



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Reform of the Residential Tenancies Act 1986

Discussion document

August 2018





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Ministry of Business, Innovation and Employment (MBIE)

Hikina Whakatutuki - Lifting to make successful

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Foreword

I'm pleased to introduce this discussion document on a targeted reform of the Residential Tenancies Act 1986 (the RTA).

New Zealand is suffering a housing crisis and the Government is committed to addressing the problem on several fronts. As well as setting up KiwiBuild to build 100,000 homes for first home buyers, we're stopping overseas buyers from purchasing existing homes in New Zealand and we're reviewing tax settings.



Making life better for renters is another important part of our plan. We plan to modernise the law to ensure rental houses are warm and dry, and to make renting more stable and secure. In December 2017 we passed legislation to enable healthy homes standards to be set for rental properties and in March this year we introduced legislation to ban letting fees which will help reduce the price barrier some tenants face when securing a home.

Renting has become a life-long reality for many individuals and families. Homeownership is now at a 60-year low and over a third of all New Zealanders live in rental homes.

Yet our laws around renters' rights have not kept up. They are still designed around the assumption that renting is a short-term arrangement for people without children, and renters will move frequently rather than set down roots in their community.

The RTA is the main piece of legislation that regulates interactions between landlords and tenants. This targeted reform of the RTA builds on our other initiatives to make life better for renters and to ensure everyone in New Zealand has somewhere they can feel at home. The reform focuses on:

- improving the security and stability of tenure for tenants while maintaining adequate protection of landlords' interests
- ensuring the law appropriately balances the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home
- modernising the law so it can appropriately respond to changing trends in the rental market
- improving the quality standards of boarding houses and the accountability of boarding house landlords.

As we work to restore the dream of homeownership for New Zealanders, this reform will bring the law up to date to reflect that more of us are living in rental homes and for longer periods of time.

I encourage you to share your views on the topics covered in this discussion document to help ensure our tenancy legislation is fit for purpose in the modern renting environment.

A handwritten signature in black ink that reads "Phil" followed by a long horizontal line.

Hon Phil Twyford

Minister of Housing and Urban Development

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How to have your say

Submissions

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the proposals raised in this document by **5pm on Sunday 21 October 2018**. We have included proposals and questions throughout the document. You may comment on any or all of the proposals and we welcome other relevant information, comments, evidence and examples relevant to the reform.

Please also include your name, or the name of your organisation, and contact details. You can make your submission by:

- filling in the online survey at www.mbie.govt.nz/rta-reform-survey
- emailing your submission to RTAreform@mbie.govt.nz
- posting your submission to:

Residential Tenancies Act Reform
Housing and Urban Branch
Building Resources Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
New Zealand

Your submission will help the government to develop policy that may be put into law. MBIE officials may contact submitters directly if we require clarification of any matters in submissions.

Publication and public release of submissions

Except for material that may be defamatory, MBIE may publish submissions on the Residential Tenancies Act Reform online. MBIE will consider you to have consented to publishing your submission by making a submission, unless you clearly specify otherwise in your submission.

Submissions are also subject to the Official Information Act 1982 (the OIA). If you have any objection to the release of any information in your submission, please set this out clearly with your submission. In particular, identify which part(s) you consider should be withheld, and explain the reasons(s) for withholding the information. A list of reasons for withholding information under the OIA is available at: <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>. Examples could include that you have provided commercially sensitive material, or you have privacy concerns. MBIE will take such objections into account when responding to requests under the OIA. Information released under the OIA may be published on the Ministry's website.

Any personal information you supply to MBIE in response to this survey will be used by the Ministry only in conjunction with matters covered by this document. Please clearly indicate below if you do not consent to your name being included in any summary of submissions that MBIE may publish.

Privacy Act 1993

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure by various agencies, including MBIE, of information relating to individuals and access by individuals to information relating to them, held by such agencies. Any personal information you supply to MBIE in the course of making a submission will be used by MBIE for the purposes of considering matters, including those discussed in this document, relating to the Residential Tenancies Act Reform. Please clearly indicate in your submission if you do not wish your name to be included in any summary the MBIE may prepare for public release on submissions received. You have the right to request the correction of any personal information held by MBIE.

Further information

If you have any questions or would like more information about the review or the process for making submissions, please email RTAreform@mbie.govt.nz

How this discussion document works

1. Introduction and overview

This section has information about the law we are reforming, the reasons for the reform and what we are hoping to achieve. There is also information about some of the other changes which are being made which will affect landlords and tenants, and the next steps after we have received your feedback.

2. Modernising tenancy laws so tenants feel more at home

This section looks at how tenants can feel more at home in the property they are renting. It considers the types of tenancy agreements available and the circumstances in which a landlord can require a tenant to move, whether the responsibilities tenants and landlords have during a tenancy are appropriate, the types of modifications that tenants should be able to make to the property, and how the law can better encourage landlords to allow tenants to keep pets.

3. Setting and increasing rents

This section discusses how rents are set and how and when they can be increased. It looks at options to address the practice of rental bidding, for making it easier for tenants to understand how their rent might increase, and how 'market rent' is challenged.

4. Boarding house tenancies

This section asks whether we should introduce new requirements which make it easier for authorities to monitor boarding houses.

5. Enforcing tenancy laws

This section looks at the powers provided to government agencies to investigate more severe alleged breaches of the Act and asks you questions about whether the existing enforcement regime is accessible, efficient, and proportionate in a modern renting environment and is structured in a way that ensures compliance.

6. Summary of proposed changes

This section summarises the proposed changes being considered as part of the reform and asks questions about landlords and tenants view the cumulative impacts of the proposed changes.

7. Glossary

8. Appendices

1. Introduction and Overview

2. This section has information about the law the Government is reforming, the reasons for doing so and what it is hoping to achieve. There is also information about some of the other changes proposed outside of this reform which will affect landlords and tenants, and the next steps after we have received your feedback.

1.1. The Residential Tenancies Act

3. The Residential Tenancies Act 1986 (RTA) is the main piece of legislation governing the contractual relationship and interactions between residential landlords and tenants in New Zealand. The RTA:
 - states the law relating to residential tenancies;
 - defines the rights and obligations of landlords and tenants of residential properties;
 - establishes a tribunal to determine tenancy disputes; and
 - provides for a fund to hold tenants' bonds.

1.2. Why we're reforming the RTA

The rental market in New Zealand is expanding

4. A third of New Zealand households are renting (589,000 households).¹ The private rental sector in New Zealand is growing relative to the number of owner occupier households because purchasing a first home is becoming increasingly difficult. In 1991, fewer than a quarter of households were renting, and fewer people were renting long-term.²

The profile of both landlords and tenants is changing

5. More children now live in rental homes. Between the 1986 and 2013 censuses, the proportion of children living in rented homes increased from 26% of children to 43%. At the same time the population overall got older and the proportion of children fell from around a quarter to just over a fifth of the population. With more children and families living in rented housing, more people may be looking for a place they can rent longer term and where they can feel at home.
6. Based on rental bond data, most tenancies in New Zealand are around 12 months. This is the median tenancy length from data which covers many different rental situations – from students renting during term-time to families who have rented the same property for many years. As this data only includes tenancies where a new bond is lodged, it does not take into account all rental situations. Housing New Zealand tenancies tend to be much longer – an average of nine years and five months.
7. The majority of tenant households rent from private landlords. Around 11 percent (66,000)³ are in public housing and a small proportion live in other types of housing like defence force accommodation. Most of the private landlords own one or two rental properties, and a quarter of them use a property manager to manage their properties.⁴

1 Statistics New Zealand Estimated Households in Private Occupied Dwellings; Rented, June 2018

2 BRANZ, New Zealand Rental Sector report (2017)

3 Ministry of Social Development Housing Quarterly Report, March 2018

4 BRANZ, New Zealand Rental Sector report (2017)

The RTA is over 30 years' old and needs to be kept up to date

8. The changing nature of the rental market makes it timely to assess whether current laws are still suitable for the current renting environment. There have been a lot of small changes to the RTA over the past 30 years, but it's been a while since broader questions about the law were asked. With new technologies like rental bidding apps entering into the market, we need to make sure the law is modern and fit for purpose.

1.3. The objectives of this reform

9. This targeted reform of the RTA is designed to support the Government's goal to make sure everyone in New Zealand has somewhere they can feel at home. The reform has four broad objectives:
1. to improve security and stability for tenants while maintaining adequate protection of landlords' interests,
 2. to ensure the appropriate balancing of the rights and responsibilities of tenants and landlords to promote good faith tenancy relationships and help renters feel more at home,
 3. to modernise the legislation so it can respond to changing trends in the rental market
 4. to improve quality standards of boarding houses and the accountability of boarding house operators.

1.4. What's included in this reform

10. The Government has agreed to undertake a targeted reform of the RTA. A targeted reform allows us to make changes to the areas of the RTA which directly affect renters, and to see these changes through in a reasonable time.

What we are consulting on

Included in this reform	Not included in this reform
• Tenancy Agreements • Termination provisions • Tenant and landlord responsibilities • Tenants' ability to make reasonable modifications and keep pets • Rent increase provisions • Boarding Houses • Enforcement mechanisms	• Definitions and the type of premises that the Act does not cover • The bond system. • The composition, jurisdiction and procedure of the Tenancy Tribunal • Administrative matters and miscellaneous provisions • Funding aspects that require regulatory change.

11. This targeted reform is focused on the following areas:

- **Modernising tenancy laws so tenants feel more at home**
 - the types of tenancy agreements available and the circumstances in which a landlord can require a tenant to move
 - the responsibilities tenants and landlords have during a tenancy
 - the ability for tenants to make modifications to a property
 - the ability for tenants to keep pets

- **Setting and increasing rents**
 - the practice of rental bidding
 - the ability of tenants to challenge rent that is substantially higher than market rent
 - the frequency of rent increases
- **Boarding house tenancies**
 - the quality of boarding houses and accountability of boarding house landlords
- **Enforcing tenancy laws**
 - the powers and enforcement options available to government agencies to investigate severe alleged breaches of the Act
 - the appropriateness and accessibility of the existing civil penalty regime under the Act

12. Each section has questions aimed to gather information about what is currently happening in the rental market, and seeks feedback on changes we are considering.

1.5. Links to other RTA changes

13. There are three other pieces of legislation already in process which will make changes to the RTA. The reform will not consider matters already considered through these pieces of recent legislation.

Healthy Homes Guarantee Act 2017

14. Amendments to the RTA were made by the Healthy Homes Guarantee Act which passed in December 2017. The amendments allow for minimum standards for insulation, heating, ventilation, draught stopping, drainage, and moisture ingress for all residential rental premises. The amendments will come into force on 1 July 2019 and compliance will be required before 1 July 2024.

15. This reform will not look at the healthy homes standards themselves, but it will ask both tenants and landlords to think about what the new standards might mean for their rights and responsibilities.

Residential Tenancies Amendment Bill (No 2)

16. The Residential Tenancies Amendment Bill (No 2), currently before Parliament, makes three groups of amendments to the RTA related to contamination, liability for damage to rental premises caused by a tenant, and tenancies over rental premises that are unlawful for residential use. More information on the Bill can be found at: <https://www.parliament.nz/en/get-involved/topics/all-current-topics/tackling-damaged-methamphetamine-contaminated-and-unlawfully-tenanted-rental-properties/>

Residential Tenancies (Prohibiting Letting Fees) Amendment Bill

17. On 22 March 2018, the Government introduced the Residential Tenancies (Prohibiting Letting Fees) Amendment Bill (the Letting Fees Bill). The Lettings Fees Bill prohibits letting agents, or any person, from requiring a tenant to pay a letting fee, or any other fee, in relation to a tenancy. Introducing this amendment will help to reduce the up-front costs faced by tenants and improve fairness for tenants. More information on the Letting Fees Bill can be found at: <http://www.mbie.govt.nz/info-services/housing-property/residential-tenancies/letting-fees>

1.6. Reform stages and next steps

Submissions period

18. We are seeking your input on a range of proposals aimed to address issues with the RTA. Your views are sought on the proposals in this consultation document.
19. You can make a submission up until **5pm, Sunday 21 October 2018**.

Next steps – turning ideas into law

20. After this consultation, submissions will be used to inform advice to the Government to support decision making which will lead to the introduction of a Bill to Parliament to change the law. The public will have a second opportunity to comment on proposals when the Bill is considered by a Parliamentary Select Committee.
21. Sign up to the Tenancy Services newsletter at www.tenancy.govt.nz (click the link at the bottom of the homepage) and follow Tenancy Services on Facebook to keep up to date on the process.

2. Modernising tenancy laws so tenants feel more at home

23. This section looks at how tenants can feel more at home in the property they are renting. It asks you questions about the types of tenancy agreements available and the circumstances in which a landlord can require a tenant to move, whether the responsibilities tenants and landlords have during a tenancy are appropriate, the types of modifications that tenants should be able to make to the property, and how the law can better encourage landlords to allow tenants to keep pets.

2.1. Improving tenants' choice and control over their housing

24. The Government is committed to improving the sense that a tenant has choice and control over their housing options; that they can stay in their home for as long as they decide to, as long they are meeting their obligations as tenants. While giving tenants greater choice we also need to ensure that tenants understand their obligations and what behaviours would lead to a tenancy agreement ending, and that a landlord can still end a tenancy for legitimate reasons. To achieve this we need to consider both the types of tenancies available and how those tenancies can be ended.

25. Boarding house tenancy agreements are not covered in this section (see **4.1** for more on boarding houses).

There are currently two main types of tenancy agreements

26. People who rent have different needs. Some people need a long-term home, while others are looking for somewhere to live temporarily while they study or work. The RTA currently caters for different needs with two main types of tenancy agreement:

1. a **periodic tenancy** is flexible and either party is able to end the tenancy by giving notice.
2. a **fixed-term tenancy** is more secure and neither party can break the tenancy agreement before the end date without involving the Tenancy Tribunal.

27. A fixed-term tenancy longer than 90 days will automatically become a periodic tenancy when it expires unless the landlord or tenant gives notice to say they don't want that to happen. Anecdotally, we believe most fixed-term tenancies are set for a period of one year.

Changes we are proposing

28. The Government wants to modernise tenancy laws to give tenants who are meeting their obligations more choice and control in their tenancy. In particular, the Government has committed to:

- removing the ability for landlords to end periodic agreements without providing the tenant with a reason; and
- extending the notice periods landlords must give tenants under a periodic agreement for other matters from 42 to 90 days.

29. We are seeking your feedback on these changes specifically and also on whether changes to the types of tenancy agreements available could be an effective and justifiable way to improve security for tenants.

Removing 'no cause' terminations from periodic agreements

30. 'Termination' is the term we use for the end of a tenancy agreement. Currently unless a periodic agreement is ended because a tenant has breached their obligations, or for one of three specific reasons, the default under the RTA is for a landlord to terminate with 90 days' notice and no explanation to the tenant is required.

