



Residential Tenancies Amendment Bill Social Services and Community Committee

Te Ope Whakaora – The Salvation Army New Zealand Fiji Tonga and Samoa Territory Submission

Executive Summary

1. The Salvation Army is generally very **supportive** of many of the provisions of this Bill. We have consistently advocated for greater protections and security of tenure for tenants. At the same time, we understand the need to ensure there is also balance and fairness for landlords and their own rights in rental situations. With more New Zealanders living in rental accommodation, trying to find this balance through legislation is both difficult and crucial.
2. With that context in mind, our view is that this Bill does in many ways move towards that balance, particularly with the improvement in security of tenure, limitation of rent increases, and the clarity around termination notices.

Background

3. The mission of The Salvation Army is to **care for people, transform lives and reform society by God's power**.¹ The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
 - a. The combined services of Te Ope Whakaora The Salvation Army provided support to around 120,000 people in 2019. In our Community Ministries service, over 57,000 food parcels were distributed to more than 28,000 families and individuals. Our workers also conducted nearly 13,000 financial mentoring and budgeting sessions with about 3,800 clients in 2019. In addition, The Salvation Army is a registered Community Housing Provider, providing social housing for hundreds of tenants, and we are one of the largest transitional housing providers in the country. Also, we continue to provide various housing support services around the country through our Salvation Army Social Housing (SASH) and Transitional Housing units. Furthermore, our Addictions Supportive Accommodation and Reintegration Services (ASARS) continued to provide support for those facing addictions to alcohol, other drugs, and problem gambling, and also assisting those leaving prison.

¹ <https://www.salvationarmy.org.nz/church-community/resources>

4. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's Aotearoa New Zealand Fiji Tonga and Samoa Territory.

5. This submission has also been informed by our SASH service. The Salvation Army is a registered Community Housing Provider and is an active player in the provision of transitional housing. The Salvation Army provides accommodation for over 1200 people each night, either via its social housing portfolio, or via its transitional housing network. In 2019 alone, 3,253 people were housed in our transitional housing homes across the country. The Salvation Army has a presence throughout New Zealand and has been active in the provision of housing for over 100 years. Currently we are actively involved in constructing social housing units in Auckland (66 currently under construction) and exploring potential new developments and social housing partnerships throughout New Zealand.

6. Along with social housing developments, The Salvation Army Transitional Housing team (Community Ministries and ASARS) are working with the HUD; Housing and Urban Development, KO; Kāinga Ora, MSD; Ministry of Social Development and communities on further partnering opportunities to increase the temporary housing available in New Zealand and end homelessness. In 2019 our transitional housing service provided a place for 3,253 people to stay short term and transitioned 2,127 people into permanent housing. A summary of our transitional housing outcomes for 2019 is reproduced below:

Transitional Housing Stats

For the period 01/01/2019 to 31/12/2019

	Total
Average LOS	91.00
Client/Family Count	1,594.00
Client/Family Transitioned	860.00
New Units in Period	59.00
Total People Helped	3,253.00
Total People Transitioned	2,127.00

General comments

- 7. More fundamental review of the RTA** – We submit that a more fundamental review of the RTA is urgently required. This view formed the core of our submission to the RTA consultation in 2018.² The RTA came into force over 30 years ago. The RTA consultation that has led to this Bill covers some significant areas. But our view is that there are some important omissions in this current Bill, including the absence of references to those living in Transitional Housing arrangements. Additionally, we submit that there is also not enough focus in this Bill on Boarding Houses, particularly around a robust licensing and registration scheme, clarity around enforcement of standards by MBIE, and stronger regulation for those businesses loosely operating as quasi-boarding houses for vulnerable clients. For these reasons, particularly around transitional housing and boarding houses which are either not covered or lightly covered in this Bill, we urge the Select Committee to address these omissions and undertake a more robust review of the RTA that is relevant to today's housing provision realities.
- 8. Tenancy advocacy** – The Salvation Army submission to this Bill is written from a very unique set of perspectives we have as both a landlord and a tenant. In our social housing provision around the country, we act as a landlord. In our transitional housing provision, we are effectively tenants within these government arrangements. However, also weaved throughout this submission and our wider social policy approach is our strong support for the rights of tenants in New Zealand within the national rental market. We have consistently advocated for greater investment, funding and acknowledgement of tenants' rights, particularly as there is often an implicit power imbalance between the landlord and tenant. We acknowledge the work of tenants' advocacy groups throughout the country. Our view is that this Bill does improve the stated rights of tenants in many ways. But the real and practical challenges of supporting tenants to understand and exercise their rights as tenants with the landlord and Tenancy Tribunal, especially if they are in vulnerable and complex situations, cannot be underestimated by this Select Committee and MBIE as this Bill progresses. Consequently, further support for tenancy advocacy groups is crucial to having a balanced landlord-tenant relationship. Conversely, holding bad landlords to account is equally important so there is no exploitation and harm for tenants. This raises the importance of a well strong, accessible and well-resourced Tenancy Tribunal. In our view, the Tribunal process is often too complex and not in plain enough English for many in the local communities we work with. We submit this needs to be managed and structured better by the Tribunal, especially to ensure both the tenant and landlord are supported well in this process.

