

19 October 2018

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

Attention: Reform of the Residential Tenancies Act (1986)

Tēnā koe

I am writing as Chair of Capital and Coast District Health Board's (CCDHB's) Health System Committee to endorse the submission prepared by Regional Public Health (RPH) responding to the consultation on proposed changes to the *Residential Tenancies Act (RTA) 1986*.

The Health System Committee (HSC) is a statutory committee under the *New Zealand Public Health and Disability Act 2000* comprising both CCDHB's Community and Public Health Advisory Committee (CPHAC) and Hospital Advisory Committee (HAC). Our HSC helps ensure we apply a whole of system lens to our decision making to achieve the best health outcomes for our communities. The HSC supports CCDHB to make good choices for our investment in services with the biggest positive impacts and a strong focus on achieving equity of both access and outcome.

CCDHB plans, funds and provides health services to the 300,000 people living in the Wellington City, Porirua and parts of the Kāpiti Coast region. These services span prevention through to highly specialised hospital care and include:

- Population health services – including through RPH
- Primary care, community laboratory, pharmacy and community radiology
- Aged residential care and home support
- NGO and community provision of personal and mental health services
- medical and surgical services through our Hospital Services (HHS)
- Mental Health, Addiction and Intellectual Disability Services (MHAIDS)

Access to quality housing is a well-established determinant of health and wellbeing. With the growing proportion of people living in rental accommodation, ensuring there are adequate protections around termination of tenancy giving greater security to tenants is an important step for creating stability, resilience and a sense of community. Placing safeguards around how rent is set is also necessary

Internationally there is growing evidence and interest in place-based approaches to health and social systems to support wellbeing, build resilience and reduce demand for acute care.

CCDHB is adopting a localities approach that is designed to strengthen our work with communities and whānau so that people are supported to manage their own health and receive care early when it is needed. It is therefore essential that people living in rental accommodation within our communities feel a part of that community and are empowered to engage with us.

The HSC has identified housing as a key issue for CCDHB's communities who experience poorer health outcomes – notably māori, pacific peoples and people with mental health issues. We are deeply concerned about the effects of poor housing quality, security and high rental costs on the ability for our communities to improve their health and wellbeing and for achieving equity of health outcomes. Therefore, we are highly supportive of the proposed changes to the RTA as a part of the solution.

Ngā mihi

Capital & Coast District Health Board

Dame Fran Wilde (Chair)
Health System Committee

19 October 2018

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

Re: Consultation on the Reform of the Residential Tenancies Act 1986

Tēna koe

Thank you for the opportunity to make a submission on the Residential Tenancies Act reform discussion document.

Regional Public Health (RPH) delivers population and personal health services in the greater Wellington region. Our geographical area of service delivery spans Hutt Valley, Capital & Coast and Wairarapa DHBs. We deliver a range of population and personal health services, aiming to improve the health of communities throughout the greater Wellington region.

In particular we focus on achieving equitable health outcomes for high needs groups such as Māori, Pacific peoples, children and young people, low income families and other vulnerable groups.

We deliver a healthy housing programme (Well Homes) as part of the Ministry of Health's Rheumatic Fever Prevention Programme. The housing programme aims to reduce crowding and assist occupants with making their homes warmer (access to insulation grants and curtains) and drier (education around ventilation and how to reduce and treat mould). The Well Homes programme works with landlords and tenants.

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Ngā mihi

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INTRODUCTION

Thank you for the opportunity to make a submission on the Reform of the Residential Tenancies Act 1986 (RTA). We welcome a reform of the RTA that is inter-dependent with the need for rigorous housing quality standards to be introduced through the Healthy Homes Guarantees Act (2017). We specifically support the objectives of the RTA reform that focus on:

- improving the security and stability of tenure for tenants
- ensuring the law promotes good relationships between tenants and landlords
- modernising tenancy laws so tenants feel more at home
- improving the quality standards of boarding houses and the accountability of boarding house landlords.