31. This is called a 'no cause' termination. The possibility of a 'no cause' termination can be stressful for those tenants who want a stable home. Knowing their tenancy can be terminated at any time could lead tenants to worry about raising concerns about the condition of the property, seeking repairs, or exercising other rights under the RTA. A tenant has no right to appeal a 'no cause' termination to the Tenancy Tribunal unless they believe their landlord has terminated their tenancy in response to them exercising their rights under the RTA (for example, by asking the landlord to undertake repairs). However, some tenants might not be aware they can do this, or they might find the process difficult or intimidating.

If we remove 'no cause' terminations how will landlords end a tenancy if the tenant doesn't meet their obligations?

32. Currently landlords could be using the 90 day 'no cause' termination to move out tenants who are not meeting their obligations. However, we believe even in these cases, tenants deserve to know the reasons, and what evidence the landlord is basing their decision on.
33. Landlords already have the right to remove tenants who persistently fail to meet their obligations and responsibilities with regard to the tenancy and the care of the property, or if they are causing problems for other tenants and neighbours. However, there is a process landlords must follow; the landlord first must issue the tenant with a notice giving the tenant at least 14 days to remedy the situation (if it is possible for the tenant to do so). If the tenant does not fix the problem in this time, the landlord may then apply to the Tenancy Tribunal for an order to terminate the tenancy because their tenant has committed a breach of the RTA. The Tenancy Tribunal will require evidence of the breach, and will give the tenant an opportunity to present evidence.
34. Landlords are likely to find that issuing a 90-day 'no cause' termination is easier than proving their tenant has caused damage, or problems for neighbours or other tenants. In particular, we understand that landlords might be concerned about their ability to produce evidence that satisfies the Tenancy Tribunal a tenant is acting in an anti-social way if the people affected by the tenants behaviours, such as neighbours, fear retaliation against them should they formalise a complaint. We would like to find out more about what we can do to alleviate these concerns.

The RTA allows landlords to terminate agreements with tenants who cause problems for neighbours or other tenants

35. Tenants whose behaviour is affecting their neighbours or other tenants are in breach of the existing requirements in the RTA⁵ that say:
- the tenant shall not cause (or allow their visitors to cause) any interference with the reasonable peace, comfort, or privacy of any other tenants in the use of the premises, or with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood.
36. Before the Tenancy Tribunal can issue an order to terminate a tenancy under this ground, it must determine if the breach can be remedied or if it would be unfair to end the tenancy, based on the circumstances of the tenant. The Tribunal has previously stated:
- ...while it is a breach of a tenant's obligations to use the premises in a way that interferes with neighbours' reasonable right to quiet enjoyment of their properties, it is not a breach which leads to immediate termination, without a notice to remedy first being given.
37. This means a landlord who is concerned that a tenant's behaviour (or the behaviour of a tenant's visitor) is affecting others, would need to raise their concerns with the tenant and give them a chance to change their behaviour, before applying to the Tenancy Tribunal for a termination.

⁵ Sections 40(2)(c) and 41(1)

38. To make it easier for landlords to raise these issues with tenants, examples could be included in the RTA of behaviours that could come under this provision. Examples could include:

- harassment and intimidation including verbal abuse, repeated unwanted interaction and other behaviours directed at other tenants, or other people in the neighbourhood that make them feel uncomfortable
- allowing or inciting dogs kept by the tenant to intimidate other tenants or people in the neighbourhood
- sustained noise during the day or night, for example from, music, cars, machinery, loud voices.

Questions for your consideration

- | | |
|-------|---|
| 2.1.1 | If no-cause terminations are removed and a tenant displays anti-social behaviour (to the point where the landlord wants to end the tenancy) should the landlord be required to issue a notice to the tenant to improve their behaviour, before they can apply to the Tenancy Tribunal to end the tenancy? Please explain your answer. |
| 2.1.2 | Do you think the examples listed in paragraph 37 above cover the kinds of behaviour that would interfere with the reasonable peace, comfort, or privacy of any other tenants or neighbours? If not, what other examples would you include and why? |
| 2.1.3 | What kinds of evidence could a landlord produce to prove a tenant was behaving in an anti-social way if affected people such as neighbours, did not want to speak out? (Examples could include photographs, letter, affidavit, audio recording, video recording.) |

39. In addition to seeking termination if the tenant was behaving in a way suggested above, a landlord can apply to the Tenancy Tribunal to terminate the tenancy if a tenant does not meet their obligations in the following ways:

- not paying the rent,
- causing or threatening to cause significant damage,
- assaulting or threatening to assault specified persons including neighbours.
- using the premises for unlawful activity,
- breaching the RTA or the tenancy agreement in another way when the Tenancy Tribunal finds that:
 - the breach cannot be remedied and
 - it would not be inequitable to end the tenancy.

Landlords could still end tenancies with 90 days' notice for a number of other reasons

40. As well as ending a tenancy where the tenant isn't meeting their obligations, we propose landlords would be able to terminate a tenancy with 90 days' notice, in the following circumstances:

- when the owner or their family member requires the premises to live in as their principal place of residence
- when the premises has been sold with a requirement by the new owner for vacant possession
- when the landlord needs the premises for an employee (a landlord can terminate a tenancy in these circumstances if the tenancy agreement states that the premises is intended as employee housing, and tenancy will be terminated if it is needed for an employee).

41. These circumstances exist currently however the minimum period of notice required to be given by a landlord to end a tenancy under these grounds is only 42 days.

Questions for your consideration

- | | |
|-------|--|
| 2.1.4 | Landlords are currently required to give tenants 42 days' notice if they have sold the property with a requirement for vacant possession, want to move in, or need it for an employee or family member. What do you think the impact would be if this notice period was extended from 42 to 90 days? |
| 2.1.5 | When a rental property is sold, should the new owner only be able to require vacant possession if they want to use the property for a purpose that can't reasonably be accommodated with the existing tenants in place? E.g. to live in the property themselves, for a family member to live in, to renovate or to convert to a commercial property. Please explain your answer. |
| 2.1.6 | Should a landlord be able to end a tenancy so they can advertise the property for sale with vacant possession? What impact do you think this would have on tenants? |

42. We also propose the following additional termination grounds to cover other situations where it might be necessary to end a tenancy once 'no cause' terminations have been removed. These grounds are when the landlord:

- intends to carry out extensive alterations, refurbishment, repairs or redevelopment of the premises and it would not be possible for the tenant to continue to live there while the work was being undertaken, or
- intends to change the use of the premises, e.g. from residential to commercial
- when the landlord is not the owner of the premises and the landlord's interest in the property ends (for example, the landlord may lease the premises from the owner and the lease ends)
- if a person, such as a mortgagor, becomes entitled to possession and needs the tenant to vacate the premises to meet requirements relating to a mortgagee sale process or similar.

43. We propose that a landlord would be required to give 90 days' notice to end a tenancy under these grounds. If a landlord wants to end a tenancy for any reason which is not specified in the RTA, or has a good reason to give a shorter notice period, they could still apply to the Tenancy Tribunal for a termination order.

Making sure termination grounds are used fairly

44. Tenants would still be able to apply to the Tenancy Tribunal if they think their landlord might be giving them notice for a reason other than the one they are given. For example, if the landlord states they require it for a member of their family to move in, but the tenant believes they were given notice because they exercised their rights under the RTA (by asking the landlord to undertake repairs or maintenance), the tenant could challenge this at the Tenancy Tribunal.
45. We would like to know if you think that landlords should be required to provide their tenant with evidence in support of the termination ground they are using when they give the tenant notice, what level of evidence might be appropriate, and whether there should be penalties if the termination ground given is false?

Questions for your consideration

- 2.1.7 Do you think that landlords should give tenants evidence about why they are terminating a tenancy? If yes, what sort of evidence should that be?
- 2.1.8 Do you think using a false reason to terminate a tenancy should be considered an unlawful act and subject to penalties, such as those described in Section 5 (Enforcing Tenancy Laws)? If you answered yes, what kind of penalty do you think would be appropriate?

Changing notice periods for landlords and tenants

46. The Government has committed to extending the notice periods that landlords are required to give tenants when ending a periodic agreement from 42 to 90 days in circumstances where the Tenancy Tribunal has not ruled on a termination. This means if the owner wants to end a tenancy to do things like moving back into the property, they will need to factor in more time between serving notice and taking back possession.
47. We would also like to consider whether the current requirement for a tenant to give 21 days' notice is appropriately balanced with other changes in this reform that seek to provide tenants with greater security while ensuring adequate protection of landlord interests. We would be interested to hear perspectives on how long it can take landlords to re-tenant a property once a tenant has served notice and whether a longer notice period might be justified to better balance the requirements of landlords and tenants.

Questions for your consideration

- 2.1.9 If landlords are required to give 90 days' notice, should tenants be required to give more or less than 21 days' notice? If you would prefer more or less than 21 days' notice, what would be the ideal notice period?
- 2.1.10 If you are, or have been, a landlord or property manager, what is the longest length of time it has taken you to re-tenant a property once a tenant has served notice?

How a tenancy could end if we make these changes

48. Bringing together all proposals above, the reasons either the landlord or the tenant could end a periodic tenancy are set out in the table below. Most of these reasons are already allowed under the RTA, new grounds and notice periods are in **bold**.

	Grounds to end a periodic tenancy	Standard of proof	Notice period
The tenant wants to end the tenancy	Any reason, as long as the tenant gives the landlord the required notice	None	See question 2.1.9 above
The landlord wants to end the tenancy	- The tenant or their visitor has unreasonably interfered with the peace, comfort, or privacy of other tenants in the premises, people in the neighbourhood, or the landlord - The tenant has caused or threatened to cause significant damage - The tenant has assaulted or threatened to assault specified persons including neighbours - The tenant has breached the tenancy agreement - The tenant has used the premises for unlawful activity - The tenant has otherwise breached the Act and the Tribunal does not think the breach can be remedied or that it would be inequitable to refuse to end the tenancy	Evidence that satisfies the Tenancy Tribunal that the problem cannot be resolved	To be determined by the Tenancy Tribunal on a case-by-case basis
	- The owner or their family member requires the premises to live in - The landlord activates an existing clause in the tenancy agreement which states that the tenancy will be terminated if the premises is needed for an employee - The premises has been sold with a requirement by the new owner for vacant possession The landlord intends to carry out extensive alterations refurbishment, repairs or redevelopment of the premises and it would not be possible for the tenant to continue to live there while the work was being undertaken The landlord wants to change the use of the premises, e.g. from residential to commercial When the landlord is not the owner of the premises and the landlord's interest in the property ends (for example, the landlord may lease the premises from the owner and the lease ends) If a person, such as a mortgagor, becomes entitled to possession and needs the tenant to vacate the premises to meet requirements relating to a mortgagee sale process or similar	See question 2.1.7 above	90 days

	Current grounds to end a periodic tenancy which will <u>no longer be included</u> in the RTA	Standard of proof	Notice period
The landlord wants to end the tenancy	the landlord wants to end the tenancy without giving the tenant a reason (a 'no cause' termination)	None	90 days

Questions for your consideration

- 2.1.11 If you are, or have been, a landlord, are there situations where you have used the 90 day 'no cause' termination provision that would not be covered by the grounds for termination in the above table? If so, what was the situation?
- 2.1.12 What impact do you think removing 90 day 'no cause' terminations and only allowing terminations for the reasons in the table above would have?

Additional grounds for termination for public housing providers

49. In addition to the grounds discussed above, we think there are operational requirements in the public housing context that are currently addressed through 'no cause' terminations that will need to be subject to their own termination provisions if 'no cause' terminations are removed. These public housing specific matters are:
- a tenant needs to be transferred to a different public housing property that is considered to better meet their needs or the needs of the community
 - following a review of the tenant's circumstances, as the tenant is no longer eligible for public housing.
50. While it is necessary to signal that public housing specific termination provisions might be needed, if 'no cause' terminations are removed, it is not certain at this point that the RTA is the most appropriate law to include such provisions in. The Government is willing to consider alternative options for this such as giving effect to these provisions in the Housing Restructuring and Tenancy Matters Act 1992.

Questions for your consideration

- 2.1.13 If you are a public housing provider, are there other grounds for terminating a public housing tenancy that should be considered in place of 'no cause' terminations? If you answered yes, what are the other grounds?
- 2.1.14 What are appropriate notice periods for additional grounds for termination that are specific to public housing? What is your rationale for the notice periods?

To make these changes we might need to take a broader look at the types of tenancy agreements on offer

51. It is important to look at the types of tenancy agreements on offer to ensure that they remain fit for purpose and reflect the modern renting environment at the same time as considering changes to how periodic tenancies can be terminated.
52. The reasons for ending a tenancy described above only apply to periodic agreements so these changes will only help tenants feel more secure and promote good faith landlord-tenant relationships if landlords continue to offer periodic tenancy agreements.
53. If landlords think the proposed changes to periodic agreements will make it too difficult to move on tenants who don't meet their obligations, they might prefer to offer fixed-term agreements. Wider use of fixed-term agreements could help increase security for tenants in some ways because a fixed-term tenancy cannot usually be terminated before its expiration date, even if the property is sold.
54. However, should landlords move towards offering shorter fixed-term agreements to what they generally do now in order to gain more control, tenants would be less secure. In shorter fixed-terms, tenants might have to re-sign agreements more frequently and might not know what will happen each time the agreement expires (landlords only need to give 21 days' notice that they don't intend to extend or renew a fixed-term). Making periodic agreements less attractive to landlords could also disadvantage tenants who value flexibility.

Questions for your consideration

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| 2.1.15 | Do you agree with our assumption that if 'no cause' terminations are removed from periodic agreements, landlords could be more likely to offer fixed-term agreements? Please explain your answer. |
| 2.1.16 | If you have been a landlord or a tenant in a fixed-term agreement, how long was the longest fixed-term? Why did you choose a fixed-term rather than a periodic tenancy? |

Changes to the existing types of tenancy agreements could help improve security for tenants

55. To encourage landlords to consider both types of agreement, we could make changes to fixed-term tenancies to make them more secure beyond the initial term.

Options for changes to fixed-term agreements

Option one: Providing tenants with a right to extend their fixed-term agreement

56. Fixed-term agreements give landlords security that their property will be tenanted and tenants security that their tenancy will last until a fixed date. However, each time a fixed-term is due to end can be a time of great uncertainty for both tenants and landlords. This is especially likely for tenants if they find themselves locked into a cycle where their fixed-term ends every year during the months of January and February when more tenancies end and high demand can make it more challenging to find alternative accommodation.

57. One way to address this could be to provide tenants with a right to extend or renew their fixed-term agreement, or allow a tenant to choose to move onto a periodic agreement, provided the tenant has not breached their obligations during the tenancy, or that specific termination provisions do not apply at the end of the fixed-term (for example, an intention for the owner to move back into the property). This may provide tenants who are meeting their obligations with greater security. However, an unintended consequence is that it could create a situation where the law encourages landlords to issue formal notices about minor issues that could be dealt with through a discussion, so that they can retain an ability to terminate a tenancy at the end of the fixed-term if needed. Should this eventuate, it would likely be counter to the Government's objective to ensure the law promotes good faith behaviour.

