

Residential Tenancies Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill will amend the Residential Tenancies Act 1986 (the **RTA**) to require smoke alarms and insulation in residential rental properties, and other tenancy improvements.

The RTA currently places a general obligation on landlords to maintain the premises in a reasonable state of cleanliness and repair. Landlords are further required to comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises (including the Housing Improvement Regulations 1947). Examples include the provision of adequate ventilation and lighting, and an approved form of heating in every living room.

There is, however, no requirement in either the RTA or any other legislation for either smoke alarms or insulation to be provided at a premises. An objective of the Bill is to reduce fire-related fatalities and injuries and make rental properties warmer, drier, and easier to heat.

Anecdotal evidence indicates that vulnerable tenants are often unwilling to notify the Tenancy Tribunal of alleged breaches of the RTA. The RTA currently limits the power of government to work on behalf of the tenant where it is in the public interest to do so. An objective of the Bill is to strengthen enforcement powers available to the chief executive responsible for the administration of the RTA.

Reducing the length of time taken to resolve tenancy abandonment cases will also improve the efficiency of the residential rental market. The Bill aims to improve current Tenancy Tribunal mechanisms to expedite processing of these cases.

To meet these objectives, the Bill proposes to—

- create regulation-making powers to prescribe the type, location, quantities, and other technical requirements or exemptions for smoke alarms and insulation:

- clarify that these requirements apply to private residential rental properties, boarding houses, and houses where the tenant is paying an income-related rent (where the Housing Restructuring and Tenancy Matters Act 1992 applies):
- enable the chief executive to investigate and take cases direct to the Tenancy Tribunal in cases of alleged serious or persistent breaches of the RTA:
- create powers for persons authorised by the chief executive to enter a property, with notice, for the purposes of collecting non-invasive evidence of an alleged breach of the tenancy agreement or the RTA:
- enable the chief executive to require and collect information from landlords, including records of inspections, maintenance, and repairs and correspondence with the tenant:
- create an expedited process for deciding tenancy abandonment (possession) cases.

The impact of requiring the installation of smoke alarms and insulation has been analysed. Assuming full compliance with the smoke alarm requirements, for every dollar of costs the estimated benefits range from between \$8.80 and \$21.40. Full compliance with the smoke alarm requirements should also lead to 3 fewer fire-related fatalities per year. Assuming full compliance with the insulation requirements, for every dollar of costs the estimated benefit is \$1.90 over 20 years.

Possible alternatives for achieving the objectives of this Bill could have included a warrant of fitness regime for rental properties. However, this option was not progressed as it was not considered the most cost-effective mechanism for achieving the outcomes identified.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=109>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 18 May 2015 and 23 June 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-smoke-alarms-insulation-residential-rental-properties.pdf>

- <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-residential%20tenancyabandonment.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill, with certain exceptions, comes into force on 1 July 2016.

Clause 3 provides that the Bill amends the Residential Tenancies Act 1986 (the **principal Act**).

Part 1

Tenancy agreements, Tenancy Tribunal, administration, etc

Clause 4(1) amends section 2(1) of the principal Act to insert a definition of income-related rent tenancy. Generally, an income-related rent tenancy is a tenancy (other than a boarding house tenancy) where the tenant's rent is calculated by reference to the level of the tenant's income under the Housing Restructuring and Tenancy Matters Act 1992. This definition is relevant to the amendments made by *clauses 6(3) and 13* relating to insulation. *Clause 4(2)* repeals the definition on 1 October 2019, by which date the definition will be spent.

Clause 5 inserts *new section 2A* into the principal Act. *New section 2A* introduces *new Schedule 1AA* that is inserted into the principal Act by *clause 39* and the *Schedule* of this Bill.

Clause 6 amends section 13A of the principal Act, which sets out information that must be included in a tenancy agreement. The amendments made by *clause 6(1) and (2)* require the contact mobile telephone number (if any) and the contact email address (if any) of the landlord and tenant to be included in the tenancy agreement. The amendments made by *clause 6(3) and (4)* require the landlord to ensure that certain information about insulation installed at the premises is included in the tenancy agreement. The landlord commits an unlawful act if the landlord fails to do this or if the landlord includes in the tenancy agreement information about insulation that the landlord knows is false or misleading. Section 109 of the principal Act gives the Tenancy Tribunal powers to award sums in the nature of exemplary damages against persons who commit unlawful acts under the principal Act.

Clauses 7 to 9 make amendments to sections 15, 16, and 16A of the principal Act that are related to the amendments made by *clause 6(1) and (2)*.

Clause 10 amends section 30 of the principal Act. Section 30 requires landlords to keep certain records relating to payments of rent or bonds. The amendment clarifies that these records must be kept for 7 tax years after the tax year to which they relate.

Clause 11 amends section 38 of the principal Act. Section 38 entitles the tenant to have quiet enjoyment of the premises and requires the landlord not to interfere with

the tenant's quiet enjoyment. If the landlord interferes with the tenant's quiet enjoyment in circumstances that amount to harassment of the tenant, the landlord commits an unlawful act (for which a sum in the nature of exemplary damages may be awarded against the landlord under section 109 of the principal Act). The amendment provides that in certain circumstances the landlord's misuse of the new right to enter the premises given by the amendments made by *clause 14* is automatically regarded as an unlawful act under section 38.

Clause 12 makes amendments to section 43 of the principal Act that are related to the amendments made by *clause 6(1) and (2)*.

Clause 13 amends section 45 of the principal Act to require landlords to comply with all requirements in respect of smoke alarms and insulation imposed on them by regulations made under *new sections 138A and 138B* (inserted by *clauses 37 and 38*). The provision relating to smoke alarms comes into force on 1 July 2016 for all tenancies. The provision relating to insulation comes into force for income-related rent tenancies on 1 July 2016 and for all other tenancies on 1 July 2019. The amendments made by *clause 13* do not apply to boarding house tenancies, which are covered by the amendments made by *clause 17*.