Housing is a key determinant of health. The Royal Australasian College of Physicians state:

Housing is more than a place to shelter – the literal roof over one’s head. It is a key physical and social environment that contributes to the health and wellbeing of the individual and the whānau/ family.

Greater numbers of New Zealanders are living in rental accommodation than ever before.¹ Rental accommodation is consistently in worse condition than that of owner-occupied houses.² There is a large body of evidence in New Zealand that documents the relationship between poor housing conditions and ill-health and disease, such as respiratory conditions including rheumatic fever, especially in children. Tenant households are carrying a burden of disease not experienced to the same degree by those who own their own home. As the Child Poverty Action Group states:

For families who are renting, there are three main problems:

- house rents are high and increasing,
- the quality of the rental properties appears to be substandard and deteriorating,
- the rental market provides few rights and protections for renters.

Families in their own homes, with or without a mortgage, are likely to be in better health than those who rent their house, either from private or public landlords.³

A significant step in addressing the severe rates of housing related ill-health, disease and death in Aotearoa, and remedying the alarming rates of housing deprivation, will be to improve the situation

¹ Equab. S., Howden-Chapman. P., Johnson. A. A Stocktake of New Zealand Housing Feb 2018. [internet]. 2018 [cited 2018 Sept 28]. Available from:

<https://www.beehive.govt.nz/sites/default/files/201802/A%20Stocktake%20Of%20New%20Zealand's%20Housing.pdf>

² Chun. S., Cowan. V., Jones .M., White .V., BRANZ 2015 House Condition Survey: Comparison of House Condition by Tenure. [Internet] 2015 [cited 2018 Sept 28]. Available from:

https://www.branz.co.nz/cms_show_download.php?id=a1efff0a2fd9885ecf878ce475631df7025cf3b8

³ Dr. M. Dale. C., Dr Obrien .M., Dr St John .S., Our children, our choice: priorities for policy, Child Poverty Action Group Policy Paper Series, Part Four: Housing Market changes and their impact on children [internet] 2014 [cited on 2018 Sept 27]. Available from:

<http://www.cpag.org.nz/assets/Publications/140812%20CPAG%20OurChildrenOurChoice-Part4Housing%202014.pdf>

for tenants. This requires reforming the RTA, implementing rigorous healthy homes standards and strengthening the Tenancy Tribunal.

IMPROVING SECURITY AND STABILITY OF TENURE

Security of tenure and housing quality

In order to be well, people need stable, secure, warm dry housing.

The current regulatory environment of residential tenancy does little to incentivise landlords to improve the quality of rental properties. Many tenants do not report maintenance or quality issues for fear their tenancy may not be renewed, their rent might be raised, or they may be given a 90 day notice.⁴

Improving security and stability of tenure must go hand in hand with regulations that improve the structural condition of rental properties. Unless tenants feel secure at home and are empowered and protected under the RTA to speak up when their landlord is not meeting their obligations, the necessary accountability mechanisms to ensure housing standards are met do not exist. Therefore the healthy housing standards would fall short of their intention to prevent avoidable housing related illness.

Housing law researcher David Cowan has argued that housing condition protections are “rendered practically useless by the temporary nature ... of private renting”.⁵ The temporary nature of private renting that exists in New Zealand through our very minimal provisions for security of tenure, is a critical component of the creation of home and remains an outstanding issue that should urgently be addressed.

We support removing ‘no cause’ terminations from periodic agreements

In the current tight rental market, families are desperate to find accommodation and as such, when and if they do find a place to live, they often feel they must do everything possible to ensure they can stay where they are.

In order to improve stability and security of tenure, tenants need to have full protection to exercise their rights, free from the fear that at any time they could be given notice with no reason given.