^{2 2} <https://www.salvationarmy.org.nz/article/submission-consultation-reform-residential-tenancies-act>

Comments on specific parts of the legislation

9. Clauses 13 (letting fees), 14 (bonds not to be more than 4 weeks' rent), 15 (security) and 16 (receiving bond)

- a. We strongly support these amendments.

10. Clause 17 – Advertising of rent and rent bidding

- a. We strongly support the new section 22F in this clause. In our experience, it is vital for potential tenants to have clarity about the rent when looking at rental house advertisements.
- b. This provision is in line with similar advertising requirements in the Credit Contracts and Consumer Finance Act and the Responsible Lending Code connected to this Act. This kind of plain, up-front information will ideally help potential tenants make informed decisions when looking for and choosing between rental options.
- c. We submit that included in these ads for a rental property should be information stating up-front that the bond is equivalent to 4 weeks' rent. This will support clause 14 earlier in the Bill. Additionally, this simple change will give even greater clarity to tenants about the full, up-front and key move-in costs attached to a rental property.
- d. Regarding clause 14 about bonds discussed above, the existing legislation allows for bonds to also be increased if the rent is increased. We submit that even if there is a rent increase as clause 19 (discussed below) allows, then the bond should remain at the amount that was originally advertised despite any subsequent rent increases.
- e. We also strongly support the inclusion of the new section 22G in this clause about rental bids. The Salvation Army is encouraged that section 22G prohibits rent bidding is in this Bill. But we have submitted in the past to this RTA reform process that controlling this activity is admirable but also extremely difficult to regulate given the economic power that landlords have and that fact that it is very much a sellers or landlords market where many are desperate for stable rental options.³

11. Clause 19 – Rent increases

- a. Again, we strongly support the restriction of rent increases enshrined in this clause.
- b. However, we submit that a further important limitation might needed here to strengthen this clause. That is, there is clearly licence in this Bill to have a rent increase which is understandable. But there is no clarity or guidance in the Bill or principal Act about how much this rent increase can be up to.

³ [Ibid.](#)

- i. The Salvation Army calls on MBIE to undertake an investigation and policy discussion on the impacts a cap on an increase in rent could have for landlords and tenants in New Zealand. There are overseas examples of rent caps, freezes or control policies being implemented to help control unaffordable housing costs. For example, the State of California implemented a rent cap of 5% after inflation in 2019, affecting over 8 million tenants in that State.⁴ In Germany, the parliament of the Berlin city-state approved a five-year freeze on rents and a price cap of 9.80 euros per square metre in January 2020 to try and contain high property prices and rents in the City.⁵ We believe this kind of analysis is important and submit this should be part of a more ambitious and comprehensive reform of the RTA. These types of potential rental cap or control policy is even more important for people or families on fixed and lower incomes, and beneficiaries in our nation.

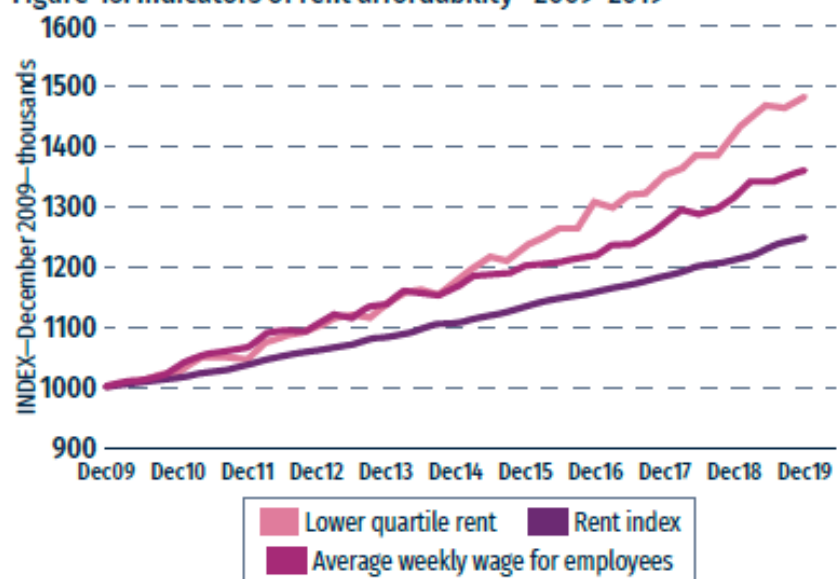
 - ii. We call on MBIE to undertake some modelling on what various rent increase cap options might result in for the landlord and tenant within this new timeframe of a yearly rent increase under clause 19. Our concern here, especially for many of those poorer New Zealanders using our various services around the country, is that the rent increase permitted in this clause will be so significant that it will price these tenants out of their existing tenancy. Some form of a cap could provide clarity, stability and security for the tenant that can only add to the other measures in this Bill.