Clause 14 amends section 48 of the principal Act. Section 48 sets out the landlord's rights to enter the premises during the tenancy. The amendments give the landlord a new right to enter on 24 hours' notice where—

- rent is at least 14 days in arrear; and
- the landlord has reasonable cause to believe that the tenant has abandoned the premises.

The new right may be exercised only for the purpose of confirming whether the tenant has abandoned the premises. The new right does not apply to boarding house tenancies (*see* section 66X of the principal Act instead).

Clause 15 amends section 54 of the principal Act. Section 54 gives the tenant the right to apply to the Tenancy Tribunal for a declaration that a notice given by the landlord terminating the tenancy is of no effect on the ground that, in giving the notice, the landlord was motivated by the fact that the tenant has sought to exercise a right against the landlord or has made a complaint against the landlord. The amendment made by *clause 15(1)* extends the time period within which the tenant may make the application from 14 to 28 working days after receipt of the termination notice. The amendment made by *clause 15(2)* provides that the giving of a termination notice is an unlawful act (for which a sum in the nature of exemplary damages may be awarded against the landlord under section 109 of the principal Act) if the termination notice is declared to be of no effect by the Tenancy Tribunal under section 54.

Clause 16 makes an amendment to section 61 of the principal Act that is related to the amendment made by *clause 25*.

Clause 17 amends section 66I of the principal Act to require landlords of boarding house tenancies to comply with all requirements in respect of smoke alarms and insulation imposed on them by regulations made under *new sections 138A and 138B* (in-

serted by *clauses 37 and 38*). The provision relating to smoke alarms comes into force on 1 July 2016 and the provision relating to insulation comes into force on 1 July 2019.

Clause 18 amends section 73 of the principal Act to permit the electronic sealing of documents by the Tenancy Tribunal.

Clause 19 amends section 76 of the principal Act, which relates to Tenancy Mediators. Tenancy Mediators have the function of assisting landlords and tenants to settle their disputes. Tenancy Mediators are currently appointed under the State Sector Act 1988 and are officers of the Ministry of Business, Innovation, and Employment. The Minister for Building and Housing also currently has a duty to appoint Tenancy Mediators from outside the State services to act in cases involving the Crown. The amendments replace the current provisions relating to the appointment of Tenancy Mediators with a duty placed on the Chief Executive of the Ministry of Business, Innovation, and Employment to appoint Tenancy Mediators. A Tenancy Mediator appointed by the chief executive may be a natural person or a body corporate.

Clause 20 amends section 78 of the principal Act, which sets out orders that the Tenancy Tribunal may make in relation to disputes between landlords and tenants. These orders include work orders. A work order is an order requiring work (for example, repairs) to be carried out at premises. Where the Tenancy Tribunal makes a work order, section 78(2) requires or permits (depending on whether the work order is made by consent) the Tribunal to make an alternative order requiring a party to pay money to the other. The amendment disapplies section 78(2) in cases where the work order relates to smoke alarms, insulation, or a failure to comply with a standard of fitness imposed by regulations having effect under section 120C of the Health Act 1956 (*see* the Housing Improvement Regulations 1947 that remain in force by virtue of section 120C).

Clause 21 makes an amendment to section 86 of the principal Act that is related to the amendment made by *clause 25*.

Clause 22 amends section 87 of the principal Act. Section 87 sets out what the Chief Executive of the Ministry of Business, Innovation, and Employment may do following the filing of an application with the Tenancy Tribunal by a landlord or tenant. This includes referring the application to a Tenancy Mediator (*see* notes on *clause 19* above). The amendment made by *clause 22(1)* requires the chief executive to refer an application under section 61 of the principal Act (*see* notes on *clauses 24 and 25* below) directly to the Tenancy Tribunal and not to a Tenancy Mediator. The amendment made by *clause 22(2)* requires the chief executive to ensure that a Tenancy Mediator to whom an application is referred is independent of the parties to the dispute and also clarifies that, if a State service is a party, the Tenancy Mediator's independence cannot be challenged just because the Tenancy Mediator is an officer or employee of a State service.

Clause 23 makes an amendment to section 88 of the principal Act that is related to the amendments made by *clause 19*.

Clause 24 amends section 91 of the principal Act and *clause 25* inserts *new section 91AA* into the principal Act. These amendments relate to section 61 of the principal Act, under which a landlord may apply to the Tenancy Tribunal for an order terminating the tenancy on the ground that the tenant has abandoned the premises and rent is in arrear. The amendments establish a process for dealing with an application under section 61 within 10 working days after the application is filed and without a hearing. Normally, the Tenancy Tribunal may not determine an application made to it without a hearing. Before determining an application under section 61 within the period of 10 working days and without a hearing, the Tenancy Tribunal must be satisfied of the following matters:

- that the tenant does not want to contest the application;
- that the landlord has provided sufficient information with the application to enable the Tribunal to determine the application properly without a hearing and on the basis only of that information or of that information with minor clarifications.

The amendments do not apply to boarding house tenancies (*see* section 66X of the principal Act instead).

Clause 26 replaces section 91B of the principal Act. *New section 91B* gives the Tenancy Tribunal powers to make certain directions to deal with cases where, despite all reasonable efforts, a party to a proceeding before the Tribunal has not been served with a notice or other document as required.

Clauses 27 and 28 make amendments to sections 99 and 101 of the principal Act that are related to the amendments made by *clause 19*.

Clause 29 amends section 108 of the principal Act, which relates to the enforcement of work orders (*see* notes on *clause 20* above). The amendment made by *clause 29(1)* is consequential on the amendment made by *clause 20*. *Clause 29(2)* amends section 108(2A) to provide that a person commits an unlawful act (for which a sum in the nature of exemplary damages may be awarded against the person under section 109 of the principal Act) if the person breaches a work order without reasonable excuse.

Clause 30 makes amendments to section 109 of the principal Act that are related to the amendment made by *clause 15(2)*.