Ninety-day no-cause terminations undermine other protections provided to tenants under the RTA. While retaliatory action by landlords is prohibited under the RTA, enforcing these rights ...”requires empowered tenants who are prepared and able to challenge a termination notice from the landlord

⁴ The People’s Review of Renting. August 2017. [internet] 2017 [cited on 2018 sept 27]. Available from: <https://www.rentersunited.org.nz/wp-content/uploads/2018/08/ASRUPeoplesReviewofRentingWebversion.pdf>

⁵ Cowan, D. Housing Law and Policy. (Cambridge University Press, 2011).

in the Tenancy Tribunal. As noted ... around 90% of cases taken to the Tribunal are taken by landlords and the majority of these are not even contested by tenants”.⁶

As part of the Regional Public Health (RPH) led Well Homes programme, home assessors who visit cold, damp, unsafe rental homes will, where appropriate, provide a letter to the landlord or contact the landlord directly to outline the structural maintenance, heating, and other quality issues that need to be remedied. Staff from the Well Homes programme report that tenants often do not wish to have their housing concerns raised with the landlord for fear their tenancy may be terminated or not renewed. Staff report that tenants are often concerned that if the Well Homes programme advocates for the tenants’ rights, the tenants will be seen as “problem tenants” and be given notice.

Ending tenancies when tenants do not meet their obligations

We agree with MBIE’s statement:

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.

Given the significant public health implications of tenancies being terminated (and families being put into a precarious housing situation) we consider the threshold for termination of tenancy should be high. This would include high evidence thresholds and tenants being given every possible opportunity to remedy situations where they are not meeting their obligations. It is important to recognise that there are existing civil and criminal processes available for dealing with anti-social behaviour and other social issues e.g. noise control.

We are particularly concerned that those who are struggling with poor mental health or addiction issues are given appropriate opportunity and support before their behaviour could jeopardize their housing security.

Other grounds for termination and extending notice periods

We support all measures that ensure tenants who are meeting their obligations can stay in their rental home for as long as possible. Extending the notice period from 42 to 90 days in situations where a landlord is able to terminate a tenancy would allow families more time to find alternative accommodation.

It is beyond the scope of our role to consider the market implications of the other grounds for termination that are proposed. However, an emphasis should be put on protecting housing security for tenants when determining whether additional grounds are required.

⁶ Johnson. A., Strategic Responses to the review of the Residential Tenancies Act. A background paper prepared for Child Poverty Action Group (CPAG).[internet] 2018 [cited on 2018 Sept 27]. Available from: <https://www.cpag.org.nz/assets/180927%20CPAG%20Strategic%20Responses%20to%20RTA%20review.pdf>

Types of tenancy agreements

From a public health perspective, providing tenants with longer tenure is beneficial. Transience or residential mobility is associated with negative health outcomes. Outcomes identified in association with residential mobility include: higher levels of behavioural and emotional problems; increased teenage pregnancy rates; accelerated initiation of illicit drug use; adolescent depression; reduced continuity of healthcare⁷.

As indicated in the RTA Reform Discussion Document, a decreasing proportion of New Zealand households are owner-occupiers and an increasing proportion are living in rented accommodation. In order to ensure the types of tenancy agreements available are fit for purpose and reflect the modern renting environment, emphasis needs to be placed on ensuring tenants can stay in their rental homes for longer. Given that 'Option three: Allow only open-ended tenancies' provides the most security and certainty for tenants, we suggest the government undertake further exploration of removing fixed-term tenancies from the market.

We agree that if fixed-term tenancies remain, and the proposed changes are made to periodic tenancy agreements, landlords may tend to prefer fixed-term agreements over periodic agreements. As such, attention needs to be given to fixed-term agreements to ensure they provide security of tenure. Given that 'Option one: Providing tenants with a right to extend their fixed-term agreement', may result in an unintentional incentive for landlords to adopt a more litigious approach, we would support 'Option two: Specify a minimum length for fixed term agreements'.

⁷ Jolleyman, T., & Spencer, N. Residential mobility in childhood and health outcomes: A systematic review. *Journal of Epidemiology and Community Health* [internet] 2008 [cited on 2018 Sept 28]. Available at: <http://www.jstor.org/stable/40665954>

ENSURING THE LAW PROMOTES GOOD RELATIONSHIPS BETWEEN TENANTS AND LANDLORDS

Landlord and tenant responsibilities

More needs to be done to educate both landlords and tenants. Through our experience delivering the Well Homes programme, we are aware that many tenants and landlords are not fully cognisant of their rights and obligations under the RTA.

