



## Briefing

### RESIDENTIAL TENANCIES (HEALTHY HOMES STANDARDS) REGULATIONS 2019: REVIEW OF COMPLIANCE TIMEFRAMES FOR PRIVATE LANDLORDS AND PUBLIC HOUSING PROVIDERS (KĀINGA ORA AND COMMUNITY HOUSING TENANCIES)

|                 |               |                        |                |
|-----------------|---------------|------------------------|----------------|
| <b>Date</b>     | 8 August 2022 | <b>Security level</b>  | Confidential   |
| <b>Priority</b> | High          | <b>Tracking number</b> | HUD2022-000196 |

#### ACTION SOUGHT FROM MINISTER(S)

|  |   |
|--|---|
| <b>Hon Dr Megan Woods</b><br>Minister of Housing                           | <p><b>Agree</b> to a policy option to change healthy homes standards compliance timeframes for private landlords and public housing providers.</p> <p><b>Direct</b> officials to prepare a Cabinet paper presenting changes to the compliance timeframes to the Residential Tenancies (Healthy Homes Standards) Regulations 2019.</p> |
| <b>Hon Marama Davidson</b><br>Associate Minister of Housing (Homelessness) | <b>For your information</b>   |
| <b>Hon Peeni Henare</b><br>Associate Minister of Housing (Māori Housing)   | <b>For your information</b>   |

#### CONTACT FOR DISCUSSION

| Name               | Position   | Telephone                | 1st contact |
|--------------------|--|--------------------------|-------------|
| Claire Leadbetter  | Manager Policy and Legislation Design                | 04 832 2431 or s 9(2)(a) | ✓           |
| Carolina Rodriguez | Senior Policy Advisor, Policy and Legislation Design | 04 831 6093              |             |

#### OTHER AGENCIES CONSULTED

The Parliamentary Counsel Office, The Ministry of Business, Innovation and Employment (MBIE), Kāinga Ora, the Energy Efficiency and Conservation Authority, Land Information New Zealand, The Treasury, the Ministry of Education, The New Zealand Defence Force, the Department of Prime Minister and Cabinet, the Ministry of Health, the Ministry of Social Development, Department of Corrections, and Te Puni Kōkiri.



## Briefing

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|--|---|------------------------|----------------|
| <b>Minister(s) receiving</b>   | Hon Dr Megan Woods, Minister of Housing                           |                        |                |
| <b>Minister(s) CCed</b>  | Hon Peeni Henare, Associate Minister of Housing (Māori Housing)   |                        |                |
|  | Hon Marama Davidson, Associate Minister of Housing (Homelessness) |                        |                |
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### PURPOSE

1. To provide you with advice to extend the compliance timeframes for the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (healthy homes standards) compliance for private and public housing providers.

### EXECUTIVE SUMMARY

2. Global supply chain and freight issues stemming from the impacts of COVID-19 have led to a reduction in supply and availability of a wide range of imported goods across the world and caused challenges for landlords seeking to comply with the healthy homes standards. Rental sector stakeholders have advised us that the current compliance dates put private landlords, who are genuinely trying to comply with the healthy homes standards, at risk of breaching their obligations due to ongoing issues outside of their control. These issues are mainly present for properties entering the rental market for the first time. There are also issues with accessing trade capacity for some interventions and regions.
3. Kāinga Ora is also facing challenges in meeting the compliance date of 1 July 2023 for public housing. This is despite its efforts to increase delivery rates. Even if work is successfully accelerated, Kāinga Ora expects to have access issues in 5 to 10 percent of homes which require resolution before work can be undertaken.
4. We consider that the ongoing impacts of COVID-19 require a change to compliance dates for the healthy homes standards for private landlords and public housing providers.





5. We recommend the healthy homes standards compliance deadline for private landlords be extended from 90 to 120 days after their first renewal date after 1 July 2021. We also recommend an extension of the 'drop dead' compliance date of one year for all landlords, that is, extending private landlords' last date to comply to 1 July 2025 and Kāinga Ora and Community Housing Providers' (CHPs) last date to comply to 1 July 2024.

**RECOMMENDED ACTIONS**

**It is recommended that you:**

- a. **Note** that Kāinga Ora, community housing providers and private landlords are facing challenges in meeting the compliance deadlines for the healthy homes standards.
- b. **Agree** to change compliance timeframes as follows:
  - i. For private landlords, extend the timeframe to comply for the start of a new or renewed tenancy from 90 to 120 days, and
  - ii. Extend all final deadlines for 12 months, that is, extending the final compliance date for private landlords to 1 July 2025 and Kāinga Ora and community housing providers to 1 July 2024
- c. **Agree** that the extension to the compliance timeframes will only be available to landlords whose healthy homes compliance date has not yet passed.
- d. **Agree** that compliance timeframe changes will not apply to the heating standard for landlords who have been eligible for the grace period on the heating standard, and their compliance date remains 12 February 2023.