Option two: Specify a minimum length for fixed-term agreements

58. To better differentiate between periodic and fixed-term tenancies, a minimum duration for a fixed-term could be set, for example, two years. This would reset the balance between periodic and fixed-term agreements; periodic agreements without a no-cause termination option would be available for tenants and landlords who value flexibility and fixed-term agreements would be available where both parties want a more secure longer-term arrangement.

59. However, this could have the unintended consequences of making it difficult for homeowners to rent out their property if they are moving away from their home city for a fixed period. For example, a Dunedin homeowner offered a 12 month contract in Auckland might want to rent out their home, and make it clear to the tenant that the property would only be available for 12 months. If they could not offer a fixed-term, they would have to offer a periodic tenancy and give the tenant 90 days' notice before they want to move back (as it is proposed that this is a specific termination ground that would be allowed). This could create uncertainty for the tenant which would be counter to the objective to help renters feel at home.

60. The above examples are not intended to be exhaustive. Rather they should indicate how we are thinking about the impacts that changes to periodic agreements in isolation could have on the type of agreements that landlords are willing to offer. We would like to hear from you about whether we are thinking about this in the right way and to hear your ideas about how the differences between periodic and fixed-term agreements could be rebalanced through this reform.

Questions for your consideration

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| 2.1.17 | Do you think tenants should have the right to renew, extend or modify their fixed-term tenancy (option 1), if their landlord has not raised any concerns with their behaviour or if specific termination provisions do not apply at the time the tenancy was due to be renewed? What effect do you think this would have on the relationship between landlords and tenants? |
| 2.1.18 | What do you think would be the impact of setting a minimum length (option 2) for fixed-term agreements? What do you think would be a suitable length? |
| 2.1.19 | What else could the Government do to make sure landlords feel comfortable offering periodic agreements, if they can only terminate for the reasons proposed? |

Do we still need two different types of tenancy agreement?

61. An alternative to modernise and simplify New Zealand's tenancy law and to provide tenants with security of tenure would be to allow only a single tenancy type. This model has already been introduced in some countries. For example, as part of a wider review of private tenancies, Scotland recently removed fixed-term agreements altogether allowing only open-ended periodic tenancies with conditions similar to those we propose for New Zealand periodic tenancies earlier in this chapter.

Option three: Allow only open-ended tenancies

62. A periodic tenancy that the landlord can only end if they require the property for another purpose or if the tenant isn't meeting their obligations (for details see the table on page 19) is essentially open ended. If this was the only type of agreement available, tenants who are meeting their obligations would have both flexibility and stability. Tenants would not need to worry about renewing agreements every year, for example, but could serve notice to end their tenancy any time they need to.
63. As a variation of the existing periodic tenancy, this option would be easy for all parties to understand, and it would be simple for both tenants and landlords to move on to this sort of agreement. An example of how this might work is illustrated in the following case study:

Case study: A single open-ended tenancy

64. Aleki and his partner have been living and working in Tauranga for the last five years. Despite being model tenants, they were only offered year-long fixed-term tenancies under the previous law so they are happy to sign an open ended tenancy under the new law with experienced landlord Anna. Because Aleki and his partner are meeting their obligations by looking after the house, they are confident that their behaviour won't give Anna any reason to end their tenancy.
65. Anna on the other hand has comfort that if Aleki and his partner stop meeting their obligations she will have the ability to end the tenancy. In addition, Anna knows that should she decide to live in the property herself, or decide she wants to redevelop the property; the law will protect her interests as well.
66. While this model provides tenants with both certainty and flexibility, removing the ability to offer fixed-term agreements results in more uncertainty for landlords, many of whom will rely on regular cash flow and certainty over a specific period to meet their mortgage obligations. In the example above, Anna can still end the tenancy if her tenants stop meeting their end of the bargain, but she does not have any guarantee that Aleki and his partner won't give her notice that they want to move out at any time. If Aleki and his partner gave notice at a time of year when demand for rental properties is low, Anna could be without rental income for a period.
67. This option would also remove the current protection tenants in fixed-term agreements have against being required to move if their landlord sells the rental property. Currently, the buyers of a rental property subject to a fixed-term agreement who want to live in their new property, move their family in, or renovate, cannot do so until the fixed-term expires. Under a single open ended-model, the security a fixed-term offers tenants when their property is sold will be reduced to some extent. How much tenants would be affected depends on the decisions we make about when a tenancy can be terminated.

Questions for your consideration

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| 2.1.20 | Do you think only allowing open-ended tenancies which the landlord can't end unless they require the property for another purpose or the tenant isn't meeting their obligations (option 3) is the best way for the Government to meet its objective to improve security and stability for tenants? Please explain your answer. |
| 2.1.21 | Do you think the Government should further investigate removing fixed-term tenancies from the market? Please explain your answer. |
| 2.1.22 | If fixed-term tenancies were removed, what changes could be made to periodic agreements to balance security for tenants and landlords? |

2.2. Landlord and tenant responsibilities

68. Signing up to a tenancy agreement means both landlords and tenants have obligations under the RTA. We need to make sure that these are fit for purpose and make sense in the modern renting environment.
69. The previous section looked at ways that to improve tenant's choice and control over their housing and help them feel more at home in their rental properties. If people are going to stay in rental homes for longer, this could raise new issues that haven't come up under shorter tenancies.
70. We might need to think about times when a tenant and a landlord need to take joint responsibility and work together. It is important that rights which help tenants feel at home are balanced with responsibilities so landlords are confident their property will be protected.
71. Other parts of this document look at tenants' ability to make modifications to their rental property or to keep pets. Tenant and landlord responsibilities relating to modifications and pets are addressed in those sections. This section considers responsibilities more generally.

Tenant responsibilities

72. We are interested to know how well the current law is working, and whether landlords and tenants feel they have a good understanding of what a landlord has the right to expect from their tenant. We would also like to look at additional responsibilities a tenant could take on if there was a shift to them staying in a property for longer.

73. A tenant's obligations under the law at the moment include both responsibilities, and actions and behaviours which are prohibited.

Key tenant obligations under the Residential Tenancies Act	
Responsibilities	Prohibitions
A tenant must: • pay the rent as and when it is due • make sure the premises is primarily a home, not a place of business • keep the premises reasonably clean and tidy • replace batteries in smoke alarms if necessary • tell the landlord about any damage or need for repairs as soon as possible • have the landlord's permission to sublet any part of the premises or to assign their tenancy to another person	A tenant must not: • intentionally or carelessly cause damage to the premises • interfere with fire escapes or exits • use the premises, or permit the premises to be used, for any unlawful purpose • interfere with the reasonable peace, comfort or privacy of any other tenants, or people living in the neighbourhood • allow more people than the number specified on the tenancy agreement to reside on the premises

74. Tenants are also responsible for the behaviour of their guests, so the prohibitions also extend to people they allow on the property. This means that they cannot allow someone else to intentionally or carelessly cause damage, use the premises for an unlawful purpose, or disturb other tenants or neighbours.

Questions for your consideration

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| 2.2.1 | Have you ever disagreed with your tenant or landlord about whether or not they are meeting their obligations? If yes, how could this have been avoided? |
| 2.2.2 | Do you think tenants should have more responsibilities for the property that they rent? Please explain your answer. Are there other things a tenant should or should not be able to do? Please explain your answer. |
| 2.2.3 | Do you think a tenant's responsibilities to keep a property 'reasonably clean and tidy' make it clear what sort of behaviour a landlord can expect? If not, how could this be made clearer to a tenant? |
| 2.2.4 | Should a tenant in a longer-term tenancy have additional responsibilities for the care and maintenance of the property? If you answered yes, at what point during a tenancy should these additional responsibilities be triggered, and what sort of responsibilities should a long-term tenant take on? |
| 2.2.5 | What other changes to tenants' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets? |

What happens if a tenant is not meeting their obligations?

75. If a tenant breaches their obligations under the RTA, the landlord can send the tenant a 14-day notice to remedy that breach. This notice would tell the tenant what they have done to cause a breach, what they need to do to fix it, and how long they have to fix it. If the tenant does not fix the problem within the time allowed, the landlord can apply to the Tenancy Tribunal to sort the matter out. As part of that application, the landlord could seek to end the tenancy, or require the tenant to do something such as fix damage they have caused.
76. Some of the ways a tenant can breach their obligations under the RTA are serious enough to be considered 'unlawful acts'. If an unlawful act is committed the Tenancy Tribunal has the ability to award exemplary damages (a financial penalty) against the party who commits the unlawful act. Some examples of unlawful acts by tenants are; subletting without their landlord's permission, allowing the property to be used for an unlawful purpose, or interfering with fire exits. A full list of unlawful acts and the corresponding exemplary damages is included at Annex 1.
77. However, some breaches such as failure to notify the landlord of damage or the need for repairs as soon as possible, are not considered unlawful acts. For example, there is no penalty if a tenant does not tell a landlord about a water leak in timely way, and that leak then escalates to cause wider damage to the property. We are interested in hearing views about whether the law is effective in encouraging good faith behaviour in this regard.

Question for your consideration (please indicate if you are a tenant or landlord when answering)

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| 2.2.6 | Are there sufficient repercussions for tenants who don't meet their obligations? If not, what would you change? |
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Landlord responsibilities

78. We would also like to know whether tenants and landlords have a good understanding of what a tenant can expect from their landlord. We would then like to look at ways the relationship between a landlord and a tenant might need to change if tenants were to stay in a rental property for longer.

79. As with tenants, the law includes both responsibilities, and prohibited actions and behaviours for landlords.

Key landlord obligations under the Residential Tenancies Act	
Responsibilities	Prohibitions
A landlord must: • give the tenant notice and information if the property is sold • provide the premises in a reasonable state of cleanliness • maintain the premises in a reasonable state of repair • meet smoke alarm and insulation requirements • provide and maintain locks and other devices to ensure that the premises are reasonably secure • give the tenant appropriate notice when they need to access the premises to: ○ undertake an inspection ○ check on repair work the tenant has been required to do ○ install insulation or smoke alarms ○ undertake maintenance or repairs	A landlord must not: • interfere with the reasonable peace, comfort or privacy of the tenant in the use of the premises by the tenant • allow another tenant to interfere with the reasonable peace, comfort or privacy of the tenant in the use of the premises by the tenant • unreasonably refuse a request from a tenant to sublet the property or pass on the tenancy to someone else • unreasonably refuse a request from a tenant to make modifications • enter the premises during the tenancy unless the tenant has freely given consent before the landlord enters or it is an emergency • use force or the threat of force to enter or attempt to enter the premises

80. While landlords are responsible for maintaining and repairing the property, the law anticipates that there are times the tenant might need to carry out urgent repair work which would usually be the responsibility of the landlord. The tenant can carry out repair work provided that:

- the state of disrepair did not result from an action that constitutes a breach of the tenancy agreement by the tenant, and
- repairs are needed to prevent injury to people or property (or are otherwise serious and urgent), and
- the tenant has notified the landlord about the state of disrepair or made a reasonable attempt to do so.

81. In these cases the landlord is required to compensate the tenant for any reasonable expenses incurred by the tenant for repairs.

82. If repairs or maintenance are needed and they are not urgent, the tenant must inform their landlord and the landlord must maintain or repair the premises within a reasonable time. If a landlord does not fix the identified problem, a tenant can issue the landlord with a notice to remedy giving the landlord at least 14 days to fix the problem. If the damage isn't fixed at the end of the notice period, the tenant can go to the Tenancy Tribunal which can order repairs, require the landlord to pay compensation, or terminate the tenancy at the tenant's request.

83. Many landlord obligations mirror the obligations of a tenant in the section above. Those that are particular to landlords are those restricting the landlord's access to the premises. These requirements mean that, despite the fact that the landlord owns the property, they must recognise the tenant's right to privacy. This is an important part of making tenants feel at home in their rental accommodation, but it is important these obligations are balanced against a landlord's right to protect their asset.

Questions for your consideration (Please state if you are a tenant or landlord when answering)

- 2.2.7 Do you think landlord obligations are clear and well understood?
- 2.2.8 Are there other things a landlord should be responsible for? If yes, please specify. Are there other things that a landlord should or should not be able to do? If yes, please specify.
- 2.2.9 Do you think the current obligations make it clear what tenants can expect from landlords in terms of maintenance? If you answered no, how could this be made clearer?
- 2.2.10 What other changes to landlords' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets?
- 2.2.11 Are there sufficient repercussions for landlords who don't meet their obligations? If not, what would you change?

How can landlords and tenants work together to keep a property warm and dry?

84. The Healthy Homes Guarantee Act 2017 made changes to the RTA which will allow for the introduction of new minimum standards for heating, insulation, ventilation, moisture ingress, draught-stopping, and drainage in rental properties. The minimum standards are now being developed and will be consulted on separately. The Healthy Homes amendments to the RTA will come into force on 1 July 2019 and compliance with the minimum standards (the Healthy Homes standards) will be required before 1 July 2024. All landlords still need to make sure their property is insulated (unless an exception applies) before 1 July 2019.
85. Because the Healthy Homes standards are currently under development, we don't yet know exactly what will be required, but landlords could be required to provide:
- a fixed heating source which can keep a room at a healthy temperature,
 - a ventilation method to help control high levels of moisture, and
 - protection against unnecessary draughts that create a cold home
86. It will be the responsibility of the landlord to make sure a property is able to be kept warm and dry by meeting these standards. However, we recognise that tenant behaviour will influence whether the property is kept warm and dry.

87. The Healthy Homes standards will help to protect a landlord's property from damage associated with damp. Landlords will have to make sure their property meets the requirements, but won't see the benefits (of less maintenance) unless tenants choose to use the facilities the landlord provides. We understand when it comes to heating, tenants might need to consider things like the cost of running the heating system and their own preferences for a comfortable indoor temperature. However, when landlords comply with other standards which won't be as costly to run and are less influenced by individual preferences we would like to know if tenants should then be required to use such improvements. For example, if a landlord is required to install a ventilation method, such as extractor fans, should a tenant be obliged to use it?
88. As part of this review of landlord and tenant responsibilities, we would also like to find out if tenants could, where possible, be responsible for maintenance when their landlord has made modifications to meet the new heating, ventilation, and drainage requirements. For example, when the requirement for smoke alarms was introduced in 2016, tenants became responsible for replacing the batteries as required.

Questions for your consideration

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| 2.2.12 | How do you think landlords and tenants should share the responsibility for maintaining heating equipment, ventilation methods, and any other improvements installed under the Healthy Homes standards? |
| 2.2.13 | If a landlord makes improvements to a property to make it warmer or drier, should tenants be obligated to use those improvements? Please explain your answer. |

2.3. Modifications to rental properties

89. The Government is considering options for how the law can better help landlords and tenants agree to tenants making reasonable modifications or minor changes to their rental properties, or whether tenants should be able to make certain changes without consulting their landlord.

Current situation – landlords must not withhold consent 'unreasonably'

90. Currently, the law prevents a tenant from modifying rental properties unless they first get agreement from their landlord. However, the RTA places an expectation on landlords not to withhold agreement unreasonably.
91. We have heard from some tenants that landlords' are not always willing to agree to the modifications they think are reasonable. Property managers might also have their own reasons to decline such requests before they even reach the owner, e.g. because it might be easier for them to have the same approach to modifications across the entire portfolio of properties they manage. However, there isn't good data available to demonstrate how much a problem this might be in either instance.