In order to ensure tenants live in warm, dry and safe housing, landlords need to fulfil their obligations to provide a home that is in a reasonable state of repair and meets the (yet to be determined) healthy homes standards. Many residential properties are currently in a poor state of repair.

Although many rental properties are in poor condition, the vast majority of claims brought before the Tenancy Tribunal are on behalf of landlords. Tenants need easier access to tenancy advocacy and support services to make sure landlords meet their obligations. Additionally, by improving security of tenure tenants will feel more able to raise concerns when landlords do not meet their obligations.

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

We strongly support the introduction of new minimum standards for heating, insulation, ventilation, moisture ingress, draught-stopping and drainage in rental properties through the Healthy Homes Guarantee Act 2017.

We acknowledge the role tenant and landlord behaviour plays in maintaining a warm, dry home. In response we recommend that in line with good regulatory practice, emphasis be focussed on providing education for tenants and landlords that explicitly focusses on the importance of warm dry homes for health and wellbeing (as well as protecting landlord assets). Education could specifically include information to landlords and tenants about the benefits of providing and using heating and ventilation appliances and how to heat the home most efficiently.

MODERNISING TENANCY LAWS SO TENANTS FEEL MORE AT HOME

Modifications to rental properties

We support any legislation that makes it easier for tenants to make reasonable modifications to their rental home. We specifically support any mechanisms that make it easier for tenants to make modifications, not already covered under the Healthy Homes Standards, that increase the level of safety (especially for children) and reduce injury hazards in the home.

In 2010 more than 261,000 New Zealanders were injured as a result of everyday slips, trips and falls in their homes. Collectively, the social cost of these injuries and deaths have been estimated to be around \$13 billion annually (at 2008 costs), 3½ times more than are associated with road injuries, making the average social costs per home injury approximately \$26,000.³³

One way to improve the burden of these injuries and their associated costs is to reduce injury hazards in the home.⁸

Some examples of these sorts of modifications that reduce injury hazards and increase safety:

- earthquake proofing by affixing appliances to the wall
- affixing safety gates to protect children especially around stairs
- affixing child safety latches to cupboards

⁸ Baker. M., Howden-Chapman. P., Gillespie-Bennett. J., Keall. M. Improving health, safety and energy efficiency in New Zealand through measuring and applying basic housing standards. The New Zealand Medical Journal. 2nd August 2013, Volume 126 Number 1379. [internet] 2013 [cited on 2018 Sept 28]. Available from: <https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2013/vol-126-no-1379/view-gillespie-bennett>

SETTING AND INCREASING RENT

Ultimately increasing housing supply is needed to address housing affordability issues.

Tenant households tend to pay a higher proportion of their household income on housing than owner-occupiers do. The 2018 Housing Stocktake reports “between late 2012 and late 2017 average rents for three-bedroom houses rose 25% while wages rose only about 14%”.⁹ Many low-income families reduce expenditure on other necessities such as food and heating in order to make rent payments.¹⁰

We support the government’s move to put further limits on rent increases.

We support any legislative changes that provide greater certainty for renters, especially those who pay a higher proportion of their disposable income on housing. Increasing certainty about the amount of rent required to secure a property, and the amount and frequency of rent increases would allow tenants to make more informed budgeting decisions and ensure tenants had more money leftover (after rent) to pay for other necessities such as heating, nutritious food and healthcare.

Rental bidding

We do not support the practice of rental bidding as it particularly disadvantages people with low purchase power in securing rental accommodation.

It is well evidenced that those living on low incomes are more likely to have poor health outcomes. In a market where rental bidding is the norm, those on low incomes have the least ability to compete, which means they are the least likely group to secure housing.

Preventing rental bidding will improve access to housing for this group and support better health outcomes for those already most at risk.

