



Briefing

Reform of the Residential Tenancies Act 1986 – Minor policy issues for drafting			
Date:	13 December 2019	Security level:	In Confidence
Priority:	High	Report number:	BRF19/20110498

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Associate Minister of Housing (Public Housing)	Agree to the minor policy issues set out in this briefing for inclusion in the Bill amending the Residential Tenancies Act 1986.	By Monday 16 December

Contact for discussion			
Name	Position	Telephone	1 st contact
Claire Leadbetter	Manager, Tenures and Housing Quality	04 832 2431	s 9(2)(a) ✓
Susan O'Neill	Senior Policy Advisor	04 832 2571	

Other agencies consulted
Ministry of Business, Innovation and Employment (Housing and Tenancy Services), Parliamentary Counsel Office, Ministry of Justice (Offences and Penalties)

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) <hr/>

<p>Comments</p> <p><i>AS discussed @ agency meeting</i></p>

Date returned to MHUD:

17/12/2019



Briefing

Reform of the Residential Tenancies Act 1986 – Minor policy issues for drafting

For: Hon Kris Faafoi, Associate Minister of Housing (Public Housing)

Date: 13 December 2019

Security level: In Confidence

Priority: High

Report number: BRF19/20110498

Purpose

1. This briefing seeks your agreement to various minor policy issues to be included in the amendments in the Residential Tenancies Act 1986 (RTA).

Executive Summary

2. Cabinet agreed to amend the RTA to improve fairness in the RTA through improved security of tenure and strengthened enforcement [SWC-19-MIN-0142]. Cabinet also agreed to amendments around minor fittings, installing fibre broadband in rental properties, setting and increasing rent, and access to justice [SWC-19-MIN-0146].
3. We have been working with Parliamentary Counsel Office (PCO) on drafting the Bill. Through the drafting process, a number of minor policy issues have arisen. Cabinet has authorised you as the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising in the drafting process [SWC-19-MIN-0142].
4. We propose you agree that the fixed-term tenancy proposals do not apply to fixed-term tenancies of less than 90 days. Cabinet agreed on what happens at the end of a fixed-term tenancy, including that the default position is that the fixed-term tenancy becomes a periodic tenancy [SWC-19-MIN-0142]. This proposal is based on tenancies of more than 90 days, but this was not clearly noted in the Cabinet paper. *yes,*
5. We seek your approval to increase the maximum penalty for the offence of contempt of proceedings at the Tenancy Tribunal from \$2,000 to \$3,600. This was left out of the Cabinet paper in error. *OK,*
6. Cabinet agreed to apply civil pecuniary penalties, a higher penalty, to specified breaches of obligations in the RTA in specific circumstances [SWC-19-MIN-0142]. One of those obligations is 48(1AB), which applies where a landlord has provided or continues to provide premises to a tenant despite the landlord knowing that they are contaminated. We propose that the boarding house equivalent obligation in section 66(5) is also eligible for civil pecuniary penalties.
7. Cabinet agreed to establish a new infringement regime to allow the Regulator to issue infringement notices for lower-level breaches [SWC-19-MIN-0142]. On reflection during the drafting process, some of the proposed infringement offences are not suitable as infringement offences. We propose that the following breaches are not infringement offences. They will remain unlawful acts, and subject to exemplary damages:
 - a. obligation in section 13A(3) to provide insurance information to a tenant on request, if the tenancy agreement was entered into before the requirement to provide insurance information was in force.