Tenants should feel at home in rental properties

92. Ensuring tenants may make minor modifications to a rental property will help allow them feel more at home. Examples of minor modifications include being able to hang pictures, put up shelving, affix furniture or appliances to a wall, or plant a vegetable garden.
93. Such rights should be balanced against the interests of landlords in maintaining the condition and value of their properties, so it is important we also consider how modifications should be treated when a tenancy ends.

What are your experiences?

94. The government is interested in understanding the experiences of landlords and tenants when it comes to requests to make modifications to a rental property. This will help inform options to clarify the intent of the law.

Questions for your consideration

- 2.3.1 If you are or have been a tenant, what has been your experience seeking agreement to make modifications (that you considered to be reasonable) to rental properties?
- 2.3.2 If you are, or have been, a landlord or property manager, in what instances have you withheld, or granted, permission for tenants to modify a property? What were your reasons for doing so?

Should tenants be responsible for reversing modifications?

95. Before considering changes in this area, we think it's important to clarify that the cost of modifications requested by a tenant should generally be met by the tenant unless both parties agree otherwise. Additionally, we consider that a tenant should be responsible for reversing the modifications they have made when a tenancy ends, unless the landlord agrees to inherit the modification. If a tenant does not do so, the RTA could allow the landlord to apply to the Tenancy Tribunal for the tenant to meet any reasonable costs of reversing a modification they have made.
96. Additionally, where a tenant fails to make right any modification, the breach could be an unlawful act. In this instance, a landlord could apply for the tenant to pay a penalty in addition to the costs of repairing any damage caused by the modification.
97. We note under the Residential Tenancies Amendment Bill (No 2) (currently being considered by Parliament), the liability for any careless damage caused by a tenant when removing a fixture will be limited in accordance with this Bill.

Questions for your consideration

- 2.3.3 Should a tenant be under an obligation to reverse any modifications they make in rental properties, unless the landlord agrees to take on the modification? Please explain your answer.
- 2.3.4 Do you think that if the landlord doesn't wish to take on a modification at the end of a tenancy and the tenant doesn't reverse it, that this should be an unlawful act with a potential financial penalty? Please explain your answer.

Options we are considering to make it easier for landlords and tenants to agree on modifications

Option one: A landlord has 21 days to consider a request, after which they are deemed to have agreed to reasonable modifications

98. One option to help more tenants and landlords reach agreement about modifications could be through ‘silent agreement’ where the landlord is deemed to have agreed to a request to make modifications unless they decline the request within a certain timeframe and for a specified reason. In effect, this would mean rather than landlords having to say yes to modifications, they would instead have to say no, and there would be limited reasons for which they could do so. We would welcome feedback on what sort of information a landlord would reasonably need to make this decision. We are also interested in what kinds of reason might be considered good reasons to decline modification requests. At a minimum, we think reasons to refuse a request could be:

- the cost of putting the modification right could exceed the bond held for the property, or
- the requested modification would have impacts on the landlord’s property that are considered to be disproportionate to any benefits the tenant claims they would receive, or
- the requested modification would be in breach the building code, other regulations or legislation, or
- the requested modification would result in a landlord breaching their obligations for the property, such as body corporate rules, covenants or obligations to preserve a buildings heritage features, or
- the requested modification would affect the structure or weather tightness of the property.

99. We propose landlords have 21 days to consider the request from the date that all necessary information is provided to the landlord. The RTA allows 21 days for other obligations and notice periods, for example landlords have to appoint an agent to look after their rental property if they will be out of the country for more than 21 days. In addition, other regulatory regimes that seek to achieve similar things also prescribe this timeframe. For example, the Fencing Act 1978 provides neighbours with 21 days to object to a proposal to build a fence along a shared boundary before becoming liable for half of the costs of that fence.

100. Disputes about whether the requested modification is reasonable would be decided by the Tenancy Tribunal or resolved in mediation.

Case study: Modifications to secure furniture in case of an earthquake

Bella rents a three bedroom house in Stokes Valley, Wellington, where she lives with her two children. Bella is mindful of her children’s safety and wants to take action to ensure that things like bookcases and the television won’t fall on them if there was to be an earthquake. She would also like to hang some pictures. Bella emails her landlord with an outline of what work she would like to do and provides the landlord with enough information about the modifications to determine what the costs of putting that right at the end of the tenancy might be.

The landlord considers it unlikely that the cost of remediating this work would exceed the \$1600 in bond she has lodged for the property and no other relevant grounds for objection seem to apply. The landlord does not respond to Bella so after 21 days have elapsed she now has a right to do the work. When the tenancy ends 18 months later Bella asks the landlord if she would like this activity to be remediated and undertakes this work to a reasonable standard.

101. An advantage of this approach is that by basing grounds for objection on factors like the damage an activity could cause, there is no need to be prescriptive about what modifications are and are not acceptable. By placing a time limit on the request landlords would be encouraged to respond to all queries within the timeframe that the Act expects business to be undertaken in.
102. A disadvantage of this approach is that it would be difficult to account for other risks, such as rent arrears, that may also need to be offset through a tenant's bond. In addition, it may not always be clear what the true costs of remediating a proposed modification could be.

Questions for your consideration

- 2.3.5 What are reasonable grounds to object to a tenant's request to make minor modifications to a rental property?
- 2.3.6 Do you agree that 21 working days is a reasonable amount of time for a landlord to consider a tenant's request to make minor modifications to a rental property?
If you answered no, what would you consider to be a reasonable amount of time and why?
- 2.3.7 Depending on the type of modification, should a landlord be able to require the tenant to use a suitably qualified trade person? If so, what modifications should, or should not, be subject to this requirement?

Option two: Tenants have a statutory right to make specified modifications

103. A second option is to give tenants a right to carry out specific types of "low risk" modifications to rental properties. This approach could involve compiling of a list of modifications tenants could make after notifying their landlord that they intend to do so, rather than having to obtain their landlord's permission.
104. We would like to hear your views about the kinds of common modifications which could be included on the list. If this approach is adopted, it could be given effect through regulations, on which there would be further consultation. Guidance on each modification included on the list could then be provided on Tenancy Services' website in a similar way to the current insulation and smoke alarm requirements.

Case study: Notifying the landlord after making permitted modifications

Oscar rents a one bedroom flat in Invercargill. He wants to put up some shelving in the bathroom to make better use of the small space. Oscar visits the Tenancy Services website and sees that shelving is allowed, subject to certain requirements. Oscar notifies his landlord of his intention to install the shelves and installs these in accordance with the guidance on the Tenancy Services website. When the tenancy ends eight months later Oscar asks the landlord if he would like the shelves removed. The landlord thinks they are a good addition and replies in writing that this is not necessary. Oscar is happy with this arrangement and the landlord inherits the shelves as a fixture of the property.

105. An advantage of this approach is that it would be more certain for both tenants and landlords meaning less time would be spent trying to reach agreement. By limiting the list of permitted modifications to things considered reasonable it is unlikely that this approach would impact on landlords to a greater extent than their existing obligation not to withhold consent unreasonably.

106. A disadvantage of this option is that if tenants only have to notify landlords of modifications rather than requesting permission for them, there could be potential for a landlord to unintentionally breach his or her obligations relating to the property. For example, if the tenant unknowingly modified a heritage feature or the modification breached body corporate rules. However, this risk could be mitigated if the landlord included information about this in the tenancy agreement. The option is more prescriptive and less flexible than the first option, for example if the kinds of modifications tenants want change over time. However, landlords and tenants could continue to agree to modifications that are not on the approved list on a case-by-case basis, as they can currently.

Questions for your consideration

- 2.3.8 What are sorts of modifications that could be included on a list of alterations tenants have a right to make without seeking their landlord's permission?
- 2.3.9 Do you think that the advantages, disadvantages and impacts of each option have been correctly identified?
- 2.3.10 If the government was to develop either option one or two further, which model do you prefer and why?

2.4. Keeping pets in rental properties

107. The government is considering whether the law could be changed to better encourage landlords to allow tenants to keep pets in a rental property.

Keeping pets could help tenants feel at home

108. The government is looking at ways to help tenants feel more at home in their rental properties. As part of this, we are seeking feedback on proposals to change the law so more tenants may have pets in rental properties while ensuring that risks relating to the value and upkeep of landlords' properties can be managed.
109. For many tenants, having a pet is important for companionship and contributes to a sense of feeling at home in their rental property. Tenants questioned about being turned down for a rental property in the report, *The New Zealand Rental Sector*⁶ reported pets as the second most common reason. However, allowing pets in rental properties could increase the risk of damage and wear and tear to the property. Landlords might also be concerned that pets will disturb neighbours or cause costly damage, such as requiring fumigation or replacing carpets or curtains. If their insurance does not cover pet damage, landlords may be less inclined to take on tenants with pets because of the risk the tenant will not pay for the repair of that damage.

⁶ BRANZ, New Zealand Rental Sector report (2017)

Currently landlords can say no to pets

110. Tenants have no explicit right under the RTA to keep a pet in their rental property. Whether they can do so is solely at a landlord's discretion. Irrespective of the kind of animal or the condition of the property, landlords may require a no pets clause in tenancy agreements, which can be a ground for the Tenancy Tribunal terminating a tenancy if a tenant is found to be keeping a pet in breach of the agreement.
111. While many landlords do permit tenants to keep pets, the law does not require a landlord to have regard to the nature of the pet or the condition of the property when making a decision about whether or not to allow pets. This means that legally a landlord can prevent a tenant from keeping a pet, even in situations where the pet itself can't reasonably cause any damage (e.g. pets such as fish which are contained), or when the pet is unlikely to cause damage which would affect the condition of the property (because the carpet and other furnishings supplied by the landlord are old and have depreciated to the point where they arguably hold little value).
112. If this permission is declined, tenants who have or want a pet will need to find a rental property in which pets are allowed. In a tight rental market such properties may be difficult to come by.

Question for your consideration

- 2.4.1 Should a landlord be able to refuse a tenant's request to keep a pet without giving a reason? Please explain.

What are your experiences?

113. We are interested in understanding the experience of landlords and tenants in regards to keeping pets in rental properties.

Questions for your consideration

- 2.4.2 If you are, or have been a tenant, what has been your experience seeking agreement to keep a pet in a rental property?
- 2.4.3 If you are, or have been a landlord or property manager, what has been your experience allowing tenants to keep pets at your rental property?
- 2.4.4 If you are, or have been a landlord or property manager, and you withheld permission for tenants to have pets, why did you do so?

Tenants will be liable for careless pet damage up to a cap

114. The Residential Tenancies Amendment Bill (No 2) (the Bill) which is currently before Parliament proposes a new damage liability framework. If the Bill passes in its current form, tenants will be liable for careless damage caused by an act or omission, capped at the level of their landlord's insurance excess (if insurance covers the damage) or at four weeks' rent, whichever is less.

115. For pet damage that is more than fair wear and tear and which is ‘careless’, i.e. not intentional, tenants will be liable:
- for their landlord’s insurance excess (if applicable); or
 - if the landlord does not hold insurance, for up to four weeks’ rent for the damage (caused by each act or omission).
116. Some rental insurance policies do not cover damage caused by pets, for example, they might say the policy does not cover loss or damage from “scratching, chewing, tearing, soiling or vomiting by domestic pets”, or simply from “loss caused by domestic pets”.
117. Where pet damage is careless and not covered by a landlord’s insurance, a tenant would be liable under the Bill for the cost of the damage up to four weeks’ rent.

Under what circumstances should tenants be allowed to keep pets?

118. We are seeking views about the circumstances under which tenants should be permitted to keep pets in rental properties.
119. The right of tenants to keep pets should be balanced against the interests of landlords to keep their rental property in a clean and tidy state of repair.
120. The suitability of the property is relevant when considering whether pets should be allowed in rental properties. For example, if the rental property is not properly fenced or is a small apartment with no outdoor space, it might not be appropriate for a tenant to keep a dog.

Option one: Specify in law when landlords could decline a request to keep a pet

121. One option for clarifying the law in this area is to prohibit landlords from declining a pet request or from including a no pets clause in the tenancy agreement, unless doing so was aligned with specified grounds, such as:
- the property is unsuitable for the type of pet requested (for example, the tenant wants to keep a dog and the property has no fenced outdoor area), or
 - there are overriding regulations that prevent the keeping of the type of pet requested (for example, body corporate rules that prohibit all pets or council by-laws that prevent keeping certain pets (for example, a goat in a suburban backyard), or
 - the condition of the property is such that type of pet requested could cause a level of damage that could not reasonably be recovered from the tenant, or
 - the landlord believes on reasonable grounds that allowing a pet will interfere with the reasonable peace, comfort or safety of other tenants, neighbours or representatives exercising functions on their behalf.

Option two: Landlords must not unreasonably refuse a pet request

122. Another option could be that a landlord must not ‘unreasonably withhold’ consent to a tenant’s request to keep a pet. This would be similar to how the RTA deals with a tenant requesting permission to sublet their rental property. Disputes about whether a landlord’s refusal to give consent to a pet request was unreasonable would be decided by the Tenancy Tribunal or resolved in mediation.

Options one and two would require the landlord to consider the pet and the property

123. Options one and two would require a landlord to consider both the kind of pet and the nature and condition of the property in making a decision about whether or not to allow animals in the rental property. In effect, pet requests would only be able to be declined in instances where there is a reasonable risk of damage that a landlord would not be able to recover easily or where the property was subject to overriding regulations or requirements or was not suitable for the pet requested. We are interested in your views on what would constitute reasonable grounds to refuse a pet request.
124. Tenants are already obliged to make sure they do not unreasonably interfere with the peace and comfort of the neighbours and this extends to their pets. For example, even if their landlord agrees to a tenant keeping a dog on the rental property, the tenant must make sure the dog does not cause problems for other tenants or their neighbours; if not they could be found to be in breach of the RTA. See paragraph 73 for more information about tenants' responsibilities.
125. Alternatively, tenants could prove their worthiness of having their pet in their rental property to strengthen their case. For example, Wellington City Council recognises good dog owners by offering reduced dog registration fees for people who achieve Responsible Dog Owner (RDO) status. This is reached by completing an adequate education and obedience course, having no record of their dog being impounded, no public complaint about their pet and so on. A similar checklist could be used by tenants to persuade landlords to allow them to bring their pets with them to rental properties.

Questions for your consideration

- 2.4.5 What might be reasonable grounds for a landlord to object to a tenant's request to keep a pet?
- 2.4.6 Would it be more effective if tenants instead gave reasons why they should be able to keep pets in rental properties?
- 2.4.7 Do some premises have specific attributes that mean they are inappropriate for some types of pet? If so, what?

Option three: Pet bond or carpet cleaning requirement

126. Under this option landlords and tenants would be able to agree to the tenant keeping a pet or pets in the rented premises in exchange for the tenant paying a 'pet bond' for a prescribed amount, for example two weeks' rent. The pet bond would be lodged with Tenancy Services and would be separate or additional to the regular bond. The bond money could be payable for certain types of pets likely to cause damage such as dogs and cats but not for animals which are contained, such as fish in a bowl or small tank.