Clause 31 makes an amendment to section 114 of the principal Act that is related to the amendments made by *clause 19*.

Clause 32 amends section 123 of the principal Act. Section 123 sets out the general functions of the Chief Executive of the Ministry of Business, Innovation, and Employment under the principal Act. The amendment permits the chief executive to publish comments about particular persons who have been landlords.

Clause 33 inserts *new sections 123A to 123E* into the principal Act.

New section 123A imposes requirements on landlords to keep certain documents and gives the Chief Executive of the Ministry of Business, Innovation, and Employment the power to require a landlord to produce those documents to the chief executive.

New section 123B gives the Chief Executive of the Ministry of Business, Innovation, and Employment the power to require a tenant to produce to the chief executive certain documents that the tenant has in the tenant's possession or under the tenant's control.

New section 123C supplements *new sections 123A and 123B*.

New sections 123D and 123E permit persons authorised by the Chief Executive of the Ministry of Business, Innovation, and Employment to enter and inspect premises in relation to alleged breaches of tenancy agreements or the principal Act. An inspection must be authorised by the Tenancy Tribunal.

Clause 34 inserts *new sections 124A and 124B* into the principal Act. *New section 124A* permits the Chief Executive of the Ministry of Business, Innovation, and Employment to take proceedings against a landlord as if the chief executive were the tenant, if the chief executive is satisfied that it is in the public interest to do so on certain grounds. The chief executive may do this without the consent of the tenant and despite the tenant's refusal to consent. *New section 124B* supplements *new section 124A*.

Clause 35 amends section 133 of the principal Act. Under section 133, a landlord may be required to inform the Tenancy Tribunal or the Chief Executive of the Ministry of Business, Innovation, and Employment of the provisions of the tenancy agreement, and it is a criminal offence for a landlord not to comply with a requirement imposed under section 133 without a reasonable excuse. The amendments made by *clause 35(1) and (2)* clarify that the Tenancy Tribunal or the chief executive may require the tenancy agreement itself (or a copy) to be produced to the Tenancy Tribunal or the chief executive. The amendment made by *clause 35(3)* increases the maximum fine that may be imposed for an offence under section 133 from \$400 to \$2,000.

Clause 36 amends section 136 of the principal Act, which relates to the service of documents under that Act. The amendments relate to the service of documents on companies and the service of documents by email.

Clauses 37 and 38 insert *new sections 138A and 138B* into the principal Act. These new sections confer powers on the Governor-General to make regulations imposing requirements on landlords in respect of smoke alarms and insulation. *See notes on clauses 13 and 17* above.

Part 2

Amendments to schedules of principal Act

Clause 39 inserts *new Schedule 1AA* into the principal Act as set out in the *Schedule* of this Bill (*see notes on clause 5* above).

Clause 40 amends Schedule 1A of the principal Act. Schedule 1A sets out the maximum sums that may be awarded in the nature of exemplary damages under section 109 of the principal Act for unlawful acts under that Act (*see section 109(4)*). The amendments made by *clause 40(1)* set maximum sums for unlawful acts under sections 30(2) and 48(4)(b), *new section 13A(1B)* (inserted by *clause 6(3)*), *new section*

54(3) (inserted by *clause 15(2)*), and *new section 123A(4)* (inserted by *clause 33*). *Clause 40(2)* makes an amendment that is consequential on the amendment made by *clause 29(2)*.

The *Schedule* of this Bill contains *new Schedule 1AA* that is being inserted into the principal Act (*see notes on clause 5* above). *New Schedule 1AA* contains transitional, savings, and related provisions that relate to the application of amendments made by this Bill.

Hon Dr Nick Smith

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Part 2

Amendments to schedules of principal Act

39	New Schedule 1AA inserted	18
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40	Schedule 1A amended	18
	Schedule	19
	New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Residential Tenancies Amendment Act **2015**.

2 Commencement

- (1) This Act, except the provisions referred to in **subsections (2) and (3)**, comes into force on 1 July 2016. 5
- (2) **Sections 6(4), 13(2), 17(2), and 38(2)** come into force on 1 July 2019.
- (3) **Sections 4(2) and 13(4)** come into force on 1 October 2019.

3 Principal Act

This Act amends the Residential Tenancies Act 1986 (the **principal Act**). 10

Part 1

Tenancy agreements, Tenancy Tribunal, administration, etc

4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in its appropriate alphabetical order:
- income-related rent tenancy** means a tenancy, other than a boarding house tenancy,— 15
- (a) that commences before 1 July 2016 and in relation to which section 72(1) or 92(1) of the Housing Restructuring and Tenancy Matters Act 1992 applies at the beginning of 1 July 2016; or
- (b) that commences on or after 1 July 2016 and in relation to which section 72(1) or 92(1) of the Housing Restructuring and Tenancy Matters Act 1992 applies at its commencement 20
- (2) In section 2(1), repeal the definition of **income-related rent tenancy** (as inserted by **subsection (1)** of this section).

5 New section 2A inserted (Transitional, savings, and related provisions) 25

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 13A amended (Contents of tenancy agreement)

- (1) After section 13A(1)(a), insert:
- (aa) the landlord's contact mobile telephone number (if any); and
 - (ab) the landlord's contact email address (if any); and
- (2) After section 13A(1)(b), insert: 5
- (ba) the tenant's contact mobile telephone number (if any); and
 - (bb) the tenant's contact email address (if any); and
- (3) After section 13A(1), insert:
- (1A) The landlord must ensure that the following information about insulation is included in the tenancy agreement: 10
- (a) a statement as to whether or not there is insulation installed at the premises:
 - (b) details of the insulation installed at the premises (if any):
 - (c) if the tenancy is, or will be, an income-related rent tenancy and requirements in respect of insulation are imposed on the landlord as referred to in **section 45(1)(bb)**, a statement explaining how the landlord will comply with those requirements. 15
- (1B) Each of the following is an unlawful act:
- (a) the landlord fails to comply with **subsection (1A)**:
 - (b) the landlord includes, or allows to be included, in the tenancy agreement information about insulation that the landlord knows to be false or misleading. 20
- (4) Replace **section 13A(1A)(c)** (as inserted by **subsection (3)** of this section) with:
- (c) if requirements in respect of insulation are imposed on the landlord as referred to in **section 45(1)(bb) or 66I(1)(bb)**, a statement explaining how the landlord will comply with those requirements. 25

7 Section 15 amended (Notification of successor to landlord or tenant)

After section 15(1), insert:

- (1A) For the purposes of subsection (1)(a), the following must be notified with the person's contact address: 30
- (a) the person's contact mobile telephone number (if any):
 - (b) the person's contact email address (if any).

