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Social Services and Community Committee
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Submission on the Residential Tenancies Amendment Bill

1. Thank you for the opportunity to make a submission on the Residential Tenancies Amendment Bill (the Bill).
2. The Public Health Association of New Zealand (PHA) fully supports the purpose of this proposed Act to modernise the legislation to make it better suited for today's renting environment. We also support the intention of the Bill to better balance the rights and obligations of tenants and landlords. We have some minor reservations and some recommendations to make (outlined below) about how the Bill could be further improved.
3. We support the submissions of Regional Public Health and the Department of Public Health, University of Otago, Wellington.

Who are we?

4. The PHA is a national association with members from the public, private and voluntary sectors. Our organisation's vision is 'Good health for all - health equity in Aotearoa', or 'Hauora mō te katoa – ora ngā mō te Ao', and our purpose is to advocate for the health of all New Zealanders.
5. To achieve this, we provide a forum for information and debate about public health action in Aotearoa New Zealand. Public health action aims to improve, promote and protect the health of the whole population through the organised efforts of society.
6. We recognise Te Tiriti o Waitangi as Aotearoa New Zealand's founding document, defining respectful relationships between tangata whenua and tangata Tiriti, and are actively committed to supporting Te Tiriti in all policy and legislation. Therefore we applaud the requirement of the Bill that 'In achieving the purpose of this Act, all persons performing functions or exercising powers under it must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).' We recommend that 'The Treaty of Waitangi' is replaced with 'Te Tiriti o Waitangi' to ensure that it is the Māori version of this document that is taken into account. We also recommend that the word 'articles' replaces the word 'principles'.
7. We actively promote full implementation of related international agreements to which New Zealand is a signatory, including the UN Convention on the Rights of the Child (UNCROC), the UN Declaration of the Rights of Indigenous People (UNDRIP), the Convention on the Rights of Persons with Disabilities, the UN Framework Convention on Climate Change and the Paris Climate Agreement.

8. We promote implementation of the [1948 Universal Declaration of Human Rights](#) and the [1967 International Covenant on Economic, Social and Cultural Rights](#) both of which recognise adequate housing as part of the right to an adequate standard of living.
9. We also advocate action on the United Nations Sustainable Development Goals (SDGs), in particular [Goal 11: Sustainable cities and communities](#), which has as its first key target: 'to ensure access for all to adequate, safe and affordable housing.' (1)

Right to adequate housing

10. The Bill's explanatory note observes that New Zealand's rental market has changed markedly since the Residential Tenancies Act 1986 (the Act) came into force with many more households renting and for longer periods, and that this is the impetus for updating the legislation. We contend that while the demographics of renter populations and duration of renting careers may have changed, the fundamental issue of people's right to adequate housing has not changed.
11. This was highlighted very recently by the United Nations Special rapporteur on adequate housing, Leilani Farha, who was in New Zealand for ten days on a mission to assess the state of the country's housing. She declared that the root of New Zealand's housing crisis lay 'in the gutting of social housing and a speculative housing market' and that successive governments had 'entrusted this fundamental human right in large part to private property owners and real estate investors' (2). To fix the housing crisis Leilani Farha urged the government to reset housing policy with a 'bold cohesive plan' and suggested as an underlying foundation 'a human-rights based national housing strategy. That's very different from a smattering of policies where housing is recognised as a fundamental right.' (2) Therefore we recommend that the Bill explicitly states in its preamble that adequate housing is a human right and that all policy will proceed and be founded on that basis. Furthermore we recommend that New Zealand develops a national housing strategy.
12. There has been a failure in NZ to recognise the right to adequate housing especially in relation to people who rent their homes. One of the results of this failure has been that the quality of NZ's rental housing (particularly private but also state or social housing) has been allowed to deteriorate. It is the most disadvantaged families who are forced to live in the worst quality housing, enduring damp, mouldy, unhealthy homes. In 2014 it was estimated that 70% of children living in poverty were living in rental housing (3). Living in these poor housing conditions has serious detrimental impacts on the inhabitants' health but children are particularly badly affected. 'Children living in rental accommodation are more likely to be hospitalised, especially for diseases linked to housing, more likely to be re-hospitalised, and more likely to die young' (4). The Ministry of Health (MOH) has labelled some diseases 'Housing-Sensitive Hospitalisations', for which approximately 6,000 children are admitted each year. These children are 3.6 times more likely to be re-hospitalised and 10 times more likely to die in the following 10 years' (5), (6).
13. Māori and Pacific are even more disadvantaged by this situation as they have much higher rates of rental housing occupancy and lower rates of homeownership than non-Māori, non-Pacific and these trends are continuing (6). Consequently Māori and Pacific children are disproportionately affected by poor housing quality-related illnesses (6). Strengthening rights for renters through the measures proposed in the Bill has the potential to reduce inequalities in NZ.
14. We note that in 1936 71% of Māori lived in dwellings that whānau owned, by 1991 the ownership rate had fallen to 56%, by 2013 it was at 43%, and today it is likely to be below 40%. This is