Pet damage deposits in British Columbia, Canada

In British Columbia, landlords may request a "pet damage deposit" if a tenant has or gets a pet. The deposit can be up to half of one month's rent, which is in addition to any security deposit that may also be required by a landlord. The limit on the deposit is regardless of the number of pets allowed and can only be used to cover the costs of repairing damage caused by a pet, unless the tenant agrees otherwise. A pet bond could cover, for example, the cost of getting a carpet professionally cleaned, if a pet caused carpet damage.

127. A pet bond would only be able to be claimed by a landlord if cleaning or repairs were needed because of pet damage.
128. An alternative to a pet bond could be making it a compulsory obligation for a tenant who keeps a pet, such as a cat or dog to have the carpet professionally cleaned at the end of the tenancy. Currently, requests or requirements in a tenancy agreement from landlords or property managers for tenants to do so are not legally enforceable so long as the carpets are otherwise left reasonably clean and tidy.
129. These options address the risk to landlords they will be out of pocket by the impact pets have on their rental homes. However, it would increase costs for tenants.

Question for your consideration

- 2.4.8 What types of changes to the law could be made to compensate landlords for potential damage to rental properties if tenants keep pets?

Option four: Clarify the obligations on tenants to remove any doubt that pets may not cause nuisance

130. While tenants have a general obligation not to interfere with the peace and comfort of their neighbours and this obligation extend to their pets, there is no explicit obligation on tenants in regards to their pet's behaviour.
131. Additional to the options above, a further option could be to include a new duty or new duties on tenants specifically in relation to pets, for example:
- to ensure a pet does not cause nuisance to the landlord's other tenants at the premises or to the neighbours or the landlord or their representatives, and/or
 - to take all reasonable steps to ensure a pet does not impact on the cleanliness and tidiness of the premises and to prevent pet damage to the premises.
132. Breach of any or all of these obligations could be an unlawful act (with corresponding penalties).
133. The Local Government Act 2002 gives local and district councils the power to make bylaws for the purpose of protecting the public from nuisance and for regulating the keeping of animals. For example the Dog Control Act 1996 directs every territorial authority to adopt a policy in respect of dogs. In accordance with the Dog Control Act, the Wellington City Council has a *Dog Policy* which includes topics such as responsibilities of dog owners, access to public places, prohibited places, registration fees, microchipping and how to achieve Responsible Dog Owner status (as discussed above).
134. This shows that there are already obligations on people (including tenants) to make sure their pets do not cause nuisance to others. We are interested in your views about whether the RTA should also include such an obligation on tenants.

Questions for your consideration

- 2.4.9 Do you support the introduction of specific obligations in the RTA for tenants who keep pets in regards to their rental property and the peace and comfort of their neighbours?
- 2.4.10 If you are a landlord, are there any other options not covered in this section that would make you feel more comfortable with tenants having pets? If yes, please explain.

3. Setting and Increasing Rent

135. This section looks at how rents are set and how and when rents can be increased. It asks you questions about the practice of rental bidding, the ability of tenants to challenge rent that is substantially higher than market rent, and the frequency of rent increases.

3.1. Rental bidding

136. 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. It isn't known exactly how common this practice is in New Zealand. However, anecdotally we understand that some landlords might try to encourage higher rental bids by asking tenants to indicate the most they are willing to pay to secure that property, or by telling prospective tenants that they have already received rent offers above the advertised rent.
137. Rental bidding could potentially push up overall rental prices, particularly in areas of high demand, and lead to people who have the least ability to pay struggling to identify suitable rental properties that they can afford.

Currently, the RTA allows tenants and landlords to negotiate on rents

138. The RTA currently allows landlords and tenants to agree on the amount of rent for a property before the tenant moves in for either a periodic or fixed-term tenancy. Rental bidding or auctions are not prohibited by the Act.
139. Allowing landlords and tenants to agree the rent enables both parties to adjust the price they are willing to pay or accept for a particular property based on their personal circumstances or needs. For example, a tenant might be prepared to pay more to secure a property closer to their work, or one that is well set up for children.
140. On the other hand, if a tenant is prepared to pay more per week than other potential tenants, a landlord might consider the additional money is enough to justify letting the property to that person.
141. Landlords might also accept a lower weekly rent for a property if they know that the rental income will be steady over a longer period, like in a longer fixed-term tenancy. In other instances, landlords might want higher rent in return for less certainty, for example in the case of a shorter fixed-term or periodic tenancy.

A tight rental market can encourage rental bidding

142. When there is a shortage of rental housing, tenants compete amongst themselves to secure a rental property, and the easiest way to compete is to offer more money. This context has given rise to practices such as 'rental bidding'. In addition, smart phone applications have emerged which may help to facilitate this practice.
143. This practice adversely affects people who have limited purchasing power as they can find themselves priced out of rental properties by people who have greater disposable income. This can make it harder for tenants to find suitable rental properties that they can afford.
144. When someone takes the time to view a rental property and decides it will meet their needs only to then be told that they would need to pay significantly higher rent than advertised this could be seen as the landlord not acting in good faith. There is also a risk that in some circumstances, the prospect of greater rental returns could motivate some property managers or landlords to bid up rents themselves.

Question for your consideration

3.1.1 Have you been involved in rental bidding? If yes, what was your experience?

Case study: Rental bidding

Will has been a landlord for 10 or so years. His rental property, located in Hamilton, has always been in hot demand. He has primarily set the rent based on his mortgage repayments and on-going maintenance. This year he listed his property for \$450 per week. Although he knows he could probably get more if he asked, he thinks this represents a fair price for the property.

Eseta and Sione view the property, and because it is close to where they work, feel it would be the perfect place to move to. If they move in to the house they could save around \$30 per week in travel (as well as around half an hour travel time each day) to and from work so they offer to pay \$480 per week for the house. They feel that the extra \$30 is worth it for the house as it will save them half an hour travel each day.

Will receives 10 applications to rent his property in total.

Current situation

Under the current situation, Will can choose to accept Eseta and Sione's offer or choose other tenants. There is also nothing stopping Will from asking the other nine applicants if they would be willing to pay more rent for the property for themselves. Under this situation the rent could be bid up substantially above the \$450 per week listed price.

Question for your consideration

3.1.2 Do you think rental bidding should be banned or controlled? Why or why not?

Options for changes to the RTA in regards to rental bidding

Option one: Prohibit landlords or property managers from asking for rental bids

145. This option would prohibit landlords or property managers from asking tenants to indicate the most they are willing to pay above the advertised rent for a property. This approach has recently been adopted by the State of Victoria in Australia.

146. This would mean:

- when a landlord or property manager lists a property, the advertised price is the price they expect for someone to rent that property, as opposed to a 'starting point'
- tenants will have more certainty over how much the landlord is asking for to rent the property. This would support them to make more informed decisions about which properties they can afford to apply for
- tenants would not be prevented from choosing to offer to pay more, if they wanted, and landlords would still be able to accept an offer of higher rent
- the practice of encouraging bidding might be prevented from becoming normalised among landlords and property managers.

147. Prohibiting landlords from requesting rental bids would not stop rental bidding outright but it will minimise the risk of tenants being asked to offer higher rents, over and above what they might otherwise be willing to pay. This option is the least restrictive on the rental market, and still enables a landlord and tenant to agree on a price that a prospective tenant is willing and able to pay, and that a landlord is prepared to accept.
148. In the current tight rental market, this approach may still have limitations such as:
- tenants will not know whether or not other tenants are offering higher rents for the same property, which may reduce transparency
 - because tenants won't know how much they might have to pay be the highest bidder, they might offer the most they can afford from the outset
 - landlords might initially list properties at a higher price to compensate for the inability to ask for rental bids.
149. We expect over time, as other initiatives such as KiwiBuild help increase the supply of rental houses, the likelihood of these risks occurring will reduce. As the amount of competition for rental properties reduces, tenants might not find themselves having to bid at all in order to secure a rental property.

Case Study – Option one: Prohibiting requests for rental bids

Under this option, in the above example, Will could choose to accept Eseta and Sione's offer or choose another applicant. However, Will would not be able to actively ask the other nine applicants whether they would be willing to pay more to secure the property. It is up to the applicants to offer more up front if they are prepared to do so.

Option two: Prohibit the request and acceptance of rental bids

150. An alternative option would be to prohibit landlords and property managers both requesting *and* accepting rental bids. This would prevent landlords from being able to ask for higher rents than what is advertised, and also prevent people wanting to rent the property from being able to bid against each other.
151. This would mean:
- the advertised price for the rental property is the price that the successful applicant would pay, supporting greater transparency for tenants in a tight rental market.
 - tenants with less disposable income will be better able to identify suitable rental properties that are affordable to them.
 - tenants would be prevented from offering more than the advertised price, which could increase competition amongst tenants along other, non-price factors.
152. This option limits the ability of tenants and landlords to freely agree a price for a rental property. For example, tenants would not be able to negotiate on price to get additional value from a property such as paying extra to secure a property close to their children's school.
153. Prohibiting rental bidding might cause landlords and property managers to ask for higher rents in the first instance as they would be losing the ability to get a higher rent through rental bidding. If rents were raised across the board to reflect this inability to negotiate, the rental market will become less affordable.
154. This option may not meet the Government's objective of allowing the law to be responsive to changing trends and patterns in the housing market as landlords would not be able to use rental bidding to determine the market rate for their property. As a result, they might end up charging rent lower than the property is worth in the current market.

Case Study – Option two: Prohibiting the request or acceptance of rental bids

Under this option, in the above example, Will must not accept more than the price that he listed the property for (\$450 per week). While Eseta and Sione offered to pay more, if Will offered the property to them, he would have to offer it at the \$450 per week rate and any rent higher than this figure would be unenforceable. Under this situation, all 10 applicants are treated equally from a price perspective; however, it prevents Eseta and Sione from paying more for the property to secure a benefit for them.

Question for your consideration

- 3.1.3 If you think something should be done about rental bidding, do you have a preference between option one or option two, or another option? Please explain.

3.2. Challenging rent increases at the Tenancy Tribunal

- 155. The RTA currently states that where the rent payable, or to become payable, substantially exceeds market rent, a tenant can apply to the Tenancy Tribunal to reduce the current rent to an amount that is in line with market rent. The RTA does not explain how the Tenancy Tribunal must consider what ‘substantially exceeds’ means.
- 156. The purpose of this is to allow for adjustments to current rent when the rent for the tenant’s property is substantially higher than the market rent. It is not intended to be used as a mechanism to influence or change what market rent is.
- 157. The ability of tenants to challenge rent increases at the Tenancy Tribunal is important, especially if changes are made to the way that landlords can increase rents as identified in the next section.

Market rent is what a landlord might reasonably expect to receive, and a tenant might reasonably expect to pay

- 158. Market rent is determined under the RTA by what a landlord might reasonably expect to receive and what a tenant might reasonably expect to pay for the tenancy based on comparable premises in the same or similar locality.
- 159. The RTA currently requires that an application for a rent adjustment under a fixed-term tenancy agreement must be made to the Tenancy Tribunal within three months of the last rent review or from the commencement of the tenancy. Where a tenant has a periodic tenancy agreement, that tenant can apply to the Tenancy Tribunal for an adjustment to market rent at any time.
- 160. The Tenancy Tribunal is also not able to consider the personal circumstances of the tenant or landlord in determining the market rent for a tenancy and whether or not to adjust the current rent to be in line with the market rent.
- 161. MBIE includes indicative data on average rents based on Tenancy Bond data. The information provided is only intended to assist parties with assessing whether the rent they are paying for the property in question may be substantially higher than the market rent.
- 162. The RTA should ensure rents and rent increases are transparent and can be understood by both tenants and landlords. The market rent requirements act as a check on how much the landlord increases the rent by. This would help ensure both parties understand how the rent is set and support our objective of promoting a well-functioning tenant-landlord relationship.

There could be barriers to tenants challenging rent increases

163. While the RTA allows tenants to challenge the rent they pay for a property at the Tenancy Tribunal, there might be other barriers preventing them from doing so.
164. In the first instance, tenants might not be aware they can ask for their rent to be adjusted to market rent through an application to the Tenancy Tribunal. If they are aware, they might be motivated not to challenge it out of fear of damaging the relationship with the landlord or property manager, or for having to seek a new property, such as if a fixed-term tenancy is not continued or extended.
165. Where a tenant in a fixed-term tenancy does challenge their rent to the Tenancy Tribunal, the first obstacle they might face is the three month time period to challenge the rent level or increase. This time frame might be too short for tenants to gather the necessary evidence to support a claim. If tenants are not aware they can challenge the rent they pay, three months could go by before a tenant even thinks about addressing the issue. Finally, if there is a shift to longer term tenancies, the three month limit may be a barrier to tenants seeking an adjustment to their rent in circumstances where the market rate has dropped substantially over the course of their tenancy.

Question for your consideration

- 3.2.1 An application for a rent adjustment under a fixed-term tenancy agreement must be made to the Tenancy Tribunal within three months of the last rent review or from the commencement of the tenancy. Do you think three months is an appropriate amount of time to allow for this process? Why or why not?

166. A further issue is that, because the RTA does not define what ‘substantially exceeds market rent’ means, or how it should be calculated, there might be inconsistencies in what constitutes ‘substantially exceeds market rent’.

Question for your consideration

- 3.2.2 Do you think the RTA should include guidance on what constitutes ‘substantially exceeding market rent’? If you answered yes, what do you think constitutes ‘substantially exceeding market rent’?

3.3. How and when rents can be increased

Currently rents can be increased every six months

167. The RTA currently allows landlords to increase rent once every six months (180 days). For fixed-term tenancies this only applies if the agreement states that the rent can be reviewed or increased every six months. If the fixed-term agreement does not state the rent can be increased, then the rent cannot be increased during the term of the tenancy.
168. It is not known how often rent increases occur in practice or how landlords calculate how much the rent increases by. We are interested in knowing how and when landlords increase rent and we are seeking views on whether changes in this area are warranted?

Question for your consideration

- 3.3.1 If you are a tenant or a landlord, how often has the rent for your rental property increased? (e.g. six-monthly, yearly, every two years)?

Limiting rent increases to once every twelve months

169. The Government has committed to limiting rent increases to once every 12 months to give tenants longer term certainty of their housing costs. Limiting the frequency of rent increases could help to reduce the likelihood of tenants being unexpectedly priced out of their rental properties, providing them with more security and stability of tenure.
170. However, there is a risk that limiting rent increases to once every 12 months would not allow landlords or property managers to correctly reflect changes in their cost structures in a timely manner as a result of other changes, such as improvements to the property. To reduce the likelihood of this occurring, landlords might ask for higher rents at the beginning of a tenancy.