- b. obligation in section 13A(4) to provide correct insurance information if anything changes so that the insurance information previously provided is no longer correct.
 - c. Section 47(1) – If a landlord puts the premises on the market, the landlord must give notice to the existing tenant. We note that section 47(2) in relation to a prospective tenant will remain an infringement offence.
 - d. Section 66J(4) – If a landlord of a boarding house puts the premises on the market, the landlord must give notice to the existing tenant. We note that the part of section 66J(4) that relates to a prospective tenant will remain an infringement offence.
8. We are still considering whether one of the obligations proposed in the RTA should be an infringement offence. If required, we will provide you with further advice about the obligation that a landlord must not invite or encourage bids for rent (new section 17C).
 9. We propose changes to section 13, to separate out the obligations to have a tenancy agreement in writing, for the agreement to be signed, and for the signed agreement to be provided by the landlord to the tenant. This will apply even if the landlord has signed the tenancy agreement, but the tenant has not. This will provide clarity of the obligations that will be subject to the new infringement regime and to exemplary damages.
 10. We propose that the Bill includes a regulation-making power to create infringement offences. This is a fairly standard feature of infringement regimes and helps to ‘future-proof’ the RTA. We will provide you with further advice in the new year about the proposed maximum penalties to apply to infringements created by regulation.
 11. Cabinet agreed to increase the maximum level of exemplary damages and agreed to introduce fees and maximum fines for infringement offences [SWC-19-MIN-0142]. In most cases, the new maximum level of exemplary damages aligns with the maximum level of the infringement fine for a landlord with five or fewer tenancies for the same breach. There are six breaches where these penalties do not align. However, we do not recommend any action, and simply ask you to note the inconsistency.
 12. We propose rationalising the provisions in the RTA that set out how the Regulator can take proceedings in the Tenancy Tribunal or court. We propose consolidating the Regulator’s powers in sections 124A and 124B. There are some parts of section 124 that will be included in s124A to ensure the Regulator’s current powers are retained.
 13. We note we have provided you with separate policy advice on the s 9(2)(f)(iv) on broadband installations in rental properties and on the definition of landlord’s or owner’s family member. We will also provide you with further advice on documents that landlords must retain, and on any other matters arising from drafting, in the new year.

Recommended actions

14. It is recommended that you:

- a) **Note** that Cabinet has agreed to reform the Residential Tenancies Act 1986 and a Bill to implement the reform is currently being drafted.
- b) **Note** that Cabinet authorised you to make minor policy decisions on issues arising during the drafting process [SWC-19-MIN-0142].
- c) **Agree** that the proposals setting out what will happen at the end of the term for fixed-term tenancies do not apply to fixed-term tenancies of less than 90 days.
- d) **Agree** to increase the maximum penalty for the offence of contempt of proceedings at the Tenancy Tribunal from \$2,000 to \$3,600.

Noted

Noted

Agree / Disagree

Agree / Disagree

- e) **Note** that Cabinet has agreed that breaches of section 48(1AB) may be subject to civil pecuniary penalties [SWC-19-MIN-0142]. Noted
- f) **Note** that section 66I(5) of the Residential Tenancies Act 1986 is the equivalent of section 48(1AB) for boarding house tenancies. Noted
- g) **Agree** that section 66I(5) of the Residential Tenancies Act 1986 be one of the obligations which, if breached, may be subject to civil pecuniary penalties. Agree / Disagree
- h) **Agree** that the following obligations in the Residential Tenancies Act 1986 are not to be subject to infringement offences:
 - i. obligation in section 13A(3) to provide insurance information to a tenant on request, if the tenancy agreement was entered into before the requirement to provide insurance information was in force.
 - ii. obligation in section 13A(4) to provide correct insurance information if anything changes so that the insurance information previously provided is no longer correct.
 - iii. obligation in section 47(1) that if a landlord puts the premises on the market, the landlord must give notice to the existing tenant. We note that section 47(2) in relation to a prospective tenant will remain an infringement offence.
 - iv. obligation in section 66J(4) that if a landlord of a boarding house puts the premises on the market, the landlord must give notice to the existing tenant. Agree / Disagree
- i) **Note** that we are still considering whether the breach of the obligation on landlords not to invite or encourage bids for rent should be an infringement offence. Noted
- j) **Note** that the breach of the obligations in section 47(2) and in section 66J(4) in respect of prospective tenants will remain infringement offences. Noted
- k) **Note** that the breach of the obligations referred to in Recommendation (g) will be unlawful acts and subject to exemplary damages. Noted
- l) **Agree** to separate out the obligations in section 13 of the Residential Tenancies Act 1986 to have a tenancy agreement in writing, for the agreement to be signed, and for the signed agreement to be provided by the landlord to the tenant. The landlord is required to provide the signed agreement to the tenant even if the landlord has signed the tenancy agreement, but the tenant has not. Agree / Disagree
- m) **Agree** that the Bill should include a power for infringement offences to be created by regulation. Agree / Disagree
- n) **Note** that we will provide you with further advice in the new year about the maximum penalties to apply to infringement offences created by regulation. ? Noted
- o) **Note** there are six breaches where the new maximum level of exemplary damages does not align with the maximum level of the infringement fine for a landlord with five or fewer tenancies for the same breach. Noted