Noted

Agree/ Disagree

Agree/ Disagree

Agree/ Disagree

Claire Leadbetter  
**Manager Policy and  
Legislation Design**

8/8/22

Hon Dr Megan Woods,  
**Minister of Housing**

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## BACKGROUND

### Previous advice on Kāinga Ora compliance timeframes

6. On 21 May 2021, we provided you with advice regarding Kāinga Ora's compliance dates under the healthy homes standards [BRF20/21050941]. Kāinga Ora has a fixed deadline of 1 July 2023. Private landlords have a rolling deadline of compliance within 90 days of a new or renewed tenancy, with a final deadline of 1 July 2024. In 2021, Minister Williams declined the request to change Kāinga Ora's compliance timeframes to the same timeframes as private landlords and officials committed to continue to monitor supply chain issues.
7. Minister Williams met with Kāinga Ora on 17 June 2021 to discuss their request. At the meeting, Kāinga Ora agreed that it would continue looking at options to scale up projects to meet the current deadline. It was agreed that Kāinga Ora would provide further advice to Minister Williams following a discussion with its Board about any risks that may impact its ability to meet the current compliance date.
8. On 21 June 2021, we recommended making changes to compliance dates for any types of landlords based on a discussion with stakeholders, but also recommended that this should be revisited if further lockdowns were required [BRF20/21061009 refers].

### Impacts of the second national COVID-19 lockdown

9. On 23 September 2021, after the second national lockdown (Alert Level 4), officials tested with a range of stakeholders whether they would still be able to meet the compliance dates. Based on the information received, landlords were facing several barriers, including product supply issues and difficulty in accessing tradespeople to undertake the required building work [BRF2122091106 refers]. The COVID-19 pandemic has contributed to a loss of approximately 240,000 direct labour hours and have set Kāinga Ora's compliance programme back by approximately six months.

10. s 9(2)(f)(iv)

s 9(2)(h)

Kāinga Ora has since made efforts to accelerate its work on healthy homes standards.

11. In April 2022, the Kāinga Ora Board approved a number of changes to the healthy homes programme to accelerate work, including a further \$60.7 million increase to the budget in the final year of work. Kāinga Ora has increased delivery rates from 180 homes per week in 2021, to approximately 550 homes per week in the first half of 2022.

<sup>1</sup> Legal advice/ legally privileged





12. Modelling has indicated that if the trend at that time continued without making any changes, work would be 90 percent complete as at 1 July 2023. Kāinga Ora expects that even if work is successfully accelerated to the required volume, there will likely still be a persistent 5-10 percent of its homes where there are access issues due to customer complexities. Completing these properties will require more intensive management and take time to resolve. A timeframe extension would partially mitigate the compliance risk for these homes.

13. s 9(2)(f)(iv)

**However, landlords are facing supply and trade constraints**

14. It is too early to assess the new trend line following the April decisions. Kāinga Ora will continue to aim for the 1 July 2023 compliance date. However, COVID-19 fluctuations or any further unforeseen capacity constraints may mean that delivery will not reach or sustain the required increase for Kāinga Ora to complete 700-800 properties per week from September. If the timeframes are extended, sufficient buffer should be included to account for this uncertainty. There is also regional variation in the supply and trade constraints which means that forecast completion dates will differ geographically and some may face sustained constraints for longer than others.

15. We are continuing to monitor the data and evidence emerging from the ongoing constraints of the construction sector. The issues with global supply and freight chains stemming from the impacts of COVID-19 have led to a reduction of supply and availability of a wide range of imported goods across the world. This is being acutely felt in New Zealand given our location and the size of our market.

16. While many of the supply side issues are likely to begin to ease over the next 12 to 24 months, officials consider that an extension in the timeframes for healthy homes standards compliance will address the immediate supply pressures and will enable landlords to continue with healthy homes implementation activities in a measured way.

17. Kāinga Ora supports the recommendation to extend the compliance timeframes. While their compliance programme has significantly increased over the last twelve months compared to earlier periods, their model estimates that Kāinga Ora will fall short of fully meeting the compliance target of July 2023 by about 5 to 10 percent of their stock.

18. Kāinga Ora has advised that despite their best efforts to mitigate challenges, there is little to no buffer should any other events occur and the final homes to complete are likely to be the most complex, including those with persistent access issues.