Specifying how and when rent will be increased

171. Requiring a landlord to include how and when rents can be increased in the tenancy agreement could provide greater clarity for both landlords and tenants. If tenants have a better understanding of how their housing costs might change, they might be better able to plan for their future. It will also support good faith relationships as tenants will not be surprised by any increase their landlord makes. If there is a general move to longer-term tenancies, tenants will be better able to plan for the future increases.
172. However, landlords are already required to disclose a range of information including recent requirements around insulation at a property and, subject to the Residential Tenancies Amendment Bill (No 2) passing, the insurance details applying to the property. Requiring landlords to also include information on the matters they will take into account when calculating future rent increases would increase this burden further.
173. In addition, requiring landlords to factor in all the variables that might lead to an increase in rent at the start of a tenancy could block a landlord from being able to recuperate reasonable costs that might arise during the tenancy.
174. Finally, there may be difficulties applying this requirement to public housing properties where rent for a property is based on income which could change over the course of a tenancy.

Questions for your consideration

- 3.3.2 Do you agree that rent increases should only be allowed once every twelve months?
- 3.3.3 Should landlords be required to disclose how they will calculate future rent increases when a new tenancy is entered in to? Please explain

4. Boarding Houses

175. This section looks at how boarding house tenancies are treated under the Act and asks questions about how the quality of boarding houses and accountability of boarding house landlords can be improved.

4.1. Quality standards for boarding houses and improved accountability for their operators

176. The Government's objective to improve the quality of boarding houses is part of its commitment to ensure that every New Zealander has a safe, warm, dry place to call home. This section considers whether boarding houses should be treated differently to other residential premises and tests options for addressing premises and operators that routinely fail to meet quality expectations.

What are boarding houses?

177. A boarding house is a residential premises which is occupied, or intended to be occupied, by at least six tenants at any time, where a tenant rents a room or sleeping quarters in a room, rather than the whole house, and shares facilities such as the kitchen and bathroom. While there are a number of reasons why tenants might choose boarding house accommodation, boarding houses sometimes provide accommodation for people with a poor credit or tenancy history, limited means, health or disability issues, or where appropriate alternative houses choices are lacking.

Boarding houses under the RTA

178. The law currently treats boarding houses in a similar way to any other rented residential premises, but there are some key differences that come from the communal and sometimes transient nature of boarding house living. For example, landlords are able to set house rules or enter the communal areas without notice, and can terminate a tenancy at shorter notice and for a wider range of reasons.

What is happening in the boarding house sector?

179. The Government wants to ensure everyone living in boarding house is housed in a physically warm, dry, and safe structure and subject to fair treatment. Current indications are that this is not the case; most submitters to a Select Committee inquiry into boarding houses in 2014 reported that the condition of some boarding houses was so poor they did not comply with basic building health and safety standards⁷. In addition, concern has been raised recently about the quality of the service that some boarding house landlords provided their tenants.
180. Boarding house tenants and landlords have to meet many of the same requirements under standard tenancies. For example:
- Boarding house landlords must:
 - provide the premises in a reasonable state of cleanliness
 - maintain the premises in a reasonable state of repair
 - meet smoke alarm and insulation requirements
 - provide and maintain locks and other devices to ensure the premises are reasonably secure.

⁷ https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR57007_1/briefing-into-long-term-caravan-park-and-motor-camp-accommodation

- Boarding house tenants must:
 - pay the rent as and when it is due
 - keep their room reasonably clean and tidy
 - tell the landlord about any damage or need for repairs as soon as possible
 - replace batteries in smoke alarms if necessary

181. In addition, the RTA also has rules that relate specifically to boarding house tenants and landlords. For example:

- Boarding house landlords must:
 - ensure that copies of house rules and fire evacuation procedures are on display in the premises at all times
 - ensure tenants have access to their room, and toilet and bathroom facilities at all times, and other facilities at all reasonable times
 - take all reasonable steps to ensure house rules are observed and enforced
- Boarding house tenants must:
 - observe the house rules
 - not alter, add to, or remove any locks from the premises
 - not cause or permit interference with the reasonable peace, comfort, or privacy of any other tenant on the premises.

182. Boarding house tenants might be more vulnerable to exploitation by landlords, have more limited knowledge of their rights, and be less likely to exercise their rights or lay a complaint due to a lack of alternative accommodation options. In general, it is likely to be more difficult for people in boarding houses to hold their landlords to account in the same way that tenants in the general rental market can, especially if their landlord lives on the premises. This is supported by a 2004 Tenants Protection Association survey of Christchurch boarding houses which found that in traditional boarding houses:

- 55 per cent of residents reported a health or disability issue
- 10 per cent reported mental health issues
- 35 per cent reported prior dependency on drugs or alcohol, and 16 percent reported a current such dependency, and
- 77 per cent were beneficiaries (super-annuitants or recipients of unemployment, sickness, or invalid's benefit).

Question for your consideration

- 4.1.1 Do you think tenants' and landlords' current responsibilities for boarding houses are fit for purpose? Please explain

What changes could we make to better protect boarding house tenants?

183. The Government is considering whether additional monitoring of boarding houses is justified to ensure a nationally consistent approach to protect the interests of boarding house tenants.
184. Both MBIE and local authorities already have powers to manage problems with boarding houses. However, they are restricted in the exercise of these powers by incomplete data on boarding house locations and a lack of willingness and/or ability of boarding house tenants to lay complaints regarding substandard accommodation or poor landlord behaviour. Boarding houses can be suburban houses with no signage, or can look (or sound) like guest accommodation from the name. However, their purpose and standard of accommodation can be very different from guest accommodation⁸.
185. According to the 2013 Census, there were 174 boarding houses and 2,718 people living in boarding houses across New Zealand – this was likely to be an undercount due to underreporting and the difficulties with identifying boarding houses. MBIE estimates that there might be 548 of these premises based on those that have lodged a bond and identified that the dwelling is a boarding house. Any change in this area needs to first provide a means of better identifying boarding houses and their location.
186. Further, as discussed in the enforcement chapter of this document, MBIE has a limited range of enforcement options available to ensure boarding house landlords are meeting their obligations even when the location of these premises is known. An outcome of this reform therefore should be a strengthened enforcement regime for boarding houses generally. In addition, the Government wishes to consider a specific mechanism to remove premises or operators with significant and enduring quality issues from the market. However, any action to be balanced against the availability of emergency housing to prevent a related increase in homelessness. For this reason, there is likely to be a lead in period before any substantial changes come into effect to allow for emergency housing and other relevant initiatives to first be scaled up.
187. Finally, the Government wants to consider whether the definition of a boarding house is explained in an appropriate way and is easily understood. The Act may not currently cover all people living in other communal accommodation such as tenancies where each tenant has an individual agreement, or in room by room accommodation. Even where tenancies are technically boarding house tenancies, it's possible the protection offered to boarding house tenants may not be broadly enough applied if operators are not aware they should be meeting boarding house requirements.

Questions for your consideration

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|-------|---|
| 4.1.2 | If you are, or have been, a tenant of a boarding house, what has been your experience of boarding house quality? Was it very poor, poor, average, good, or excellent? |
| 4.1.3 | Are stronger enforcement powers needed to improve the quality of boarding houses? |

⁸ <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/outside-norm/boarding.aspx>

Options for improving the quality of boarding houses

Option one: A self-certification system for boarding houses or their operators

188. Under a self-certification scheme, boarding house operators would be required to provide basic details about their premises such as their contact details and the boarding house's address and capacity. Operators would then need to self-certify that they understand their obligation under the RTA to comply with all relevant laws relating to the property and are actively doing so. For boarding house landlords whose properties and actions already meet these requirements, this should be a simple 'tick-box' exercise. Evidence of compliance would not necessarily be needed at the time of self-certification, but would need to be provided upon request from a relevant authority. Evidence of compliance could include, for example:
- Copies of the fire evacuation procedures and any boarding house rules (and evidence that these are displayed on the property)
 - Copies of the insulation statement in a tenancy agreement and documents demonstrating compliance with any Healthy Homes standards
 - A list of services that are (or may) be provided by the landlord that are not covered by the rent, and their cost
 - Relevant building consent documents
189. This would mean the relevant authority could enforce penalties against boarding house operators who failed to register or made false declarations about the condition of their property. In cases of severe and persistent breaches, the relevant authority could also have the ability to ban an operator or premises from being certified (either permanently or for a set period).

Advantages of a self-certification scheme

190. This approach would achieve our primary objectives with the least amount of intervention and the lowest compliance costs for boarding house operators of all the options being considered. We expect self-certification would lead to improved data on the number and location of boarding houses and would allow for more proactive monitoring and enforcement action.
191. In addition, the act of self-certifying would likely trigger boarding house operators to take stock of all requirements relating to their business that they already need to comply with. We expect it would lead to greater levels of compliance without the need for government-led enforcement. Finally, if the relevant authority had the power to cancel certification of boarding houses or boarding house operators, this could lead to problematic premises or operators being removed from the market in instances where they had repeatedly breached requirements.

Disadvantages of a self-certification scheme

192. This option could result in a reduction in boarding house numbers if landlords did not meet the certification standards, or if they elect to withdraw from the market if they think it will be too much work to get the premises up to standard.
193. As is the case with any intervention, it is possible that any costs associated with landlord compliance will be passed onto tenants. For more vulnerable boarding house tenants, cost may already be a barrier to alternative accommodation sources. However, good boarding house operators should already know what their obligations are and be meeting this standard. In this context, there may be no cost to confirming compliance. Operators who didn't know their business was technically a boarding house would face additional costs from finding out what obligations apply to them and how they can become compliant. These costs might include obtaining professional advice and possibly resource consent from their council. In addition,

operators who did know about the rules but had chosen not to comply may face costs to become compliant if the introduction of a certification scheme motivated them to do so for the first time.

194. The key disadvantage with this approach could be if penalties for operating a boarding house without certification are set too low, landlords might not be incentivised to comply. If this were the case, we wouldn't see improvement in the data available and there might not be any significant improvement on the current situation. In particular, landlords flying under the radar now could continue to do so under a self-certification regime.

Questions for your consideration

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| 4.1.4 | Do you think a self-certification regime would lift the quality of boarding houses, and/or mean standards could be effectively enforced? Please explain. |
| 4.1.5 | Do you think self-certification should focus on; the physical property, the operator, and/or both? Please explain. |
| 4.1.6 | Are there any other standards boarding house landlords should need to meet in order to self-certify? |
| 4.1.7 | If you are, or have been a boarding house landlord, how do you think a self-certification regime would affect you? |

Option two: Introduce a Warrant of Fitness for boarding houses and their operators

195. Under this option operators would be required to obtain an operating certificate, licence or permit to run a boarding house. One key difference between this option and self-certification is that a licensing regime would shift the assessment about whether or not the premises and/or the operator met the standards away from the operator and onto a regulatory authority. This authority would be independent of the boarding house and able to take a nationwide approach to assessing what constitutes 'good enough.' Documents that could be requested as part of any licensing application include:
- Copies of the fire evacuation procedures and any boarding house rules (and evidence that these are displayed on the property)
 - Copies of the insulation statement in a tenancy agreement and documents demonstrating compliance with any Healthy Homes standards
 - A list of services that are (or may) be provided by the landlord that are not covered by the rent, and their cost
 - Photos of the premises
 - Relevant building consent documents
 - Plans of the dwelling which indicate elements such as the number and size of bedrooms, bathrooms, and other facilities
 - Copies of policies and procedures for planning and cyclical maintenance
196. In addition to an inspection of the boarding house itself, this approach could also extend to considering the personal qualities of the operator, such as whether they are a fit and proper person to run the a boarding house. A fit and proper person assessment could consider, for example, a criminal history check, a financial history check, and an applicant's compliance history with boarding house regulatory requirements.

197. Fees would be charged to landlords to obtain a licence to offset both the cost of processing applications and undertaking enforcement activity. Until we have a better idea of what would be involved in this process it's difficult to estimate what fees would apply, however, we recognise that this may result in some boarding house operators leaving the market.

Advantages of a Warrant of Fitness for boarding houses and/or their operators

198. This approach is likely to go the furthest towards improving the quality of boarding houses. By requiring that both the physical premises and the operator meet certain requirements as assessed by a regulatory authority, boarding house tenants could have confidence that their accommodation is fit for purpose and the operator is credible. Assuming landlords comply, this option would improve data on the number and location of boarding houses and would enable more proactive monitoring and enforcement of boarding houses together with a mechanism to remove poor operators or premises from the market. Finally, a Warrant of Fitness would shift the assessment of boarding houses from a retrospective one that takes place after the relevant authority has identified an issue, to a proactive one that could capture safety or quality issues before they arise.

Disadvantages of a Warrant of Fitness for boarding houses and/or their operators

199. The disadvantages of this approach are that it is almost certain to increase the cost of doing business for all boarding house operators, and it is reasonable to expect these costs will be passed onto tenants. Because the requirements are likely to be more stringent and costly than under the self-certification option, a Warrant of Fitness is also more likely to result in a reduction in the number of boarding houses. If this happens, it might put further pressure on emergency accommodation providers. Furthermore, setting up a new licensing regime generally results in significant costs for government that are not able to be recovered through licensing fees. Care is needed to consider whether this would be the best use of new government funding or whether other interventions, such as greater enforcement capacity could achieve better outcomes for people with less cost.
200. Noting these disadvantages, the Government wants to investigate this issue further. Comment is welcomed on whether the harm that badly run boarding houses can cause justifies the costs to operators, tenants and the government that would result from additional regulation. In addition, we note councils may already have ability to license boarding houses under the Local Government Act but we are not aware of any that have done so. We will be talking to councils about the reasons for this further to better understand the current situation before any changes in this area are recommended.

Questions for your consideration

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| 4.1.8 | Do you think a Warrant of Fitness would lift the quality of boarding houses and/or mean standards can be effectively enforced? Please explain |
| 4.1.9 | The introduction of a boarding house Warrant of Fitness would result in new costs being placed on tenants, landlords and the government. Do you think this would be justified? |
| 4.1.10 | If additional protections were introduced for boarding houses, which model would you prefer, a self-certification regime, or a Warrant of Fitness? Please explain |
| 4.1.11 | If a Warrant of Fitness were to be introduced for boarding houses and their operators, do you think responsibility for the regime should sit with local or central government? Please explain. |

Does the definition of boarding houses in the RTA need to change?

- 201. The RTA currently defines a **boarding house** as a residential premises containing one or more boarding rooms along with facilities for communal use by the tenants of the boarding house, and occupied, or intended by the landlord to be occupied, by at least six tenants at any one time.
- 202. A **boarding room** is defined as a room in a boarding house that is used as a sleeping quarters by one or more tenants of the boarding house, and that is for use only by a tenant whose tenancy agreement relates to that room.
- 203. A **boarding house tenancy** means a residential tenancy in a boarding house that is intended to, or that does in fact, last for 28 days or more, and under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house, and has the right to the shared use of facilities of the boarding house.
- 204. We would like to hear your views about whether other situations where people live in large flats which are rented on a room-by-room basis, or where each occupant has their own tenancy agreement, should be subject to the additional protections proposed for boarding houses. It might be important, that these premises have additional requirements to offset the problems that can arise from people who don't know each other living in close proximity. For example, fire safety regulations, guaranteed access to hygienic facilities at all times and the availability of house rules where needed.
- 205. While such premises may be considered boarding houses by the Tenancy Tribunal if a tenant or a landlord made a claim, it might be important that all parties understand their obligations before issues come up that need to go to the Tribunal.

