

## Briefing

<b>Residential Tenancies (Healthy Homes Standards) Regulations 2019: Options regarding the Compliance Timeframes extension for Private Landlords and Public Housing Providers (Kāinga Ora and Community Housing tenancies)</b>			
<b>Date</b>	16 September 2022	<b>Priority</b>	Urgent
<b>Tracking number</b>	HUD2022-000783		

<b>ACTION SOUGHT FROM MINISTER(S)</b>		
<b>Minister</b>	<b>Action sought</b>	<b>Deadline</b>
Hon Dr Megan Woods <b>Minister of Housing</b>	Consider the timeline for the fast-track legislation approach  Seek confirmation of your preferred approach to amend the compliance timeframes of the healthy homes standards	As soon as possible in order for officials to prepare the appropriate Cabinet materials

<b>CONTACT FOR DISCUSSION</b>			
<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st contact</b>
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<b>OTHER AGENCIES CONSULTED</b>
The Parliamentary Counsel Office (PCO), The Ministry of Business, Innovation and Employment (MBIE), Kāinga Ora (KO), Ministry of Social Development (MSD), Department of the Prime Minister and Cabinet (DPMC), The Treasury.

# Briefing

<b>0BRESIDENTIAL TENANCIES (HEALTHY HOMES STANDARDS) REGULATIONS 2019: OPTIONS REGARDING THE COMPLIANCE TIMEFRAMES EXTENSION FOR PRIVATE LANDLORDS AND PUBLIC HOUSING PROVIDERS (KĀINGA ORA AND COMMUNITY HOUSING TENANCIES)</b>			
<b>Minister(s) receiving</b>	Hon Dr Megan Woods, Minister of Housing		
<b>Date</b>	16 September 2022	<b>Priority</b>	Urgent
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## Purpose

1. To provide you with a timeline for fast-tracking implementation of your preferred option to extend compliance dates for the healthy homes standards s 9(2)(h)

## RECOMMENDED ACTIONS

2. It is recommended that you:

- a. s 9(2)(h)

- b. **Note and provide feedback on** the fast-track timeline to change the Residential Tenancies Act 1986 in order to achieve the policy intent that you previously agreed [Briefing HUD2022-000196] regarding an extension of compliance timeframes for the healthy homes standards for private landlords and public housing providers.

*Noted*

- c. **Note** that if there is difficulty in securing House time for legislative change there remains a further option to extend compliance timeframes, in a more constrained way, solely via regulations; and also an option to rely on the existing regulatory system.

*Noted*

- d. **Agree** to proceed with the option to make an urgent amendment to the Residential Tenancies Act 1986 (the Act) to proceed with your preferred policy option previously agreed [Briefing HUD2022-000196].

*Agree/Disagree*

- e. **Direct** officials to prepare a Cabinet paper for consideration by the Cabinet Social Wellbeing Committee (SWC) to enable recommendation d above.

*Agree/Disagree*



Claire Leadbetter  
**Manager Policy and Legislation  
Design**

16/ 9 /2022

Hon Dr Megan Woods  
**Minister of Housing**

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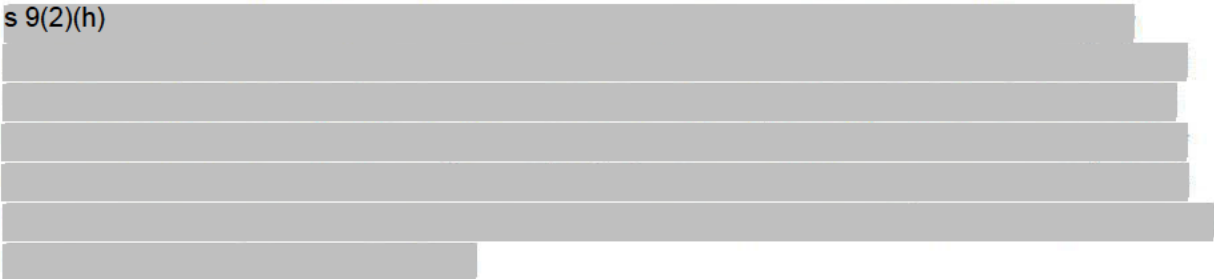