## **Review of Compliance Timeframes for Private Landlords and Public Housing Providers**

### **Policy design of the current compliance dates**

19. When the healthy homes standards were designed in 2018, officials considered several factors when setting the compliance dates. A primary consideration was ensuring that landlords do not compete for building materials and tradespeople at the same time and that there would be sufficient capacity in the building industry to undertake the required additional work. Furthermore, there was a desire from the Government that public rentals, such as properties managed by Kāinga Ora and CHPs, should comply ahead of privately owned rental properties. Therefore, the compliance dates were staggered depending on the type of tenancy a landlord manages.
20. Private landlords have a rolling compliance date of between 1 July 2021 and 1 July 2024. Their compliance date is triggered when a new tenancy is entered, or the tenancy is renewed, and must comply with the healthy homes standards within 90 days of that date. Public and community housing landlords that manage a large housing stock were given a fixed compliance date rather than a rolling date based on tenancy turnover. Because of the volume of properties they manage, having a fixed date helps them to undertake this work in an efficient manner. All boarding house tenancies needed to comply by 1 July 2021 and Kāinga Ora and registered CHPs need to comply by 1 July 2023.
21. When the compliance dates were being designed, tenancies lasted around 20 months on average. However, the length of tenancies has increased since 2018, to an average of 26.73 months in 2021. The number of tenancies ending each year is also decreasing (from 151,072 in 2018 to 140,166 in 2021).
22. Average tenancy length is relevant as the compliance dates took into consideration at least one rotation of tenants and for houses to be vacant so landlords could undertake the healthy homes standards works, without imposing on tenants. Although some private landlords and most Kāinga Ora homes have met the healthy homes standards while houses are occupied, the extended period in which tenants are currently staying might have also deterred landlords from bringing their properties up to the healthy homes standards.
23. Homes owned by New Zealand Defence Force, Ministry of Education, Land Information New Zealand, Department of Corrections and Te Puni Kōkiri are considered to be private landlords for the purpose of the regulations. This means that the proposed changes in the compliance deadlines would also apply to them as if they were private landlords.

### **Long-lasting impact of COVID-19 on landlords' ability to comply with the healthy homes standards**

24. Officials have reached out to a range of stakeholders to investigate perceptions as to whether the COVID-19 related issues have persisted and how they have impacted landlords' ability to comply with the healthy homes standards. Stakeholders have





overall expressed concerns about the increasing costs of trades and materials caused by supply-side and demand-side headwinds.

25. Property managers perceive that homes that are yet to comply with healthy homes standards are at high risk of not meeting their deadline given the current environment. Property managers are unlikely to take on any properties that are not already fully healthy homes compliant as they want to avoid any non-compliance risk.
26. The main issue for private landlords seems to be the supply of heat-pumps. Medium and small heat pump installers usually order the devices as needed so if there are any delays at any stage of the supply chain, it could significantly affect their ability to install them on time. Stakeholders from the rental sector have consistently reported that trying to buy a suitable heat pump and get it installed within 90 days is very ambitious in the current environment.
27. Kāinga Ora has reported that it has put steps in place to manage some of its issues around the supply of heat-pumps. However, Kāinga Ora continues to experience issues around supply of other materials, such as insulation, and the availability of carpenters and heat pump installers. Pressures on materials and trade vary in different parts of the country and depend on suppliers.
28. While many of the supply side issues are likely to begin to ease over the next 12 to 24 months, officials consider that an extension in the timeframes for healthy homes standards compliance will address the immediate supply pressures and will enable landlords to continue with healthy homes implementation activities in a measured way.
29. Kāinga Ora supports the recommendation to extend the compliance timeframes. While their compliance programme has significantly increased over the last 12 months compared to earlier periods, their model estimates that Kāinga Ora will fall short of fully meeting the compliance target of July 2023 by about 5 to 10 percent of their stock.

### **PROPOSED EXTENSION TO COMPLIANCE TIMEFRAMES**

30. The objective of the proposed extension is to provide landlords and property managers sufficient time to comply with the healthy homes standards given the current trades constraints and the supply chain issues for some building products. The rationale for Kāinga Ora and CHPs to continue to have a fixed deadline is due to the longer nature of the tenancies they manage compared to private landlords whose turnover is shorter, and therefore have a rolling deadline. It also allows them to undertake a programme management approach due to the scale and resources needed to ensure their large and diverse stock of homes comply with the standards.
31. Officials suggest using the following criteria to assess options:
  - a. Fairness between different types of landlords – this relates to the integrity of the rules for different types of tenants. Supply chain issues are widespread and are affecting all types of landlords.
  - b. Accountability – changes and new rules must be clear to communicate and practical to enforce.
  - c. Proportionality – provide a reasonable extension that corrects the “market issue” but gives no further advantage to landlords who are avoiding compliance. Large scale





landlords must keep the momentum gained and must not lose the sense of urgency and efficiencies gained in the process.