compared to the national average of 70% for Pākehā (Stats NZ 2016). If home ownership continues to decline at the rate it has been falling since 1991 Māori will almost be entirely renters by 2061(7).

15. Māori lost their land through colonisation and this has had devastating effects socially, culturally, spiritually, and economically. These impacts of land loss are intergenerational and are evident today in inequitable health and wellbeing outcomes including disproportionate rates of imprisonment; suicide; and family and sexual violence. We see this situation as a breach under Article 3 of Te Tiriti o Waitangi, as Māori are not able to enjoy housing access equally with Pākehā.
16. To uphold Te Tiriti o Waitangi articles within housing policy we recommend addressing the underlying structural factors that entrench Māori into being renters for life and worse, homeless at higher rates than non-Māori. While we strongly support improving the rights of Māori as renters, we also recommend facilitating affordable home ownership pathways for both rural and urban Māori.

Security of tenure

17. The UN's definition of the right to adequate housing includes: security of tenure; habitability; accessibility; affordability; availability of infrastructure, materials, facilities and services; location and cultural adequacy. Of all these security of tenure is identified as 'the cornerstone of the right to adequate housing' (8). Accordingly we welcome the intention of the Bill to improve security of tenure for tenants, which will, along with the other proposed measures, redress some of the existing power imbalance between landlords and tenants.
18. Lack of security of tenure for tenants has meant that tenants have not felt confident to take complaints about their rental homes to the Tenancy Tribunal for fear of being evicted. Currently cases by landlords far outnumber tenants' in the Tribunal (over 90% of cases come from landlords, many of which are not contested by tenants (6). Tenants have also been fearful of having their names published if they did make a complaint and earning a reputation as a nuisance tenant, which could affect their ability to secure future tenancies.
19. The current complaints-driven system of existing legislation means the onus is on tenants to make a complaint. This is a problem not just because tenants may feel intimidated by the system but also because they may lack knowledge about their legal rights, and the legal obligations of landlords.

Tenant advocacy service

20. Therefore, in addition to the proposals in the Bill to improve security of tenure, we recommend setting up a free advocacy service for tenants who are experiencing problems with their tenancy. Tenant advocates have a crucial role in educating tenants about their rights and supporting them to access those rights. In many situations the issues may be able to be resolved without recourse to the Tenancy Tribunal with advocates acting as mediators and bringing the parties together to iron out the issues. Tenants and landlords report that advocates have been able to mediate disputes and resolve them to the satisfaction of both parties; in some cases landlords were reassured 'that issues could be resolved without resorting to ending the tenancy' (9). Tenant advocates have also reported that they were more likely to be responded to by authorities than the tenants were (9).

Improving outcomes for children

21. Improving security of tenure will improve outcomes for children living in poverty. Insecure tenure leads to high rates of residential mobility which have been identified as risk factors for socioemotional and behavioural (SEB) difficulties in preschool children (10) and have also been associated with poorer mental and physical health, increased behavioural problems and poorer

educational achievement in older children (11). Therefore improving security of tenure can improve the overall wellbeing of children and avoid long term harms.