## Background

3. On 8 September 2022, we provided you with advice [Briefing HUD2022-000196 refers] to change healthy homes standards compliance timeframes for private landlords and public housing providers.
4. Based on our recommendation, you agreed to extend the compliance timeframes, and your preferred policy option was as follows:
  - For private landlords, extend the timeframe to comply from the start of a new or renewed tenancy from 90 to 120 days, and
  - 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.
5. At this point, we understood it was possible to achieve your preferred option via regulation change.


s 9(2)(h)

## The preferred option requires a fast-track legislation change

8. You have indicated that this work is high priority, and you have requested a timeline to undertake urgent amendments to the Residential Tenancies Act (the Act) to proceed with your preferred policy option agreed in [Briefing HUD2022-000196]. Te Tūāpapa Kura Kāinga propose that if you choose to proceed with an amendment to the Act, that you:
  - *change primary legislation* to extend the final compliance date for private landlords to 1 July 2025 and
  - *amend the regulations*:
    - to extend the final compliance date for Kāinga Ora and community housing providers to 1 July 2024 and
    - for private landlords, to extend the timeframe to comply from the start of a new or renewed tenancy from 90 to 120 days.
9. Using primary legislation to amend the Act and the regulations is the best use of resource and provides certainty to the sector in a timely fashion.

10. The Bill (which will amend the Act) can extend the deadlines for public and private landlords. The Bill can amend the regulations directly, so there would be no need to do separate amendment regulations.
11. The timeline provided below aims to pass an amendment to the Act by the end of the year. Te Tūāpapa Kura Kāinga consider that this would be the preferable timeframe to provide certainty to all stakeholders. Due to the phased compliance model, deadlines are being triggered for many private landlords, many of whom already have had to comply. To achieve this timeframe, we have noted several assumptions alongside the various steps that would be required in order to fast track the process and its implementation.
12. Alternatively, we have included details around an option that would be possible without requiring an amendment to the Act. However as discussed with you earlier, the option to change the regulations does not deliver on the policy outcomes as fully. (See paragraphs 20 to 22)
13. Another option would be to rely solely on the regulatory response (i.e., not making any changes to the compliance deadlines and allowing the enforcement vehicles in place to respond to the specifics of a situation). (See paragraphs 23 to 27)
14. A comprehensive timeline which includes dates, key steps and outlines risks and assumptions to achieve amendments to the Act, is below.
15. s 9(2)(h)  

16.  Te Tūāpapa Kura Kāinga recommends the option of House time in December if possible. This is because, as time passes, the dates for heathy homes compliance for more private tenancies will be triggered. Also, if a Bill is passed in February 2023 that is only four months prior to the compliance date for Kāinga Ora and registered CHP tenancies.