**The proposed options**

- 32. Officials propose extending the compliance dates to a timeframe that reflects the reality of the current trades constraints and the supply chain issues for some building products. The current challenges mean that despite making reasonable efforts to comply, some landlords have not been able to comply with some healthy homes standards within 90 days of a start of a tenancy. This is particularly relevant where a property is entering the rental market for the first time. This risks properties being left empty between tenancies as landlords wait for products and/or labour to be available. In choosing our preferred option we have balanced ensuring that the timeframes impose a reasonable compliance burden with the need to ensure landlords comply as soon as possible.
- 33. The options are set out in Table 1 below. For private landlords, both options change the compliance dates for the start of a new or renewed tenancy from 90 to 120 days which is the minimal additional time required in the current operating environment (following proportionality criteria). Also, both options add the same amount of time to the final compliance date to private landlords and Kāinga Ora. This is designed to equitably reflect the pressures on public and private sector landlords.
- 34. The only difference between option 1 and option 2 is the amount of time given to the final compliance date to private landlords and Kāinga Ora. We suggest as option 1, an extension of 9 months (to 31 March 2025) and as option 2, a more “round” extension of whole year (to 1 July 2025). The options exclude changes to boarding houses which have had to comply already and properties which have already passed their compliance dates.

**Table 1: Suggested options to change the compliance date of the healthy homes standards**

| TYPES OF LANDLORDS | CURRENT COMPLIANCE DATES   | OPTION 1  | OPTION 2 (OFFICIALS PREFERRED)   |
|--------------------|--|---|--|
| Private landlords  | Rolling deadline: from 1 July 2021 a landlord will have to ensure that a tenanted property is compliant within 90 days of the start of every new or renewed tenancy. | Rolling deadline: from the date the amendments come into force a landlord will have to ensure that a tenanted property is compliant within 120 days of the start of every new or renewed tenancy. | Rolling deadline: a landlord will have to ensure that a tenanted property is compliant within 120 days of the start of every new or renewed tenancy. |





|   |   |   |   |
|---|---|---|---|
|   | Final deadline: all private landlords will have to be compliant by 1 July 2024, if they have not had to comply earlier. | Final deadline: all residential tenancies will have to be compliant by 31 March 2025, unless they have had to comply earlier. | Final deadline: all residential tenancies will have to be compliant by 1 July 2025, unless they have had to comply earlier. |
| Public housing providers (Kāinga Ora and CHP's) | Fixed deadline: residential tenancies are required to meet the standards by 1 July 2023.                                | Fixed deadline: residential tenancies are required to meet the standards by 31 March 2024.                                    | Fixed deadline: residential tenancies are required to meet the standards by 1 July 2024.                                    |
| Boarding houses                                 | Fixed deadline: residential tenancies are required to have met the standards by 1 July 2021.                            | No change   | No change   |

## ANALYSIS AND RECOMMENDATIONS

35. For private landlords, both options change the compliance dates after the start of a new or renewed tenancy from 90 to 120 days, which is the minimal additional time required in the current operating environment (following proportionality criteria). Also, both options add the same amount of time to the final compliance date for private landlords and public housing providers. This is designed to equitably reflect the pressures on public and private sector landlords.
36. The only difference between option 1 and option 2 is the amount of time given for the final compliance date to private landlords and public housing providers. We suggest as option 1, an extension of 9 months (to 31 March 2025) and as option 2, a more “round” extension of a whole year (to 1 July 2025).
37. Officials recommend Option 2, bringing the final compliance for private landlords to 1 July 2025 and Kāinga Ora to 1 July 2024. From the beginning of the healthy homes standards we have been working to “1 July” dates for all deadlines including the previous government’s smoke alarm and insulation regulations. This consistency has helped educational and enforcement efforts to stick this date in people’s minds and will be easier to communicate than 9 months alternative of option 1.
38. The 9 month extension only provides Kāinga Ora with a 7 month period to address the remaining properties once the effect of the holiday period on access to trades and tenant’s homes is taken into account. A 9 month extension would not allow a concentrated push towards the end date because of the interruption of the holiday





period. This would also affect momentum with conversations with tenants who have concerns about allowing access to their homes for the work to be done,

39. Giving both sectors a full year, will mitigate any further potential issues with Kāinga Ora meeting the dates as it gives them a more suitable buffer if supply chain and access issues continue or worsen within the next year.

