



Submission on the Residential Tenancies Amendment Bill

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1. Recommendations

1.1. Auckland Property Investors Association Incorporated ("APIA") welcomes the opportunity to give feedback on the Residential Tenancies Amendment Bill ("the Bill").

1.2. Our comments relate to

- The restoration of the 90-day no-fault termination provision for landlords;
- The new rules relating to pets at rental properties; and
- Enforceability of no-smoking clauses in tenancy agreements;

1.3. We make the following recommendations to this committee:

- **No change to clause 22** - That the 90-day no-fault termination provision be restored to landlords;
- **Amendment of s42D(1) under clause 16** - That the enforceability of no-pet clauses in tenancy agreement be preserved and landlords continue to be able to stipulate a no-pet policy at the rental property without being required to state a reason;
- **Amendment of s42C under clause 16 and Schedule 1A under clause 37** - That it be made an unlawful act for tenants to keep pets in manners that breach their tenancy agreements or are contrary to their landlords' consent or conditions set out with the consent. The maximum penalty awardable for committing this unlawful act be set at \$1,500, which is in line with other pet-related unlawful acts set out by this Bill.
- **Amendment of s18AA under clause 8** - That the maximum collectable pet bond to be set as the equivalent of 4 weeks' rent.
- **Amendment of s43AA under clause 17** - That clauses in tenancy agreements that ban vaping or the use of vaping products indoors be confirmed as enforceable.

2. Introduction

2.1. APIA is a non-profit advocate and education facilitator for Auckland residential property investors (landlords).

2.2. The rental sector is critical to New Zealand's housing story. This Bill recognises that there are now 1.7 million renters in New Zealand, and over 80% of renting

households are in the private rental market. The sector's significance in its size and scope necessitates a vision that it should be well-run, professional, and a thriving environment for landlords and tenants. Since our inception in 1995, we have oriented our work around these goals.

- 2.3. We act as a collective voice for landlords who provide over 3,850 rental homes across Auckland. We are connected with over 16,000 residential property investors nationwide (subscribers) and represent the interests of over 700 members Auckland wide.
- 2.4. Both members and subscribers have expressed significant interest in the Bill. 3,296 have completed our Survey titled *Landlord Perspectives on the Residential Tenancies Amendment Bill 2024* ("the Survey") to share their feedback, and their views are captured in these submissions.
- 2.5. A summary of the Survey results is set out in the accompanying appendix.

3. General Comments and Recommendations

3.1. Restoration of the 90-day no-fault termination will restore trust and promote better access for tenants in the private rental market. S54 provides sufficient protection against misuse.

3.1.1. We strongly support returning s51(termination) provisions of the Residential Tenancies Act ("the Act") to the pre-2020 settings. In particular, we fully endorse the restoration of the 90-day no-fault termination provision for landlords.

3.1.2. 73.1% of survey respondents believe the 90-day no-fault termination rule will make it easier for them to manage their periodic tenancies.

3.1.3. When prompted further, respondents indicate feeling comfortable renting to tenants with less-than-perfect rental history.

3.1.4. Additionally, the majority of respondents recognise that this provision serves as a necessary check within the rental system, encouraging professional dealings and personal accountability from both parties.

- 3.1.5. We are sensitive to tenant groups' concerns that restoring the 90-day no-fault termination provision for landlords could undermine security of tenure by opening the floodgates to abuse.
- 3.1.6. These fears are unfounded. Only 8.2% of Survey respondents (88% of whom are not members of a Property Investors Association) indicated they would default to the 90-day no-fault termination as their primary method of ending a tenancy, even when other options are available under the Act.
- 3.1.7. It is important to note that this 8.2% figure overstates the risk of abuse, as not all of them are illegal, unethical or improper.
- 3.1.8. The statistical weight of predictable instances of abuse is irrelevant. Any abuse of the 90-day no-fault termination has a detrimental effect on tenants and should be treated seriously.
- 3.1.9. S54 of the Act (retaliatory termination) provides ample control against instances of abuse/misuse of the 90-day no-fault termination. Tenants can safely rely on this provision and interact with landlords on equal footing without fear of losing their homes.
- 3.1.10. In summary, we expect the restoration of the 90-day no-fault termination provision as a necessary policy setting that will pave the way to
- Increase in supply in the private rental market;
 - Democratise and broaden tenants' access to housing in the private rental market despite their rental, background and credit history; and
 - Promote trust and collegiality between landlords and tenants.
- 3.1.11. Our specific recommendation vis-à-vis the 90-day no-fault termination is that clause 22 be preserved as is throughout the legislative process.

3.2. New pet rules should complement, not compromise, ownership rights. Several improvements must be made to adequately incentivise landlords to allow pets at their rental properties.

3.2.1. The jurisprudence of our land is deeply rooted in ownership rights. As such, we firmly believe that any new rules relating to pets at the rental property should complement, not compromise, ownership rights.

3.2.2. However, we also recognise and support the Bill's stated objectives vis-à-vis pet-owning tenants, which is that they should enjoy the same access to housing in the private rental market as tenants who do not own pets.

3.2.3. Mandating landlords to consent to pets is counterproductive. It incentivises non-compliance and creates market distortions that will ultimately be detrimental to tenants with pets.

3.2.4. The rules, in their present form, are too heavily weighted towards mandating and lack sufficient incentives for landlords. Only 7.3% of Survey respondents indicate that they will be much more likely to allow tenants to keep pets under these rules.

3.2.5. A balanced approach would ensure that landlords see the benefits of allowing pets, making it a commercially viable, obvious and attractive option. This would encourage compliance and foster a more harmonious rental market, ultimately benefiting both landlords and tenants, including those with pets.

3.2.6. Respondents to the Survey expressed strong preferences for:

3.2.6.1. Preservation of landlords' ownership rights, including the ability to decline pets without stating a reason. 91% of survey respondents support the ability for landlords to decline pets in the tenancy agreement without stating a reason;

3.2.6.2. Tenants being adequately deterred from breaching provisions of the tenancy agreement or landlords' reasonable conditions vis-à-vis pets. 99% of survey respondents agree that tenants should secure their

landlords' consent before keeping pets at the rental property, and 93.4% believe that failure to do so should be made an unlawful act; and

3.2.6.3. Increase in proposed maximum pet bond to a meaningful level that reflects a commitment by the tenant to abide by terms of the tenancy agreement whilst providing an adequate safety net for landlords to wear the risk of accepting pets. 61.4% of survey respondents support the ability for landlords to collect a pet bond on a per pet basis. 43% believe the maximum collectable pet bond should be higher than 2 weeks' rent.

3.2.7. As such, we recommend the following to this committee (in blue):

3.2.7.1. In the first instance, the proposed s42D under clause 16 of the Bill be amended to enable landlords to continue exercising their ownership rights by declining pets in the tenancy agreement without stating a reason:

42D Provisions in tenancy agreements relating to tenant keeping pets

~~(1) A tenancy agreement must not prohibit a tenant from keeping a pet on the premises unless the landlord provides reasonable grounds in the agreement for the prohibition.~~

(1) A tenancy agreement may prohibit a tenant from keeping a pet on the premises.

(2) A tenancy agreement must not impose on the tenant any unreasonable condition relating to the tenant keeping a pet.

(3) A landlord who fails to comply with subsection (1) commits an unlawful act.

~~(4) The following provisions of a tenancy agreement are of no effect:~~

~~(a) a provision that prohibits a tenant from keeping a pet without providing reasonable grounds for the prohibition;~~

~~(b) a provision that imposes an unreasonable condition relating to the tenant keeping a pet.~~

(4) A provision of a tenancy agreement that imposes an unreasonable condition relating to the tenant keeping a pet is of no effect.

3.2.7.2. Alternatively, if landlords remain limited in their ability to decline pets, that Bill be amended to reflect the following:

3.2.7.2.1. That adequate deterrent be put in place to promote tenant compliance with the tenancy agreement or landlords' reasonable conditions vis-à-vis pets. We recommend the following changes to the proposed s42C under clause 16 and Schedule 1A under clause 37:

42C When tenant may keep pet

(1) A tenant may keep a pet on the premises -

(a) if the tenancy agreement provides that the tenant may keep the pet or the landlord gives written consent to the tenant keeping the pet; and

(b) in accordance with any reasonable conditions set out in the tenancy agreement or attached to the consent.

*(2) A tenant who fails to comply with **subsection (1)** commits an unlawful act.*

37 Schedule 1A amended

...

(3) In Schedule 1A, after the team relating to section 42B(6), insert:

***42C(2)** Tenant keeping pets contrary to tenancy agreement or without landlord's consent or failing to meet the reasonable conditions set out in the tenancy agreement or attached to the landlord's consent to keep pets 1,500*

~~***42D(3)** Landlord including prohibition on tenant keeping pet in tenancy agreement without providing reasonable grounds in agreement for prohibition 1,500*~~

~~***42E(5)** Landlord, failing, without reasonable excuse, to provide written notice in response to tenant's request for consent to keep pet within 21 days of receiving request 1,500*~~

~~***42E(6)** Landlord refusing consent without reasonable grounds 1,500*~~

3.2.7.2.2. That the maximum pet bond collectable be raised from 2 weeks' rent to 4 on a per pet basis. We recommend the following changes to the proposed s18AA under clause 8:

18AA Pet bonds

*(1) A landlord may require payment of a bond (a **pet bond**) of no more than 2 4 weeks' rent lawfully payable under the tenancy agreement relating to the tenant's obligations in relation to a pet if -*

(a) the tenant is keeping, or intends to keep, a pet on the premises;

and

(b) the landlord has agreed the pet may be kept on the premises.

*(2) A landlord must not require payment of more than 1 pet bond for a tenancy **pet**.*

(3) If the landlord lawfully increases the amount of the rent, the landlord may require payment of a further sum of pet bond not exceeding the amount by which the rent payable for 2 4 weeks has been increased.

(4) If the landlord decreases the amount of the rent, the chief executive must, on application by the person who paid the bond, refund the tenant the amount by which the total sum of pet bond already paid exceeds the rent payable for 2 4 weeks following the decrease.

...

3.3. The enforceability of no-smoking indoor clauses should be broadened to include vaping to allow the private rental sector to future-proof itself as more information continues to come to light about the detrimental effects of vaping on people, pets and property.

3.3.1. Vaping or e-cigarettes is a relatively new alternative to cigarettes and other smoked tobacco products as defined by the Smokefree Environments and Regulated Products Act 1990.

3.3.2. Though the *“risks associated with long-term vaping are unknown... vaping ... is unlikely to be totally harm free.”*¹

3.3.3. Information continues to come to light as to the detrimental effects vaping or second-hand vaping has on people’s² (in particular, children’s³) and pet’s health⁴, property or building structures⁵ and perceived property value⁶.

3.3.4. Fidelity to our civic code as landlords requires a firm commitment to the idea that the homes we rent out must be safe and harm-free for tenants and their dependents (including children and pets). And whilst we continue to improve our understanding of the effects of vaping in the home, we must take a better-safe-than-sorry approach in setting the appropriate policies.

3.3.5. Therefore, we strongly believe that in affirming the enforceability of no-smoking indoor clauses, the Bill should also broaden its support for a smoke-free Aotearoa to include the ability for landlords to ban vaping and the use of vaping products indoors.

3.3.6. 82% of survey respondents support extending the enforceability of no-smoking clauses to include vaping products.

¹ Ministry of Health - Manatū Hauora and Health NZ 2022, Vaping Facts, accessed 3 July 2024, <https://vapingfacts.health.nz/the-facts-of-vaping/risks-of-vaping/>

² biomedicalcentral.com 2021, An updated overview of e-cigarette impact on human health, accessed 3 July 2024, <https://respiratory-research.biomedcentral.com/articles/10.1186/s12931-021-01737-5>

³ The Royal Children's Hospital Melbourne 2023, Kids Health Information - E-cigarettes and teens, accessed 3 July 2024, https://www.rch.org.au/kidsinfo/fact_sheets/E-cigarettes_and_teens/
#:~:text=Nicotine%20exposure%20during%20the%20teenage, on%20to%20use%20regular%20cigarettes.

⁴ Waka Toa Ora 2021, Quit smoking and vaping around your pets SPCA media release, accessed 3 July 2024 <https://www.healthychristchurch.org.nz/news/signatory-notice-board/2021/6/quit-smoking-and-vaping-around-your-pets>

⁵ Domo Real Estate, Will Vaping Indoors Devalue a Home?, accessed 3 July 2024, <https://www.southbayresidential.com/vaping-home-value-impact/>

⁶ Martin, Erik J 2019, The Mortgage Report, Vaping Indoors Might Devalue a Home, accessed 3 July 2024, <https://themortgagereports.com/48799/vaping-indoors-might-devalue-a-home>

3.3.7. We specifically recommend that the proposed s43AA under clause 17 be amended to (in blue):

43AA Tenancy agreement may prohibit smoking and vaping

(1) A tenancy agreement may prohibit a tenant from smoking a smoked tobacco product *and or using a vaping device or vaping product in any part of the premises other than -*

(a) outdoors; and

(b) in any outbuildings that are intended solely for storage or parking (for example, a garage, carport, or garden shed intended solely for those purposes).

(2) In this section, -

outdoors does not include a balcony, porch, or other structure that is immediately attached to any inside area

premises includes facilities

smoked tobacco product has the meaning given in section 2(1) of the Smokefree Environments and Regulated Products Act 1990

vaping device has the meaning given in section 2(1) of the Smokefree Environments and Regulated Products Act 1990

vaping product has the meaning given in section 2(1) of the Smokefree Environments and Regulated Products Act 1990

4. Conclusion

- 4.1. We are grateful for the opportunity to provide feedback on the Residential Tenancies Amendment Bill 2024 and remain committed to supporting its legislative journey towards becoming law.
- 4.2. We fully support the Bill's stated objectives of promoting supply in the private rental market and democratising access to housing for tenants, irrespective of whether they own pets.
- 4.3. We believe the best approach to achieving an enduring outcome is to set commercially and socially nuanced policies, incentivising landlords to release stock into the market and offer tenancies as broadly as possible. Additionally, there should

be ample incentives and disincentives to promote personal accountability, professional dealings, and adherence to tenancy agreements by both parties.

4.4. We wish to speak to our submission and look forward to interacting with this committee in due course.

Yours sincerely,

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General Manager

Auckland Property Investors Association

Appendix: Summary of results from Survey titled *Landlord Perspectives on the Residential Tenancies Amendment Bill 2024* conducted between 22 May and 2 July 2024

The following summary includes responses to multiple-choice questions from the Survey. This summary provides an overview of the key findings and trends amongs our respondents. Please note that this summary excludes free-text comment responses. However, these detailed comments which offer further insights and perspectives can be made available to this committee upon request

Total respondents: 3,296

1. Are you a member of a Property Investors Association?

73.3% Yes

26.7% No

2. What is your role in managing rental properties?

59.7% Landlord

3.9% Property Manager

35.9% Both

0.5% Neither

3. How many residential tenancies do you currently manage?

26.0% 1-2

29.9% 3-5

17.7% 6-10

26.5% 11 or more

4. Are you currently waiting for the 90-day no-fault termination notice to become law before terminating any periodic tenancies?

12.9% Yes

78.4% No

3.2% Unsure

5.6% I am not managing any periodic tenancies

5. If the 90-day no-fault termination notice becomes law, how likely would you use it even when you could terminate the tenancy under other provisions of the Residential Tenancies Act (e.g., notice to move back into the property, applying to the Tribunal for rent arrears)?

8.2% Yes, definitely

29.0% Maybe, depending on the situation

57.2% No, I would seek termination under the appropriate and relevant provisions

5.6% Unsure

6. Will the reinstatement of 90-day no-fault termination make it easier or harder for you to manage your periodic tenancies?

73.1% Easier

18.4% No effect

1.0% Harder

7.5% I am not managing any periodic tenancies

7. Do you support returning the landlord's notice period for periodic tenancies to 42 days on certain grounds (e.g., selling the property, the owner moving back in)?

85.0% Yes

5.3% No

9.7% Unsure

8. How do you feel about allowing landlords to give notice to end a fixed-term tenancy at the end of the term without providing a specific reason?

67.7% Strongly support

21.1% Support

8.5% Neutral

1.7% Oppose

1.0% Strongly oppose

9. Do you agree that tenants should be required to give 21 days' notice, rather than 28 days, to terminate a periodic tenancy?

- 9.2% Strongly agree
- 22.1% Agree
- 36.4% Neutral
- 16.7% Disagree
- 15.5% Strongly disagree

10. Under the new rules, are you more likely to offer fixed-term tenancies rather than periodic tenancies?

- 21.8% Much more likely
- 21.1% Somewhat more likely
- 52.7% No change
- 1.5% Somewhat less likely
- 2.9% Much less likely

11. Do you currently allow pets in your rental properties?

- 20.6% Yes
- 35.0% No
- 44.2% In some properties, but not all
- 0.2% Not applicable

12. Would you be more or less likely to allow your tenants to keep pets at the rental property under these new pet rules?

- 7.3% Much more likely
- 24.8% Somewhat more likely
- 44.9% No change
- 2.7% Somewhat less likely
- 4.1% Much less likely
- 16.3% It doesn't matter what I want, the new rules give tenants a presumptive right to keep pets anyway

13. Do you think no pet clauses in tenancy agreements should be enforceable, irrespective of whether they are accompanied by a reason?

- 91.0% Yes
- 7.1% No
- 1.9% Unsure

14. Should the new pet rules capture and apply to the following circumstances?

Select any and all that apply.

- 78.2% Tenants keeping pets they own at the rental property
- 43.2% Tenants keeping pets they don't own at the rental property
- 41.7% Visiting pets at the rental property (i.e. no overnight stay)
- 56.8% Service animals residing at the property
- 40.3% Service animals visiting the property (i.e. no overnight stay)
- 43.7% Existing no-pet clauses that predate the new rules
- 5.6% Other

15. Should existing no-pet clauses in tenancy agreements remain enforceable until the end of the tenancy?

- 81.8% Yes
- 8.5% No
- 9.7% Unsure

15. Do you support the introduction of a pet bond up to a maximum amount equivalent to 2 weeks' rent?

- 49.5% Yes
- 1.0% No, 2 weeks' rent is too high. It should be less.
- 43.0% No, 2 weeks' rent is too low. It should be more.
- 6.6% Unsure/No opinion

16. If you allow pets at your rental property, would you collect from the tenant the maximum general (4 weeks) and pet (2 weeks) bond allowable?

- 69.9% Yes, definitely
- 25.7% Maybe, depending on the tenant/situation
- 1.0% No
- 3.4% Unsure

17. When should the pet bond be refunded to the tenant?

- 63.3% At the conclusion of the tenancy once all outstanding matters are resolved
- 32.8% During the tenancy with the landlord's consent so long as the tenant is no longer keeping pets at the rental property
- 3.9% Unsure/No opinion

18. Do you think it should be an unlawful act (with penalty attached) for your tenant to keep pets at the rental property without your consent?

93.4% Yes
2.2% No
4.4% Unsure

19. Should you be able to attach any conditions to your consent for the tenant to keep pets at the rental property?

57.5% Yes, but only reasonable ones
29.1% Yes, I should be able to attach any conditions I want
12.1% No, it should be a simple 'yes' or 'no' to pets
1.2% Unsure

20. Do you think it is fair that you can only refuse a tenant's request to keep a pet on reasonable grounds?

26.2% Absolutely fair
15.5% Somewhat fair
5.8% Neutral
15.8% Somewhat unfair
26.7% Absolutely unfair

21. Do you find the list of reasonable grounds for refusing pets to be appropriate?

12.1% Absolutely yes
35.0% Broadly yes
20.6% Neutral
19.9% Broadly no
12.4% Absolutely no

22. Do you support making tenants liable for the costs of all damage caused by pets that are not fair wear and tear?

88.6% Strongly support
10.2% Support
0.7% Neutral
0.2% Oppose
0.2% Strongly oppose

23. Do you think the Bill should include specific provisions that clearly define pet-related damage (as opposed to any other forms of damages)?

72.6% Yes

9.5% No

18.0% Unsure

24. Do you agree with reducing the rent arrears liability for periodic tenants who abandon the tenancy from 28 days after abandonment to 21 days?

26.5% Yes

59.0% No

14.6% Unsure

25. Do you agree that you should be able to ban a tenant from smoking a smoked tobacco product in any part of the premises other than outdoors and any outbuildings intended solely for parking or storage (such as a carport)?

94.9% Yes

2.9% No

2.2% Unsure

26. Do you think the enforceability of no-smoking clauses should be extended to vaping products?

82.0% Yes

5.6% No

12.4% Unsure

27. Do you support giving the Tenancy Tribunal the ability to make decisions on paper in limited circumstances?

59.7% Yes

6.3% No

34.0% Unsure

28. Select the types of Tribunal applications that should be decided by the Tribunal on paper. Select all that apply.

85.2% Rent arrears

84.2% Abandonment

73.1% Termination for anti-social behaviour (after satisfaction of 3 strike rule)

76.5% Termination for persistent rent arrears (after satisfaction of 3 strike rule)

7.3% other

29. Do you agree that you should be able to serve documents to your tenants (and vice versa) by text message or instant messaging?

51.5% Yes

28.2% No

20.4% Unsure

END