8 Section 16 amended (Change of name or address)

After section 16(1), insert: 35

- (1A) In subsection (1), **contact address** includes the following:

(a) a person's contact mobile telephone number:	
(b) a person's contact email address.	
9 Section 16A amended (Landlord must have agent if out of New Zealand for longer than 21 consecutive days)	
After section 16A(4), insert:	5
(4A) For the purposes of subsection (4)(a), the following must be notified with the agent's contact address:	
(a) the agent's contact mobile telephone number (if any):	
(b) the agent's contact email address (if any).	
10 Section 30 amended (Landlord to keep records)	10
After section 30(1), insert:	
(1A) The records must be kept for 7 tax years after the tax year to which they relate.	
(1B) In subsection (1A) , tax year means—	
(a) the period of 9 months beginning with 1 July 2016 and ending with 31 March 2017; or	15
(b) a later period of 12 months beginning with 1 April and ending with 31 March.	
11 Section 38 amended (Quiet enjoyment)	
After section 38(3), insert:	
(3A) Without limiting the generality of subsection (3), the landlord commits an unlawful act under that subsection if the landlord enters the premises purportedly under section 48(2B) without any reasonable cause to believe that the tenant has abandoned the premises.	20
12 Section 43 amended (Disposition of landlord's interest)	
(1) After section 43(1), insert:	25
(1A) The following must also be included in the notice under subsection (1)(a) if known to the landlord:	
(a) the purchaser's contact mobile telephone number (if any):	
(b) the purchaser's contact email address (if any).	
(2) In section 43(2), after "(1)(a)", insert "or (1A) ".	30
13 Section 45 amended (Landlord's responsibilities)	
(1) After section 45(1)(b), insert:	
(ba) comply with all requirements in respect of smoke alarms imposed on the landlord by regulations made under section 138A ; and	

- (bb) if the tenancy is an income-related rent tenancy, comply with all requirements in respect of insulation imposed on the landlord by regulations made under **section 138B**; and
- (2) In **section 45(1)(bb)** (as inserted by **subsection (1)** of this section), delete “if the tenancy is an income-related rent tenancy,”. 5
- (3) After section 45(1A), insert:
- (1B) The landlord in relation to an income-related rent tenancy that commences on or after 1 July 2016 but before 1 July 2019 is not required to comply with the requirements imposed on the landlord as referred to in **subsection (1)(bb)** until the 90th day after the date of commencement of the tenancy. 10
- (4) Repeal **section 45(1B)** (as inserted by **subsection (3)** of this section).
- 14 Section 48 amended (Landlord’s right of entry)**
- (1) In section 48(1)(b), replace “subsection (2) or subsection (3)” with “subsections (2) to (3)”.
- (2) After section 48(2), insert: 15
- (2A) **Subsection (2B)** applies if—
- (a) there is rent that is at least 14 days in arrear; and
- (b) the landlord has reasonable cause to believe that the tenant has abandoned the premises.
- (2B) The landlord may enter the premises for the purpose of confirming whether the tenant has abandoned the premises at any time specified in a notice given to the tenant not less than 24 hours before the intended entry. 20
- (3) In section 48(4)(b), replace “subsection (2) or subsection (3)” with “subsections (2) to (3)”.
- (4) In section 48(5), replace “subsection (2) or subsection (3) or subsection (4)” with “subsections (2) to (4)”. 25
- 15 Section 54 amended (Tribunal may declare retaliatory notice of no effect)**
- (1) In section 54(1), replace “14” with “28”.
- (2) After section 54(2), insert:
- (3) The giving of a notice terminating a tenancy is an unlawful act if the notice is declared under subsection (2) to be of no effect. 30
- 16 Section 61 amended (Abandonment of premises)**
- After section 61(5), insert:
- (6) A process for dealing with applications under subsection (1) within 10 working days and without a hearing is set out in **section 91AA**. 35

17 Section 66I amended (Landlord's ongoing obligations)

- (1) After section 66I(1)(b), insert:
- (ba) comply with all requirements in respect of smoke alarms imposed on the landlord by regulations made under **section 138A**; and
- (2) After **section 66I(1)(ba)** (as inserted by **subsection (1)** of this section), insert:
- (bb) comply with all requirements in respect of insulation imposed on the landlord by regulations made under **section 138B**; and

18 Section 73 amended (Seal of Tribunal)

- (1) In section 73(1), delete “, in the custody of each Registrar.” 10
- (2) After section 73(1), insert:
- (1A) The seal may be applied to a document physically or electronically.