⁹ Equab. S., Howden-Chapman. P., Johnson. A. A Stocktake of New Zealand’s Housing Feb 2018. [internet]. 2018 [cited 2018 Sept 28]. Available from: <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20of%20New%20Zealand's%20Housing.pdf>

¹⁰ Johnson. A. Room for Improvement: Current New Zealand housing policies and their implications for our children, Child Poverty Action Group, September 2003 [internet] 2003 [cited on 2018 Sept 28]. Available from: <http://www.cpag.org.nz/assets/Publications/RFI.pdf>

BOARDING HOUSES

Public health evidence suggests that tenants living in boarding houses are particularly vulnerable.

International studies and a small number of New Zealand studies have shown that boarders staying in the poorest condition boarding houses experience high levels of poverty, poor health and disability and are vulnerable to eviction.¹¹

In order to address the health and housing situation for tenants currently in boarding situations, greater supply of supportive and therapeutic living environments is urgently required.

We applaud the government's intention to "ensure everyone living in a boarding house is housed in a physically warm, dry, and safe structure and is subject to fair treatment."

We support government initiatives to provide additional monitoring of boarding houses in order to more effectively ensure boarding houses are compliant with building health and safety standards and provide safe, secure, warm, dry accommodation.

We support the introduction of stronger enforcement powers to improve the quality of boarding houses.

We support the establishment of a Warrant of Fitness for boarding houses and their operators. However, we also recognise the unintended effect of compliance costs being passed on to tenants in the form of increased rents and reduction in the number of boarding houses. These factors could increase the level of vulnerability of boarding house tenants. This may result in boarding house tenants forced into rough sleeping or other severe forms of homelessness. Therefore, we recommend the government undertakes further research into the impacts of these trade-offs.

When determining which course of action to take, we urge the government to place the health and wellbeing of young people, those living with disabilities, people experiencing high levels of poverty, and poor mental and/or physical health at the centre of all decisions.

¹¹ Aspinal, C. E. Anyone can live in a boarding house can't they? The advantages and disadvantages of boarding house residence (Thesis, Master of Public Health). University of Otago. [internet] 2013 [cited on 2018 Sept 29]. Available from: <https://otago.ourarchive.ac.nz/bitstream/handle/10523/3818/AspinalClareE2013MPH.pdf?sequence=1&isAllowed=y>

ENFORCING TENANCY LAWS

Currently, tenants are not sufficiently empowered to bring bad behaviour of landlords to the Tenancy Tribunal and landlords are not sufficiently deterred from operating in a way that does not meet their obligations. This is evidenced by the fact that "... 90% of the applications to the Tribunal are from landlords, effectively making it a landlords' tribunal".¹²

In order to address current power imbalances in the residential tenancy system and ensure tenants are protected, more needs to be done to ensure that landlords who consistently do not meet their obligations and as a result put the health and wellbeing of tenants at risk are appropriately investigated and penalised.

We believe there needs to be an appropriate regulatory compliance regime. This should focus on education for both landlords and tenants about their rights and obligations including the consequences of non-compliance. Any compliance regime should also include an escalating series of responses to ensure landlords are compliant and are given appropriate disincentives to repeated breaches.

We support all initiatives that enable MBIE to more effectively enforce compliance in complex multi-tenanted situations such as boarding houses, and situations where very poorly maintained or uninhabitable properties suggest the landlord or property owner has no interest in the responsibilities that come with owning a property to let.

We support the provision for MBIE to have power to enter the common spaces of boarding houses in order to more effectively monitor boarding house situations, determine situations of non-compliance and take action to protect tenants. However, privacy for boarding tenants must also be prioritised.

We strongly support providing MBIE with the ability to audit a landlord or property manager. This would provide greater protection for tenants, promote compliance and uncover systemic issues.

We support giving MBIE the ability to take a single case in respect to multiple breaches of the RTA. Landlords or property managers who repeatedly do not meet their obligations must face appropriate penalties that incentivise good practice and compliance and effectively discourage lack of responsibility.

¹² Equab. S., Howden-Chapman. P., Johnson. A. A Stocktake of New Zealand's Housing Feb 2018. [internet]. 2018 [cited 2018 Sept 28]. Available from: <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20of%20New%20Zealand's%20Housing.pdf>