Questions for your consideration

- 4.1.12 Is the definition of a boarding house understandable and does it capture all the premises you think should be treated differently because of the shared nature of the accommodation?
- 4.1.13 Should all room-by-room tenancies be treated as boarding houses? Why or why not?

5. Enforcing tenancy laws

206. This section looks at the enforcement powers currently available to MBIE to investigate more severe alleged breaches of the RTA. It asks you questions about whether providing the Chief Executive with additional powers and enforcement options would promote a more effective enforcement regime and encourage greater levels of compliance, and about the appropriateness and accessibility of the existing civil penalty regime under the Act.

5.1. Ensuring the right penalties are enforced by the right authorities under the RTA

Currently there are different options for landlords and tenants to resolve problems

207. The RTA sets out the rights and responsibilities of people who enter into tenancy agreements. When someone does not follow the rules, this is called a breach of the Act. Someone can breach the Act by not doing what they are supposed to do, or by doing something they are not allowed to do.
208. Some breaches of the Act are serious enough to be considered unlawful acts. For example, a landlord interfering with a tenant's quiet enjoyment of their home is a breach of the Act. However, if this continues to such a degree that it's considered harassment, it is an unlawful act. Exemplary damages are a form of financial penalty can be awarded against parties who commit an unlawful act.
209. For parties who are unable to come to an agreement about how to resolve breaches themselves, the RTA establishes a hierarchy of options to assist them to resolve disputes: FastTrack Resolution, Mediation, and a hearing at the Tenancy Tribunal (the Tribunal).

FastTrack Resolution

210. FastTrack Resolution is a quick version of Mediation provided by MBIE, to help landlords and tenants formalise an agreement that's been reached after a dispute. A *notice to remedy* can be issued in this context which records a formal step requesting the other party to take action⁹. Landlords or tenants are also encouraged to use the FastTrack Resolution process, to make existing agreements they have reached legally binding.

Mediation

211. Mediation helps landlords and tenants talk about and solve their problems. Mediation is available where issues are more complicated but still amenable to resolution through formal discussion before matters reach the Tenancy Tribunal.
212. One of the most common outcomes at mediation is where the tenant agrees they owe the landlord a certain amount of rent arrears and the tenant agrees to pay their current rent plus a certain amount to make up the arrears as detailed in a mediators order (with the whole amount becoming due and payable immediately and the tenancy terminated if any of the payments are missed). Most mediators orders are sealed (approved) by the Tenancy Tribunal and enforceable through the collection unit at the District Court.

⁹ A notice to remedy can also be issued for mediation and Tribunal self-resolution.

Tenancy Tribunal

- 213. The Tenancy Tribunal can formalise what is agreed at mediation, or can make a ruling on a disagreement that cannot be resolved through mediation alone, and can issue an order that is legally binding on the parties involved in the dispute. The most common orders issued by the Tribunal are those ordering tenancies to end, money to be paid, or work to be done.
- 214. The maximum amount the Tribunal can order be paid as part of an order (for example, repairs) is \$50,000. The Tribunal can also require exemplary damages be paid by the wrongful party for any unlawful acts. Exemplary damages are intended to punish, rather than compensate, and can be awarded in addition to compensation.
- 215. The majority of complaints to the Tribunal are by landlords for non-payment of rent (90 percent of applications are from landlords with 75 percent of those applications being about rent arrears). However, given the very low numbers of tenants accessing the Tribunal, this does not necessarily indicate that rent arrears is the most common breach of the Act.

Chief Executive Powers

- 216. In addition to the options available to parties to a tenancy agreement to resolve disputes, the RTA enables MBIE to investigate more severe alleged breaches of the Act. The powers provided to MBIE are not intended as a substitute for self-resolution, but are designed to be used where it is in the public interest to do so, for example there is a significant risk to a person's health or safety, there has been a serious or persistent breach of the law, there has been systemic failure, or the landlords conduct is likely to undermine confidence in the law.
- 217. MBIE's Chief Executive is currently empowered to give advice, investigate complaints, inspect properties, and take or defend proceedings on behalf of any party on being satisfied that there is a cause of action and that it is in the public interest to do so.
- 218. As well as exercising the statutory powers to take action in the Tenancy Tribunal, we recognise that not every breach should be taken through a judicial process. As such MBIE's Chief Executive also provides advice, issues non-statutory warnings, or enters into non-binding compliance agreements to address identified breaches.
- 219. Since 2016, when the Chief Executive was provided with additional enforcement capability, MBIE has investigated a range of issues including landlords who have placed tenants in danger by renting a substandard property, landlords who have rented commercial premises for residential purposes, and landlords who have failed to provide the bare minimum in terms of health and safety requirements (such as smoke alarms and safe gas appliances).
- 220. MBIE has also investigated a number of landlords who have failed to provide tenants the minimum information needed in tenancy agreements, failed to lodge bonds, or keep legally required records. Actions have also been taken against landlords who have significantly over charged tenants, either in terms of unlawful fees or excess rent in advance. Actions have ranged from obtaining orders in the tribunal, to educating, warning, and entering into compliance agreements.
- 221. While MBIE does not need to receive a complaint to take action, they often rely on information from third parties, such as health or social service providers, to identify problematic properties. Even when there are significant problems with a property, the tenants often do not want any action taken against landlords. The preferred approach of the team is to be proactive and take action based on their own information or as a preventative strategy.

Questions for your consideration

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| 5.1.1 | Have you ever had a situation related to your tenancy where you felt that action, in some form, was warranted but decided against it? Please explain |
| 5.1.2 | Have you ever, sought the assistance of MBIE's tenancy services to investigate your tenancy? |
| 5.1.3 | If you answered yes to the previous question, please explain which part of MBIE's tenancy services you sought assistance from and please comment on the quality of the service you received. If you had any problems with your experience with Tenancy Services, do you think they were due to lack of resources or information (on your part, or the part of agencies), the provisions of the law, or something else? Please describe. |

We need to make sure we have the best tools to enforce the law in a fair and constructive way

222. The Government is considering measures to promote good faith relationships between tenants and landlords, and modernise the legislation so that it can respond to the changing trends in rental markets. However, we recognise that, given the power imbalance between tenants and landlords, tenants might still be hesitant to address the failings of landlords, not least because the most serious breaches of the Act tend to be observed in circumstances where tenants are most vulnerable. This issue is exacerbated when supply of rental housing is tight, because tenants are unlikely to be motivated to complain when they lack alternatives.
223. It is also important that the majority of parties who do the right thing and meet their obligations are not disadvantaged by peers who choose not to meet their minimum legal obligations. MBIE therefore needs the right tools to both hold parties to account, and to incentivise the required behaviour change.
224. We want to ensure the powers available to MBIE allow us to make the best use of existing and planned enforcement capability to promote an efficient and effective enforcement regime. This reform provides an opportunity to consider whether the existing powers and enforcement actions available to MBIE remain appropriate given broader changes being considered as part of this reform and in light of the practical experience gained since the Chief Executive's powers were strengthened in 2016.

The Tenancy Tribunal is outside of the scope of this reform

225. The broader parts of the RTA that relate to the Tenancy Tribunal's composition, jurisdiction and procedure are not within scope of this reform. Those provisions are important but comprise about thirty percent of the Act. The Government does not consider an examination of that breadth can be given due consideration within the timeframe afforded to this targeted reform.

Enforcement changes under consideration

226. This reform considers whether the powers available to achieve compliance in the rental market are efficient and effective. Particular consideration is being given to:
- whether the existing powers enable MBIE to effectively and efficiently gather information and evidence about a particular tenancy,
 - whether the actions that MBIE is able to take following the completion of an investigation are appropriate and proportionate, and
 - the appropriateness and accessibility of the existing exemplary damages regime.

227. In carrying out its function, MBIE has observed enforcement gaps where landlords or property managers responsible for multiple properties are not complying with basic requirements in the law, such as installing smoke alarms, adequately maintaining premises, and where its current enforcement powers are insufficient to respond to issues at more complicated multi-tenanted properties such as Boarding Houses. In some of these cases, holding parties to account through Tribunal action is lengthy and the time spent is disproportionate to the act.
228. MBIE has also observed very poorly maintained or uninhabitable properties, with a large number of issues that suggest the particular landlord or property manager has no interest in the responsibilities that come with owning a property to let. While MBIE can bring actions on behalf of tenants, it can be difficult to gather evidence to support enforcement action in circumstances where landlords are unlikely to be co-operative and tenants are reluctant to be involved.

Enabling effective and efficient information and evidence gathering

Option one: Power of entry into boarding houses

229. MBIE has no power of entry to properties except when invited by tenants or landlords, or where permitted by the Tenancy Tribunal. While we are not proposing to change this for most forms of property, we are considering whether MBIE should be able to access the common spaces and offices of boarding houses.
230. As discussed earlier in this document, some of the rights and obligations of boarding house tenants under the RTA differ from those of other tenants, due to the different dynamics created by communal living and the more transient nature of boarding house tenancies. Boarding house tenants could be more vulnerable to exploitation by landlords, have less knowledge of their rights, and be less likely to exercise their rights or lay a complaint due to a lack of alternative accommodation options, or fear of retaliatory action by their landlord or fellow tenants.
231. Currently, MBIE can only enter a boarding house with the prior agreement of at least one of the tenants. While this permission is often able to be obtained, it might pose some risk to the tenant who consented to the inspection if they are able to be identified by their peers. In addition, as boarding house tenancies can currently be terminated for any reason with 28 days' notice, tenants who invite inspection may place themselves at greater risk of being evicted from their home should the landlord object to MBIE's investigation.
232. To address this issue, we propose providing MBIE with the power to enter common spaces (such as living areas, bathroom and kitchens) and the offices of a boarding house without invitation provided that sufficient notice has been given to the landlord. This would ensure that MBIE could gather the information needed to determine whether a boarding house operator was complying with their legislative requirements, including the condition of premises and to determine whether action was required to protect tenants. This power would not provide MBIE with the right to enter a tenant's room without permission.

Questions for your consideration

- 5.1.4 Do you consider it appropriate for MBIE to have the power to enter the common spaces of boarding houses without the prior agreement of at least one of the tenants?
- 5.1.5 How much notice should MBIE be required to give a boarding house landlord before exercising this power? (e.g., no notice, 24 hours or 48 hours' notice) Please explain

Option two: Power of audit

233. The RTA currently enables MBIE to request documents, including records of tenancy agreements, inspection reports, correspondence between parties, and maintenance or repair work, for the purposes of carrying out its functions or powers under the Act. However, this power does not extend to rent records, business practices, or processes, and it is unclear to what extent MBIE can proactively audit landlords' records to ensure compliance compared to requiring them to provide a large number of records, involving additional time and cost to both the landlord and MBIE.
234. More people are renting and are doing so for longer periods of time. Providing MBIE with the ability to audit a landlord or property manager would help uncover systemic issues and promote practices that encourage compliance the existing power may not provide.
235. For example, MBIE might wish to proactively audit a property management company that has been the subject of multiple complaints to determine that the company has compliant business models and to determine whether the complaints relate to an act that was the result of human error or systemic non-compliance.

Question for your consideration

- 5.1.6 Do you think it's appropriate for MBIE to carry out audits of a landlord or property managers? Please explain your reasons.

Option three: Taking a single case in respect of multiple breaches of the Act

236. The Tenancy Tribunal currently hears cases between parties in relation to a specific tenancy agreement or dispute. While MBIE has the ability to take cases to the Tribunal, it must file separate applications for each tenancy even where the same breach has occurred across multiple properties managed or owned by the same property manager or landlord.
237. The nature of the cases MBIE may bring against a party using its power to take direct action in cases of severe alleged breaches of the RTA could result in the MBIE taking action against a party for alleged breaches across multiple tenancies (for example, where a single landlord has failed to lodge a bond across multiple tenancies).
238. Although the Tribunal has the ability to consolidate multiple cases, we seek your views on whether it should be possible for MBIE to take a single case in respect of multiple breaches of the Act. We consider this would provide for more efficient use of MBIE and Tribunal resources and enable cases to be resolved more quickly.
239. We also seek your feedback on whether larger penalties should be available for breaches of the Act when a single case is taken in respect of multiple breaches. A sufficient penalty will also act as a deterrent to landlords who choose not to comply with their legal obligations and reassurance for landlords who do comply that the government is ensuring there is a level playing field.

Questions for your consideration

- 5.1.7 Do you think it's appropriate for MBIE to be able to take a single case in respect of multiple breaches of the RTA?
- 5.1.8 What level of penalty should MBIE be able to seek when taking a single case in respect of multiple breaches?

Enabling effective and efficient enforcement action

240. MBIE currently has the ability to take a case to the Tenancy Tribunal following an investigation. This is in effect an all or nothing option and provides limited opportunities for a more graduated enforcement response to match the significance of the breach or the degree of harm caused. This section considers whether providing MBIE with additional statutory enforcement options would improve the effectiveness and efficiency of the enforcement regime.

Option one: Enforceable undertakings

241. An enforceable undertaking is an agreement between a landlord and MBIE that sets out the circumstances that led to a breach, the steps a landlord needs to undertake to remedy the breach, and a time frame and consequences for failing to adhere to the agreement. Enforceable undertakings are focused on changing a person's poor practices. For example, an enforceable undertaking might be the appropriate course of action where a party has a number of minor and/or technical breaches, or if they have for example failed to include insulation statements in their tenancy agreements.
242. Unlike an improvement notice, enforceable undertakings would be used in situations where both parties agree there has been a breach and have agreed on a course of action to remedy the situation. For example, if a private landlord has not provided all the necessary details in a tenancy agreement and hasn't provided the tenant with sufficient time ahead of property inspections, an enforceable undertaking could provide a sufficient incentive to ensure the landlord undertakes the required steps properly.
243. There is some overlap between enforceable undertakings and orders that tenants can seek through the Tenancy Tribunal. However, enforceable undertakings can enable an agreement to be reached without the Tribunal's involvement, freeing up the Tribunal's resources to deal with cases where parties genuinely disagree about the fact and the appropriate course of action.

Question for your consideration

- 5.1.9 Do you consider it appropriate for MBIE to enter into enforceable undertakings with landlords? Please explain

Option two: Improvement notices

244. We are considering whether MBIE should have the ability to issue improvement notices. An improvement notice would alert the party of a breach, and provide them with an opportunity to rectify the breach within a specific time period without further penalties. Parties could challenge the issue of an improvement notice through the Tenancy Tribunal.
245. Improvement notices would be used in situations where the breach that has occurred can be easily remedied and does not pose an immediate risk to other parties. An example may be a landlord who has failed to install smoke alarms in their properties. It differs from an Enforceable Undertaking in that the party might not agree with the finding of the regulator.
246. There is some overlap between improvement notices and work orders which tenants can seek through the Tenancy Tribunal. However, these notices are focused on changing practices in advance of them becoming significant problems, and allow for straightforward cases to be resolved without the Tenancy Tribunal's involvement.