19 Section 76 amended (Tenancy Mediators)

- (1) Replace section 76(1) with:
- (1) The chief executive must, from time to time, appoint Tenancy Mediators for the purposes of this Act. 15
- (1A) For the purposes of **subsection (1)**, the chief executive may appoint—
- (a) natural persons under the State Sector Act 1988; and
- (b) natural persons otherwise than under that Act on terms and conditions determined by the chief executive; and 20
- (c) bodies corporate on terms and conditions determined by the chief executive.
- (1B) A Tenancy Mediator that is a body corporate must perform or exercise its duties, functions, and powers through natural persons who are officers or employees of the body corporate and who are authorised by it for the purposes of this subsection. 25
- (2) Repeal section 76(2) and (3).
- (3) After section 76(9), insert:
- (9A) In relation to a Tenancy Mediator that is a body corporate, subsection (9)(b) also applies to any officer or employee of the body corporate through whom the body corporate is performing or exercising its duties, functions, and powers in accordance with **subsection (1B)**. 30
- (9B) Subsection (9)(b) does not prevent the following:
- (a) the chief executive exercising a right under, or otherwise enforcing, the terms and conditions of a Tenancy Mediator's employment contract or appointment. 35

- (b) a Tenancy Mediator that is a body corporate exercising a right under, or otherwise enforcing, the terms and conditions of the appointment or employment contract of any of its officers or employees.
- (4) Repeal section 76(11).
- 20 Section 78 amended (Orders of Tribunal)** 5
- After section 78(2), insert:
- (2AA) Subsection (2) does not apply if the work order, or any part of the work order, relates to any of the following:
- (a) smoke alarms:
- (b) insulation: 10
- (c) a failure to comply with a standard of fitness or other requirement applying by virtue of section 120C of the Health Act 1956.
- 21 Section 86 amended (Filing of applications)**
- After section 86(2), insert:
- (2A) The approved form for an application under section 61(1) must (in particular) require the landlord, in the application,— 15
- (a) to state whether the landlord wants the application to be dealt with under **section 91AA**; and
- (b) to provide specified contact details of the tenant for use by the Tribunal under **section 91AA(3)**, if the landlord wants the application to be dealt with under **section 91AA**. 20
- 22 Section 87 amended (Duties of chief executive on receipt of application)**
- (1) After section 87(1), insert:
- (1A) Despite subsection (1), an application under section 61(1) must be referred directly to the Tribunal and the chief executive must refer the application to the appropriate Registrar accordingly. 25
- (2) After section 87(3), insert:
- (4) The chief executive must ensure that a Tenancy Mediator to whom an application is referred is, and continues during the case to be, independent of each of the parties. 30
- (5) If any of the State services is a party, the Tenancy Mediator’s independence cannot be challenged just because the Tenancy Mediator is an officer or employee of any of the State services.
- 23 Section 88 amended (Functions of Tenancy Mediators)**
- In section 88(4), replace “his or her” with “the Tenancy Mediator’s”. 35

24 Section 91 amended (Notice of hearing by Tribunal)

After section 91(2), insert:

- (3) This section is subject to **section 91AA**.

25 New section 91AA inserted (Process for determining abandonment applications within 10 working days without hearing)

5

After section 91, insert:

91AA Process for determining abandonment applications within 10 working days without hearing

- (1) This section applies if a landlord who files an application under section 61(1) (the **abandonment application**) in accordance with section 86 states in the abandonment application that the landlord wants the abandonment application to be dealt with under this section. 10
- (2) The Tribunal must complete the 2 stages set out in **subsections (3) to (6)** within 10 working days after the date on which the abandonment application was filed in accordance with section 86. 15
- Stage 1*
- (3) The Tribunal must, using the contact details provided by the landlord as referred to in **section 86(2A)(b)**, take reasonable steps to attempt—
- (a) to bring the abandonment application to the attention of the tenant; and
- (b) to ascertain whether the tenant wants to contest the abandonment application. 20
- Stage 2*
- (4) The Tribunal must—
- (a) decide whether it is satisfied of both of the matters in **subsection (5)**; and
- (b) if it decides that it is satisfied of both of those matters, determine the abandonment application in the way referred to in **subsection (5)(b)**. 25
- (5) The matters referred to in **subsection (4)(a)** are as follows:
- (a) that the tenant does not want to contest the abandonment application;
- (b) that the information provided by the landlord with the abandonment application is sufficient on its own, or with only minor clarifications from the landlord, to enable the Tribunal to determine the abandonment application properly without a hearing and on the basis only of that information, or of that information with those minor clarifications. 30
- (6) For the purposes of **subsection (5)(a)**, the Tribunal may treat the tenant as not wanting to contest the abandonment application if the tenant does not, within a period determined by the Tribunal, respond to the steps taken by the 35

- Tribunal under **subsection (3)** or respond to those steps in a way required by the Tribunal.
- (7) If the Tribunal decides that it is not satisfied of both of the matters in **subsection (5)**, the Tribunal must proceed with the abandonment application in accordance with section 91. 5
- 26 Section 91B replaced (Hearing may proceed even if party not served)**
- Replace section 91B with:
- 91B Substituted service, etc**
- (1) This section applies if—
- (a) a notice or other document that is required to be served on a party is not served in accordance with this Act; and 10
- (b) the Tribunal is satisfied that all reasonable efforts have been made to serve the notice or other document on the party in accordance with this Act.
- (2) The Tribunal may— 15
- (a) direct—
- (i) that, instead of service in accordance with this Act, specified steps be taken that are likely to bring the notice or other document to the attention of the party; and
- (ii) that the notice or other document be treated as served on the party on the happening of a specified event or on the expiry of a specified period; or 20
- (b) direct that the notice or other document be treated as served on the party on a specified date, if steps have already been taken that have brought, or are likely to bring or to have brought, the notice or other document to the attention of the party; or 25
- (c) dispense with the requirement for service and proceed as if the notice or other document had been served on the party in accordance with this Act.
- 27 Section 99 amended (Tribunal may require inquiry and report by Tenancy Mediator or suitable person)** 30
- After section 99(3), insert:
- (4) A person appointed under subsection (3) may be a natural person or a body corporate.
- 28 Section 101 amended (Protection of persons appearing, etc)** 35
- After section 101(2), insert:

- (3) In relation to a Tenancy Mediator that is a body corporate, subsection (2)(a) also applies to any officer or employee of the body corporate through whom the body corporate is exercising any power or jurisdiction under any of the provisions of this Act in accordance with **section 76(1B)**.
- 29 Section 108 amended (Enforcement of work orders)** 5
- (1) In section 108(1)(b) and (2)(b), after “78(2)”, insert “(if any)”.
- (2) In section 108(2A), replace “intentionally” with “, without reasonable excuse,”.
- 30 Section 109 amended (Unlawful acts)**
- (1) In section 109(3), after “application”, insert “(other than one referred to in **subsection (3A)**)”.
- (2) After section 109(3), insert:
- (3A) In the case of an application in respect of an unlawful act under **section 54(3)**, the Tribunal may order the landlord to pay a sum in the nature of exemplary damages if the Tribunal is satisfied that it is just to do so having regard to the matters referred to in subsection (3)(b) to (d). 10 15
- 31 Section 114 amended (Powers of entry of Tenancy Mediators)**
- In section 114(1), after “Mediator”, insert “who is a natural person”.
- 32 Section 123 amended (General functions and powers of chief executive)**
- After section 123(1)(da), insert:
- (db) the publication of comments about particular persons who are, or have been, landlords: 20
- 33 New sections 123A to 123E inserted**
- After section 123, insert:
- 123A Documents to be retained by landlord and produced to chief executive if required** 25
- (1) A landlord must retain the following documents during, and for 12 months after the termination of, the tenancy:
- (a) the tenancy agreement and any variations or renewals of it (or copies):
- (b) any reports of inspections of the premises carried out by or for the landlord during the tenancy (or copies): 30
- (c) records of any maintenance or repair work carried out at the premises by or for the landlord during the tenancy (or copies):
- (d) any notices or correspondence between the landlord (or a person acting on the landlord’s behalf) and the tenant (or a person acting on the tenant’s behalf) in relation to the tenancy (or copies). 35

- (2) The chief executive may by notice in writing require a landlord to produce to the chief executive any specified documents, or any documents of a specified class, that the landlord is required to retain under **subsection (1)(b) to (d)**.
- (3) A notice under **subsection (2)**—
- (a) may be given only if the chief executive reasonably requires the documents for the purposes of the chief executive’s functions or powers under this Act; and 5
 - (b) may not be given any later than 12 months after the termination of the tenancy; and
 - (c) must specify the way in which the documents must be produced to the chief executive. 10
- (4) A landlord commits an unlawful act if, without reasonable excuse, the landlord fails, within 10 working days after receiving a notice under **subsection (2)**, to produce the documents to the chief executive in the way specified in the notice.
- 123B Documents to be produced by tenant to chief executive if required** 15
- (1) The chief executive may by notice in writing require a tenant to produce to the chief executive any specified documents, or any documents of a specified class, that—
- (a) fall within **section 123A(1)(a) to (d)**; and
 - (b) are in the tenant’s possession or under the tenant’s control. 20
- (2) A notice under **subsection (1)**—
- (a) may be given only if the chief executive reasonably requires the documents for the purposes of the chief executive’s functions or powers under this Act; and
 - (b) may not be given any later than 12 months after the termination of the tenancy; and 25
 - (c) must specify the way in which the documents must be produced to the chief executive.
- 123C Chief executive’s powers in relation to produced documents**
- If a document is produced to the chief executive under **section 123A or 123B**, the chief executive may— 30
- (a) inspect and make records of the document; and
 - (b) take copies of the document or extracts from it.
- 123D Power of entry to inspect premises**
- (1) An authorised person may, at any reasonable time, enter any premises that are the subject of a tenancy to inspect the premises, and any fixtures, fittings, and chattels in the premises, if— 35

- (a) the inspection is authorised by an order of the Tribunal under **section 123E** and is carried out in accordance with any conditions set out in that order; and
- (b) the authorised person gives both the landlord and the tenant at least 24 hours' written notice of the authorised person's intention to enter the premises. 5
- (2) A notice under **subsection (1)(b)** must—
- (a) state that it is given under this section; and
- (b) state the address of the premises to which it relates; and
- (c) state the time at which, and the date on which, the authorised person proposes to inspect the premises; and 10
- (d) include a copy, sealed with the Tribunal's seal, of the Tribunal's order under **section 123E**.
- (3) The authorised person's power to inspect includes the power to do any of the following: 15
- (a) to bring onto, and operate on, the premises any equipment (and to use electricity from the electricity supply at the premises for the purpose of operating the equipment):
- (b) to take or make photographs, sound or video recordings, measurements, or drawings: 20
- (c) to take samples of things for analysis:
- (d) to test things.
- (4) The landlord or the tenant (as the case may be) must provide the authorised person with all assistance that the authorised person reasonably requests from the landlord or the tenant in relation to the inspection, including (for example) assistance reasonably requested for the purpose of enabling the authorised person to enter the premises or to access any part of the premises. 25
- (5) Both the landlord and the tenant may accompany, or have a person acting on behalf of the landlord or the tenant accompany, the authorised person while the authorised person is inspecting the premises. 30
- (6) An authorised person who enters any premises under this section must,—
- (a) on initial entry, produce evidence of the authorised person's identity; and
- (b) while subsequently on the premises, produce that evidence to any person who reasonably requests to see it.
- (7) In respect of any premises in any defence area (within the meaning of the Defence Act 1990), an authorised person must exercise the authorised person's powers under this section subject to any conditions relating to security that the officer in charge of the defence area imposes. 35

- (8) A person commits an offence and is liable on conviction to a fine not exceeding \$2,000 if the person, without reasonable excuse,—
- (a) fails to comply with **subsection (4)**; or
 - (b) obstructs or hinders an authorised person in the exercise of the authorised person's powers under this section. 5
- (9) Sections 166 and 167 of the Search and Surveillance Act 2012 apply (with any necessary modifications) in relation to the powers of an authorised person under this section.
- (10) In this section, **authorised person** means an officer of the department, or any other person, who is authorised by the chief executive to enter premises under this section. 10
- (11) The chief executive may authorise a person for the purposes of **subsection (10)** only if the chief executive is satisfied that the person is properly qualified or trained to exercise the powers of an authorised person under this section.
- (12) This section does not affect any power or right that a person has apart from this section to enter any premises or to do anything on any premises. 15

123E Tribunal may authorise inspection

- (1) The chief executive may, in relation to a tenancy, apply to the Tribunal for an order authorising an inspection under **section 123D**.
- (2) The Tribunal may make an order authorising the inspection if it is satisfied that the chief executive has reasonable grounds for believing— 20
- (a) that there has been a breach of the tenancy agreement or a breach of this Act in relation to the tenancy; and
 - (b) that the inspection is reasonably necessary for the purposes of the chief executive's functions or powers under this Act in relation to the breach. 25
- (3) The Tribunal's authorisation may be given subject to conditions, which must be set out in the order.