Landlord must permit and facilitate installation of fibre connection in certain circumstances

22. We support the new section 45B requiring landlords to allow and help tenants get fibre connection. The United Nations Human Rights Council declared, in a report in 2011, that the internet is a '*catalyst* for the enjoyment of human rights, most notably, the right to freedom of expression' and 'given that the Internet has become an indispensable tool for realizing a range of human rights... ensuring universal access to the Internet should be a priority for all States' (12). The events of the past few days have illustrated just how important good internet access is to modern life and how those without it are at a severe disadvantage. As of midnight on 25 March, because of the threat of COVID-19, all New Zealanders are required to go into 'lockdown'; adults will be working from home and children will be receiving their schooling over the internet. All university courses will be taught remotely. Those households without internet connection will not only be physically isolated, like the rest of the population, but will miss out on essential opportunities to connect with their families, to continue to work and to pursue their education. This is also an equity issue as those who are already the most economically and socially disadvantaged are more likely to be living in rental housing and so may be further disadvantaged by not having internet access.
23. To strengthen the ability of tenants to access the internet we recommend that the exemptions for landlords to permit installation of fibre connection are restricted to (2) (a) (i), and that subsection (2) (a) (ii) - (d) is removed. We also recommend that the Government funds the full cost of installation either through the UFB Initiative or another mechanism.

Landlord must provide information on healthy homes standards

24. We support this section (Clause 44 Section 66l) but recommend it goes further to require that landlords always provide this information not just when the tenant requests it. As discussed above in paragraph 19 in some cases the tenant may be unaware of the landlord's obligations under the healthy homes standards so it is important that they are provided with this information and are made aware of the standards the property should be meeting.

Increased fines for some existing offences

25. We support increased fines for existing offences. It is important that fines for breaches are commensurate to the offence and not tokenistic. It is pointless having fines if the sums are so paltry as to not act as a disincentive.

Changes to landlords' rights of termination and renewal

26. We strongly support the end of no cause termination of tenancies as an essential move towards improving security of tenure for tenants. We also support establishment of strictly defined allowable causes for termination.
27. We agree with clauses 31 and 32 in the new Bill which remove landlords' ability to end a periodic tenancy on 90 days' notice without giving a reason. We also support clause 38 New section 60A making it an unlawful act for landlords to give notice without cause.
28. We are concerned that putting the property on the market remains an allowable cause for termination of the tenancy. While we understand that landlords may sometimes need to sell their properties we do not think this necessarily means tenants should have to leave their homes. We recommend landlords must consider the impact on the tenants of the sale of the property and if

possible maintain the tenancy. This is the case in some European jurisdictions where sale of a property is not allowed as a reason for terminating a tenancy.

29. We are also concerned that landlords sometimes use the excuse of needing the property to house family or selling the house in order to evict tenants. We recommend a process whereby landlords have to produce proof that they genuinely do need to sell the property untenanted or have family needing to be housed. These properties are families' homes and the right to security of tenure demands that this fact is not taken lightly.
30. We support the change of notice period from 21 to 28 days for a tenant to end a periodic tenancy. We also support clause 40 which increases the notice from 21 to 28 days, which a tenant must give if they wish to exercise a right under the tenancy agreement to have the tenancy renewed or extended.

Continuation of expired fixed-term tenancies as periodic tenancies

31. We also support this change so that expired fixed-term tenancies roll over more smoothly into periodic tenancies and landlords are not permitted to terminate the tenancy in order to prevent it becoming periodic. In NZ the market pattern is commonly a one-year fixed tenancy with an average relatively short term of about two-years. Shorter term tenancies and frequent moves for tenants create multiple and various problems for tenants which have been well documented from increased financial stress due to the costs of moving and poorer outcomes for children in a range of areas. Making long term tenancies the norm rather than the exception will go a long way to improving security of tenure for tenants.