- p) **Note** that we do not propose making changes to align the penalties referred to in Recommendation (m). (Noted)
- q) **Note** we are using the drafting process to rationalise the provisions of the Residential Tenancies Act 1986 that allow the Regulator to step into the shoes of one of the parties (landlord or tenant) to take proceedings in the Tenancy Tribunal or a court. (Noted)
- r) **Note** that this rationalisation of the provisions that allow a Regulator to step in the shoes of one of the parties will not remove any powers that the Regulator has currently. (Noted)
- s) **Agree** to amend the language used for matters that were previously called 'minor fittings' to 'minor changes', given our further analysis in partnership with Parliamentary Counsel Office has concluded this is preferred as fittings has a specific legal definition and would be problematic to use in this context. (Agree / Disagree)
- t) **Note** that, subject to your agreement, Parliamentary Counsel Office will incorporate these amendments in the draft Bill. (Noted)
- u) **Note** we have provided you with separate policy advice on the s 9(2)(f)(iv) on broadband installations in rental properties and on the definition of landlord's or owner's family member. (Noted)

C.D. Leadbetter

Claire Leadbetter
 Manager, Tenures and Housing Quality

13.12.19



Hon Kris Faafoi
 Associate Minister of Housing (Public Housing)

14.12.19

Cabinet has agreed to amendments to the Residential Tenancies Act 1986

15. On 30 September 2019, Cabinet agreed to amend the RTA to improve security of tenure and to strengthen enforcement [SWC-19-MIN-0142]. On 18 October 2019, Cabinet agreed to further amendments around minor fittings, installing fibre broadband in rental properties, setting and increasing rent, and access to justice [SWC-19-MIN-0146].
16. We have been working with PCO on drafting the Bill. You have instructed that the Bill have its First Reading in the first sitting block of 2020. We are aiming to have the Bill approved by the Cabinet Legislation Committee (LEG) on 11 February 2020.
17. Through the drafting process, a number of minor policy issues have arisen. Cabinet has authorised you as the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising in the drafting process [SWC-19-MIN-0142].

Policy proposals

We have identified various minor policy issues for your decision

Increasing a penalty for a criminal offence

18. The appendix to the Cabinet paper *Improving Fairness in the Act* [SWC-19-SUB-0142 refers] sets out the increase of penalties for criminal offences. We have identified that, in error, the appendix did not include one of the criminal offences in the RTA, section 112. The section relates to contempt of proceedings at a Tenancy Tribunal sitting, for example, obstructing a Tenancy Adjudicator.
19. The current maximum penalty for this breach is \$2,000. In line with other offences, we propose increasing the maximum penalty to \$3,600. This ensures consistency in the levels of penalties.