34 New sections 124A and 124B inserted

After section 124, insert:

124A Chief executive may take proceedings as if tenant 30

- (1) The chief executive may, if satisfied that it is in the public interest to do so on any of the grounds listed in **subsection (2)**, do any of the following in relation to a tenancy as if the chief executive were the tenant:
- (a) initiate any civil proceedings that could be brought by the tenant;
 - (b) assume the conduct of any civil proceedings brought by the tenant; 35
 - (c) without limiting the generality of **paragraphs (a) and (b)**, apply to the Tribunal for a work order.

- (2) The grounds referred to in **subsection (1)** are as follows:
- (a) in the chief executive’s opinion, the condition of the premises, or the condition of any premises in relation to which the landlord is the landlord under another tenancy, poses a significant risk to the health or safety of any person: 5
 - (b) in the chief executive’s opinion, the landlord has committed a serious breach of this Act, or has persistently breached this Act, in relation to the tenancy or otherwise:
 - (c) in the chief executive’s opinion, any conduct of the landlord in relation to the tenancy or otherwise risks undermining public confidence in the administration of this Act: 10
 - (d) any other ground that the chief executive considers appropriate.
- (3) The chief executive may act under **subsection (1)** without the tenant’s consent and despite the tenant’s refusal to consent, and even if the tenancy has terminated. 15
- (4) If the tenancy has terminated,—
- (a) any application for a work order that is made, or the conduct of which is assumed, by the chief executive must be dealt with (or continue to be dealt with after the termination) as if the tenancy were still in force; and
 - (b) any work order granted on such an application may be enforced by the chief executive under section 108(1) despite the tenancy’s termination. 20

124B Supplementary provision to section 124A

- (1) The chief executive may not initiate, or assume the conduct of, any proceedings under **section 124A(1)** any later than 12 months after the date on which the chief executive becomes aware of the matters on which the proceedings are based. 25
- (2) If the chief executive acts under **section 124A(1)**, the following provisions apply in relation to the proceedings in question:
- (a) the chief executive has the same rights and remedies as the tenant, including the right to settle the proceedings: 30
 - (b) the chief executive may do anything in relation to the proceedings that the tenant could do and, as between the chief executive and the tenant, has control of the proceedings:
 - (c) if the proceedings have already commenced, the Tribunal or court must substitute the chief executive for the tenant as a party to the proceedings: 35
 - (d) any claim that a person has against the tenant must be dealt with in separate proceedings brought by the person against the tenant (and not against the chief executive):

- (e) any order or judgment may be enforced by the chief executive as if the chief executive were the tenant:
- (f) any money (excluding costs) recovered by the chief executive must, without any deduction, be paid by the chief executive to the tenant:
- (g) the tenant must reasonably co-operate with the chief executive. 5
- (3) In **subsection (2)(d)**, **claim** means a claim for money, a possession order, a work order, or anything else, whether under the tenancy agreement, this Act, or otherwise.
- (4) If a person is the landlord under 2 or more tenancies and the chief executive acts under **section 124A(1)** in relation to 2 or more of those tenancies, the Tribunal or any court may allow any of the proceedings in question that are before it to be consolidated with 1 or more of any of the other proceedings in question that are before it. 10
- (5) Any certificate given by the chief executive relating to the chief executive's powers under **section 124A** or this section is, in the absence of proof to the contrary, sufficient evidence of the matters referred to in the certificate. 15
- 35 Section 133 amended (Tribunal or chief executive may require terms of tenancy agreement)**
- (1) After section 133(1), insert:
- (1A) A notice under subsection (1) may require the landlord to produce to the Tribunal or the chief executive, in the way specified in the notice, the tenancy agreement and any variations or renewals of it (or copies), and the Tribunal or the chief executive may— 20
- (a) inspect and make records of any document that is produced; and
- (b) take copies of the document or extracts from it. 25
- (2) In section 133(2), replace “such a notice” with “a notice under subsection (1)”.
- (3) In section 133(2), replace “\$400” with “\$2,000”.
- 36 Section 136 amended (Service of documents)**
- (1) After section 136(1)(b), insert:
- (ba) if the landlord is a company, it may be sent by post addressed to the landlord at the address of the landlord's registered office: 30
- (2) After section 136(1)(c), insert:
- (ca) if the landlord is a company, it may be delivered to the landlord's registered office, and either placed in the mailbox or attached to the door in a prominent position: 35
- (3) After section 136(8), insert:
- (9) Where any document is transmitted by email in accordance with this section after 5 pm on any day, it is to be treated, in the absence of evidence to the con-

trary, to have been given or served on the next working day after the date on which it was transmitted.

- (10) In proving service of a document transmitted by email, it is sufficient to prove that the email was—
- (a) properly addressed to the email address in question; and
 - (b) properly transmitted with the document to that email address.