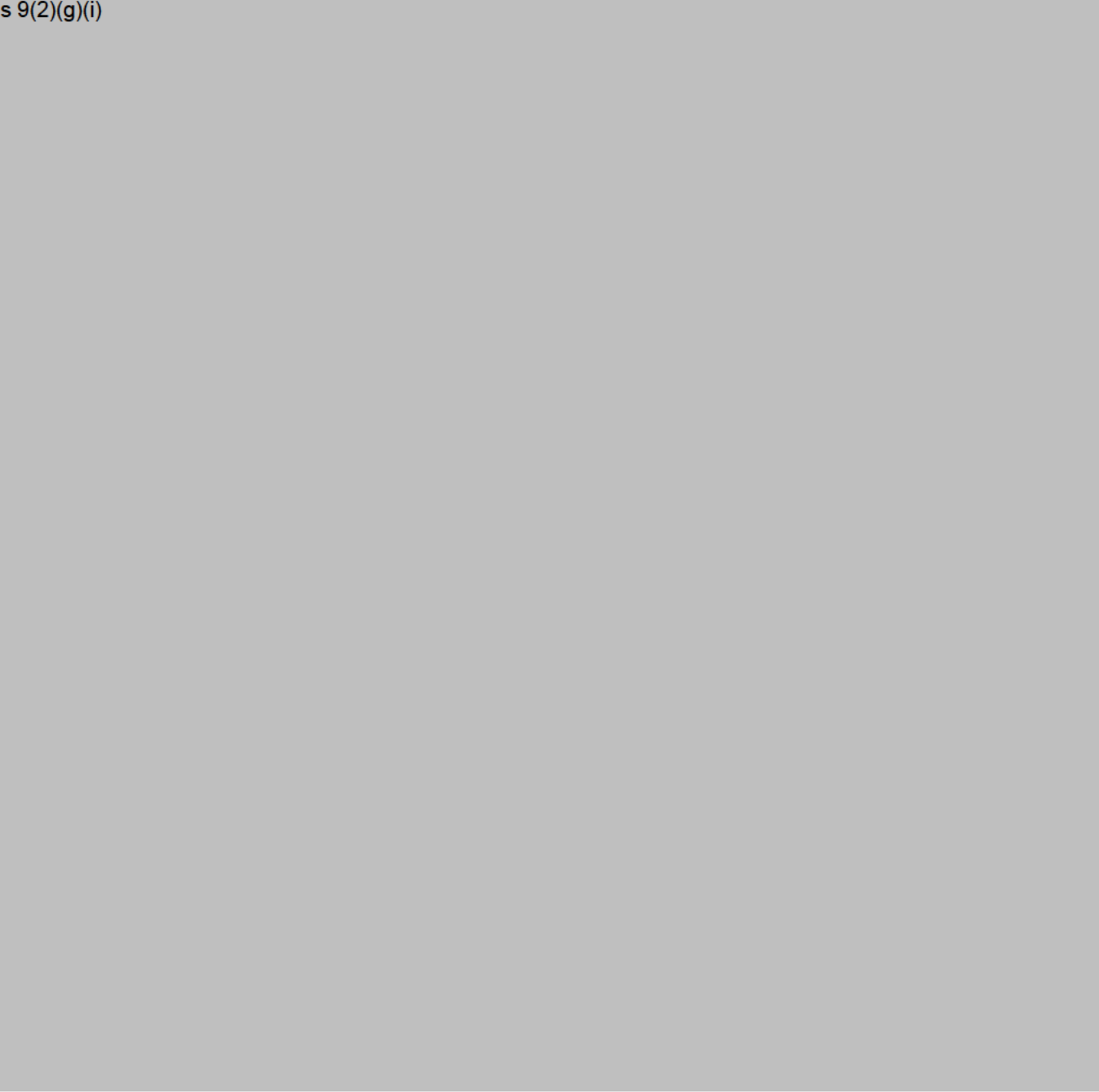
s 9(2)(g)(i)








s 9(2)(g)(i)



17. The timeline above notes modifications to the usual process that we would need to rely on to achieve the legislation change in such a short timeframe.

18. s 9(2)(h)



19. Passing primary legislation is a multi-stage process and, unless Parliament wishes to accord urgency, is likely to take longer to achieve that option to change regulations. If the legislation is introduced but not passed this year this could mean a period of uncertainty for the sector and this could disrupt current engagement with compliance. As a result, we consider that proceeding with urgent legislation would support providing certainty more quickly.



20. A legislative option will best mitigate the compliance risk for private landlords, CHPs and Kāinga Ora. The following table summarises the advantages and disadvantages of following this option:

**Table Two: Advantages and Disadvantages to Amend Primary Legislation to Allow Implementation of the Preferred Option**

<b>Changing primary legislation to remove the legal constraint</b>	
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• A full year extension for private landlords, Kāinga Ora and registered CHPs, provides more buffer for them to meet compliance standards if supply chain and access issues continue or worsen within the next year.</li> <li>• A full year's extension to all types of landlords will better mitigate the compliance risk for CHPs and Kāinga Ora. It allows time for the natural slowdown of the holiday season which impacts on trade services</li> <li>• Kāinga Ora estimate that at 1 July 2023 they will be working with about 5 to 10 percent of their stock where there are persistent access issues. A proportion of those access issues are likely to persist through to 1 July 2024 because of their complexity. A year extension allows more time for these to be managed. Access issues can be reported separately; however, they are still technically breaching the HHS.</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Passing primary legislation is more resource intensive than making changes within current regulatory-making powers. It would also require House time and the government may have competing priorities for this time.</li> <li>• Those tenants who have been in their tenancies long term and where a renewal has not occurred since 1 July 2021 may be concerned about the effect of moving the final compliance date. This is mitigated to some extent as some landlords have proactively moved to comply before their compliance deadline has been triggered.</li> </ul>