Applying the pecuniary penalties to the boarding house equivalent breach

20. Cabinet agreed to introduce a new civil pecuniary penalties regime for the most serious breaches of the RTA [SWC-19-MIN-0142]. Pecuniary penalties apply to five specific provisions of the RTA, where their breach can result in serious consequences for the health and safety of tenants or where deliberate action has been taken to undermine the protections afforded by the RTA. The Regulator would be able to apply for pecuniary penalties where the landlord has six or more tenancies. The Tenancy Tribunal could order a maximum penalty of \$50,000, which would be payable to the Crown. The Bill will set out criteria for the Tenancy Tribunal to decide if the higher penalty is justified.
21. The appendix to the Cabinet paper *Improving Fairness in the Act* sets out the unlawful acts to which the new civil pecuniary penalties apply [SWC-19-SUB-0142 refers]. One of those unlawful acts is 48(1AB), which applies where a landlord has provided or continues to provide premises to a tenant despite the landlord knowing that they are contaminated. This section was inserted by the Residential Tenancies Amendment Act 2019 (the Amendment Act), but it is not yet in force.
22. However, the Amendment Act also included the same obligation in respect of boarding house tenancies. This was not included in the Cabinet paper in error. We propose that the boarding house equivalent obligation in section 66I(5) is also included. This ensures that boarding house landlords are subject to the same obligations as other landlords in similar circumstances.
23. We note that the civil pecuniary penalties will only apply to landlords with six or more tenancies. We consider that most boarding houses will meet this threshold. This is because a boarding house is a premises with boarding rooms and facilities for communal use, intended to be occupied by at least six tenants at any one time.
24. Some landlords provide room-by-room tenancies in large houses, which are effectively boarding houses (when there are at least six tenants). It may be disproportionate to apply a

pecuniary penalty to these landlords. This risk may be managed through the criteria for the Tenancy Tribunal to make a pecuniary penalty order, or through the Regulator's operational guidance on when it is appropriate to make an application in respect of a boarding house that is essentially a large house with room-by-room tenancies. We will continue to consider this risk and may provide you with further advice.

Application of proposals to fixed-term tenancies

- 25. Cabinet agreed that at the end of a fixed-term tenancy, both parties can agree to end, extend or renew the fixed-term, the tenant can give 28 days' notice, or the landlord can give notice in accordance with the provisions for ending periodic tenancies. If none of these apply, the fixed-term tenancy will become periodic [SWC-19-MIN-0142].
- 26. This proposal was based on current section 60A of the RTA, which applies to fixed-term tenancies of more than 90 days. While the Regulatory Impact Assessment noted this, the Cabinet paper did not. Fixed-term tenancies of less than 90 days will end at the end of the fixed term. We propose that you note that the fixed-term tenancy proposals do not apply to fixed-term tenancies of less than 90 days, which is consistent with how the Act currently works. The existing safeguards for short fixed-term tenancies in the RTA will remain, such as multiple fixed-term tenancies that are longer than 90 days will be considered to be a normal fixed-term tenancy.

Removing some infringement offences

- 27. Cabinet agreed to establish a new infringement regime to allow the Regulator to issue infringement notices for lower-level breaches [SWC-19-MIN-0142]. Infringement offences fall under the criminal jurisdiction, but no conviction is entered. The Regulator can issue an infringement notice without applying to the Tenancy Tribunal. The penalty is paid to the Crown. The proposed infringement offences were included in the appendix to the Cabinet paper *Improving Fairness in the Act* [SWC-19-SUB-0142 refers].
- 28. According to the Legislation Design and Advisory Committee's Legislation Guidelines, infringement offences are appropriate where the conduct involves straightforward issues of facts than can be easily identified by an enforcement officer. Infringement offences are generally not appropriate for mens rea offences (i.e. offences that require a mental element, such as intent or recklessness), cases that involve complex factual situations, or conduct that may warrant more serious consequences.
- 29. During the drafting process, we have identified that some of the proposed infringement offences are not suitable as infringement offences. The table below sets out the relevant obligation and the reason why it should not be an infringement offence.