Fair rents

32. We approve of the changes to prevent landlords from encouraging rent bidding by requiring them to state the amount of rent on advertisements. We also support making it an offence for landlords to 'invite or encourage' prospective tenants to offer more rent than the amount advertised.
33. However, we strongly object to section 22G(2) which still allows prospective tenants, off their own bat, to offer to pay more rent than that advertised. This seems to contradict the intention of the Bill to prevent landlords from taking advantage of the shortage of housing by getting tenants to engage in a bidding war. Practically speaking this is exactly what will happen as prospective tenants vying for a limited number of properties will offer more rent if they can afford it to secure a property, once again leaving the most disadvantaged even worse off. We recommend that both formal and informal rent bidding is outlawed and landlords are not only required to advertise a specific rent for tenancies but must rent the property at the amount advertised. However, it should not be an infringement offence for a prospective tenant to offer above the advertised amount.
34. We are delighted to see the amendment to limit rent increases to once a year. One of the major problems with housing in NZ is unaffordability which particularly affects households in rental housing. Of those households paying over 40% of their income to housing costs, 60% to 65% are tenants (6). These pressures are increased in a market where there is a housing shortage and rents, which once kept pace with wages, are now rising. Since late 2014 rents have risen faster than wages and much faster than prices generally (6). Therefore we welcome any measures to improve affordability and in particular we recommend the following further measures:
 - i. Limit rent increases to no more than inflation, based on the Consumer Price Index (CPI) in the preceding 12 months

- ii. Allow reasonable and proportionate rent increases above CPI where significant improvements have been made to the quality or facilities of the home – beyond ordinary maintenance. Such improvements would not include those made in order for the property to comply with minimum standards
- iii. Prevent unreasonable rent hikes between tenancies by requiring the landlord to set rent within a reasonable range of the previous rent charged for that property (except where significant improvements beyond normal maintenance have been made) and inform incoming tenants in writing of the rent paid by the previous tenants
- iv. Require that rents are set within a reasonable range of the median rent of comparable rented houses in the same area.

Creation of infringement offences

35. We support the creation of infringement offences in the Bill. It is not enough to make certain actions unlawful; there must also be clear and appropriate consequences. It is important that the law has teeth and there are financial consequences for landlords who flout the law and take advantage of tenants.

Minor changes

36. We are pleased the Bill allows ‘minor changes’ to be made to a rental property. One of the ways having a home can contribute to wellbeing is by providing ontological security which can be defined as ‘a stable mental state derived from a sense of continuity in regard to the events in one’s life.’ Part of this sense of security is the ability to have control over one’s living environment. It is therefore important that tenants, like other people, will now be allowed to make their homes more homely by making minor alterations in their homes.

Termination by notice

37. We support the tightening of the conditions for termination of notice (Clause 32) with the requirement for an increase in notice to be given from 42 days to 90 for all reasons except if the property is to be used by family or employees (increased notice from 42 to 63 days).

38. We support the proposed new sections regarding termination for antisocial behaviour as this strikes a better balance between unacceptable behaviour by tenants and landlords’ ability to get rid of tenants for bad behaviour while safeguarding the ability of tenants to assert their rights without fear of recrimination by landlords.

39. We also strongly support the proposed new section 55B because it requires that the hardship of a termination of a tenancy on tenants must be taken into account and balanced against that of the landlord. This is an encouraging step towards recognising in law the impact termination of tenancy can have on tenants.

Landlords’ rights to prohibit gun safes in rental properties

40. The Bill is currently silent on any requirements around allowing tenants to install gun safes in rental properties. We recommend that the Bill states explicitly that the installation of gun safes does not qualify as a ‘minor change’ under the Bill and landlords be allowed to retain their current right to ensure that guns are not stored in the rental property.

41. Under the [NZ Police Seven Firearms Safety Arms Rules](#), gun owners are required to keep firearms in a ‘lockable cabinet, container or receptacle of “stout construction”’. “Stout construction” is

interpreted by the police as being 'strong enough to stop a child or opportunist thief getting access' and any gun storage safe must meet 'the international standard of thwarting attack by hand tools (unpowered tools) for a minimum of 10 minutes' (13). The gun safe must also be securely fixed to the frame of the building to prevent removal. These requirements would seem to rule out considering the installation of a gun safe as a minor change under the proposed Bill.