### **Transitional issues**

40. Changes in the compliance timeframes will only be available for landlords whose healthy homes compliance date has not yet passed. This is consistent with the presumption that all laws apply prospectively.

41. Private landlords of modern homes who have a healthy homes standards compliance date on or after 12 May 2022 and before 12 February 2023 have a grace period to comply with the heating standard on 12 February 2023. If changes in the compliance dates become law before 12 February 2023, landlords eligible for the grace period could potentially have an extra 30 days to comply. We consider this would not be fair as tenants would have had to wait already to get qualifying heaters installed. We propose that landlords who have not yet complied with the heating standard due to eligibility for the grace period will not be eligible for the timeframe extension and will need to comply with the heating standard by 12 February 2023.

s 9(2)(f)(iv)

[REDACTED]

### **RISKS**

45. The proposed options will benefit landlords as they will have more time to comply with their legal obligations. However, affected tenants may face a delay in the installation of heating devices and that will delay the benefits of the policy aim of warm, dry, rental homes. To some extent this will be true where landlords are delaying compliance for as long as possible. However, this risk is lessened because we understand from the sector that most landlords are seeking to comply proactively as they want to mitigate the risk of having to comply urgently if a tenancy ends at short notice. Officials note





that this delay will not significantly impact tenants in the long term. We also believe that the extension would bring relief to landlords who are required to make a property that is new to the rental market compliant but who are not able to access products or trades due to issues beyond their control.

46. s 9(2)(g)(i)

[REDACTED]

47. There is a risk that there will be ongoing labour and supply constraints, or significant rises in the cost of materials and/or labour, that continue to prohibit some landlords from meeting the adjusted deadlines. The Ministry is continuing to monitor these issues closely.

s 9(2)(h)

[REDACTED]

[REDACTED]

[REDACTED]

## COMMUNICATIONS

50. If you wish to proceed with these changes, we propose that you will do a press release advising of the policy changes approved after Social and Wellbeing Cabinet Committee (SWC). This will give public and private landlords as well as industry as much notice as possible of the changes.

51. Ministry officials will engage with targeted stakeholders to update them on your policy decisions after your press release.





## NEXT STEPS

52. If you choose to proceed with changes to the compliance dates, we will need to begin a process to amend the Residential Tenancies (Healthy Homes Standards) Regulations 2019.
53. We have set out the detailed steps and timeline for progressing an amendment to the compliance dates in the table below.
54. Please note the timeline, outlined in table two, is compressed and it requires a quick turnaround at several points between the Minister’s Office and HUD officials. The reason for this that the healthy homes compliance deadline for Kāinga Ora and Community Housing Providers currently falls on 1 July 2023 and we would recommend the changes to be announced and to come into force as far in advance of that deadline as possible.

**Table 2: Estimated timeline to make changes to the Residential Tenancies (Healthy Homes Standards) Regulations 2019: compliance dates**

| ACTION  | DATE  |
|---|---|
| Minister receives briefing with proposed changes  | 8 August 2022   |
| Minister provides feedback on whether to proceed with the proposed changes.   | 22 August 2022  |
| Departmental consultation and draft Cabinet paper and Regulatory Impact Assessment (TBC).                           | 23 August – 1 September 2022  |
| Cabinet paper and RIA provided to the Minister’s office (inclusive of time for Caucus and Ministerial consultation) | 5 September – 23 September 2022<br>[assumes Minister approves to release straight away and with no changes] |
| Cabinet paper and RIA lodged for Social and Wellbeing Cabinet Committee (SWC) consideration                         | 26 September 2022<br>(late lodgement with Cabinet Office)   |





|   |  |
|---|--|
| Social and Wellbeing Cabinet Committee considers the paper                                | 28 September 2022  |
| Cabinet considers the paper   | 3 October 2022   |
| Finalise drafting instructions  | 3 October – 7 October 2022   |
| Parliamentary Counsel Office drafting regulations.  | 7 October 2022 – 28 October 2022<br>[PCO still to confirm]   |
| Draft Cabinet paper + Departmental consultation   | 31 October – 14 November   |
| Cabinet paper and regulations provided to the Minister's office Ministerial consultation. | 15 November – 30 November<br>[assumes Minister approves to release straight away and with no changes]<br>Assumes no caucus consult |
| Cabinet paper and RIA lodged for Cabinet Legislation Committee consideration              | 1 December 2022  |
| Cabinet Legislation Committee considers the regulations                                   | 8 December 2022  |
| Cabinet and Executive Council considers the regulations                                   | 12 December 2022   |
| The regulations are Gazetted  | 15 December 2022   |
| Amendments come into effect 28 days after gazetting                                       | 12 January 2023  |