Table 1: Infringement offences to be removed

Section	Description	Reason to exclude
13A(3) and 13A(4)	<p>Failure to provide information in the tenancy agreement. This section imposes a number of information requirements, the breach of most of which can be infringement offences. However, there is an issue with the following:</p> <ul style="list-style-type: none"> • <i>If tenancy agreement was entered into before the requirement to provide insurance information was in force, landlord must provide required insurance information within a reasonable time after receiving a request from a tenant (s 13A(3))</i> 	<p>The requirement to provide the information within a reasonable time means the decision about whether there is a breach requires a value judgement. This is inconsistent with the nature of infringement offences as straightforward issues of fact.</p> <p>We do not propose amending the "within a reasonable time" requirement, as it was included in this section through the select committee process for the Residential Tenancies Amendment Act 2019.</p>

Section	Description	Reason to exclude
	<ul style="list-style-type: none"> If anything changes so that the insurance information previously provided is no longer correct, the landlord must, within a reasonable time after the landlord becomes aware of the change, provide the correct information to the tenant in writing (s 13A(4)). 	
13A(1F)(b)	This section is in respect of the same information requirements as set out above for s13A(1F)(a). However, it refers to where the tenancy agreement includes anything the landlord knows to be false or misleading.	This section has a mens rea element (a mental element) – the landlord must “knowingly” include false or misleading statements. The mens rea element means this is not suitable for an infringement offence.
47(1) and 66J(4)	If the landlord puts the premises on the market, the landlord must give notice to a tenant as soon as reasonably practicable.	<p>The requirement to provide the information within a reasonable time means the decision about whether there is a breach requires a value judgement. This is inconsistent with the nature of infringement offences as straightforward issues of fact.</p> <p>Note: sections 47(2) and 66J(4) in respect of advising prospective tenants will continue to be infringement offences. “As soon as reasonably practicable” does not arise in this context as the property is on the market and the prospective tenant will be advised before they become a tenant.</p>

30. We are still considering whether one of the obligations proposed in the RTA should be an infringement offence. We are in discussions with our colleagues at the Ministry of Business, Innovation and Employment and at the Ministry of Justice. If required, we will provide you with further advice about the new obligation that a landlord must not invite or encourage bids for rent.
31. All of the breaches of the RTA covered by the infringement offences are also subject to exemplary damages. The Tenancy Tribunal determines disputes between landlords and tenants, which may include ordering exemplary damages. Exemplary damages are a civil penalty paid by the unsuccessful party to a dispute to the other party, which may be in addition to compensation for losses. The Regulator can also apply to the Tenancy Tribunal for exemplary damages on behalf of a party to the tenancy (and any exemplary damages would be paid to that party). For the breaches noted above, the breach will still be an unlawful act and subject to exemplary damages.

Amendments to the requirements of one of the infringement offences

32. We also propose changes to the requirements of one of the infringement offences. Section 13(1) currently requires that every tenancy agreement shall be in writing and signed by both the landlord and the tenant. We propose separating out these obligations. This will provide clarity of the obligations that will be subject to the new infringement regime and to exemplary damages.
33. We propose that the new requirements are:
- a. It will be an obligation on the landlord to have a tenancy agreement in writing. Failure to do so will be an unlawful act (subject to exemplary damages) and an offence (subject to an infringement offence).

- b. Every tenancy agreement will be required to be signed. However, since a party cannot be responsible for whether another party signs the tenancy agreement, this requirement does not impose a direct obligation on either party.
- c. The landlord will be under an obligation to provide a copy of the signed tenancy agreement to the tenant. This will apply even if the landlord has signed the tenancy agreement, but the tenant has not. Failure to do so will be an unlawful act (subject to exemplary damages) and an offence (subject to an infringement offence).