Amendment to enforce work orders

42. We are delighted with the change in the Bill to make work orders enforceable. Currently if the Tenancy Tribunal issues a work order to a landlord the order does not have to be complied with if the existing tenancy ends. The result of this is that landlords can re-rent properties that have been found to breach regulations without having to comply with any work order. This is clearly to the detriment of future tenants' wellbeing, makes a mockery of the law, and is a lost opportunity to improve the quality of our rental housing stock.
43. We want to emphasise strongly that NZ's private rental housing stock is the poorest quality housing and must be improved. Enforcing work orders ensures that improvements are made and over time rental housing will improve in quality.
44. We recommend amending the Bill to remove Section 108 (7) from the Act as we believe that if a work order has been issued by the Tribunal it should be complied with and not expire at a certain time unless the person applies to the Tribunal to have the order revoked and provides a convincing reason for doing so. Our thinking is that if the Tribunal has good enough reasons for issuing a work order then that work should be carried out.

Suppression of names (clause 51, new section 95A)

45. We support this change to allow the Tenancy Tribunal to suppress the identifying details or names of a witness or party involved in a case in the Tribunal and to suppress the names, if requested, of a party who has brought a successful action in the Tribunal. We know from research that tenants are loath to assert their rights as they are fearful that when applying for a tenancy the landlord may check their 'record' and reject them if they are perceived to be a troublesome tenant (9). This change in the Bill will embolden tenants to assert their rights and not be afraid to take action against a landlord if the latter is in breach of the regulations or law. This is another crucial measure to strengthen security of tenure.

Our recommendations:

- The Government develops a national housing strategy
- The Bill states explicitly that adequate housing is a human right and that all policy will proceed and be founded on that basis
- The wording of the Bill changes to refer to upholding the **articles** of te Tiriti o Waitangi (Māori version) and removes the word 'principles'.
- The Bill acknowledges the effects of colonisation on housing for Māori
- The Government investigates affordable home ownership pathways for Māori, both rural and urban
- The Bill establishes a free advocacy service for tenants

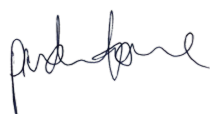
- Landlords are required to consider the impact on tenants of the sale of a property and if possible maintain the tenancy
- Landlords are required to produce proof that they genuinely do need to sell their property untenanted or have family needing to be housed
- The Bill states explicitly that the installation of gun safes does not qualify as a 'minor change'
- The Bill requires landlords to always provide information on compliance with the healthy homes standards
- Both formal and informal rent bidding is outlawed
- Landlords must rent the property at the amount advertised
- Limit rent increases to no more than inflation, based on the Consumer Price Index (CPI) in the preceding 12 months
- Allow reasonable and proportionate rent increases above CPI where significant improvements have been made to the quality or facilities of the home
- Prevent unreasonable rent hikes between tenancies by requiring the landlord to set rent within a reasonable range of the previous rent charged for that property and inform incoming tenants in writing of the rent paid by the previous tenants
- Require that rents are set within a reasonable range of the median rent of comparable rented houses in the same area
- Amend the Bill to remove Section 108 (7) from the Act to make work orders enforceable with no time limits
- Restrict the exemptions for landlords to permit installation of fibre connection to Section 45B subsection (2) (a) (i)
- Remove Section 45B subsection (2) (a) (ii)- (d)
- Government funds the full cost of fibre installation either through the UFB Initiative or another mechanism.

Conclusion

We are pleased to support this Bill, which we see as an important step, along with the other pieces of legislation and policies the Government has introduced, in improving housing in NZ and making a safe, secure, healthy and affordable home, whatever the tenure, available to every New Zealander.

We are happy to provide any clarification on matters covered in our submission.

Ngā mihi nui,



Prudence Stone
Chief Executive Officer

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