance from lights, ducts and roof
	Effective ventilation to the outside		Thermoplastic insulated cabling
	Waste water drain connected		F P Under Floor
	Working artificial lighting		Insulation to requirements <input type="checkbox"/> Foil <input type="checkbox"/> Bulk
	Visibly safe power outlets and light switches		Dry underfloor
			Ground vapour barrier
	F P Living Areas		No ponding
	Wall and ceiling linings, and floor intact		F P General
	Surfaces clear of mould		Envelope in reasonable repair and weather tight
	Working artificial lighting:		No cracks, holes in roof
	• Living, lounge, dining		No cracks, holes in external cladding
	• Hallway		No cracks, holes or missing panes in windows
	• Stairs (switch at each end)		Spouting and stormwaters functioning and not leaking
	• Other		Two effective methods of egress
	Visibly safe power outlets and light switches		Structurally sound
	Heating, fixed, effective and safe		Glass doors include visibility strips
	Opening window (each area) with secure latch		Handrails and balustrades to code
	Window security stays (where required)		Non-potable water labelled
	Curtains/drapes present		Paths, decks and surfaces non-slippery/free from moss
Comments		Fail	Pass
Signed:		Date:	End Time: