



Department of
Building and Housing
Te Tari Kaupapa Whare

Review of the Residential Tenancies Act 1986: Synopsis of Submissions

This report does not necessarily reflect the views of the Department of Building and Housing and does not reflect official Government policy.

Table of Contents

- EXECUTIVE SUMMARY 1**
- INTRODUCTION.....1
- RESPONSE.....1
- KEY FINDINGS.....1
- SYNOPSIS OF WRITTEN SUBMISSIONS 7**
- INTRODUCTION.....7
- BACKGROUND.....7
- METHODOLOGY FOR ANALYSIS OF SUBMISSIONS8
- NUMBER OF SUBMISSIONS AND KINDS OF SUBMITTERS8
- DETAILS OF RESPONSES BY THEME9
- 1. *More people rent and it’s important to get the balance between landlords and tenants right.....9*
- 2. *The circumstances of people renting are more diverse..... 15*
- 3. *People with different individual and family circumstances have different needs for stable housing. 18*
- 4. *Housing is becoming less affordable.....26*
- 5. *Is there a problem with the quality of rental housing? 32*
- 6. *Standards of property management are variable. 38*
- 7. *Do prospective landlords get the right advice?..... 41*
- 8. *Not all rental accommodation is covered by the RTA..... 43*
- 9. *It is not always clear who is responsible for paying some household costs. 45*
- 10. *Tenancy support services for landlords and tenants are important. 46*
- 11. *Would some tenants benefit from advocacy services? 48*
- 12. *Are there any other issues relating to the RTA or residential tenancies in general that you would like to comment on? 52*
- General Comments 57*
- Comments Outside Scope of Review..... 57*
- General Comments about Discussion Paper, Consultation Process 58*
- APPENDIX 1: LIST OF ORGANISATIONS THAT PROVIDED SUBMISSIONS 60**
- APPENDIX 2: METHODOLOGY FOR SUMMARISING SUBMISSIONS..... 64**
- APPENDIX 3: SUMMARY OF PUBLIC MEETINGS 66**

Executive Summary

Introduction

This document summarises submissions received in response to the public discussion document *Getting the Balance Right: Review of the Residential Tenancies Act 1986* ('the Discussion Document'), which the Department of Building and Housing (the Department) published in early November 2004.

Response

The Department received 574 submissions.

The majority of submissions were from landlords. Only 39 submissions were received from tenants or groups representing tenants; however, another 33 submissions were received from community organisations, disability groups and public health organisations, which also represented the perspective of tenants or particular groups of tenants. 24 submissions were received from property managers and 12 from central and local government.

Key Findings

The key findings of the public consultation, both public meetings and written submissions, are set out below. Findings from the written submissions have generally been consistent with issues identified during the public meetings.

Balancing the rights and obligations of landlords and tenants

While some submitters felt that the balance of rights and obligations in the Residential Tenancies Act 1986 (the RTA) is about right,

- landlords and property managers tended to the view that the RTA favours tenants, particularly in relation to notice periods, rent arrears, and inadequate penalties for tenants' breaches of their obligations under the RTA; and
- tenants and tenant groups felt the RTA favours landlords and property managers, such as the ability for landlords to refuse to rent to people or to give 90 days' notice without having to provide a reason, and inadequate penalties for landlords or property managers who fail to make repairs or adequately maintain their rental property.

Enforcement of Tenancy Tribunal orders

Comments about enforcement of Tribunal orders focused particularly on:

- the difficulties landlords have in tracing tenants who owe them money;
- the number of processes, the time, and the costs involved in enforcement and collection and that not all of these costs are recoverable from the party that owes the money; and
- whether there are sufficient and adequate penalties to create proper incentives for compliance with Tenancy Tribunal orders.

Meeting the diverse needs of tenants

Of those that offered a clear opinion, the majority felt that the needs of a diverse range of tenants were adequately addressed by the market. However, some submitters commented on the shortage of suitable accommodation, particularly in certain geographical areas, for certain groups, such as large or extended families, people with children, those with a disability, persons with mental health issues, beneficiaries and those on low incomes.

A number of suggestions were made about ways to address this, including:

- providing more information for landlords and developers about housing needs and trends;
- redirection of benefits or direct crediting from wages to pay rent;
- more support for community housing initiatives and public/private partnerships;
- incentives (e.g., tax incentives or access to direct payment of benefits for rent) for landlords who provide rental accommodation for tenants with particular needs.

Stable housing

While the majority of submitters agreed stability was important, there was little consensus about whether stability of tenure of rental accommodation is a problem or what are the factors that lead to turnover of tenancies.

Suggested drivers of turnover included:

- landlords selling properties because of the greater-than-expected difficulties involved in being a landlord, or in order to realise capital gains or purchase a more profitable or valuable property; and
- tenants moving to better quality or larger housing, or for reasons of affordability or debt, or simply for lifestyle reasons.

Many landlords expressed a preference for longer tenancies but felt that fixed term tenancies were difficult to enforce if tenants wanted to break them.

Housing affordability

As indicated above, comments were received about the shortage of suitable accommodation for beneficiaries and those on low incomes. Comments were also made about affordability of rental accommodation, particularly in certain parts of New Zealand.

Landlords noted that rents are a reflection of the cost of residential property more generally and that in some instances rents do not cover the property owner's total costs (mortgage servicing costs, maintenance, etc.).

Suggestions about ways to address affordability included:

- redirection of benefits to pay rent;

- increased provision of state housing
- more support for community housing initiatives and public/private partnerships;
- incentives (e.g., tax incentives or access to direct payment of benefits for rent) for landlords who provide rental accommodation for low-income tenants and beneficiaries.

Housing quality

Submitters were divided as to whether there was a problem with the quality of rental housing.

Even amongst those who agreed there was a problem and would like minimum standards, there was a range of views about what might constitute minimum standards (e.g., heating, insulation, adequate cooking facilities, soundproofing, smoke detectors).

A number of people felt minimum standards were already adequately addressed in other legislation and supported a free market approach to rental housing standards, with the market dictating quality at each price level. There was some support for a voluntary rental housing quality standard, such as a star rating.

Both landlords and tenants expressed concerns about the impact that a minimum standard, or even a voluntary standard, could have on rent levels.

With respect to clarifying the obligations of landlords and tenants for property maintenance, it would appear that a number of maintenance issues are the result of conflicting interpretations of the RTA. Particular comments were made about the use of the word “reasonable” in the Act (*reasonable* state of repair) and the need for clarification or guidance about what is considered “reasonable”, e.g., who is responsible for things such as trimming trees, cleaning gutters and cleaning chimneys.

Standards of property management

There were conflicting views as to whether or not there is a problem with standards of property management, and if so, where the problems lie.

A number of people suggested that market forces already do a satisfactory job of maintaining standards.

Some submissions expressed concern about landlords’ lack of professionalism and knowledge of the RTA, with a few expressing the view that landlords should be encouraged or required to use professional property managers.

Other submissions expressed concern about professional property managers, including the fact that many are associated with real estate agencies, do not have adequate training in property management, and may have a conflict of interest between their responsibilities as property managers and as real estate agents.

There was support for provision of more education and information to landlords and property managers. Specific mention was made of the benefits of attending the Department's landlord seminars, joining a landlord association and obtaining information from Tenancy Services. There was less support for property managers and/or landlords being required to obtain some form of standard or qualification.

Advice and information

There was an overwhelming call for increased provision of information and education about a range of things, including about the Act itself, interpretation/clarification of some provisions in the Act, rights and obligations under the Act, rental market information, maintenance requirements and costs, and the risks associated with being a landlord.

Submitters suggested a number of channels for the provision of information, including:

- enclosing information with bond receipts;
- distributing information through schools, churches, community organisations, accountants, banks, and financial advisers;
- providing translators and more translated information;
- providing more information to migrants;
- providing tenants with a copy of the RTA;
- providing a "plain English" list of landlord and tenant obligations.

RTA coverage

The majority of submitters were against extending the coverage of the RTA to include tenancies which have a significant service component, such as the provision of meals. Submitters were concerned about the prospect of adding another layer of bureaucracy, resulting in extra costs or a reduction in the supply of accommodation. There were also concerns expressed about complicating the RTA or creating delays to the dispute resolution process for general tenancies.

A number of submissions, both for and against, were received in relation to RTA coverage of boarding houses. Several submissions were also received about coverage of university halls of residence. (Inclusion of boarding houses and university halls of residence in the RTA is addressed in the Residential Tenancies Amendment Bill 2001, reported back from Select Committee in March 2003.)

The majority of submitters were opposed to extending the coverage of the RTA to flatmates and boarding house tenants.

A few submitters suggested providing the ability for neighbours of tenanted properties to access the dispute resolution mechanisms of the RTA.

Responsibility for household costs

There was little consensus as to how household costs should be split between landlords and tenants, although there was call for liability to be clarified, via the RTA

or guidance material, or as agreed between the parties at the beginning of a tenancy, perhaps with the support of a 'model' provided by the Department of Building and Housing.

Most comments related to costs associated with water and wastewater. One argument was that landlords should be liable for health and sanitation, including water and wastewater charges. The counter to this argument was that landlords should not be held liable for something they have no control over (i.e., the amount of water used). Passing on costs to the user was seen as a means of conserving resources.

There was also no clear agreement as to how fixed and variable costs should be divided between landlords and tenants. There was some suggestion that landlords should be liable for costs relating to the provision of facilities or maintenance, but there were also calls to balance this against the practical implications of splitting utilities bills.

Tenancy support services

The most common services identified by submitters as critical were:

- advice;
- information;
- education;
- dispute resolution;
- the bond service; and
- enforcement.

A number of submitters stressed the need for advice to be unbiased, consistent, accurate and easily accessible. The same comments were made in respect of mediation and adjudication services.

A number of submitters commented on the need to raise the profile of Tenancy Services and improve the accessibility of Tenancy Services (both in terms of physical access and office hours).

Advocacy

Submitters were fairly evenly divided as to whether or not advocacy services should be provided to tenants.

Amongst those who support some kind of advocacy service, there were mixed views as to whether it should be available to all tenants or targeted to particular needs. A large number of people suggested a third option under which advocacy services would be available for both landlords and tenants.

There were mixed views about who should provide the service and about the need for an independent service, with only a slight preference indicated for providing advocacy services separately from Tenancy Services.

Other comments

There were a range of comments on other issues relating to the RTA or residential tenancies in general. Many of these repeated or expanded on responses made to previous questions, such as termination of tenancies and notice periods; advance rent and bonds; issues related to enforcement and the Tenancy Tribunal; and issues of interpretation and terminology.

There were also more general comments about the extent to which the rental market should be regulated or left to market forces, as well as the extent to which the RTA should or could be used to address social issues via the private rental market.

Finally, some comments fell outside the scope of the RTA Review, such as:

- the issue of service tenancies in the farming sector;
- lessees under the Maori Reserve Lands Act 1986 wanting their tenancies to be subject to the RTA;
- the need for greater efforts to be made to assist families to save towards a house mortgage deposit; and
- local planning provisions should require property developers to allocate a percentage of developments to affordable housing.

Synopsis of Written Submissions

Introduction

This document summarises submissions received in response to the public discussion document *Getting the Balance Right: Review of the Residential Tenancies Act 1986* ('the Discussion Document').

The purpose of this summary of submissions is to collate and present the views of submitters in a clear and concise way, as a public record of submissions and to facilitate the next phase of the Review, research and analysis of issues and development of options.

Background

The RTA is the central piece of legislation governing the rental housing market and relationships between landlords and tenants. Since the RTA came into force in 1986, there have been significant changes in the structure and dynamics of the residential rental market.

The Review of the RTA ('RTA Review') is being undertaken to ensure that the RTA continues to provide an appropriate balance between a tenant's need for a home and a landlord's right to manager their business investment effectively.

Between November 2004 and February 2005 the Department undertook public consultation as part of the RTA Review.

The Department would like to thank all submitters for their contributions.

Publication and Call for Submissions

In early November 2004, the Department published the Discussion Document. The closing date for written submissions was 18 February; however, late submissions were accepted.

The Department published the Discussion Document in a short form and a long form, both of which included a form for making submissions. The short form discussion document was sent, with a covering letter, to 1,000 landlords and 1,000 tenants selected from the Department's bond database. The Department sent the long form discussion document to 1,500 key housing stakeholders (e.g., Housing New Zealand Corporation, Property Investors' Federation and Tenants Protection Association). Copies of the Discussion Document (short and long forms) were made available in the Department's Tenancy Services offices. Copies were also made available on the Department's website (in PDF and HTML versions), along with a submission form that could be submitted electronically.

There was also a media release and general advertising about the RTA Review.

The Department's Tenancy Services Centre dealt with around 200 requests for copies of the discussion document. The Department also received requests for large numbers of copies from all of the major property investors' organisations.

Public Meetings

The Department of Building and Housing ran fifteen public consultation meetings between 15 November 2004 and 29 January 2005. A number of meetings were general, while others focused particularly on residential tenancy issues for Maori, Pacific people and ethnic communities.

The Department sent out invitations to approximately 1000 stakeholders (including a copy of the Discussion Document). In addition, the meetings were advertised in community newspapers, ethnic media, on Pacific radio and on the Department's website. General advertising about the RTA Review (such as interview work on radio), also alerted members of the public to the fact that meetings would be held, and that information on the meetings would be on the Department's website.

In all, approximately 350 people attended the meetings. Of these, 92 identified themselves as landlords, 30 as tenants, 20 as property managers, and the rest identified themselves as "other" or did not indicate.

Many of those who attended the public meetings also made a written submission.

A written summary of issues raised during the public meetings issues is attached as Appendix 3.

Methodology for Analysis of Submissions

The approach used for analysing and summarising the written submissions is described in Appendix 2.

Number of Submissions and Kinds of Submitters

The Department received 574 written submissions.

The majority of written submissions were sent by post, email or fax. 212 of the written submissions were made using the electronic form provided on the Department's website.

A small number of submitters experienced difficulties with the electronic form and contacted the Department. In most cases, it appeared that submitters were trying to use a version of the form that had been copied from the website and emailed to them by various trade associations or other organisations. This disassociation from the website meant that the form could not be submitted using the 'submit' button at the bottom of the form. The Department assisted submitters who had difficulty with the electronic submission from by providing an email address for their submission, emailing them a Microsoft Word version of the submission form, and allowing them an extension of time to make their submission.

The majority of submissions were from landlords. Only 40 submissions were received from tenants or groups representing tenants; however, another 33 submissions were received from community organisations, disability groups and public health organisations, which also represented the perspective of tenants or particular groups of tenants.

Submissions were received from key housing stakeholders, including: Housing New Zealand Corporation (HNZC); individual property investors’ associations and the New Zealand Property Investors’ Federation; Real Estate Institute of New Zealand; and a number of tenancy groups including Tenants Action Group and Tenants Protection Association.

The total breakdown of submissions is set out below:

| No. | Percentage | Description |
|-----|------------|---|
| 407 | 71% | Landlords or groups representing landlords (385 individuals and 22 groups) |
| 39 | 7% | Tenants or groups representing tenants (32 individuals and 7 groups) |
| 24 | 4% | Property managers (5 individuals and 19 organisations) |
| 104 | 18% | Other, including <ul style="list-style-type: none"> • community organisations (19) • disability groups (8) • halls of residence for tertiary students (8) • public health organisations (6) • central government (6) • local government (6) • Maori Reserved Lands Act 1985 lessees (28) |

A list of all of the organisations that made submissions is attached as Appendix 1.

Details of Responses by Theme

1. More people rent and it’s important to get the balance between landlords and tenants right

1.1 Does the RTA currently achieve the right balance between the rights and obligations of landlords and the rights and obligations of tenants? If not, why not?

Of the 448 submitters who answered this question, 359 were landlords, 21 property managers, 28 tenants, and 48 ‘other’ (e.g., community groups).

57 submitters (44 landlords, 6 tenants and 7 ‘other’) expressed the view that the RTA currently achieves the right balance. Almost half of these qualified their responses, with landlords focusing on issues related to rent arrears, property damage and enforcement of Tenancy Tribunal orders; while tenants and others commented on the

power imbalance between landlords and tenants and the need for greater clarity in the Act about each party's responsibilities.

359 submitters (generally landlords and property managers) did not feel that the RTA currently achieves the right balance because it overly favours tenants. The main issues raised by these submitters concerned:

- the longer notice periods for terminating tenancies by landlords as compared with tenants;
- the difficult, costly, and time consuming process for obtaining and enforcing Tenancy Tribunal orders and the difficulty of tracing former tenants against whom an order has been made;
- lack of penalties for tenants' breaches;
- the process for, and costs associated with, dealing with abandoned property and goods;
- inadequate bond amounts and tenants who stop paying rent in the last few weeks of a tenancy, effectively eliminating the bond as protection against rent arrears and property damage;
- a perceived bias in favour of tenants by Tenancy Services and/or mediators and/or the Tenancy Tribunal and its decisions (e.g., tenants not being required to adhere to the correct process and procedures; tenants are not made to provide the same level of evidence as landlords);
- state intervention in what are felt to be private contractual arrangements;
- the use of the word 'reasonable' in the RTA when describing many of the obligations under the Act (e.g., "reasonably clean and reasonably tidy") is too broad, leaving it open to interpretation and allowing tenants to avoid obligations;
- landlords having to give their address for service (with possible physical risk), but a tenant's address can be confidential; and
- the effect of tenants' behaviour on neighbours and a neighbourhood and the perceived inability to address problems in this area.

32 submitters (a combination of tenants and 'other' submitters) felt that the RTA overly favours landlords. The main issues raised by these submitters concerned:

- landlords not providing and maintaining premises in a reasonable state of cleanliness and repair;
- little control over rent increases;
- the ability of landlords to refuse to rent to people or to terminate a tenancy without giving a reason;
- the use of the word 'reasonable' in the RTA when describing many of the obligations under the Act is too broad, leaving it open to interpretation and allowing landlords to avoid obligations;
- perceived bias in favour of landlords at the Tenancy Tribunal;

- landlords failing to return money owed at the end of a tenancy;
- landlords entering premises in a tenant's absence without the tenant's permission;
- insufficient penalties for landlords and property managers who repeatedly fail to carry out their obligations;
- given the low number of applications made by tenants currently, the need to investigate the reasons for this and to provide other ways of making complaints and reviewing landlords performance; and
- the difficulty certain groups (e.g., those with disability) have finding rental accommodation.

HNZC noted that submissions on the New Zealand Housing Strategy discussion document expressed concern about the balance in the RTA but were divided as to whether power lay with tenants or landlords.

The New Zealand Defence Force (NZDF) commented that, as most of its tenants serve in or are employed by NZDF, there is a different balance for their tenants as compared with the majority of tenants. Some of the rights of NZDF tenants under the RTA are diminished but these are justified given the particular circumstances of NZDF and NZDF rents are lower to compensate.

1.2 How can Tenancy Tribunal orders be better enforced?

375 submitters answered this question, of which 308 were landlords, 21 property managers, 17 tenants, and 29 'other'.

Enforcement of unpaid debt

A number of submitters commented specifically on issues related to enforcement and collection of debt (e.g., rent arrears, damages).

Several submitters commented that enforcement powers for tenancy-related debt should be broadened and comparable to debt recovery for other civil debts.

Some submitters felt that there should be a way to obtain immediate attachment orders from a tenant's wages or benefit for overdue rent. One submitter suggested the Tenancy Tribunal should have the authority to issue attachment orders against wages and other income like WINZ benefits and bank accounts. Another submitter proposed all arrears determined by the Tenancy Tribunal should be automatically enforceable without further action by the applicant to the court. One submitter proposed that the amount and regularity of arrears payment should be determined jointly by the Tribunal and the successful applicant at time of the Tribunal's decision.

Other submitters thought that non attendance at an Order for Examination hearing should result in a default Attachment Order by the courts. Similarly, another submitter suggested allowing the District Court assessor of an Order for Examination to assess a default amount (e.g. \$10 per week) when the individual against whom an order is sought does not attend the Order for Examination hearing.

Submitters suggested mechanisms to assist collection of unpaid debt, such as allowing the use of private debt collectors as an alternative to the Collections Unit in the Ministry of Justice or establishing a tenancy debt collection agency. Submitters also commented on the need for assistance in obtaining current addresses of former tenants who have outstanding orders for payment, including improved information sharing by government departments. Three submitters commented favourably on recent changes to allow information sharing by other government departments to provide addresses to the Collections Unit at the Ministry of Justice.

One submitter proposed an insurance levy, payable in part by the landlord and in part by the tenant, collected with a bond at the start of a tenancy, to cover any uncollectible funds and payable to the successful applicant after a certain period of unresolved debt-collection.

Submitters also suggested a variety of ways to assist create incentives for payment of unpaid debt, such as:

- penalty interest on unpaid debt;
- publication of debtors' names either by Collections or by landlords/property managers;
- a 'non-payer' database or a publicly available database of Tenancy Tribunal orders;
- seizure/confiscation of property;
- wheel clamping; or
- preventing people with outstanding orders for payment from leaving the country.

A number of submitters wanted greater provision for recovery of costs associated with collection of unpaid debt (e.g., interest, use of debt collectors).

Enforcement processes

The majority of submitters commented on enforcement processes and the need to make the processes for getting a Tenancy Tribunal hearing, obtaining an order and enforcing an order simpler, faster, less costly and more accessible for both parties. Particular issues raised in relation to enforcement processes included

- the need for quicker action by the Tenancy Tribunal when a tenant does not turn up to mediation or a hearing or does not comply with an order;
- having to go through additional processes and pay further fees to get Tenancy Tribunal orders enforced. As one submitter commented [sub 311], "The successful applicant, be they the landlord or the tenant, should not have to go through numerous legal processes to achieve rectification of the ruling made in their favour.";
- the process of serving warrants to appear at court for an Order for Examination – often debtors do not show and, although an arrest warrant is issued, bailiffs seem reluctant to forcibly arrest debtors and bring them to Court; and
- the slow process to obtain contempt orders when court ordered payments stop.

Some submitters made specific suggestions for improving enforcement processes, such as:

- mediators should be able to seal their own orders or have them sealed automatically by the Tenancy Tribunal to expedite the enforcement process;
- Tenancy Tribunal orders should include explicit default clauses about the consequences if the order is not met, so that action can be taken without having to go back to the Tribunal;
- the Tenancy Tribunal or court should arrange the enforcement procedure as part of its judgment, in consultation with the parties;
- Tenancy Tribunal orders should be automatically enforced by the court without having to re-apply for Order for Examination hearings or warrants to seize or attachment orders;
- the Tribunal and courts should make appropriate order against a party in absentia;
- improved cooperation among government departments (e.g., sharing of information by more government agencies to assist in tracing former tenants; assistance of the Inland Revenue Department in debt collection; Work and Income New Zealand stopping benefits for those with outstanding warrants or non-compliance with orders for payment of debt); and
- 10-day-notices and other orders should be valid for a longer period in case the breach re-occurs or the order has not been completely fulfilled, perhaps by means of a 'suspended order'.

A number of submitters commented on the need for improved monitoring and follow-up of outstanding orders. Some submitters suggested that the courts should collect and administer payments and forward the payments to successful applicants, with detailed records kept to identify those who repeatedly do not comply, while other submitters suggested the Tenancy Tribunal or the Department should have this role. One submitter suggested failure to comply with orders should automatically be referred to the District Court.

Several submitters suggested publishing all Tenancy Tribunal orders or publishing the names of those who fail to comply with Tenancy Tribunal orders.

Penalties

A number of submitters commented on penalties and whether there are sufficient and adequate penalties to create adequate incentives for compliance with Tenancy Tribunal orders. Many submitters felt that there should be more or increased penalties for failure to comply with Tenancy Tribunal orders, including:

- strict time limits and clear penalties for non-compliance;
- criminal prosecution, with increased fines and the possibility of imprisonment;
- allowing landlords to evict tenants immediately if they fail to comply with an order; and

- allowing tenants to sue landlords who fail to comply with an order.

Three submitters commented specifically on the need for additional or increased penalties for particularly recalcitrant landlords who "continuously & deliberately flout" the RTA. One of these submitters proposed that the Department of Building and Housing could pay for essential maintenance, and then put a caveat on the property.

One submitter also thought the Tenancy Tribunal should have the power to award costs on parties where delaying tactics are employed.

Enforcement bodies

Submitters also commented on the bodies involved in enforcement of Tenancy Tribunal orders.

Several submitters commented that mediators should be able to seal their own orders or have them sealed automatically by the Tenancy Tribunal to expedite the enforcement process.

Some submitters expressed the view that the present court system places very little importance on enforcement of Tenancy Tribunal orders. Several submitters suggested that the Tenancy Tribunal should be able to enforce its own orders, rather than parties being required to go to the District Court.

Several submitters proposed giving authority to other parties to enforce orders. For example, one submitter suggested that Department staff should be involved in enforcing orders, to avoid contact between a landlord and tenant during a time of disagreement. Another proposed that Tenancy Services should supervise compliance with orders and manage the money that is paid by the debtor.

Several submitters commented on the role of bailiffs and the Police in enforcement, including:

- the need for bailiffs to serve warrants after hours;
- bailiffs should be trained and required to attend properties for seizing goods without advance telephone calls;
- proposing that other authorised agents besides bailiffs should be able to serve warrants and assist with other aspects of enforcement (e.g., evictions); and
- the need for more involvement and consistency by the Police in enforcing the RTA and the serving of warrants.

Four submitters suggested that the Tenancy Tribunal should be for serious matters and that some of the less serious transactions or minor adjudications should be able to be dealt with by Tenancy Services. For example, one submitter proposed that 10-day notices for wilful damage or nuisance could be effective on presentation of evidence to Tenancy Services. On a related point, several submitters commented on the need for the Tenancy Tribunal to have jurisdiction to deal with claims exceeding \$12,000.

One submitter suggested disbanding the Tenancy Tribunal altogether and leaving it to the District Court to resolve tenancy-related disputes.

Other

Some submitters commented on the need to address issues before they reach the point of Tenancy Tribunal hearings and enforcement of orders.

One submitter commented on the need for a broader range of remedies short of termination of the tenancy to address tenancy breaches to enable better management of tenancies, particularly for those tenants with complex social needs. This submitter gave as an example the use of demerit points in some Australian states.

One submitter thought that District Court hearings should be held where the debt occurred, not the location of debtor.

HNZC commented that submissions on the New Zealand Housing Strategy supported improving enforcement and review of dispute resolution tools as long as it is balanced and meets rights of both parties.

One submitter [sub 458] expressed the view that the issue is not the effectiveness of the Tenancy Tribunal system, but the ability to serve court orders, stating "Confidence in the Tenancy Tribunal system is effectively being undermined by a broader failure of the Court system".

2. The circumstances of people renting are more diverse.

2.1 *How well does the rental market respond to the needs of people in different family and individual circumstances?*

This question was answered by 339 submitters (256 landlords, 22 property managers, 25 tenants and 36 other).

Of those that offered a clear opinion, the majority felt that the needs of a diverse range of tenants were adequately addressed by the market.

A number of submitters commented about the effect of market forces on the supply of rental accommodation. Apartment developments targeting foreign students were cited as a successful example of market forces at work.

Some submitters felt that there was a problem with accommodation supply lagging behind demand. This was attributed in part to protracted building consent processes, although it was noted that rental stock tended to be recycled, rather than purpose built.

A shortage of accommodation suitable for large or extended families was identified by several submitters. Submitters had particular concerns about health implications associated with overcrowding. The Auckland Regional Public Health Service noted that "crowding is associated with a range of infectious diseases including

meningococcal disease, tuberculosis, rheumatic fever, respiratory infections and mental health”.

Other submitters thought there was a shortage of accommodation suitable for people with disabilities. It was suggested that this shortage will become more acute as the population ages. IHC quoted 2001 census figures in which 20% of the population reported they had a disability and that “this ratio increased with age, and reached 54% for those aged 65 years and over”.

Discrimination, or a perception of increased risk, was identified as a barrier for some tenant groups including:

- immigrants;
- Maori;
- Pacific Islanders;
- ex prisoners;
- people with children;
- large families;
- beneficiaries;
- low income earners
- people with a mental illness; and
- pet owners.

2.2 *What can be done to improve the response of the rental market to a more diverse range of family and individual circumstances?*

This question was answered by 299 submitters (231 landlords, 18 property managers, 21 tenants and 29 other).

62 submitters identified tax breaks, subsidies or other incentives as a way to improve the response of the rental market to shortages in certain segments

Several submitters mentioned risks associated with renting to some tenant groups. Submitters suggested that they would be more likely to rent to these tenants if risks could be mitigated through:

- payment of benefits and accommodation supplements directly to landlords;
- government guaranteeing rent payments;
- making it easier to enforce tenant obligations; and
- the establishment of a bad tenant register.

Submitters expressed the view that compliance costs or red tape was a barrier to the provision of new accommodation or modification of existing stock. It was felt that these restrictions caused construction delays and limited dwelling diversity.

It was suggested that more could be done to address the issue of mismatched housing - such as moving state house tenants when their circumstances change or encouraging “empty nesters” to free up family homes.

A number of submitters wanted the government to take a more active role in assessing housing needs and trends. It was suggested that this information could be used by developers and landlords to plan supply. It was also suggested that the government could run a register of accommodation that is available to meet special needs.

Some submitters felt that the government needed to take a more active role in the provision of accommodation. Suggestions included:

- building more state housing;
- leasing and subletting private dwellings; and
- public / private partnerships - where by government entered into partnerships and collaborations with community organisations and private landlords, along similar lines to the Housing Innovation Fund administered by HNZA.

It was suggested that the Accommodation Supplement could be increased to overcome affordability issues, although at least one submitter felt that the Accommodation Supplement artificially distorted rent levels. Another suggestion was to assist tenants into home ownership.

A shortage of accommodation for immigrants was mentioned by a number of submitters. A small number of these submitters felt that the housing shortage was the result of poor immigration policy, rather than a lack of supply per se. Others felt that more could be done to overcome language and cultural barriers between landlords and tenants – such as the provision of publications in other languages, advocates and interpreters.

2.3 *Are there changes required to the RTA and its administration to respond better to the more varied family and individual circumstances of tenants? If so, what change is needed?*

This question was answered by 265 submitters (201 landlords, 17 property managers, 18 tenants and 29 other).

A number of landlords felt that the RTA was biased against landlords, and as a result discourages investment in residential property. Others said that they would be more likely to rent to “risky” tenants if it was easier to deal with tenancy agreement breaches and collect outstanding rent. Specific suggestions included:

- reducing delays to the dispute resolution process;
- reducing the amount of rent arrears required before the Tenancy Tribunal can terminate a tenancy;
- reducing notice periods;
- allowing landlords to collect larger bonds;
- increasing penalties for RTA breaches; and

- improving the enforcement process.

A number of comments were received in relation to security of tenure. It was suggested that the RTA could promote a wider range of tenure arrangements. It was also suggested that the RTA could clarify rights of renewal.

There were conflicting opinions as to whether the RTA should be used as a vehicle to ensure that the market responds to specific needs. The New Zealand Law Society suggested that “a decision needs to be made as to whether any revision to the RTA should include matters of social policy or social engineering, rather than pure administration and management of tenanted properties”. A number of submitters felt it was the role of central government, not the private market, to provide for unmet housing needs.

Some felt that the discrimination provisions under the Human Rights Act 1993 and RTA could be more actively enforced.

3. People with different individual and family circumstances have different needs for stable housing.

3.1 *How important is stable housing to people in different family and individual circumstances?*

Of the 323 submitters who answered this question, nearly $\frac{3}{4}$ (228) agreed stability was important or very important.

Many specifically mentioned its importance for families with children at school. Others mentioned its importance for older people and those with an intellectual disability. Those with physical disabilities were also mentioned as a group requiring stability, and in particular to justify investment in modifications that might be required to enable a disabled person to live at the property.

Several submitters mentioned connectivity with the community as a benefit from stability: “Stable housing is the basis of sustainable communities.” [sub 456]. Stable housing was also thought to contribute to improved health outcomes.

A significant number of submitters – both landlords and tenants - said the importance of stability varied depending on the circumstances and preferences of individual renters, and that circumstances change over time. Two respondents made the point that homeowners also move house as their circumstances change. Young single people in particular were seen as being highly mobile. Some mentioned that tenants move because of changes in employment or relationship issues. One tenant said tenants moved frequently in search of lower rents.

Several submitters pointed out that longer term tenancies are of benefit to both tenants and landlords. Ten percent of respondents said that landlords would prefer longer term tenancies with ‘good’ tenants, usually defined as a tenant who paid the rent on time and took adequate care of the property. Benefits for landlords were seen to be stability in income, with less vacant time between tenants and less “wear and tear from high turnover” [sub 67] Several landlords said that in practice there are long-term tenancies under periodic rental agreements, with ‘good’ tenants.

Several respondents viewed the length of tenure as largely being the tenant's choice, with tenants either not seeking/refusing a longer term or breaking a fixed term agreement with little penalty. In speaking of longer term tenancy agreements the New Zealand Property Investors' Federation [sub 509] said the Federation "had detected little tenant enthusiasm or up-take", and other landlords said their experience had been that tenants rejected fixed term agreements when offered, appearing to prefer flexibility. Some respondents said the short average length of tenancies indicated that stability was not a concern for tenants.

3.2 How well does the private rental market respond to people's different needs for stable housing?

Of the 307 submitters who answered this question, over 40% thought the market responded well or very well. However there was a sharp distinction between the responses of different types of submitters. Nearly half of landlord submitters (111) thought the market responded well, with only 13 thinking it did not. This compared with 14 tenant or tenant advocate submitters (half of those that answered this question), who believed the market did not respond well. Property managers and other organisations were more mixed in their views, qualifying their responses.

Several respondents expressed the view that landlords tended to cater for the mainstream in order to appeal to a wider market, and that this tended to disadvantage low income earners and others with special needs when seeking accommodation. Four submitters thought it was not the private market's responsibility to provide stable housing.

Many landlords expressed the view that the market worked very well for 'good' tenants, with 37 respondents saying they preferred to keep tenants for longer periods: "Landlords want stable returns, best achieved with stable long-term tenants" [sub 559]. Some said they offered rewards of discounted rent or requested fewer rent increases during tenure: "At the present time many landlords are happy to charge a lower rental to sign a tenant on a fixed term tenancy" [sub 519].

One submitter noted that landlords tended to use fixed term contracts "poorly" and that "...larger' landlords are more likely to provide stable housing than those who rent out 1-2 dwellings" [sub 456]. Five submitters said experiences with 'bad' tenants under the current system led landlords to exit the market, thereby leading to regular sales of tenanted properties.

Views were mixed on fixed term contracts in practice. A few submitters felt the fixed term arrangements under the RTA were unbalanced, in that tenants were perceived to be able to break them with little difficulty whereas landlords were seen to be tied in. Others thought tenant flexibility was too limited under fixed term tenancies, with some being locked into continuing with inappropriate housing. One property manager said that there was little to be gained by a tenant in a fixed tenancy because of the need to find another tenant if they had to leave – "this requirement doesn't work and should be removed" [sub 448].

Several respondents pointed out that long term tenancies do exist currently. There are provisions for fixed term tenancies in the RTA; in addition periodic tenancies

allow an open-ended length of stay if both sides are comfortable with the arrangement, and some landlords operated one-year contracts extendable by agreement (with one landlords saying their tenants had stayed for up to 11 years under this system). A couple of submitters recommended examination of overseas options for choices in types of rental agreement, including assured tenancies and long-term leasehold arrangements (although one submitter stated such tenancies would make property investment less attractive).

One submitter noted: “If the demand is there the market will respond, especially if there were more protection to the landlord in return for giving the tenant a more stable term” [sub 50]. This issue of perceived inadequate protection and enforcement was raised by other respondents, saying it led to providers having difficulty in committing to longer term tenancies. “The bad experience of the few and poor response of the law spoils it for others” [sub 358]. One respondent thought not enough landlords tended to seek or provide rental properties of a standard that would attract stable tenants due to concerns about their inability to adequately protect their investment under the RTA.

One landlord noted that while most landlords seek stable tenants, some are seeking quick financial gain on resale of their rental properties, and “probably need changes to tax laws to alter this behaviour” [sub 458]. The investor nature of landlords was mentioned as being a factor: “Most owners are investors or saving for retirement so at some stage they will sell” [sub 536]; one submitter noted there had been a change in nature from long-term investors to short to medium-term investors in the market. The current housing boom was thought to have contributed to the recent high turnover in rental properties by a few respondents, who thought this may change as the market cools.

One submitter thought a ‘good’ tenant was less likely to be evicted on sale of a rental property, as often the purchaser was another landlord, so in this way a “quality tenant has a fair degree of stability brought about by their own actions” [sub 510].

One property manager noted: “With property prices and interest rates changing so often, owners take advantage and sell. But when interest rates fall and house prices fall, a lot of tenants buy homes. So it goes both ways.” [sub 452].

3.3 *What stops landlords offering longer-term tenancy agreements?*

Of the 383 respondents who answered this question, 314 were landlords, who listed five main reasons why longer-term agreements were not offered:

- Fear of the tenant turning out to be unsatisfactory and problems ending the tenancy;
- A perception that tenants do not want longer term agreements;
- A view that fixed term agreements under the current RTA benefit only tenants, with no gains for landlords;
- Restrictions on the ability to increase rents during the tenancy; and
- Loss of flexibility when dealing with the property, particularly if the landlord wishes to sell.

Fear of “being stuck with a ‘bad’ tenant” was by far the dominant reason given by landlords, with 104 submitters (approximately one third of the landlords who answered this question) giving this as the reason. Landlords were anxious about the prospect of rent arrears and damage to property. Fourteen respondents said it was harder and took longer to remove unsatisfactory tenants under a fixed term agreement, and lengthy delays in the process meant the eventual costs faced by the landlords were higher.

Submitters also referred to a perceived bias against landlords in the RTA and the difficulty of enforcing any Tenancy tribunal orders post-eviction as problems arising from a ‘bad’ tenant.

Several landlords said a lack of trust, or the inability to check references or the tenant’s credit or rent history increased their uncertainty over a tenant’s suitability and prevented them offering long-term agreements. Seven suggested a trial period before offering a long-term agreement, with two suggesting a 12 month period would be suitable.

The second main reason given by landlords was the lack of demand from tenants; one quarter of respondents said tenants wanted short-term/periodic agreements. A further 22 landlords stated landlords prefer long-term agreements, with a ‘good’ tenant (although two noted property developers or traders may not). Nine submitters stated that circumstances can change, on both sides, and periodic agreements give flexibility. One respondent noted: “Periodic agreements suit both tenant and landlord; can have long-term tenancies under this system, but both sides are free to change arrangements as they need to” [sub 430].

The perceived imbalance of benefits from fixed-term agreements under the current system was put forward by 44 landlords. Tenants are perceived as being able to easily abandon the tenancy whenever they wish with few serious repercussions: “In practice, landlords give up flexibility but tenants retain theirs” [sub 562]. Four submitters suggested that higher bonds (up to three months of rent) were necessary to compensate for this risk. One respondent suggested that a fixed-term agreement might give tenants more incentive to disappear should they get into arrears.

The final two main reasons put forward by landlords were restrictions on rent reviews and the potential loss of flexibility in the event of wanting to sell the property, both given by 17 respondents. It was harder under longer-term agreements to maintain market rentals, which both decreased the return on the investment relative to other investment opportunities but also exposed landlords to risks from volatility in interest rates and other charges. One said the inability to secure a fixed rate loan for longer than 5 years prevented longer tenancies; two cited changes in government policies leading to uncertainty over future costs. One submitter suggested that a registered valuer should be required to set rents annually during a long term agreement, such as for commercial properties.

Finally, properties with long-term tenants were perceived to be harder to sell, and to realize lower values, than vacant sales. This was seen as a particular issue in the

current market, where many landlords are thought to be short-term investors seeking to make a capital gain.

Four submitters referred to difficulties in effecting maintenance during long-term tenancies. One said they had been advised against long-term agreements by their property manager. Thirty landlords said nothing was preventing them offering long-term tenancies.

Non-landlord respondents were mixed in their answers to this question. Tenants and tenant advocates were evenly divided between landlords' desire to increase rents and profits, and landlords' anxiety over 'bad' tenants, rent arrears and damage as being the main reason why landlords didn't offer long term agreements. One stated that vacant possession entitlement and entitlement to occupy encouraged landlords to terminate leases early.

Other organisations noted the same reasons as above. One stated rent increases caused many tenants to move; another noted the fall in turnover when income-related rents were re-introduced for state housing suggested affordability was at least part of the problem.

3.4 *What can be done to encourage landlords to enter into longer tenancy or leasehold agreements for those who want them?*

Security of payment was the main suggestion for encouraging landlords to enter into longer agreements, and most of these included some form of guarantee. Five suggested an order on wages or benefits for rent; a further 25 specified direct credit of benefits from WINZ for rent, and 16 opted for guaranteed rent, underwritten by the State (of these, 3 referred to lease agreements with HNZA). Twenty-one submitters said that bonds should be increased for longer terms, with periods suggested ranging from 3 months to 2 years (one suggested no limit); one suggested bonds should be indexed to property values. In contrast, one organisation suggested that improved management of tenancies would obviate the need for bonds. A further four submitters recommended that tenants should be permitted to pay more than two weeks in advance, by negotiation.

Significantly faster processes for dealing with rental arrears and damage, particularly for evictions (34) and better enforcement and debt recovery for breaches of tenancy agreements (24) were proposed by many respondents. Ensuring the law treated both sides fairly was cited by 13 submitters. Fourteen said it needed to be harder for tenants to break a fixed term agreement, with three specifying defaulter's interest or other significant financial penalties. Four suggested some form of guarantee to cover the cost of tenants breaking tenancies, e.g., the use of interest on bond monies.

Information on the quality of prospective tenants was another area where several suggestions were made. Access to more information in the form of references and credit histories was cited by 14 respondents. The establishment of a readily accessible database of Tenancy Tribunal decisions was suggested by nine respondents; a database of good tenants, register of bad tenants, and access to rent histories were also suggested. One organisation raised the idea of using a variety of methods to ensure access to information about landlords and tenants, noting that the use of references and forms do not suit all situations.

The ability to review rents regularly was raised by 16 landlords, who were concerned that market rent levels need to be maintained during a long-term tenancy. One suggestion was that the Tenancy Tribunal should arbitrate on fair market rentals if required. An additional 5 submitters thought instead that rents should be indexed to inflation over the term of the agreement; one suggested changes in rent should be linked to movements in the landlord's mortgage payments. One landlord suggested that incentive/penalty plans for tenants should be permitted. Three respondents suggested rents should be controlled for long-term agreements; one proposed that the should set acceptable rent levels.

Trial periods were suggested by 12 respondents, with an option for a longer period after the initial "settling-in" period. (One respondent stated present fixed term/periodic arrangements do not allow tenants and landlords to establish an initial minimum period such as three months.)

Financial incentives were discussed by several respondents. "Stability is dependent on a good return to the property investor – making the effort of operating a rental property business a worthwhile return" [sub 545]. A number of suggestions for improving financial returns included:

- Government subsidy (6);
- Tax relief (8) – one suggested reducing or eliminating the depreciation clawback after a certain period of time;
- Rates relief and/or interest rate controls or support (5) – one suggested the government provide cheap finance for landlords with longer-term rentals.

One specific proposal was for Government grants to be provided to landlords who formed Loss Attributing Qualifying Companies and guaranteed that properties owned by those companies would be used for rental accommodation only (i.e., the properties could not be sold, but shares in the company could be traded). The grant would cover the initial loss in value of the dwellings; the result would be lower cost rental dwellings which would enable lower rents.

Changes to the tax structure to enable major upgrades to be better depreciated were suggested by four respondents, with subsidies or rebates for those who modified properties to improve accessibility. Four respondents said landlords required easier access to carry out ongoing maintenance during longer-term agreements; on the other hand one stressed the need for major upgrades to be negotiated to minimise disruption. Four respondents suggested some responsibility for maintenance costs could pass to the tenant in longer-term arrangements; one drew a parallel with the European model, where tenants are responsible for internal furnishings and decoration.

The need for clear unambiguous tenancy agreements was raised in several submissions. Specific issues raised included:

- Review/clarify provisions for termination of fixed term agreements due to breach by either party (one submitter proposed all terminations should be required to show 'just cause');

- The need for ‘out’ clauses for both parties (other submitters proposed an ‘out’ clause for the landlord if the tenant was found to have fraudulently entered into the tenancy);
- The need for ongoing reviews of arrangements, with clear stipulations as to the frequency of changes to conditions (including rent reviews), rights of renewal and notice periods;
- Two submitters proposed the ability to negotiate out of some RTA clauses, and one suggested the need for tighter and more clearly defined ‘rights to waiver’.

Education and improved information about options for different tenancy arrangements and their relative merits were mentioned by several respondents from all categories. One organisation said many interpreted section 5(ba) of the RTA as restricting fixed term agreements to a maximum of 5 years, and this needed to be clarified. Two proposed that the Department develop and promote generic longer-term contracts. Information providing support to landlords who may be facing difficulties with their properties was suggested as one mechanism to encourage landlords to take a longer term view of their participation in the market.

Two health organisations suggested regulating housing quality standards could decrease the burden on tenants to raise quality issues, thereby reducing the potential for conflict and possibly increasing stability of tenure.

One organisation suggested investigating increasing the guaranteed length of residential tenancies; similarly, another submitter proposed removing vacant possession entitlement and entitlement to occupy. However three landlords believed the introduction of a model similar to the UK, with assured tenancies, would make residential properties less attractive and lead to market exit by landlords.

One organisation proposed the reintroduction of capital gains tax.

Eighteen landlords said they already want longer term tenancies; a further 21 stated there was no problem to be solved, and/or it should be left to the market/individuals to determine. Twelve said there was no demand from tenants for longer-term arrangements.

3.5 *Could the RTA be amended to provide improved choices for people wanting stable housing? If so, how?*

A total of 263 submitters answered this question, of whom 55 (21%) said the RTA should not be amended. The main reasons given were:

- the current framework is able to accommodate longer term tenancies (cited by around half of these respondents);
- regulation should be decreased rather than increased; and
- it is not the role of the RTA to provide choices.

One respondent stated “...tenants wanting stability and landlords wanting to give it need to work it out.” The RTA could give no guarantees on either side [sub 555] There was seen to be a need for education about obligations on both sides.

Landlords were evenly divided between not wanting any change to the RTA, and wanting some way to reduce landlord risk. The predominant view of this second group was summarized by one respondent: “Make the landlord’s position less risky and long-term tenancies are immediately more likely” [sub 542]. Fifteen respondents held this view in general terms; however, several specific remedies were suggested by submitters, including:

- improve the balance of rights and responsibilities to support landlords/provide more equitable dispute resolution;
- a database or register of tenant information;
- higher bonds for longer terms;
- make it more difficult for tenants to abandon a fixed term agreement;
- direct credit benefits from WINZ for rent;
- make Tribunal orders enforceable;
- make it faster and easier to evict a ‘bad’ tenant;
- increase the penalties for rent arrears and/or damage; and
- provide guarantees for rent or damage (two submitters mentioned the HNZN lease scheme as one way to achieve this).

Other remedies included enabling monthly rental payments in advance, longer notice periods for tenants and improved tracking of defaulters. Two submitters thought that if tenants were actively pursued their tenure may improve: “If the RTA changes to ensure the state will actively find tenants who owe money, tenants are more likely to stay where they are, resulting in greater stability” [sub 108].

A number of respondents across all submitter types suggested including a greater menu of tenancy agreements in the RTA. Some suggested fixed-term agreements should be more like commercial leases, with a requirement to on-sell if the tenant does not complete the agreed term. Several respondents suggested the RTA should include a more comprehensive default model with reasonable provisions for rent review (one proposed it should be based on the Auckland District Law Society form).

Some submitters wanted the ability to allow more flexible arrangements, with a trial period of 6-12 months on a periodic basis, before signing up to a long-term tenancy agreement. Others wanted the RTA amended to include long-term (up to 10 years) leases, with incentives for both tenants (such as rent controls or bond waivers), and landlords (e.g., tax incentives/rates relief).

One respondent stressed the need to clarify that current fixed term agreements are possible for longer than 5 years; a number of submitters suggested the current exemption from the RTA for agreements longer than 5 years should be removed.

Termination requirements were also assessed. Some respondents thought higher levels of evidence should be required for termination, while others believed ‘just cause’ should be shown for termination regardless of the length of tenure.

There were a range of suggestions relating to the desirability or otherwise of the “European model”. Respondents replied variously:

- abolish vacant possession entitlement/entitlement to occupy;
- remove the provision enabling eviction if the property will remain a rental post-sale;
- reinstate protected tenancies and tenure protection for elderly widows;
- investigate ‘secure tenancy’ agreement;
- rights to tenancy should be inheritable.

A number thought that stable housing could not be provided in a competitive market and the Government should provide such choices directly. Three thought affordable rent was the issue although they were divided as to the role of the Accommodation Supplement in achieving this.

4. Housing is becoming less affordable.

4.1 Does the RTA impact on the supply of affordable housing?

Respondents to this question were fairly evenly divided, with 138 replying “No” and 109 “Yes” (44% and 34% respectively). This pattern was replicated across all categories of respondent. Twelve respondents replied “Don’t Know”.

Those who thought the RTA had a minimal impact on housing affordability pointed to a range of other factors as being responsible. Market forces were stated as the main factor by 36 submitters. Specific cost drivers identified as increasing rents included:

- interest rates;
- insurance to cover damage to properties;
- house prices;
- taxation;
- immigration; and
- increased building costs under the Building Act 2004.

A number of submitters stated housing costs were rising because of general price pressures; one stated rents had risen less than house prices, and that the fundamental issue was low wages.

One landlord stated that developers placing covenants over land that prohibited ‘basic’ first home type dwellings being constructed was a factor reducing affordability [sub 33], while another stated the Resource Management Act had “...all but destroyed the building of lower cost rentals” [sub 362]. Regional pressures were cited by a number of submitters, with several specifically mentioning Auckland, Nelson or Wellington (one tenant thought the Regional Growth Strategy in Auckland had more impact than the RTA).

One public health organisation stated the “reduction in social housing and higher house prices raising barriers to home ownership have reduced options for those renting at the lower end of the market” [sub 320]. Another pointed out that low income households were likely to trade off housing costs against other dimensions of housing adequacy.

Those who thought the RTA did affect the affordability of housing stated two main effects:

- 1) One was the direct impact on rents due to the need for landlords to cover costs and/or the possibility of financial loss due to ‘bad’ tenants and inadequate remedies under the RTA, cited by several respondents. “The lack of information on the history and suitability of tenants, problems locating ‘skipped’ tenants and collecting debt, means the rents charged have a ‘risk premium’ to cover potential loss or damage” [sub 562]. Another landlord pointed out that the need to charge 4 weeks bond as a “minimum protection measure” made it costly for tenants to secure a property [sub 535].

Two submitters made the observation that by failing to ensure ‘bad’ tenants face consequences, the RTA increases the costs faced by all tenants – in effect, ‘good’ tenants end up subsidizing the ‘bad’ ones. One property manager said that landlords charged the highest possible rent because if something went wrong costs would probably not be covered by the bond, and the Tenancy Tribunal was not seen as an option because of lack of recovery of orders for payment of outstanding debt.

- 2) However the more significant impact of the RTA on affordability was thought to be indirect, through landlords either exiting the lower end of the market or choosing not to enter it because of perceived difficulties or bias in the application of the RTA (cited by 35 submitters).

As one submitter commented, “It does prevent me from offering to demographics that I feel have a higher risk of not working out” [Sub 106].

One landlord thought the RTA had a beneficial effect on affordability, because it provides a level of certainty to both sides and therefore keeps costs low.

Six landlords made the general point that regulation increases costs and interferes with supply and demand, and 15 asked for no increase in regulation from the current position.

4.2 Are the rent control provisions of the RTA appropriate?

Nearly half of the 318 respondents to this question thought the provisions were inappropriate (147 submitters, or 46%) compared with a third who thought otherwise (89).

However, there appeared to be some confusion as to the nature and extent of existing rent control provisions. Several submitters said rent controls were inappropriate and/or have perverse effects: “Any rent controls will remove investment

capital from the rental market and reduce the amount and quality of accommodation available to tenants” [Sub 20]. Another six respondents were unaware there were any such provisions in the RTA.

Twenty-eight respondents thought that the market should determine rents.

Some respondents thought the RTA provisions worked well. “RTA provisions are clear and can deal with overcharging by unscrupulous property owners” [Sub 26]. Others thought the operation of the provisions would be enhanced by providing information on market rents, particularly at the start of tenancies (one suggestion was that Tenancy Services could collect rental data on average rentals in specific areas when bonds were lodged, and make this data available).

Landlords who thought the provisions were inappropriate raised a number of issues:

- The 60 days notice required from landlords was seen as too long, compared with tenants’ requirements to give only 21 days notice of termination. Two respondents suggested 30 days notice was more appropriate.
- The six-month time period between rent increases was seen as too long by some, particularly when local body rates and interest rates were rising; however a similar number thought that provision was appropriate. Two submitters discussed the problems this rule posed for institutional landlords, given the need to get timing and notices correct; one suggested this rule should not apply to service tenancies because of the administrative burden and costs imposed [New Zealand Defence Force]. NZDF also stated there was ambiguity in relation to annual tenancies, and supported removal of this rule in that situation.
- Two landlords disagreed with the ability of tenants to dispute rent increases: “If a tenant disagrees, a landlord can’t enforce a rent rise even where justified by the market” [sub 546].
- Some submitters thought that 4 weeks bond and 2 weeks rent in advance should be standard.
- A number raised concerns over the impact of existing controls on supply, claiming restrictions on rent increases were limiting investment in the sector.
- One landlord suggested a commission of mediators comprising both tenants and landlords, with regular visits to properties.

Non-landlord respondents had a different view:

- A number thought the length between rent increases should be longer, suggesting either annual increases or every two years.
- A number of respondents proposed limits to rent increases, with some stating they should be limited to increases in inflation.
- One respondent called for clearer guidelines as to what had to be provided for ‘market rent’; another thought that where increases in rent were justified by ‘substantially improved’ premises, more detailed definition of what constituted ‘substantial’ was required.

One landlord suggested the inability to increase rents during a fixed term agreement worked against tenants' best interests, as it became uneconomic to provide 'more and better' accommodation. However some adjudicators proposed amending provisions for fixed term tenancies, such as only being able to increase on renewal dates, so that tenants have the option of not renewing, or if there is provision for rent increases during the fixed term agreement that the tenant has an option to end the tenancy if the increase is significant [the Principal Tenancy Adjudicator].

4.3 How can we reduce the costs faced by landlords?

The 357 respondents to this question proposed a wide variety of suggestions, across all types of submitter. Six landlords and three other respondents thought that present costs were reasonable. One organisation pointed to the growth in the rental sector as contradicting the perception that extra costs (e.g., unpaid rent) would deter investors [Housing New Zealand Corporation]. Several respondents argued against increased regulation or bureaucracy.

The two main cost issues raised by submitters were ensuring active enforcement of orders and debt recovery from delinquent tenants, so that a breach received 'fair punishment'; and the speed of remedy for a breach, in particular an easier and quicker eviction process.

Eighty-two respondents (23% of those who answered the question) proposed harsher penalties or more effective enforcement procedures, particularly for debt recovery. Many called for more active enforcement of Tribunal orders, including in particular measures to improve locating defaulting tenants. Several proposed interest should be charged on rental arrears. Five respondents suggested non-payment of rent should be illegal and regarded as theft. Some respondents also called for more stringent penalties for damage caused by tenants, with one proposing tenants should be subject to exemplary damages and another calling for intentional damage to be made a criminal offence. One submitter suggested tenants who regularly had judgments awarded against them should be penalized.

Sixty-four respondents (18% of those who answered the question) referred to the need to increase the speed of dispute resolution, with the current process argued to take 7-9 weeks before eviction could be effected. Several options for expediting the process were suggested including:

- reduce the waiting time for a Tribunal hearing (one respondent suggested a maximum waiting time of 1 week);
- reduce the notice period required for landlords (most suggested equalling the tenant notice period);
- shorten mediation or remove the requirement for it;
- reduce the 10-working day letter period to 5 days;
- enable application for rent arrears to occur at 2 weeks rather than 3.

Two submitters felt that a tenancy should be terminated immediately if it was obtained by fraud or false pretences. Four respondents thought that landlords should have to wait no longer than a week before disposing of abandoned goods.

The costs of mediation and application to the Tenancy Tribunal were raised by many submitters, who suggested these should be either free or recovered from tenants or the 'guilty party'; it was also proposed that costs should be awarded for landlords' time, travel and other costs associated with Tribunal hearings. Two respondents suggested surplus bond monies should fund the Tribunal. One proposed that landlords should be permitted to appear 'over-the-phone' at hearings, "... as most landlords work and find it hard to take a day off, especially when the tenant doesn't turn up" [sub 7].

Several other suggestions were made to reduce landlord risk. A number of respondents mentioned the need for higher bonds to ensure adequate protection. One proposed the bond should be increased to two months rent similar to requirements in the USA, the UK and Australia; another suggested bond and rental in advance should be linked to the minimum time for the process of eviction. Three submitters believed the practice of using up the bond to pay rent at the end of a tenancy should be penalized or made illegal. One submitter suggested there could be two bonds, one for rent arrears and one for damage.

Twenty-seven respondents suggested information on tenants' rental history should be publicly available. Options for this included a register of 'bad' tenants or tenant debtors, and online access to Tribunal findings.

Direct payment of rent from benefits or wages was proposed by 26 respondents, not all of them landlords; one organisation suggested this could be part of having systems in place at the start of a tenancy to reduce the possibility of rent arrears occurring in the first place [Ministry of Social Development].

Several respondents suggested the Government should provide a guarantee for rent and damage recovery, perhaps through creating a fund. Two suggested the Government or Tribunal should pay landlords for rent arrears and damage, and then seek to recover this from defaulting tenants themselves. Several submitters suggested options for insurance, including making it compulsory for tenants to have contents insurance that covered damage to fixtures and fittings (perhaps subsidized by the Government).

A few submitters suggested enabling landlords to provide incentives for good tenant behaviour. Some respondents proposed education for tenants on their obligations and the need to respect the property.

Several respondents suggested a need for clarification about which charges should be paid by tenants and which by landlords, particularly regarding water, waste water and rubbish collection. (One proposed that landlords should receive incentive payments to assist them to upgrade metering systems.) Two stated tenants should pay rates.

A number of respondents proposed subsidizing or limiting increases in local council rates and mortgage interest rates. Tax incentives were also suggested, by 21 submitters. One suggested tax incentives for landlords to renovate and improve properties, and prevent 'slum' developments. Several opposed changes to the

depreciation regime; two proposed the claw-back of depreciation on sale of a property should be removed.

4.4 *What can be done to encourage private landlords to provide affordable rental housing for low-income earners?*

There was a marked divergence in responses among the 380 respondents to this question. Landlords and property managers overwhelmingly responded with suggestions that increased the security of rental payments, with 100 of these submitters (31% of those who answered the question) suggested direct crediting of rental payments from WINZ or employers. One landlord stated: “Easier and less stressful for landlords to accept lower rent which is regular than a higher rent with defaults every now and then” [sub 38]. Two thought WINZ should also pay the bond and letting fee where relevant. A further 24 respondents proposed some form of rental guarantee, mostly from the Government but two proposed a guarantee by other family members or others. The concept of the Government renting from landlords on a long-term basis and on-renting to low income tenants, such as the HNZA 10 year leases, was thought to be a good idea by 7 respondents.

Other responses which aimed at lowering landlord risk included a ‘bad’ tenant register/information on Tribunal decisions being publicly available (one respondent suggested tenants should be rated using a star system); and a quicker and more equitable dispute resolution process, including more effective enforcement of Tribunal orders and measures to improve tracing defaulters. Some thought notice periods for eviction in the case of vandalism should be severely shortened (to as little as two days); one proposed instant eviction in this case, with WINZ paying for the damage and then seeking recompense from the tenant itself. Four specifically mentioned guarantees for the cost of damage: “Property damage is one of the key areas which discourages landlords from low cost areas.” [sub 131]. Six respondents thought there should be more protection for landlords generally.

Many landlords focused on the ability of low income earners to pay a market rent, with 45 suggesting rent subsidies or housing vouchers were necessary. Four suggested increases in the minimum wage, and two proposed general tax cuts to improve spending power. Some suggested low income tenants should receive budgeting advice.

Twenty-three respondents in this category suggested tax incentives for landlords. Some proposed rates relief or subsidized interest rates and two thought maintenance and repairs should be subsidized.

There was limited discussion of development options. Two respondents suggested zoning laws should be examined, with one suggesting more lower priced land should be opened up, while building inflation needed to be controlled. One mentioned the possibility of working with Government developers to build accommodation affordably and selling to private landlords on favourable terms, in return for landlord guarantees to keep renting the home for some minimum period.

A number of respondents said “Nothing/Not much”. One respondent stated that house prices and location had more impact on affordability than the RTA; regarding

the RTA, the best that could be done is “have a good legislation, and for it to be administered well, which is the situation we have at the moment” [sub 540].

Respondents other than landlords and property managers had quite different answers. Of the 57 respondents of this type, seven (12%) suggested direct crediting of rental payments and 4 proposed an increase in the Accommodation Supplement (one suggested the abolition of market rents and the imposition of income related rents ‘across the board’). Five respondents suggested some form of rent control, limiting increases to the rate of inflation and/or tying it to tax incentives for landlords in long-term agreements.

The potential for increased ‘third sector’ (non-government organisations) involvement was stressed by several submitters:

- Two suggested charitable trusts or community-based housing organisations should manage tenancies with private landlords, supported by government grants.
- Three suggested public-private housing partnerships; a model was suggested showing workable incentives to provide social housing, based on migrant housing schemes in Auckland.
- Schemes to assist tenants into home ownership were also proposed, as was the use of a reverse mortgage-type arrangement which resulted in some form of ‘rental title’.
- Five submitters stressed the need for more state housing rentals.

A number of organisations suggested adopting the proposal in the New Zealand Housing Strategy, with inclusionary zoning required for all major residential developments resulting in 15-25% of each development being affordable housing.

Ten submitters suggested ways to lower landlord costs, including tax breaks, subsidies and low interest loans. One organisation stated: “Changes in the economy are likely to have a greater impact [on affordable supply] than changes aimed at promoting investment (e.g., decreasing costs by effective retrieval of unpaid rent)” [Housing New Zealand Corporation].

5. Is there a problem with the quality of rental housing?

5.1 *What problems are there, if any, with the quality of rental properties in New Zealand?*

The 343 submitters who answered this question were divided as to whether they thought there was a problem with the quality of rental housing.

Many of those who did not believe there was a problem commented on the fact that the market provides tenants with a wide range of rental property to choose from, from high to low quality, depending on how much they are willing to pay.

Of those submitters who indicated there were some problems with the quality of rental properties, many expressed the view that the problems are generally minor

and isolated, involving only a few landlords and a small proportion of rental stock at the low end of the rental market.

However, about 70 submitters felt the problems were more serious and extensive. Some of these submitters cited previous and ongoing studies about the poor quality of New Zealand housing, generally based on: international standards; some emerging evidence of the poorer quality of rental housing compared to owner-occupied housing; and reports on the impact of substandard housing on health and safety, educational and economic outcomes for tenants.

Submitters described the following problems with rental accommodation:

- lack of insulation;
- inadequate heating;
- insufficient ventilation;
- windows and doors that do not seal well;
- cold;
- damp and mould;
- deferred maintenance;
- poor repair;
- poor wiring;
- no smoke alarms;
- asbestos;
- hot water cylinders with faulty temperature settings;
- inadequate security;
- inadequate pest control;
- lack of cleaning between tenancies;
- lack of soundproofing;
- inadequate accessibility for those with physical or age-related disability;
- structural problems (including some with 'leaky building' problems);
- lack of fencing for families with children.

Several submitters also commented more generally about older, poorly maintained housing with outdated amenities being used as rental accommodation; new buildings not up to expected standards being used as rental accommodation, including those with 'leaky building' problems; and new, purpose built rental accommodation of a substandard quality.

A couple of submitters commented on the need to distinguish between "renters by choice", who have bargaining power, and "renters by necessity", who may not have that power.

Several submitters commented on the lack of compliance with Building Code requirements, Housing Improvement Regulations 1947 and other legislation. One submitter noted that over two-thirds of homes were built prior to the Building Code requirements and that the Housing Improvement Regulations and relevant parts of the Health Act 1956 are almost 50 years out of date. Several submitters also commented on the fact that standards are covered in a number of pieces of legislation and enforcement of those standards is spread across a number of organisations.

12 submitters specifically commented on the poor quality of rental housing provided by HNZA and local councils.

HNZA noted that submissions on the New Zealand Housing Strategy expressed widespread concern that rentals are often substandard and of poor quality, with no standards or monitoring.

5.2 *What, if any, building or housing standards should rental properties have to meet? Should standards for rental properties be set out in the RTA, or in other legislation?*

380 submitters answered this question.

97 submitters expressed the view that no standards are required, many of these supporting a free market approach to rental housing standards. An additional 112 submitters stated that the current standards contained in legislation such as the Building Act and the Housing Improvement Regulations are sufficient and / or that rental accommodation standards should be no different from those for owner-occupied accommodation. A number of these commented on the need for more information for landlords and tenants about, and better enforcement of, the current standards. Several of these submitters, including the Tenants Protection Association (Christchurch) Inc. commented on the need for the current standards to be reviewed and updated.

139 submitters agreed with the need for minimum standards. There were a range of views about what might constitute minimum standards, including:

- adequate clean water supply / running water;
- proper drainage / sewerage / plumbing/bathroom facilities;
- electricity supply / gas supply;
- ventilation and heating;
- free from damp and mould;
- working smoke alarms;
- insulation;
- safe electrical equipment;
- satisfactory cooking facilities;
- structurally sound and watertight;

- satisfactory natural and artificial lighting;
- windows and doors draft free;
- adequate security (e.g., locks on doors and windows);
- weather proofing;
- soundproofing;
- energy efficiency rating;
- adequate hygiene control for vermin;
- safe steps;
- fenced play area for children;
- accessible / modifiably accessible for those with physical disabilities;
- hot water cylinders with 55 degrees temperature setting;
- maximum number of people permitted per household;
- size of hot water cylinder adequate to number of people; and
- minimum size / minimum space allocation per tenant.

All 6 of the public health organisations that made submissions expressed the view that all rental properties should be required to meet a minimum standard based on the Healthy Housing Index, which is currently being piloted by Wellington School of Medicine and Health Sciences.

Presbyterian Support Services Otago provided a copy of its “Reasonable Rental Standard” that it uses to inspect private rental properties in Dunedin, which contains standards for safety, soundness, suitability and value.

The Energy Efficiency and Conservation Authority (EECA) noted that the National Energy Efficiency & Conservation Strategy (NEECS) target is for “all pre-1977 houses to be retrofitted with a suite of cost-effective energy efficiency measures by 2016”.

The Salvation Army suggested that a study be commenced “of the adequacy of current housing standards, and whether rental housing should be required to provide housing of a better standard than the norm”. It went on to state:

Although we need to be mindful of the effect on supply, we also consider that landlords in New Zealand have very few regulations, and that in general the level of professionalism is low. A focus on standards may be one way to refocus the private rental market, and upgrade the quality of the service provided to tenants.

There was no consensus as to how to specify minimum standards. Some submitters felt that the minimum standard should be specified in RTA, in other legislation such as Building Act, or some combination of the two (e.g., standards addressed in the Building Act and Housing Improvement Regulations with reference to these in the RTA). Other submitters felt that minimum standards should be addressed through a

code of compliance, general guidelines, a voluntary standard (e.g., a star rating), or by better specification in the tenancy agreement.

A number of those who commented on standards, both for and against, also commented on the associated issues of compliance and enforcement, such as the need for inspections either on a regular basis or in response to a complaint.

5.3 What can be done to clarify the obligations of landlords and tenants for property maintenance?

356 submitters answered this question.

76 submitters did not believe anything further was needed in this area. Many of these commented that the legislation is clear in this area. Several also commented that any clarification should be left to landlords, tenants and property managers to sort out. 2 submitters specifically stated that they did not support a 'warrant of fitness' approach.

30 submitters felt that better enforcement would help clarify the obligations of landlords and tenants for property maintenance. This included the need for more enforcement of current obligations in the RTA, both for tenants who damage property, and for landlords who fail to maintain property adequately or to carry out repairs. It also included the need for more enforcement / enforceability of obligations agreed between landlords and tenants in a tenancy agreement. A number of these submitters also commented on the desirability of regular inspections and/or a warrant of fitness system with regular inspections.

63 submitters commented on the need for more information for, and education of, landlords and tenants about their responsibilities under the RTA. Suggestions included:

- information sent to landlords and tenants when the bond is registered, such as a handbook detailing landlords and tenants specific responsibilities. One submitter mentioned the "tenants' pack" sent out by Tenancy Services last year; another submitter commented favourably about the *Renting and You* pamphlet. Several submitters noted the need for this information to be plain, simple and easy to understand;
- information for landlords on the realistic costs of maintenance (e.g., average expenditure required to maintain a property on an annual basis);
- an advertising campaign;
- Tenancy Services advice by way of regular information and seminars. Several submitters commented favourably about Tenancy Services current service provision and about the need for more of it;
- requiring landlords to attend courses on maintenance strategies and techniques, such as those provided by property investors' associations;
- a landlords' association to educate landlords and a Tenancy Services liaison officer to work with that association to facilitate educative ideas.

196 submitters indicated that greater specification is required in relation to the obligations in the RTA. Suggested mechanisms for specification included:

- specification in particular provisions of the RTA;
- a schedule to the RTA specifying obligations;
- guidelines or a code of compliance;
- specification in the tenancy agreement or in a list or maintenance schedule attached to the agreement that both parties sign to indicate they understand and accept the specified responsibilities;
- a checklist to guide regular inspections; and
- allowing landlords and tenants to negotiate and agree on who is responsible for what in the tenancy agreement and ensuring it can be enforced (some also suggested allowing landlords to offer incentives to tenants who undertake general property maintenance).

Many of these submitters commented on particular issues that need to be clarified/specified, including:

- the way the RTA currently expresses the standards to which a property must be maintained by landlord and kept by tenant (“reasonable state of repair”, “reasonable wear and tear” and “reasonably clean and reasonably tidy”). Several submitters suggested the standard should be along the lines of “the property will be returned in the same condition it was given with a mind to fair wear and tear”. One submitter [sub 458] noted that Standards New Zealand has produced a standard for residential property inspection (NZS 4306:2005);
- frequency of maintenance;
- grounds maintenance and tree trimming;
- maintenance required due to use of fixtures and fittings, e.g., chimney cleaning, light bulbs, stove elements, broken windows;
- professional cleaning of carpets;
- new utility connections;
- blocked drains due to misuse;
- responsibility for insurance;
- an enforceable requirement for tenants to inform landlords of any damage and need for repairs, possibly with a notifiable period similar to insurance claims;
- an enforceable requirement for tenants, following any damage, to take all practical steps to mitigate damage or loss;
- an enforceable right for landlords to access property for maintenance and repairs; and
- an enforceable requirement for landlords to carry out regular, scheduled maintenance and to make repairs within a specified period of time.

Several submitters also suggest that incentives (e.g., low interest loans, rate rebates) be provided for landlords to undertake work beyond basic maintenance and repairs, such as retrofitting insulation. Several other submitters suggested a communal fund be established to assist landlords with the costs of contamination tests and clean up for rental properties used to manufacture 'P' (methamphetamine).

6. Standards of property management are variable.

6.1 *What impact do variable property management practices have on the private rental market?*

This question was answered by 249 submitters (194 landlords, 20 property managers, 18 tenants and 17 other).

Most submissions supported the notion that there was some variability in property management practices. There were conflicting opinions as to how much of an effect this variability had on the wider market.

Many submitters commented about the link between property management practices and the viability of an investment, with poor practices resulting in decreased yield or driving investors out of the market. It was also suggested that poorly managed properties tended to attract less desirable tenants.

There were conflicting opinions as to whether professional property managers or private landlords were better at managing properties.

Specific concerns about property managers included:

- not completing repairs when instructed to do so by owners;
- not informing landlords of problems until they are out of hand;
- not exercising the same degree of care as owners;
- the effect of property management fees on the affordability of rentals;
- property managers being assigned too many tenancies to manage them effectively;
- charging for unnecessary services;
- not obtaining competitive quotes for repairs;
- renting to unsuitable tenants in order to obtain letting fees; and
- conflicts of interest when real estate agents sell and manage properties;

Comments made in relation to both landlords and property managers included:

- a lack of customer focus, including arrogance and aggressive behaviour;
- poor property inspection practices;
- a lack of knowledge amongst landlords and property managers, particularly with regard to the RTA, resulting in non-compliance, confusion and misunderstandings;

- bad landlords and property managers effecting the reputation of the industry as a whole; and
- poor tenant selection practices, resulting in downstream problems.

Some submitters felt that variability in property management practices was desirable, as this would impact on pricing and therefore offer more choice for tenants.

A number of submitters mentioned that market forces tended to eventually weed out bad landlords and property managers.

6.2 *What can be done to improve property management practices and professionalism among landlords and property managers?*

This question was answered by 287 submitters (225 landlords, 22 property managers, 18 tenants and 22 others).

Education was considered by many submitters to be an important component in improving property management standards. Suggestions included seminars, courses, and formal qualifications. Some submitters called for education to be supported by a testing or certification regime.

Submitters were divided as to whether education should be compulsory or voluntary. Some submitters suggested providing incentives to encourage landlords and property managers to undertake training.

While some submitters wanted property management to be restricted to licensed real estate agents, others expressed concern that real estate agents receive a lack of training in property management, as opposed to sales. Some submitters supported the creation of alternative licensing or registration regimes.

A number of submitters favoured the development of a code of practice or best practice guidelines. It was suggested that the industry could also take a lead in regulating itself.

Some submitters favoured making Tenancy Tribunal decisions or a bad landlord register readily available, thereby making it easy to identify landlords that have been found wanting by the Tribunal.

Submitters suggested that property managers should be required to provide regular reports to owners about, amongst other things, the condition of the property and any maintenance requirements.

A number of owners felt that it should be easier to hold property managers accountable for losses suffered as a result of poor property management practices.

Encouraging membership of property investor or industry associations was also seen as a way of raising standards.

6.3 What level of regulation is appropriate for landlords and property managers? Should they be registered, or alternatively, should there be a “qualmark” for these services?

This question was answered by 361 submitters (285 landlords, 17 property managers, 23 tenants and 36 others).

It was difficult to accurately assess the amount of support for the regulation of landlords and property managers, as a number of submitters appeared to be confused as to whether this question related solely to professional property managers or to landlords and property managers generally.

Of those that supported regulation, most were in favour of compulsory registration or licensing, although a significant number indicated that regulation should only apply to professional property managers.

Some submitters thought that all property managers should have to be members of the REINZ, although some concern was expressed about a lack of emphasis on property management in the training received by members. It was also suggested that a property management certificate could be developed, along similar lines to a sales certificate.

Arguments against regulation included:

- concerns about increased bureaucracy and compliance costs;
- concerns about increased costs being passed onto tenants;
- a feeling that regulation would force landlords to look for alternative investments, reducing the supply of rental properties;
- comments that standards are already ‘regulated’ by market forces; and
- concerns that regulations would be too difficult to enforce.

Some respondents favoured the introduction of a voluntary benchmarking or registration system, such as the introduction of a qualmark. It was suggested that such a system could be incentivised with, for example, access to redirection of benefits.

Other suggestions included:

- compelling or encouraging membership of a professional body or industry organisation;
- establishing a ‘bad’ landlord register or online access to Tenancy Tribunal decisions;
- compulsory training or qualifications;
- limiting the number of tenancies that can be managed by one property manager; and
- building up the Tenancy Services’ compliance unit, in order to increase compliance activity.

Some submitters supported regulation only on the condition that regulation also applied to tenants.

7. Do prospective landlords get the right advice?

7.1 *Where do potential property investors and landlords find advice to help them with their investment decisions?*

This question was answered by 308 submitters (265 landlords, 18 property managers, 11 tenants, and 14 others).

The most frequently identified sources of investment advice were:

- banks;
- accountants;
- solicitors;
- real estate agents;
- property managers;
- books and magazines;
- property investor associations;
- mortgage brokers;
- financial advisors;
- other landlords; and
- Tenancy Services.

The New Zealand Bankers' Association expressed concern about the suggestion in *Getting the Balance Right* that banks have set themselves up as advisors to people thinking about investing in rental property. They commented that "most banks have specific measures in place to ensure that staff do not advise customers in the area of property purchase for investment, whether in regard to the appropriateness of a particular piece of property to be used as a rental, a landlord's obligations and duties, or with regard to issues of taxation".

A small number of submitters indicated they did not obtain any investment advice. Some submitters made the point that people often become landlords by default, such as via an inheritance, and do not make a conscious investment decision.

7.2 *Is the type and quality of advice available to potential property investors and landlords adequate?*

This question was answered by 305 submitters (255 landlords, 19 property managers, 14 tenants and 17 others).

The majority of submitters (170) thought the type and quality of advice available was sufficient, although a number of submitters qualified their response with comments about the variability of advice on offer.

Submitters were very positive about the benefits of joining a property investors' association. Comments in respect of the advice provided by Tenancy Services were also generally positive, particularly with regard to Tenancy Services landlord seminars; however, some submitters did express concern about bias or inconsistency of advice.

Other concerns about the type and quality of advice on offer included:

- a lack of impartiality in advice provided by banks, mortgage brokers, real estate agents, developers and financial advisors. Submitters felt that these people or institutions had a vested interest in encouraging people to become landlords. In some cases people also had concerns about the quality of advice available from these sources;
- concerns about the quality and type of advice provided at “get rich” seminars;
- a lack of information about managing tenancies, as opposed to the investment side of being a landlord. Particular mention was made of the fact that real estate is not a passive investment – but rather a service industry, which requires hard work and inter personal skills;
- a feeling that landlords needed to receive more information about the pitfalls of being a landlord, such as ‘bad’ tenants and maintenance requirements; and
- a concern that information provided by some advisers was overly optimistic or unrealistic.

A number of submitters commented that although good advice was available, it could be difficult to know where to find it.

7.3 What can be done to improve the quality of financial and other advice to prospective property investors and landlords?

This question was answered by 266 submitters (215 landlords, 18 property managers, 16 tenants and 17 others).

There was support for increased education of prospective property investors and landlords. It was suggested that the Government or property investor associations could run regular seminars or courses. Some submitters also felt that financial literacy should be a component of the school curriculum.

A number of submitters said there was a need for improved access to statistical information. It was suggested that a website could be developed to provide information about yield; depreciation rates; median sale prices; maintenance requirements; and other useful data. One submitter suggested a government funded website similar to www.sorted.org.nz.

It was suggested that the Department and private institutions could provide a wider range of publications incorporating information about all aspects of being a landlord, including risks and best practice examples. Another alternative was for the Department to endorse existing publications.

Some submitters felt there needs to be better regulation of investment advisors, developers, seminars and advertising. Others thought that the quality of investment advice should be dictated by the market, rather than being something for the Government to address.

Finally, a number of submitters thought that more should be done to encourage prospective property investors and landlords to join property investor associations.

8. Not all rental accommodation is covered by the RTA.

8.1 *Should Tenancies with a significant service component continue to be excluded from the RTA? Why?*

This question was answered by 238 submitters (170 landlords, 16 property managers, 16 tenants and 36 others).

The majority of submitters (129) were against extending the coverage of the RTA to include tenancies which have a significant service component. A further 25 were undecided.

Submitters commented that tenancies with a significant service component differed substantially from general tenancies, and therefore required a different set of rules. People also mentioned the fact that these tenancies served a different market, including tourists, transients and people with mental illness.

Submitters were concerned about the prospect of adding another layer of bureaucracy, resulting in extra costs or a reduction in the supply of accommodation. There were also concerns expressed about complicating the RTA or creating delays to the dispute resolution process for general tenancies.

Mention was made of the difficulty in assessing disputes over service provision, and the potential difficulty of enforcing Tenancy Tribunal orders in relation to services.

Those that supported extending the coverage of the RTA mentioned the need to create clear rules and provide a dispute resolution forum.

A number of people supported extending the coverage of the Act only to certain types of tenancies, such as boarding houses. Other suggested factors to be taken into account when determining appropriate coverage of the RTA included the length of tenure and the extent of service component.

Submissions from tertiary accommodation providers supported the continued exclusion of hostel type tertiary accommodation from the RTA. It was mentioned that the New Zealand Code of Practice for Tertiary Student Accommodation already sets minimum standards for halls of residence and provides a dispute resolution process.

8.2 *If tenancies currently excluded from the RTA were to be included, should the RTA also regulate the provision of associated services such as meals? Why?*

This question was answered by 201 submitters (150 landlords, 15 property managers, 16 tenants and 20 other).

A clear majority of submitters (144) were opposed to the RTA regulating associated services, such as meals.

Those opposed to the inclusion of services cited the need to keep the RTA simple and avoid additional layers of bureaucracy, as well as the fact that these services are, or should be, covered by other regulations such as the Health Act 1956.

A number of submitters suggested that parties should be able to negotiate their own terms as part of the tenancy agreement or a supplementary contract. People mentioned that the diverse nature of arrangements made it difficult to impose blanket provisions.

Those supportive of extending coverage to services cited the need for one consistent piece of legislation to cover all types and aspects of tenancies. There was also a call for regulation to protect people who cannot speak for themselves, due to mental illness or disability.

8.3 *Should the RTA apply to relationships and disputes between flatmates or boarding house tenants?*

This question was answered by 278 submitters (209 landlords, 18 property managers, 20 tenants and 31 others).

The majority of submitters (163) were opposed to extending the coverage of the RTA to flatmates and boarding house tenants.

People opposed to extending the coverage of the RTA stated that the rights and obligations between flatmates could already be clarified by completing a flat sharing agreement. They also mentioned the fact that there are other avenues, such as the Disputes Tribunal, for dealing with boarding house or tenant to tenant disputes.

Some submitters expressed concern about possible delays to dispute resolution processes if the jurisdiction of the Tribunal was extended.

A number of submitters thought that the current avenues for resolving boarding house or tenant to tenant disputes were inadequate. Some supported clarifying the rights and obligations of flatmates and boarders, but questioned whether the RTA was the appropriate vehicle to do this.

A number of comments were received regarding the liability of head or joint tenants. Tenants usually have joint and several liability for tenancies. This means that tenants can be held collectively or individually liable for breaches of the tenancy agreement, regardless of which tenant or occupant committed the breach. Some submitters felt

that this left tenants unfairly exposed to the actions of others, while others favoured retaining the status quo.

9. It is not always clear who is responsible for paying some household costs.

9.1 *Why are there so many disputes over responsibilities for household costs?*

This question was answered by 289 submitters (228 landlords, 21 property managers, 18 tenants and 22 other).

The most common reasons put forward for disputes over household costs were:

- lack of clarity in tenancy agreements; and
- lack of clarity in the RTA - particularly with regard to wastewater, consumables, and tank water.

Other suggested reasons included:

- a lack of clear guidelines or published case law;
- changes to legislation and the way it's interpreted;
- conflicting advice from Tenancy Services and other sources; and
- the use of shared meters.

A number of submitters stated that they had never been involved in a dispute over household costs.

9.2 *How should household costs associated with a rental property be divided between tenants and landlords?*

This question was answered by 349 submitters (279 landlords, 20 property managers, 18 tenants and 32 other).

There was some support for the idea that landlords should be held liable for rates and body corporate fees. A small numbers of submitters suggested that tenants should be liable for all or some of the rates bill, either to align with commercial leases or because tenants receive some of the benefits associated with rates expenditure.

Most submitters that commented on insurance thought that landlords should be liable, although some thought that tenants should take out compulsory public liability insurance.

Submitters tended to favour two options in relation to cost associated with the provision of electricity, water, gas and telephone:

- 1) user pays; or
- 2) landlords being liable for fixed costs and tenants being liable for variable costs related to consumption.

Other suggestions included:

- landlords paying for costs that would be charged regardless of whether the tenancy is occupied;
- landlords incorporating all costs into rent;
- landlords paying for all water charges for reasons related to health and hygiene; and
- tenants being responsible for reconnection fees if services are disconnected due to non payment.

A number of submitters commented that it was unfair to hold landlords liable for metered consumption that was beyond their control – a similar argument was made in support of tenants being liable for refilling water tanks. It was also suggested that charging tenants for metered consumption helped to conserve limited resources.

Some submitters commented that meters are sometimes shared by more than one dwelling. Most felt that it was unfair to hold tenants liable for costs associated with consumption via a shared meter.

A number of submitters commented about the need to clarify obligations under the RTA. Submitters made particular mention of the fact that obligations in relation to consumables such as light bulbs, stove elements and rubbish bags are unclear. Submitters suggested that these costs should be the responsibility of tenants.

10. Tenancy support services for landlords and tenants are important.

10.1 What tenancy services are critical to an effective and efficient rental housing market?

This question was answered by 318 submitters (258 landlords, 19 property managers, 17 tenants and 24 others).

The most common services identified by submitters as critical to an effective and efficient rental housing market were:

- advice;
- information;
- education;
- dispute resolution;
- a bond service; and
- enforcement.

It was also suggested that advocacy and budgeting services would be beneficial, along with the appointment of a Housing Commissioner.

A number of submitters stressed the need for advice to be unbiased, consistent, accurate and easily accessible. The same comments were made in respect of mediation and adjudication services.

It was suggested that information should be available in pamphlets, guidelines and via the internet. Submitters also wanted easy access to forms, model documents, legislation, and statistical information (such as market rent reports).

Submitters wanted dispute resolution to be free or low cost, and stressed the importance of it being fast and efficient. Some submitters also thought it was important to be able to waive mediation or participate via teleconference.

In terms of enforcement, submitters wanted the ability to trace judgement debtors. They also stressed that the enforcement process needed to be fast, efficient and effective.

10.2 Are these services adequately provided for in the RTA?

This question was answered by 278 submitters (225 landlords, 16 property managers, 15 tenants and 20 others)

Respondents to this question were fairly evenly divided as to whether the services currently provided are adequate. Where concerns were expressed, they were often limited to specific aspects of service delivery, such as timeframes.

Concerns expressed by respondents included:

- delays in the dispute resolution process;
- inefficient and ineffective enforcement of Tenancy Tribunal orders;
- difficulty tracing judgment debtors;
- biased or inconsistent advice, mediation or adjudication;
- difficulty waiving mediation;
- lack of face to face contact / office locations;
- phone calls going unanswered;
- closure of services during the Christmas period; and
- a lack of education about, and public awareness of, services.

10.3 What can be done to improve the administration of the RTA and the delivery of information and other services to both landlords and tenants?

This question was answered by 271 submitters (216 landlords, 16 property managers, 14 tenants and 25 other).

Some submitters requested services that are already available. This suggests there may be a lack of awareness about the services that are already on offer. A number of submitters supported this view, suggesting that there was a need for services to be advertised. One submitter suggested making the Tenancy Services 0800 number compulsory content on tenancy agreements.

A significant number of submitters wanted the Department to provide more education and information. Specific suggestions included:

- enclosing brochures with bond receipts;
- provision of information packs for new landlords and tenants;
- sending updates via email;
- conducting seminars;
- expanding the Department's website, including the provision of decision trees; and
- providing easy access to Tribunal decisions or a register of 'bad' landlords and tenants.

In some cases submitters suggested that information could be provided via third parties such as IRD, Citizens Advice Bureaux and real estate agents. Submitters were also mindful of the fact information provision needed to cater for people for whom English is a second language, people with literacy difficulties and people without access to technology.

It was suggested that access to services could be improved through extending the opening hours of Tenancy Services and the Tenancy Tribunal, especially during the Christmas period. Other options included introducing mobile staff and providing internet-based mediation.

Some people wanted Tenancy Services and Tribunal staff to receive improved training in order to ensure that advice and dispute resolution services are provided in a balanced, accurate and consistent manner. It was also suggested that there needed to be improved speed and capacity in the dispute resolution area.

Finally, a number of submitters wanted improvements to the speed, efficiency and effectiveness of enforcement processes, including improved tracking of judgement debtors.

11. Would some tenants benefit from advocacy services?

11.1 Would the RTA work more effectively if advocacy services were available for tenants? If yes, why? If no, why not?

This question was answered by 309 submitters (229 landlords, 18 property managers, 20 tenants and 42 other).

Many of the responses to this question and the related questions interpreted "advocacy" more widely than its strict legal interpretation "to plead or argue on someone's behalf".

Submitters were fairly evenly divided as to whether or not advocacy services should be provided to tenants. A large number of people suggested a third option under which advocacy services would be available for both landlords and tenants.

A lot of responses were qualified with comments about limiting advocacy services only to those with a specific need for assistance.

Reasons given in support of an advocacy service included:

- the need to overcome language, cultural or literacy barriers;
- the need to assist tenants with disabilities or mental illness;
- a perceived power imbalance between landlords and tenants;
- the fact that a large number of Tenancy Tribunal hearings are currently not defended by tenants;
- the fact that a number of tenants do not know how to approach their landlord when issues arise; and
- concerns about the inadequacy of funding currently available to community organisations such as the Tenants Protection Association, to provide advocacy services.

It was also suggested that advocates could educate landlords and tenants about their rights and obligations, thereby possibly preventing the need for mediation or Tribunal hearings. Some submitters also suggested that advocates could provide budgeting assistance.

Arguments against the introduction of an advocacy service included:

- a feeling that advocacy would duplicate services already available from organisations such as Tenancy Services, the Tenants Protection Association and Citizens Advice Bureaux;
- the cost of delivering advocacy services;
- the system is already biased in favour of tenants, and an advocacy service for tenants would exacerbate this; and
- the fact that landlords may have to pay for lawyers in order to maintain balanced representation.

Some submitters suggested that increased education provision may be more appropriate.

11.2 *If you agree that advocacy services should be provided, do you think they should be provided for all tenants, or for some particular types of tenant? Which types?*

This question was answered by 198 submitters (146 landlords, 9 property managers, 15 tenants and 28 other).

It was difficult to accurately gauge the responses to this question, as a large number of responses contained qualifying statements. A small majority of submitters appeared to favour making advocacy services available to all tenants. Once again, a large number of submitters favoured a third option under which advocacy services would be available to all landlords and tenants.

Suggested recipients of targeted advocacy services included:

- people with disabilities or mental illness;

- people with language or literacy difficulties;
- people from different cultural backgrounds;
- Maori and Pacific people;
- new immigrants and refugees;
- beneficiaries;
- low income earners;
- first time tenants;
- those that request advocacy;
- people with reading difficulties;
- those in rent arrears;
- young people;
- people that are dependent on drugs or alcohol;
- tenants of properties owned by corporations or managed by professional property managers; and
- ex prisoners.

11.3 *How might advocacy services be provided?*

This question was answered by 161 submitters (109 landlords, 9 property managers, 12 tenants and 31 other).

Submitters tended to favour making advocacy services available as an extension of the current Tenancy Services structure, or via already established organizations or community groups such as:

- WINZ;
- church groups;
- Justices of the Peace;
- Citizens Advice Bureaux;
- Community Law Centres;
- Tenants Protection Association;
- Human Rights Commission;
- budget services; and
- IHC.

A number of comments were received in relation to the point at which advocates should commence involvement, and how tenants should be made aware of the availability of advocacy services.

Suggested ways of making tenants aware of advocacy services included:

- Tenancy Services offering advocacy to all new tenants;
- Producing literature regarding the availability of advocacy services;
- enclosing information with bond receipts;
- landlords advising as soon as tenants are in rent arrears; and
- advising about the availability of advocacy services only on request.

Some submitters favoured advocates taking an educative and preventative role, whilst other thought the involvement of advocates should be limited to Tenancy Tribunal hearings.

A number of submitters commented about a need to ensure that advocates receive proper training and are competent to perform their roles.

Cost was an issue raised by a number of submitters. Views ranged from the need for advocacy services to be provided free of charge or at a nominal cost, through to user pays. A number of submitters suggested funding advocacy services with interest from the bond fund.

11.4 If advocacy services were to be provided, should they be provided independently of Tenancy Services? Why?

This question was answered by 184 submitters (133 landlords, 9 property managers, 13 tenants and 29 other).

Of those who expressed a view on the matter, a slight majority expressed a preference for providing advocacy services separately from Tenancy Services.

A large number of responses to this question related to the need for neutrality. Submitters were divided as to whether neutrality would be best achieved via Tenancy Services or an independent advocacy service.

Reason given in support of advocacy services being provided independently of Tenancy Services included:

- a need to ensure that Tenancy Services is seen to be neutral, whereas advocates should only operate in the interests of tenants;
- a perception of bias by Tenancy Services (either towards landlords or tenants); and
- eliminating potential for conflict of interest between adjudicators / mediators and advocates.

Reasons given in support of Tenancy Services providing advocacy services included:

- the need to ensure consistency between advice provided by Tenancy Services and advice provided by advocates;
- the fact that Tenancy Services already has extensive knowledge of tenancy issues and the RTA;
- advice and support provided by Tenancy Services would be neutral; and

- avoiding the creation of extra levels of bureaucracy that may result in time delays or increased cost.

A number of submitters suggested that advocacy services should be funded by Tenancy Services, but run independently. One submitter suggested running a grants scheme similar to one administered by ACC.

12. Are there any other issues relating to the RTA or residential tenancies in general that you would like to comment on?

Penalties and Incentives

A number of submitters favoured encouraging compliance with the RTA through the introduction of new penalties. Whilst most submitters called for the introduction of exemplary damages, there was a call for some breaches to be considered criminal acts.

Submitters suggested that penalties could be imposed when:

- tenants fail to pay rent, or use bond money in lieu of rent at the end of a tenancy;
- tenants cause wilful or substantial damage;
- tenancies are induced by fraud or misrepresentation;
- landlords fail to maintain properties;
- tenants fail to vacate at the end of a tenancy;
- parties fail to attend Tribunal hearings; or
- tenants abandon premises.

There was also a call for Tenancy Services and the courts to take a more active role in ensuring compliance with the RTA. It was suggested that higher penalties may be required in order to make prosecution viable.

Some submitters wanted section 32 of the RTA amended so that incentives could be offered for compliance with tenancy agreements.

A number of submitters wanted the ability to charge interest on rent arrears and outstanding debts.

Termination of Tenancies

Many landlords wanted the same notice periods for landlords and tenants or shorter landlord notice periods. Some tenants wanted landlord notice periods to be longer (e.g., changing the 42 day notice period when a property is sold to 90 days).

Several submitters wanted the ability to terminate tenancies more readily when rent is in arrears. It was suggested that landlords should not have to wait until rent is 21 days in arrears before seeking termination via the Tribunal. It would appear that a number of submitters were unaware of the alternative grounds for termination under section 56 of the RTA.

One submitter suggested that the Tribunal should not have discretion to issue a conditional order, rather than a final termination order, when tenants are more than 3 weeks in arrears.

Some wanted the ability to cancel agreements or terminate tenancies forthwith in certain circumstances, such as when:

- tenancies have been induced by fraud or misrepresentation;
- tenants use premises for unlawful purposes;
- tenants cause substantial damage;
- tenants are in rent arrears; and
- all conditions have not been complied with prior to commencement of the tenancy (e.g., the bond has not been paid).

It was also suggested that the RTA needed to contain clear provisions regarding termination of tenancies when parties die or are adjudged bankrupt.

One submission expressed concern about the ability for mortgagee landlords to terminate fixed term tenancies as though they are periodic.

Advance Rent and Bond

A number of submitters wanted the ability to charge more than 2 weeks rent in advance. It was also suggested that landlords should be able to charge more rent in advance before the expiry of the period for which rent has already been paid.

Some submitters wanted the ability to charge more than 4 weeks rent as bond. It was also suggested that there should be a minimum bond amount.

It was suggested that when a bond is being paid by instalment, the bond should not have to be lodged with Tenancy Services until the bond is paid in full.

Concern was expressed about the practice of transferring bonds between tenancies. It was felt that this left a new landlord exposed if the bond transfer did not take place.

It was suggested that unclaimed bond money and interest revenue could be used to fund education or Tribunal costs. An alternative suggestion was to pay tenants interest on bond money.

Entry to Premises

Concern was expressed about the wording of section 48(3) of the RTA, which allows for the showing of premises to prospective purchasers, tenants or registered valuers. It was felt that use of the word “reasonable” in this section left the rights and obligations of parties regarding access too open to interpretation.

It was suggested that access under this section should be allowed following a notice period, rather than by consent. It was also suggested that access should be available

to non-registered valuers, and that tenants should not be able to refuse to have open homes.

Rehearings and Appeals

Concern was expressed about hearings and rehearings being heard by the same adjudicator.

It was suggested that there should be no restrictions on appealing Tribunal decisions. One submitter thought that the Tribunal deliberately makes monetary orders just under the \$1,000 appeal threshold.

There was also a request to clarify whether a refusal to grant a rehearing is grounds for appeal to the District Court.

Tribunal Jurisdiction Issues

It was suggested that the jurisdiction of the Tenancy Tribunal should be extended to cover third parties in certain situations. The most common request was for neighbours to be given the ability to file applications against unruly tenants. It was also suggested that the RTA should cover relationships between landlords and guarantors.

It was noted that the Tribunal's \$12,000 jurisdiction limit was set at a time when rent levels were considerably lower. It was suggested that the jurisdiction limit should be increased, in order to avoid cases being referred to the District Court unnecessarily.

Concern was expressed about section 85 of the RTA, which allows the Tribunal to exercise its jurisdiction according to the general principals of the law, but does not bind it to strict legal rights, obligations, legal forms or technicalities. It was suggested that all adjudicators should be legally trained and that all orders should be based on strict legal principals.

Concern was expressed about the ability for the Family Court to make tenancy orders without consulting landlords. These orders can give a person sole tenancy of a dwelling, regardless of whether they were originally a joint tenant, or merely an occupant.

A number of submitters were concerned about conflicts or gaps between the RTA and other legislation, such as the Unit Titles Act 1972. It was suggested that body corporate rules should be annexed to, and form part of, residential tenancy agreements.

It was also suggested that the RTA should apply to all rent-to-buy situations.

Tribunal Processes and Administration

A number of submitters felt that the prescribed fee for filing a Tribunal application should be recoverable when a claim is successful. It was also suggested that landlords should not have to pay a filing fee when tenants dispute bond refunds.

One submitter felt that the application filing fee should be raised in order to prevent frivolous applications.

A number of submitters had concerns about the length of time taken to resolve disputes, especially when a dispute has already been through mediation. It was suggested that applications should be scheduled for urgent hearings if mediation is unsuccessful.

Some submitters commented on the need for mediated orders to be automatically sealed in a timely manner.

One submitter suggested that there should be a summary order process, so that parties do not have to travel to hearings.

Some submitters felt that tenants should not be able to file Tribunal applications if their rent is in arrears.

Some suggested that there should be a time limit on landlords filing claims for disputed bonds.

Interpretation and Terminology

A number of submitters commented about difficulty interpreting parts of the RTA, resulting in misunderstandings and inconsistent Tribunal rulings.

Specific suggestions for clarifying the RTA included:

- providing clearer definitions regarding maintenance and cleaning;
- clarifying the intent behind section 40(3) of the RTA, which provides the ability to restrict the number of people that may “reside” in the premises;
- making it clear that tenants are responsible for providing rubbish bags;
- making the RTA more prescriptive about the types of evidence that can be presented;
- standardising tenancy agreements to remove ambiguity; and
- defining “substantial improvements” under section 28 of the RTA.

Redirection of Benefits

A number of submitters wanted rent payments to be paid directly from benefits.

It was suggested that this would reduce the incidence of rent arrears and Tribunal applications. Other advantages suggested by submitters included: a reduction in tenants’ bank fees; a reduction in discrimination against beneficiaries; and protection for the vulnerable party in a marriage or de facto relationship who does not have control of the finances.

Abandoned Goods

A number of submitters felt it was unfair that landlords were unable to dispose of abandoned goods without a disposal order. It was suggested that landlords should

be able to either dispose of goods without an order or hand them over to Tenancy Services for storage.

Insurance

A number of submitters thought that it should be compulsory for tenants to have public liability insurance. Others thought that landlords should provide insurance which also benefits tenants.

Miscellaneous Suggestions and Comments

Other miscellaneous suggestions included:

- replacing the word landlord with property owner, in order to remove stigma;
- changing the requirement to give 10 working days notice under section 56 to 10 consecutive days;
- requiring landlords to contact tenants before the expiry of a fixed term;
- requiring landlords to inform all joint and severally liable tenants when rent is in arrears;
- allowing for rents to be “stepped” according to the number of occupants;
- making a day noon to noon, rather than midnight to midnight;
- making it clear that tenancy can be terminated when a tenant’s guests commit an unlawful act, regardless of whether the tenant has knowledge of the unlawful act;
- requiring landlords to advise tenants when they go on holiday;
- allowing landlords to add clauses to tenancy agreements which are more onerous than the RTA;
- assessing some types of damage at replacement cost, rather than allowing for depreciation;
- making the Minister of Justice solely responsible for recommending adjudicator appointments. It was felt that the Housing Minister’s responsibility for HCNZ created a conflict of interest;
- allowing for rents to be increased annually, rather than every 180 days;
- comments for and against landlords being liable for letting fees;
- removing the requirement for landlords to give a physical address for services, due to safety concerns;
- addressing the use of consecutive fixed terms in order to avoid obligations under the RTA;
- making fixed term tenancies harder to break;
- requiring landlords to mitigate loss when fixed term tenancies are abandoned;
- using the RTA as a vehicle to provide for, and facilitate growth of, third sector housing and alternative tenure arrangements;

- considering fire safety issues surrounding rental properties, such as installation and installation and maintenance of fire places, chimneys, flues and gas heating systems; as well as the costs and benefits associated with hard-wired smoke detectors and sprinkler systems;
- automatic attachment orders when parties fail to attend examination hearings;
- making private debt collector costs recoverable; and
- making information on how to make rental properties healthier, warmer and more comfortable available to all landlords and tenants.

General Comments

Some submitters felt that the rental market should be governed by market forces, rather than legislation. It was suggested that parties should be able to contract out of the RTA or freely negotiate alternative conditions.

There was debate as to whether the RTA should, or could, be used to address social issues, as well as contractual issues. A number of submitters felt that it was the role of central government to provide for those that could not be accommodated in the private sector.

Some submitters emphasized the importance of good housing as a determinant for health and wellbeing outcomes.

Comments Outside Scope of Review

A number of comments were made that were outside the scope of the RTA Review. These included:

- Law enforcement agencies need to advise landlords about unlawful activities.
- There is a need to assist people with life skills. Landlords don't know how to connect tenants with support services, such as budgeting help.
- There should be a partnership between the Ministry of Health and the Department of Building and Housing to provide accommodation for those with mental illness.
- Greater efforts should be made to assist families to save towards a house mortgage deposit.
- Sections 116A – 116M of the Property Law Act 1952 should be repealed.
- Local planning provisions should require property developers to allocate a percentage of developments to affordable housing.
- There should be more budgeting help available to tenants.
- Landlords should receive additional tax breaks.

A number of landlords expressed concern about the Inland Revenue Department's review of depreciation rates on rental properties.

Service Tenancies in the Farming Sector

Federated Farmers made a submission on the issue of service tenancies in the farming sector. In particular, Federated Farmers commented that:

- Service tenancies should be covered by employment law only, not employment law and the RTA. Alternatively, it should only be possible to lodge complaints under one jurisdiction, in order to avoid double jeopardy.
- The regulations relating to agriculture staff, made under the Health and Safety in Employment 1992, should be removed.
- Notice terminating an employment contract should automatically constitute notice terminating a service tenancy.
- There should be reduced notice periods when tenancies have been terminated due to serious misconduct in employment.
- Employers should be able require employees to vacate premises if they are going to be absent from their employment for more than 90 days.
- Employers should be able to make a deduction from an employee's final pay if accommodation is not up to an acceptable standard.

Maori Reserved Lands Act 1986 Tenants

28 submissions were received from persons leasing a right to occupy land under the jurisdiction of the Maori Reserved Lands Act 1986 (MRLA). These were 'form' submissions; that is, they used identical wording to comment on an identical set of issues. These submissions were concerned that the residential lessees were not adequately protected by this legislation, particularly with respect to the following:

- any buildings or structures permanently fixed to the land become the landowner's property, not the lessee's – even if lessees may have built or substantially renovated the structure, they have no legal right to remove these buildings;
- lessees must rebuild any structure erected on the land if it is damaged;
- guidelines for negotiation on issues such as rent is not specified in the MRLA, and it is left to landowner to inform the lessee. Because many lessees cannot afford to object, they are open to intimidation and high rentals;
- the objection process under the MRLA is unfair, discriminates against lessees and favours landowners;
- MRLA land is supposed to be valued as if bare and unimproved but is not being done correctly and improvements are being included in valuations;

These submitters would like Maori reserved lands to be subject to the RTA.

General Comments about Discussion Paper, Consultation Process

While a number of favourable comments were received regarding the discussion document *Getting the Balance Right*, some submitters felt that the document was biased towards tenants.

Concern was also expressed about an emphasis on social issues and the length of the questionnaire.

It was also suggested that information about the review should have been sent to all landlord and tenants that have bonds lodged with Tenancy Services.

Appendix 1: List of organisations that provided submissions

Set out below is the list of organisations that made submissions on the Discussion Document. This list does not include small, privately held companies or family trusts.

| Group / Organisation | Sub No. |
|---|---------------------------------|
| A group of tenants and landlords in the suburb of Glen Innes | 575 |
| A number of teaching staff, Real Estate Centre, The Open Polytechnic of New Zealand | 563 |
| The Ancient and Apostolic Catholic Church of the East Assyrian Congregation | 589 |
| Auckland City Council | 387 |
| Auckland District Council of Social Service | 595 |
| Auckland District Health Board (Auckland Regional Public Health Service) | 321 |
| Auckland Property Club | 546 |
| Auckland Property Investors' Association (Inc.) | 507 |
| Auckland University Students' Association | 565 |
| Barfoot & Thompson Ltd (individual agencies) | 536 438 445 431 441 |
| Bayleys Property Services Ltd | 540 |
| Bishop Julius Hall | 318 |
| Bribanc Property Management | 547 |
| Bulletproof Property Partnership | 552 |
| Cahill Real Estate | 558 |
| Canterbury Property Investors' Association Inc. | 520 |
| CCS | 391 |
| Central Otago District Council | 390 |
| Christchurch Budget Service | 587 |
| City Sales Ltd | 435 |
| College House | 315 |
| Community Centre House 44 | 590 |
| Community Housing Aotearoa Inc (CHAI) | 582 |
| Community Law Canterbury | 327 |
| Community Living Trust | 581 |

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| Dunedin City Council | 389 |
| Dunedin City Tertiary Accommodation Trust | 312 |
| Dunedin Community Law Centre | 584 |
| Egyptian Association / Muslim Association | 591 |
| Energy Efficiency and Conservation Authority (EECA) | 598 |
| Everton Hall (Wellington Presbyterian-Methodist Halls of Residence Trust) | 313 |
| Federated Farmers of New Zealand Inc. | 571 |
| Financial Services Federation | 572 |
| Grey Lynn Neighbourhood Law Office (GLNLO) | 578 |
| Hawkes Bay Property Investors' Association | 6 |
| Habitat for Humanity | 586 |
| Hamilton Budgeting Advisory Trust | 597 |
| Hamilton Property Rentals Ltd | 433 |
| Hands On Residential Property Management Ltd, Independent Property Managers' Association | 439 |
| Harcourts | 448 |
| Housing Action Porirua | 475 |
| The Housing Lobby | 474 |
| Housing New Zealand Corporation | 400 |
| Hutt Valley District Health Board (Regional Public Health) | 322 |
| IHC New Zealand Incorporated | 392 |
| Ilam Real Estate Ltd | 447 |
| Independent Property Managers' Association | 429 |
| Injury Free Counties Manukau (Counties Manukau Community Injury Prevention Project) | 588 |
| Kershaw Property Management | 365 |
| LJ Hooker Ltd, Paraparaumu | 442 |
| Local Government NZ (LGNZ) | 385 |
| Manawatu Tenants Union | 473 |
| Ministry of Health (Public Health Directorate) | 324 |
| Ministry of Social Development (MSD) Housing Syndicate | 601 |
| National Council of Women of New Zealand | 580 |
| Nelson Property Investors Association | 373 |
| Nelson Tasman Housing Trust (NTHT) | 583 |
| New Zealand Association of Citizens Advice Bureaux | 579 |
| New Zealand Association of Tertiary Accommodation Professionals (NZTEAP) | 317 |
| New Zealand Bankers' Association | 576 |

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| New Zealand Defence Force | 602 |
| New Zealand Fire Service | 599 |
| New Zealand Law Society | 573 |
| New Zealand Property Investors' Federation Inc. | 509 |
| Nga Ture Kaitiaki Ki Waikato Community Law Centre | 594 |
| Office for Senior Citizens | 600 |
| Opus International Consultants Ltd, Hamilton | 383 |
| Panmure Realty Ltd | 443 |
| Pathways | 328 |
| People First New Zealand | 393 |
| The Personal Advocacy Trust Incorporated | 394 |
| Pinnacle Concepts Ltd | 551 |
| Presbyterian Support Otago | 596 |
| Prisoners' Aid and Rehabilitation Service Otago (PARS) | 592 |
| The Professionals / The Rent Shop | 450 |
| ProCare Network (North, Auckland and Manukau) Public Health Organisations | 323 |
| Properticare | 538 |
| Property Brokers - Rental Division | 384 |
| Quay Properties Ltd | 446 |
| R.O.C. Property Management Ltd | 548 |
| Real Estate Institute of New Zealand (REINZ) | 564 |
| Retirement Villages Association (RVA) | 566 |
| Rochester and Rutherford Hall | 314 |
| Rodney District Council | 386 |
| Roper & Jones Ltd, Dargaville | 430 |
| The Salvation Army, Social Policy and Parliamentary Unit | 585 |
| Signpost Resource Centre | 396 |
| South Canterbury Property Investors' Association | 364 |
| Southland Property Investors' Association | 367 |
| Taranaki District Health Board (Public Health Unit) | 319 |
| Taranaki Farmers First National | 434 |
| Tenancy at Taupo Ltd | 437 |
| Tenancy Information NZ Ltd (TINZ) | 570 |
| Tenancy Tribunal | 574 |
| Tenants Action Group | 476 |
| Tenants Protection Association | 477 |
| Tenants Protection Association (Christchurch) Inc. | 326 |

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|---|------------|
| TLC Property Management Ltd | 452 |
| Total Property Management | 444 |
| United 4 Action | 472 |
| University Hall | 316 |
| Victoria Trust | 395 |
| Victoria University of Wellington | 153 |
| Waiheke First National Ltd | 371 |
| Waitakere Housing Collaboration (WHC), subgroup of Waitakere City Wellbeing Collaboration | 577 |
| Wellington City Council | 388 |
| Wellington Libertarianz on Campus | 567 |
| Wellington Property Investors' Association (WnPIA) | 351 508 |
| Wellington School of Medicine and Health Sciences (Department of Public Health) | 320 |
| West Auckland Women's Centre | 593 |

Appendix 2: Methodology for Summarising Submissions

Database

In order to facilitate the summarising of feedback from submissions, a database was developed to capture details about submitters (e.g., type of submitter) with text-based fields to capture a summary of responses based around the themes and questions in the Discussion Document. Information from submission forms and other correspondence received in response to the public consultation on the RTA Review was entered in the database by a team of analysts. Responses to each question were then printed out, read and key issues identified.

Number of Submissions

As indicated earlier, submissions were received by mail, email or fax. The majority of submitters used the submission form provided in the Discussion Document, including an electronic version of the submission form on the Department's website.

Sometimes the same submission was sent in two or more ways (e.g., email and by post). Where a duplicate or triplicate was identified, only one submission was entered.

Also, in some instances, *identical* submissions were received from small, privately held companies with different company names but with the same director / shareholder and the same postal address. These submissions were treated as one submission.

Types of Submitters

The submission form asked submitters if they were, or their organisation represented, landlords, tenants or property managers. A number of submitters identified themselves with one or more of these three groups. The database captured this information, but analysts also identified if the submitter was one of the following: tenant advocacy group, community organisation, disability organisation, public health organisation, local government, central government, or other.

For the purposes of counting the total number of submissions, as well as identifying a particular group's perspective in relation to some of the issues, the following approach was used:

- If a submitter indicated they were a landlord, or a landlord and either/both a tenant/property manager, and they were not identified as any of the other types of submitters (e.g., community organisation), they were 'counted' as a landlord.
- If a submitter indicated they were a tenant, and they were not identified as any of the other types of submitters, they were 'counted' as a tenant.
- If a submitter indicated they were a property manager, and they were not identified as any of the other types of submitters, they were 'counted' as a property manager.

- If a submitter indicated they were a landlord, tenant or property manager, but were identified as belonging to one of the other kinds of submitters, they were 'counted' as one of the other kinds of submitters. For example, IHC indicated it was representing tenants and property managers, but was counted as a disability organisation.

Responses to Questions

In some instances, a submitter responded to one question on the form but analysis of the response indicated it should be considered as a response to one or more of the other questions. For example, a number of submitters gave very full and detailed responses to the very first question, "Does the RTA currently achieve the right balance between the rights and obligations of landlords and the rights and obligations of tenants? If not, why not?", which often addressed some of the later questions in the Discussion Document. Where this was the case, the response was counted and analysed as part of the most appropriate theme(s) and question(s) and not necessarily where it was entered in the submission form.

In some cases, answers were ambiguous or contained insufficient detail to enable definitive analysis. Where this was the case, the analysts made every effort *not* to infer or interpret the submitter's viewpoint or intent.

Appendix 3: Summary of Public Meetings

Introduction

Between November 2004 and February 2005 staff from the Department of Building and Housing ran fifteen public consultation meetings on the Residential Tenancies Act Review ('RTA Review').

At each meeting a presentation was made on the Residential Tenancies Act 1986 ('RTA') and the review. This was followed by a structured series of questions to the floor, on issues covered in the review discussion document. Comments from the floor were recorded as closely as possible in real time. Meetings were run as brainstorming sessions – all ideas were captured and treated as equal. The notes from each meeting reflect what people said – they do not reflect agreement at the meeting on any particular point.

Summary of Feedback from Meetings

The following notes summarise the feedback we received from participants at the fifteen meetings. It is difficult to state exactly how many people held a particular view, although we have stated where a view was held by a number of participants.

Notice Periods

A number of landlords raised concerns about the different notice periods for terminating tenancies and believed that notice periods should be the same for landlords and tenants. There was also concern expressed about the length of notice landlords are required to give.

Tenants were concerned about the ability for landlords to give 90 days' notice without having to have a reason. Some tenants felt that the ability of the landlord to terminate the tenancy without having to give a reason created a power imbalance.

Rent Arrears

Rent arrears were an issue raised consistently by landlords. Particular concerns related to:

- the need to issue a 10 day letter¹ or wait until the tenant is 21 days in rent arrears before seeking termination of the tenancy through the Tenancy Tribunal²;
- time delays in getting before the Tribunal;
- problems with tenants using bond in lieu of rent at the end of a tenancy;
- the inability to charge more than 2 weeks' rent in advance;

¹ This is a warning letter that gives the tenant 10 working days to remedy the rent arrears. The Tenancy Tribunal may terminate the tenancy if the rent is not paid within this timeframe.

² It would appear that a number of landlords are not aware that applications can be filed at the same time as issuing a 10 day letter.

- the inability to charge interest or penalties if rent is late;
- the perceived inability to void a contract if rent or bond is not paid before commencement of a tenancy³; and
- the fact that exemplary damages cannot be awarded against recidivist rent defaulters.

Redirection of Benefits

Many landlords felt that it was unfair that WINZ redirected benefits for payment of rent to Housing New Zealand Corporation ('HNZC') but not to private landlords, unless there was "good cause". Redirection of benefit was seen as a possible solution to issues with rent payment and generally also received support from tenants.

Abandoned Goods

A number of landlords expressed concern about the cost and time involved in dealing with goods that have been abandoned by tenants at the end of a tenancy.

Interpretation

Some people felt that parts of the RTA are too open to interpretation, resulting in abuse, misunderstandings or disputes.

Joint and Several Liability / Insurance

It is generally accepted under common law that tenants have joint and several liability. This means that tenants can be held collectively or individually liable for breaches of a tenancy agreement, regardless of which tenant actually committed the breach.

A number of people felt that the doctrine of joint and several liability should not apply to residential tenancies. Particular concerns were raised about the actions of insurance companies pursuing tenants through rights of subrogation. There appears to be little awareness that a tenant's liability for careless damage is not affected by the fact that a landlord may have house insurance.

Identifying Bad Landlords / Tenants

There was strong support amongst landlords (and some tenants) for Tenancy Tribunal orders to be made available on-line and some support for the introduction of a "rating" system for landlords and tenants.

Filing Fees

A \$20 filing fee is payable when Tenancy Tribunal applications are filed. Applicants want to be able to automatically claim filing fees as a cost if their application is successful.

³ Landlords can make agreements conditional upon payment of rent and bond prior to commencement of the tenancy.

Letting Fees

Some felt it was unfair that only registered real estate agents could charge letting fees, while others felt that the fee should be payable by the landlord (and not the tenant).

Enforcement of Tenancy Tribunal Orders

Comments about enforcement of Tribunal orders included:

- difficulty tracing tenants – it was suggested that tenancy debts should be treated like parking fines, as opposed to the judgement creditor having to supply an address;
- enforcement costs – it was suggested that enforcement should be covered by the Tribunal Application fee, as is the case for the Disputes Tribunal or that enforcement fees should only be payable if enforcement is successful;
- difficulty proving ownership of items to be seized when applying for a Distress Warrant;
- people lying about income and liabilities at examination hearings;
- a suggestion that debtor's names be published; and
- why can't landlords evict tenants themselves?

Household Costs

There was little consensus as to how household costs should be split between landlords and tenants, although there was call for liability to be clarified, either via the RTA or as agreed between the parties.

Most comments related to costs associated with water and wastewater. One argument was that landlords should be liable for health and sanitation, including water and wastewater charges. The counter to this argument was that landlords should not be held liable for something they have no control over (i.e., the amount of water used). Passing on costs to the user was seen as a means of conserving resources.

There was also no clear agreement as to how fixed and variable costs should be divided between landlords and tenants.

There was some suggestion that landlords should be liable for costs relating to the provision of facilities or maintenance, but there were also calls to balance this against the practical implications of splitting utilities bills.

Meeting the Diverse Needs of Tenants

In the centres we visited people complained about a shortage of suitable accommodation for large or extended families, people with disabilities and single people.

A number of sectors of the community appear to be reliant on social housing providers to meet their housing needs. Concerns were expressed about waiting lists

for social housing and that some tenants do not appear to be moved on from social housing when their circumstances change.

There were a number of comments about the difficulties beneficiaries and low income earners have finding accommodation. A number of landlords suggested that they would be more willing to meet these housing needs if the government helped to ensure payment of rent.

Stable Housing

There was little consensus about the factors leading to turnover of tenancies and a number of people questioned whether turnover was an issue. Suggested drivers of turnover included:

- landlords selling properties in order to realise capital gains;
- people moving due to problems with housing quality or lack of maintenance; and
- large or extended families moving as larger premises become available.

There seemed to be reluctance by landlords and tenants to enter into fixed-term tenancies due to their lack of flexibility and a feeling that they were difficult to enforce. It was noted that fixed-term tenancies also created issues for landlords who wanted to renovate properties or sell them.

It was suggested that the Department should investigate the drivers of “churn” in the rental market.

Housing Quality

A number of people expressed concerns about the quality of rental houses. While there was fairly universal support for the fact that houses should be safe and sanitary, there was more debate when it came to minimum standards for things like insulation, drapes, soundproofing, heating and smoke detectors.

Both landlords and tenants expressed concerns about the impact that a minimum standard could have on rent levels.

A number of people supported a free market approach to rental housing standards, with the market dictating quality received at each price level.

There was good support for a voluntary rental housing quality standard, such as a star rating.

Maintenance

It would appear that that a number of maintenance issues are the result of conflicting interpretations of the RTA. Particular reference was made to use of the word “reasonable” in the Act (*reasonable* state of repair). There was no clear understanding as to who is responsible for things such as trimming trees, cleaning gutters and cleaning chimneys.

A number of tenants said that they didn't ask for repairs to be done because they were concerned that the request would result in a rent increase or eviction. Others said that they didn't know what their options were if repairs were not done.

Some tenants commented that there should be a specific requirement for repairs to be carried out within a reasonable timeframe.

Professionalism of Landlords / Property Managers

Once again, there were strongly conflicting views as to whether or not there was a problem with standards of property management. A number of people suggested that market forces already do a satisfactory job of maintaining standards.

There was good support for provision of more education and information to landlords and property managers. Specific mention was made of the benefits of attending the Department's landlord seminars, joining a landlord association and obtaining a copy of the RTA.

A number of people suggested that there was a problem with landlords and property managers not carrying out regular property inspections.

It was also suggested that it should be possible to close down property managers who continually fail to comply with the provisions of the RTA.

Support Services and Information

A common theme at all the meetings was the need for more information and education on the RTA for those who are subject to it, as well as the need to raise the profile of Tenancy Services. A number of people indicated that they only sought advice or information on their rights and responsibilities when something went wrong, rather than seeking information to prevent disputes.

Suggested channels for the provision of information included:

- enclosing information with bond receipts;
- distributing information through schools, churches and community organisations;
- providing more translated information;
- providing translators or using Language Line;
- putting information in community newspapers;
- networking and attending community meetings;
- including information with migrant and refugee settlement packs;
- providing tenants with a copy of the RTA;
- Pacific radio;
- providing a "plain English" list of landlord and tenant obligations;
- newsletters to landlords; and

- videos.

Concerns were raised about the accessibility of Tenancy Services. Specific comments were made about offices not being on the ground floor, having to press bells and not being able to phone 0800 numbers from a cell phone. Suggested improvements included the ability to pay bonds electronically and mobile mediation services.

A number of people raised concerns about consistency and impartiality of advice, mediation and adjudication.

Advocacy

There was fairly good support for the provision of an independent advocacy service, provided it was a neutral service accessible by both landlords and tenants. It was thought that some people would find an advocacy service less intimidating than approaching Tenancy Services and that an advocacy service could also assist in dealing with underlying issues or language barriers.

Discrimination

A number of tenants felt discriminated against when seeking rental accommodation, although the discrimination didn't tend to be overt and was therefore hard to prove or complain about.

Particular mention was made of discrimination against large families, people with a mental illness and people on benefits or low incomes. Language barriers were also identified as a cause of discrimination.

A small number of landlords said that they *did* actively discriminate against tenants from particular groups (interestingly, in each case, the landlord was themselves from that group).