**Option that can be achieved through Regulation Change**

21. We have noted for completeness an option that could be achieved without changes to regulations. As canvassed in our discussion earlier this week, this option does not fully mitigate compliance risks for the sector and is not as equitable in its treatment of different types of landlords. This option, however, provides some relief to both types of landlords and provides a balanced approach that can be achieved via amendments to the regulations and would not require amendments to the Act.
22. The following is a modification of the preferred option as follows:
- extend the Kāinga Ora/ CHP final deadline to 31 December 2023 (an extra 6 months) and for

- private landlords to:
  - retain the final compliance date of 1 July 2024, and
  - adjust the extension of the 90 days compliance timeframe for new or renewed tenancies to either 150 or 180 days instead of 120 days as initially approved.

23. The following table summarizes the advantages and disadvantages of following this option:

**Table Three: advantages and disadvantages to implement an alternative option that can be achieved via amendments to the regulations and would not require amendments to the Act**

<b>Modified policy option to fit within the current regulation-making powers</b>	
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Increasing the extension timeframe for new or renewed tenancies would provide targeted assistance for property owners entering into the rental market, that may be more exposed to supply chain/ COVID-19 issues</li> <li>Maintains the original policy intent that private landlords would be progressively brought into the HHS regime over a 5-year period (1 July 2019 – 1 July 2024)</li> <li>Given the legal constraint tried to balance the equitable treatment of private and CHP/ Kāinga Ora landlords that was originally sought.</li> <li>More palatable to tenants as it does not extend the overall fixed date for private compliance.</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Kāinga Ora and CHP’s extension is impacted by the holiday season, which effectively reduces their extension due to the probable closure of trade services over part of December.</li> <li>The shorter extension time would not allow for a second phase of engagement post-Christmas with Kāinga Ora and CHP tenants who already have concerns about allowing access to their homes for work to be carried out. There are multiple drivers at play – some of which we have previously identified. Access issues can be reported separately, however they are still technically breaching the HHS</li> <li>s 9(2)(g)(i) [REDACTED]</li> <li>Kāinga Ora note that some proportion of those access issues are likely to persist through to 1 July 2024 because of their complexity.</li> <li>MBIE Tenancy Service note that the end of the year is a difficult time of year to communicate changes.</li> </ul>

**Rely on the regulatory response**

- There is a further option to rely on the existing regulatory response, however this does not mitigate this risk of challenge at the Tribunal for private landlords and Kainga Ora and CHPs. HUD consider it would be better to manage the risks arising from supply chain and trade constraints through legislative or regulatory change.
- Currently, where private landlords have not complied in line with their current compliance deadlines and this is brought to the regulator’s attention, the regulator is

seeking information to establish what efforts the landlord has taken to comply to help inform the appropriate response. Landlords are advised to retain evidence of the steps they have taken to comply; in case this is sought by the regulator.

26. If non-compliance from Kainga Ora is drawn to the regulator's attention after the existing 1 July 2023 compliance deadline, the regulator could seek to understand the constraints faced by Kainga Ora and the challenges it faces as New Zealand's largest landlord. While it is possible the regulator may decide it is not in the public interest to take enforcement action in the particular circumstances, the decision would need to be made at the time, nor does it provide certainty around if the same decision would be made after the landlord had further time to comply.
27. Under this option tenants of private, Kainga Ora and CHP landlords would still be able to take their landlord to the Tenancy Tribunal seeking an award for exemplary damages and for the compliance work to occur and does not provide any certainty to Kainga Ora and CHP's.
28. As canvassed in previous advice, HUD are concerned that perceptions of private landlords around the equity of this approach could affect their continued motivation to comply with the healthy homes standards.

### **Consultation**

29. The Parliamentary Counsel Office (PCO), The Ministry of Business, Innovation and Employment (MBIE), Kāinga Ora (KO), Ministry of Social Development (MSD), Department of the Prime Minister and Cabinet (DPMC), The Treasury.

### **Next steps**

30. If you wish to proceed with primary legislation change, we will send you a draft of the Cabinet Paper and RIA on 27 September for feedback. We would aim for the extension of compliance timeframes to be considered by SWC on 19 October 2022.