Power to make regulations to create infringement offences

34. Cabinet agreed to establish an infringement regime [SWC-19-MIN-0142]. A fairly standard feature of infringement regimes is the ability to use regulations to create infringement offences. We propose that the Bill includes a regulation-making power to create infringement offences. This helps to 'future-proof' the RTA and is consistent with the current provision in the RTA to be able to create criminal offences by regulation. This regulation-making power in respect of infringement offences would apply whether or not there is an equivalent criminal offence in the RTA.
35. The Bill will need to specify the maximum penalty of an infringement offence created by regulations. We need to consider what an appropriate maximum penalty would be, considering the fees and fines proposed for infringement offences, and the fines proposed for the other offences. We will provide you with further advice in the new year about the proposed maximum penalty.

Aligning exemplary damages with infringement fees penalties

36. Cabinet agreed to fee and fine levels for each offence under the new infringement regime, with two levels for infringement fees and fines: one level for landlords with five or fewer tenancies, and another for landlords with six or more tenancies [SWC-19-MIN-0142]. Cabinet also agreed to increase the exemplary damages that the Tenancy Tribunal can award for each breach of the RTA. You will recall that the amount of the increase of exemplary damages penalties proposed in the Cabinet paper was part of your discussions with coalition and support parties.
37. There are a number of breaches of the RTA that can result in either an application for exemplary damages, or the pursuit of an infringement offence. In most cases, the new maximum level of exemplary damages that the Tribunal can award aligns with the maximum level of the infringement fine that the Court could apply to a landlord with five or fewer tenancies who committed the same breach. We consider those to be a good comparison as they are both the maximum penalty that could be applied to a landlord with five or fewer tenancies by a judicial body in respect of the same conduct.
38. However, discrepancies between the maximum exemplary damages and the maximum infringement fine have been identified in six instances – see the table below. In all cases, the new maximum for exemplary damages is lower than the maximum infringement fine.

Table 2: Inconsistent penalties for some breaches of the RTA

Section	Description	Exemplary Damages (\$)		Infringement (\$)	
		Current	Inc/New	Fee ¹	Fine ²
13(1) & (2)	Failure to have a written tenancy agreement and/or provide a copy to the tenant	-	750	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
13A(1F)(a)	Fails to comply with providing required information to tenant (e.g. insurance and tenant's liability, healthy homes standards)	500	750	500 (F) 1000 (S)	1,000 (F) 2,000 (S)
15(1)	Failure to notify details specified in 15(1)(a) and (b) when a landlord's or tenant's interest passes to another person	-	750	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
16(1)	Failure to notify a change of name and contact address to the other party of the tenancy	-	750	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
29	Failure by landlord to give receipts or written statement of rent	200	350	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)
30(2)	Landlord failing to keep proper business records related to payments	200	350	500 (F) 1,000 (S)	1,000 (F) 2,000 (S)

39. As the percentage increase for the exemplary damages penalties was subject to coalition and support party discussions, we do not recommend changing those penalties. There are two options:
- Decrease the infringement fee and fine penalties for the relevant breaches, to align them with the exemplary damages penalties, or
 - Allow the inconsistency to remain in the draft Bill.
40. On balance, we recommend that the inconsistency remains in the draft Bill. While consistency between the different penalties for the same breach is desirable, it is not necessary.
41. The exemplary damages for these breaches currently in the RTA are fairly low compared to other exemplary damages. For that reason, we had recommended in the Regulatory Impact Assessment that these penalties be increased to align with the other exemplary damages. As noted above, the increase to these penalties was limited as part of your discussions with coalition and support parties. If the infringement penalties were reduced for these breaches, and therefore lower than other infringement offences, it would compound this issue.
42. We would rather maintain consistency with the penalty levels being introduced for the infringement regime. We are concerned that lowering the infringement penalties will entrench these breaches as being subject to lesser penalties in both the civil and infringement regimes. We note our preferred approach can be tested during the select committee process.

¹ (F) relates to the infringement fee or fine that would apply to a landlord with five or fewer tenancies; (S) is the infringement fee or fine that would apply to landlords with six or more tenancies.