5

37 New section 138A inserted (Regulations in respect of smoke alarms)

After section 138, insert:

138A Regulations in respect of smoke alarms

- (1) The Governor-General may, by Order in Council, make regulations imposing on landlords requirements in respect of smoke alarms for the purposes of **section 45(1)(ba) or 66I(1)(ba)**. 10
- (2) Regulations under this section may do the following:
- (a) impose different requirements for different descriptions of landlords, premises, areas in New Zealand, or other circumstances: 15
 - (b) impose requirements on all landlords or requirements that apply only for particular descriptions of landlords, premises, areas in New Zealand, or other circumstances:
 - (c) impose requirements that are subject to exceptions.
- (3) The requirements that may be imposed by regulations under this section include the following (for example): 20
- (a) requirements that smoke alarms be installed at premises:
 - (b) requirements about the inspection, maintenance, or replacement of smoke alarms that are installed at premises:
 - (c) requirements about the numbers, locations, condition, or technical specifications of smoke alarms that are installed at premises. 25

38 New section 138B inserted (Regulations in respect of insulation)

- (1) After **section 138A** (as inserted by **section 37** of this Act), insert:

138B Regulations in respect of insulation

- (1) The Governor-General may, by Order in Council, make regulations imposing on landlords requirements in respect of insulation for the purposes of **section 45(1)(bb)**. 30
- (2) Regulations under this section may do the following:
- (a) impose different requirements for different descriptions of landlords, premises, areas in New Zealand, or other circumstances: 35

- (b) impose requirements on all landlords or requirements that apply only for particular descriptions of landlords, premises, areas in New Zealand, or other circumstances:
- (c) impose requirements that are subject to exceptions.
- (3) The requirements that may be imposed by regulations under this section include the following (for example): 5
- (a) requirements that insulation be installed at premises:
- (b) requirements about the inspection, maintenance, or replacement of insulation that is installed at premises:
- (c) requirements about the quantities, locations, condition, or technical specifications of insulation that is installed at premises. 10
- (2) In **section 138B(1)** (as inserted by **subsection (1)** of this section), after “**45(1)(bb)**”, insert “**or 66I(1)(bb)**”.

Part 2

Amendments to schedules of principal Act

15

39 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule after the last section of the principal Act.

40 Schedule 1A amended

- (1) In Schedule 1A, insert in their appropriate numerical order: 20
- | | | |
|----------------|---|-------|
| 13A(1B) | (Non-compliance with section 13A(1A) , etc) | 500 |
| 30(2) | (Landlord failing to keep records) | 200 |
| 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) | 2,000 |
| 123A(4) | (Landlord failing to provide required documents to chief executive) | 1,000 |
- (2) In Schedule 1A, item relating to section 108(2A), replace “Intentional breach of work order” with “Breach of work order without reasonable excuse”.

Schedule
New Schedule 1AA inserted

s 39

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1

Provisions relating to Residential Tenancies Amendment Act 2015

1 Interpretation

In this **Part**,—

10

amendment means an amendment to this Act made by a provision of the Amendment Act

Amendment Act means the Residential Tenancies Amendment Act **2015**

commencement date, in relation to an amendment, means the date on which the provision of the Amendment Act that makes the amendment comes into force.

15

2 Existing tenancies, etc

(1) An amendment applies to a tenancy whether the tenancy commences before, on, or after the commencement date.

(2) This clause is subject to **clause 3**.

20

3 Application of amendments to sections 13A, 15, 16, 16A, and 43 (contents of tenancy agreement, etc)

An amendment made by **section 6, 7, 8, 9, or 12** of the Amendment Act applies to a tenancy only if the tenancy agreement is made on or after the commencement date.

25

4 Application of amendment to section 30 (landlord to keep records)

The amendment made by **section 10** of the Amendment Act does not apply to records in respect of times before the commencement date.

5 Application of amendments to section 54 (Tribunal may declare retaliatory notice of no effect)

30

An amendment made by **section 15** of the Amendment Act applies only if the notice terminating the tenancy is given on or after the commencement date.

6	Application of amendments to sections 61, 76, 78, 86, 87, 88, 91, 99, 101, and 114 and new section 91AA (abandonment applications, Tenancy Mediators, etc)	
	An amendment made by section 16, 19, 20, 21, 22, 23, 24, 25, 27, 28, or 31 of the Amendment Act does not apply to proceedings commenced before the Tribunal before the commencement date.	5
7	Application of amendments to section 108 and Schedule 1A (enforcement of work orders)	
	An amendment made by section 29(2) or 40(2) of the Amendment Act applies only if the work order is made on or after the commencement date.	10
8	Application of new section 123A (documents to be retained by landlord and produced to chief executive if required)	
(1)	The amendment made by section 33 of the Amendment Act applies subject to subclauses (2) and (3) of this clause.	
(2)	A landlord is not required under section 123A(1)(a) to (d) (as inserted by the amendment) to retain any of the following (or copies of any of the following):	15
	(a) a tenancy agreement, or a variation or renewal of a tenancy agreement, made before the commencement date:	
	(b) reports of inspections carried out before the commencement date:	20
	(c) records of maintenance or repair work carried out before the commencement date:	
	(d) notices given, or correspondence made, before the commencement date.	
(3)	A notice under section 123A(2) (as inserted by the amendment) may require a landlord to produce to the chief executive any document covered by subclause (2)(b) to (d) of this clause that, at the time the landlord receives the notice, is in the landlord's possession or under the landlord's control.	25
9	Application of amendments to section 133 (Tribunal or chief executive may require terms of tenancy agreement)	
(1)	The amendment made by section 35(1) of the Amendment Act applies to a tenancy agreement, or a variation or renewal of a tenancy agreement, made before the commencement date only if, at the time the landlord receives the notice under section 133(1), the tenancy agreement or the variation or renewal (or a copy) is in the landlord's possession or under the landlord's control.	30
(2)	The amendment made by section 35(3) of the Amendment Act applies only to offences committed on or after the commencement date.	35

10 Application of amendments to Schedule 1A (amounts for unlawful acts)

The amendments made by **section 40(1)** of the Amendment Act in relation to sections 30(2) and 48(4)(b) of this Act apply only to unlawful acts that occur on or after the commencement date.