247. Improvement notices could be issued concurrently with an infringement notice (discussed below). The issue of an improvement notice would not limit MBIE's ability to take proceedings to the Tenancy Tribunal should the addressee of the notice fail to comply by the specified timeframe.
248. Some landlords have been slow in responding to MBIE warnings regarding the installation of smoke alarms, requiring MBIE to take the landlord to the Tribunal. An initial infringement and improvement notice might have effectivity motivated the landlord to install the smoke alarms. Appropriate publicising of infringements and improvement notices would incentivise parties, who are reluctant to comply, to meet their obligations.
249. There would be some resourcing and funding implications associated with the ability for the MBIE to provide improvement notices.

Questions for your consideration

- 5.1.10 Do you think it's appropriate for MBIE to issue improvement notices? If so, in what situations?
- 5.1.11 What should the penalty be for failing to comply with an improvement notice?

Option three: Infringement notices

250. We are considering whether the ability for MBIE to issue infringement notices would complement the existing enforcement regime.
251. Infringement notices would be used in situations where a breach is straightforward to prove, and subject the offending party to a fine. The Tenancy Tribunal or relevant Court would still be used where tenants or landlords are taking actions themselves or where the offending is more serious or warrants a wider range of remedies. The Tenancy Tribunal or relevant Court would also still be used for those breaches not appropriate for inclusion in an infringement regime, for example where the facts are more difficult to establish. Infringement notices could be issued alongside an improvement notice, or issued as a standalone notice.
252. Infringement regimes are a feature of several comparable jurisdictions, including the States of Victoria, Queensland and New South Wales in Australia. We consider there are situations in New Zealand where the issue of an infringement notice may similarly be justified. For example, failure to provide a written tenancy agreement, charging prohibited fees or not lodging a bond.
253. The maximum penalty provided for under an infringement regime would be \$1000, as that is also the maximum penalty for criminal infringements. The infringement regime would have standard features including the ability to challenge the infringement notice at the Tenancy Tribunal and the Courts. A defendant will be able to argue total absence of fault or make a submission as to the appropriate penalty level.
254. While improvement notices are aimed at changing a party's behaviour, an infringement notice is designed to hold that party to account for their failures as well as motivating others to proactively ensure they are meeting their legal obligations. It will enable MBIE to more readily respond to breaches of the Act by parties, in circumstances where action is not otherwise being taken. Where individuals do take action, it is not proposed that MBIE would separately issue infringements.

255. The establishment and operation of an infringement regime would carry some additional resourcing and funding implications. However, to have an effective modern enforcement regime that both protects and ensures a level playing field, it's important that MBIE has a range of enforcement tools available so an appropriate and proportional response can be undertaken.

Example of how the range of enforcement options could be used

Three landlords – Nuo and Ihaka who each own multiple rental properties, and Steve who owns one, all failed to provide a correct insulation statement in their tenancy agreements. Nuo made a genuine attempt to provide an accurate insulation statement but failed to include a statement about the insulation in the floor. Steve knew he should do one but just couldn't be bothered. Ihaka knew he had to provide an insulation statement and knew he did not have any insulation in the ceiling but decided to provide some of his tenants with false information for some of his properties.

Currently MBIE enforcement options are the same for all three landlords, either a non-statutory warning or action in the Tenancy Tribunal. With a modern range of enforcement tools MBIE can select the appropriate enforcement tool for the situation:

- MBIE could enter in to an enforceable undertaking with Nuo to correct her business process to make sure she provides the correct information, but with a consequence if she fails to comply with the agreement.
- MBIE could issue an infringement notice and an improvement notice to Steve requiring him to correct his practice and to hold him to account for his failure to meet his legal requirements.
- MBIE could either issue an infringement notice(s) and an improvement notice to Ihaka or take him to the Tenancy Tribunal seeking exemplary damages and compensation for the affected tenants.

Questions for your consideration

- 5.1.12 Do you agree MBIE should have the ability to issue infringement notices in circumstances where a breach of the RTA is straightforward to prove?
- 5.1.13 Do you think infringements for landlords would be effective in holding them to account for poor behaviour, and/or encouraging positive behaviours?
- 5.1.14 What situations do you consider would be appropriate to issue an infringement notice in?

The existing exemplary damages regime may not be appropriate as requirements and responsibilities change

256. The RTA has an existing civil financial penalty regime in the form of exemplary damages. If a breach of the Act is serious enough to be an unlawful act, the Tenancy Tribunal has the ability to award 'exemplary damages' - a form of financial penalty that the person who breached the Act must pay to the affected party.
257. Unlawful acts include discrimination, harassment of a tenant or neighbour, a landlord's failure to meet maintenance or health and safety obligations, unlawful entry by a landlord, and abandonment of a premises without reasonable excuse. The maximum amount that the Tenancy Tribunal can award as an exemplary damage for each unlawful act ranges from \$200 to \$4,000, depending on the breach. It is unusual for the Tribunal to award the maximum amount of exemplary damages. Exemplary damages can be awarded in addition to general damages or compensation.

258. A full list of unlawful acts and the corresponding exemplary damages are set out in Annex 1.
259. We are interested in your views on whether the exemplary damage amounts are appropriate, if the correct ranges of breaches are within the exemplary damages regime, and if changing the name of exemplary damages to penalty would better clarify their purpose.
260. We are also interested in whether providing MBIE with the ability to apply to the Tenancy Tribunal for the award of a penalty where unlawful acts have been committed, instead of exemplary damages, would better incentivise landlords and property managers to proactively comply with their obligations under the Act. Unlike exemplary damages, which are paid to the party impacted by the unlawful act, the penalty would be paid to the Government.

Questions for your consideration

- 5.1.15 Do you think these existing exemplary damage levels are appropriate for breaches considered to be unlawful acts?
- 5.1.16 Are there any other breaches of the Act you consider meets the threshold for unlawful acts? Please describe.
- 5.1.17 Do you think changing the name of exemplary damages to 'penalty' would better clarify the purpose of the regime? Please explain
- 5.1.18 Do you think MBIE should have the ability to apply to the Tenancy Tribunal to award a penalty where unlawful acts have been committed? If yes, what do you consider would be the appropriate maximum penalty MBIE should be able to apply for?

Clarification of existing provisions

261. The RTA currently allows MBIE to:
- take action on behalf of a party to a tenancy agreement after the tenancy has terminated where a request or complaint is made **within a period of 12 months after the termination**, and
 - take proceedings against a landlord on behalf of a tenant **not later than 12 months after the date on which the chief executive becomes aware of the non-compliance**.
262. However exemplary damages cannot be awarded more than 12 months after the commission of the unlawful act and often MBIE is not aware of the unlawful act until more than 12 months after it has been committed. This is particularly true in the case of systematic, deliberate on going breaches.
263. The same limitation applies to tenants and landlords seeking exemplary damages, so it mirrors the rights a tenant would have to seek such damages.
264. We are interested in your views on whether a landlord, tenant, or the Chief Executive should be able to take a case and seek exemplary damages beyond 12 months, and if so, what an acceptable timeframe would be.

Question for your consideration

- 5.1.19 Do you think a landlord, tenant, or MBIE should be able to take a case and seek exemplary damages after 12 months from when the act was committed?

6. Summary of proposed changes

265. The following diagram summarises the proposed changes being considered across the lifecycle of a tenancy. Questions are then asked about how landlords and tenants view the cumulative impacts of the changes proposed and which single change is likely to have the most profound impact on their business or themselves personally.

Starting a tenancy	During a tenancy	Ending a tenancy
- Changing the composition of tenancy agreements and when they can be offered (<i>see chapter 2.1</i>). - Prohibiting the requesting and/or acceptance of rental bids (<i>see chapter 3.1</i>). - Introducing pre-market checks on boarding houses and their operators (<i>see chapter 4.1</i>).	- Changing tenant and landlord responsibilities to reflect the modern renting environment (<i>see chapter 2.2</i>). - Making it easier for tenants to make reasonable modifications or minor changes to a rental property (<i>see chapter 2.3</i>). - Clarifying the circumstances under which tenants should be permitted to keep pets in rental properties and the protections landlords should have if they do (<i>see chapter 2.4</i>). - Clarifying when tenants can challenge rent increases at the Tenancy Tribunal (<i>see chapter 3.2</i>). - Limiting rent increases to once every twelve months (<i>see chapter 3.3</i>).	- Removing no cause terminations and replacing these with specific justifiable grounds for termination (<i>see chapter 2.1</i>). - Extending the notice periods that landlords are required to give tenants when ending a period agreement from 42 to 90 days in circumstances where the Tenancy Tribunal has not ruled on a termination (<i>see chapter 2.1</i>).
Enforcement		
- Providing MBIE's Chief Executive with greater statutory enforcement options and associated powers (<i>see chapter 5.1</i>). - Clarifications to the existing exemplary damages regime (<i>see chapter 5.1</i>).		
Questions for your consideration		
6.1.1	If you are, or have been, a landlord, which of these changes will have the greatest impact on you? Please explain	
6.1.2	If you are, or have been, a tenant, which of these changes will have the greatest impact on you? Please explain	
6.1.3	Which of these changes of you think would have the biggest impact on the rental market? Please explain.	

Glossary and List of Acronyms

Boarding house	A residential premises where a tenant rents a room (or sleeping quarters in a room), rather than the whole house and share facilities such as the kitchen and bathroom with the other tenants. A boarding house is occupied, or intended to be occupied, by at least six tenants at any time.
Boarding house rules	Rules which set out how the boarding house can be used and enjoyed, and what services will be provided.
Enforceable undertaking	An agreement between a landlord and MBIE that sets out the circumstances that led to a breach of the RTA, the steps that need to be taken to remedy the breach, and a timeframe and consequences for failing to adhere to the agreement
Exemplary damage	A financial penalty paid to an affected person by the person who committed an unlawful act
FastTrack Resolution	A quick version of Mediation provided by MBIE, to help landlords and tenants formalise an agreement that's been reached after a dispute.
Fixed-term tenancy	A tenancy that lasts for the set amount of time that is specified in the tenancy agreement
Healthy Homes Standards	Minimum standards that can be set by the government under the RTA relating to heating, insulation, ventilation, moisture ingress, draught-stopping, and drainage in rental properties
Improvement notice	A notice alerting a party (a landlord or tenant) to a breach of the RTA and providing them with an opportunity to rectify the breach within a specific time period without further penalties
Infringement notice	A notice alerting a party (a landlord or tenant) to a breach of the RTA and requiring them to pay a fine to hold them to account for this breach
Market rent	What a landlord might reasonably expect to receive and what a tenant might reasonably expect to pay for a tenancy based on comparable premises in the same or similar locality
MBIE	Ministry of Business, Innovation and Employment
Mediation	Mediation helps landlords and tenants talk about and solve their problems. Mediation is available where issues are more complicated but still amenable to resolution through formal discussion before

matters reach the Tenancy Tribunal.

No cause termination	The situation where a periodic tenancy agreement is terminated (ended) by the landlord with 90 days' notice and no explanation needs to be provided to the tenant
Notice period	The amount of time that a party (landlord or tenant) must give the other party in order to end a tenancy (called the effective period in a fixed-term tenancy agreement).
Periodic tenancy	A tenancy that continues until either the tenant or the landlord gives written notice to end it
Rental bidding	Where 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
RTA	Residential Tenancies Act 1986
Security of tenure	Security of tenure refers to the notion that a tenant has choice and control over their housing options and that they can stay in their home for as long as they decide to, provided they meet their obligations (such as paying rent).
Tenancy Agreement	A contract between a landlord and a tenant that records all the key things a landlord and a tenant have agreed to about the tenancy
Tenancy Tribunal	The Tenancy Tribunal hears disputes between landlords and tenants of residential properties who have not been able to reach agreement themselves
Termination	The term used for the end of a tenancy agreement
Termination provisions	Reasons set out in the RTA that allow a tenancy to be terminated (ended)
Warrant of Fitness	A check to ensure that a property and/or landlord meets minimum required standards before being granted a licence to operate a boarding house

Annex 1: Unlawful acts and corresponding exemplary damages

Schedule 1A of the RTA: Amounts for unlawful acts

Section		Amount (\$)
12	(Unlawful discrimination)	4,000
13A(1F)	(Non-compliance with section 13A(1A), etc)	500
16A(6)	(Landlord failing to appoint agent when outside New Zealand for longer than 21 consecutive days)	1,000
17	(Requiring key money)	1,000
18	(Landlord requiring bond greater than amount permitted)	1,000
18A	(Requiring unauthorised form of security)	1,000
19(2)	(Breach of duties of landlord on receipt of bond)	1,000
23	(Landlord requiring rent more than 2 weeks in advance or before rent already paid expires)	1,000
27(2)	(Landlord requiring rent in excess of market rent order)	200
29	(Failure by landlord to give receipts for rent)	200
30(2)	(Landlord failing to keep records)	200
33	(Landlord seizing or disposing of tenant's goods)	2,000
38(3)	(Interference with privacy of tenant)	2,000
40(2)(ab)	(Interference, etc, with means of escape from fire)	3,000
40(3A)(a)	(Failing to observe, without reasonable excuse, the tenant's duties upon termination)	1,000
40(3A)(c)	(Using or permitting premises to be used for unlawful purpose)	1,000
40(3A)(d)	(Harassment of tenant or neighbour)	2,000
40(3A)(e)	(Tenant failing to ensure number of residents does not exceed maximum allowed)	1,000
44(2A)	(Assigning or subletting a tenancy when prohibited to do so or without the landlord's written consent)	1,000
45(1A)	(Landlord's failure to meet obligations in respect of cleanliness, maintenance, smoke alarms, insulation, or building, or health and safety requirements)	4,000
45(2A)	(Landlord interfering with supply of services to premises)	1,000

Section		Amount (\$)
46(3)	(Altering locks without consent of other party)	1,000
48(4)(a)	(Unlawful entry by landlord)	1,000
48(4)(b)	(Tenant failing, without reasonable excuse, to allow landlord to enter upon premises in circumstances where landlord entitled to enter)	1,000
54(3)	(Retaliatory notice of termination)	4,000
61(5)	(Abandonment of premises without reasonable excuse)	1,000
66G(4)	(Harassment of tenant in boarding house)	2,000
66I(4)	(Landlord of boarding house failing to meet obligations in respect of cleanliness, maintenance, smoke alarms, insulation, or building, or health and safety requirements)	4,000
66J(4)	(Landlord of boarding house interfering with services or failing to advise that premises on the market)	1,000
66K(2)(b)	(Interference, etc, with means of escape from fire)	3,000
66K(4)(b)	(Using or permitting premises to be used for unlawful purposes)	1,000
66K(4)(c)	(Harassment of neighbour)	2,000
66P(4)	(Landlord of boarding house failing to comply with order relating to house rules)	2,000
66T(1)	(Contraventions relating to entry, or attempted entry, of tenant's room in boarding house)	1,000
66X(5)	(Abandonment of premises without reasonable excuse)	1,000
108(2A)	(Breach of work order without reasonable excuse)	3,000
123A(4)	(Landlord failing to provide required documents to chief executive)	1,000
137(2)	(Contracting to contravene or evade the provisions of this Act)	1,000