² The fee is the amount imposed via the issuing of an infringement offence notice by the Regulator. The fine is the maximum amount that can be imposed for the same offence by a court following a successful prosecution.

Rationalising the provisions that authorise the Regulator to take action on behalf of a party

43. Cabinet agreed that the Regulator can apply for exemplary damages and civil pecuniary penalties to the Tenancy Tribunal no later than 12 months after the date on which the Regulator becomes aware of the matter [SWC-19-MIN-0142]. This decision was to correct an inconsistency in the limitation periods depending on whether the Regulator was acting on behalf of the landlord or tenant, or in its own right.
44. During the drafting process, we identified inconsistencies between the various provisions that allow the Regulator to take over proceedings for one of the parties. Section 124 allows the Regulator to take or defend proceedings on behalf of either a landlord or tenant. Under section 124, the party must consent, or their consent must not have been refused, and cannot be reasonably obtained.
45. Section 124A was inserted in 2016 and allows the Regulator to take proceedings only as if the Regulator were the tenant. The Regulator can act under this section even if the tenant has not consented or has refused consent. The purpose of section 124A was to allow the Regulator to intervene in a wider range of cases. Both section 124 and 124A require a public interest test to be met before the Regulator can take a case.
46. We propose rationalising sections 124 and 124A so that sections 124A and 124B allow the Regulator to act as either the tenant or landlord. There are some parts of section 124 that will be included in s124A for completeness.
47. The above amendments should make the RTA less complex and more accessible to the public. The amendments will set out a clearer set of principles for the circumstances in which the Regulator can step into the shoes of either party. This process will not remove any of the Regulator's current powers.

Minor fittings – Minor changes

48. Previously, your office had sought advice on the language used to describe what is now called the 'minor fittings' area. In our previous discussions we had noted that our advice on the exact language used in this area would be subject to PCO drafting.
49. Further analysis in partnership with PCO has concluded that because the term 'fittings' has a specific legal definition, using the term 'minor changes' in this area is preferred. This is therefore the wording now reflected in the Bill.

There are other policy issues to include in the Bill

We have provided separate advice on several policy issues

50. We provided you with separate policy advice in the following briefings:
 - a. s 9(2)(f)(iv)
 - b. BRF19/20110497: *Reform of the Residential Tenancies Act 1986 – broadband installations in rental properties*, on 9 December
 - c. BRF19/20100460: *Reform of the Residential Tenancies Act 1986 – Definition of landlord's or owner's family member*, on 12 December.
51. Should you agree with our proposals in those briefings, we can incorporate the changes in relation to the broadband installations and definition of landlord's or owner's family member in the Bill. We expect this will occur in time for introduction. As noted s 9(2)(f)(iv) we can seek Cabinet agreement in the new year so that these policy decisions can be discussed at Select Committee.

We have an issue on which we will give further advice

52. Cabinet agreed that landlords should be required to retain an expanded range of documents and be required to provide those documents on request to the Regulator [SWC-19-MIN-

0142]. Cabinet also authorised you as the Associate Minister of Housing (Public Housing) to decide on the specific documents that will be required.

53. We will give further advice on this issue in the new year. In the time available, we have been unable to address this issue and discuss it thoroughly with the Ministry of Business, Innovation and Employment as the Regulator. We anticipate we will be able to provide you with advice in time to include the drafting in the draft Bill for introduction.
54. If any further issues arise through the drafting process, or through consultation on the draft Bill, we will provide you with advice in the new year.

Consultation

55. This briefing has been prepared in consultation with the Ministry of Business, Innovation and Employment, and following discussions with Parliamentary Counsel Office. We have discussed the proposals about removing certain infringement offences with the Ministry of Justice (Offences and Penalties team).

Next steps

56. If you agree to the proposed amendments in the briefing, we will issue drafting instructions to PCO to implement the amendments in the Bill.
57. We will provide you with any further advice on minor policy issues in the new year.