 - iii. There is some guidance in the principal Act about how tenants can challenge the amount of a rent increase. But this can be another challenging process for many tenants facing very complex social and health situations to go through. As mentioned earlier, stronger tenancy support services from MBIE and advocacy groups is crucial here. But our view is that implementing some form of a rental increase cap within this clause 19 will provide the much needed clarity and stability in tenure for both tenant and landlord.
- c. In our annual *State of the Nation 2020* report, we again reported on some of the key challenges in the rental sector. For example, the figure below looks at two indicators of rent affordability over the last decade. Both indicators show that there have been major increases in rent prices since 2009.

⁴ <https://www.nytimes.com/2019/09/11/business/economy/california-rent-control.html>

⁵ https://www.washingtonpost.com/world/europe/berlin-is-taking-radical-measures-to-control-rents-can-it-hold-back-the-tide/2020/01/30/bb5e49b2-3645-11ea-a1ff-c48c1d59a4a1_story.html

Figure 45: Indicators of rent affordability—2009–2019¹²⁰



- d. Also, in this report, we continued our analysis of rent the average rents for three-bedroom home is selected, lower income suburbs over the last 5 years. The table reproduced below shows that there have been significant increases in many suburbs, including Kaikohe, Manurewa Central, Huntly East, Fordlands in Rotorua and Trentham North.
- e. Therefore, if a rent increase was subject to some form of a cap, then untenable and unfair rent increases could cease to happen, particularly for poorer or more vulnerable New Zealanders. We acknowledge that there are already some mechanisms within the principal Act that try to limit unfair rent increases, particularly the provisions that allow tenants to complain to the Tenancy Tribunal for a rent review. But exploring this kind of mechanism in the Bill could greatly support poorer and vulnerable Kiwis.

Table 26: Average rents for a three-bedroom house in selected low-income suburbs—2014–2019¹²²

	Average 5 years ago	Average 2 years ago	Average last 12 months	5-year change	1-year change
Kaikohe	225	289	325	44.1%	12.5%
Glenfield Central	471	561	582	23.5%	3.7%
Ranui North	402	465	486	20.9%	4.5%
Ākarana—Mt Roskill	486	578	601	23.5%	3.9%
Avondale West	448	538	567	26.4%	5.3%
Mt Wellington North	472	559	585	23.9%	4.6%
Ōtāhuhu East	424	484	500	17.7%	3.1%
Manurewa Central	413	494	539	30.5%	9.0%
Papakura East	375	476	500	33.4%	5.0%
Huntly East	249	348	379	52.3%	8.7%
Claudlands—Hamilton	355	429	460	29.8%	7.3%
Greerton—Tauranga	328	435	460	40.2%	5.6%
Fordlands—Rotorua	204	313	353	73.0%	12.8%
Flaxmere East—Hastings	280	336	387	38.0%	15.1%
Westown—New Plymouth	363	400	412	13.6%	2.9%
Highbury—Palmerston North	256	342	353	38.2%	3.1%
Cannons Creek North	261	346	382	46.0%	10.3%
Trentham North	348	440	535	53.5%	21.7%
Naenae South	327	446	453	38.7%	1.5%
Mirimar South	458	630	658	43.7%	4.5%
Tahunanui—Nelson	346	390	424	22.5%	8.7%
Aranui	365	336	375	2.9%	11.8%
Hornby South	422	405	417	-1.2%	3.0%
Woolston West	382	367	361	-5.4%	-1.7%
St Kilda West—Dunedin	335	401	455	35.8%	13.5%
Richmond—Invercargill	244	296	326	33.7%	10.1%
National	358	440	465	30.1%	5.7%

12. Clause 23 – Tenant’s fixtures

- a. We support this provision. In our experience as landlords, allowing for these kinds of minor modifications can really add a sense of belonging and home for the tenant. This is part of our attempt as a socially responsible landlord to build community and the resilience of our clients.
- b. We also believe this area needs to be managed very well to ensure the tenant-landlord relationship remains friendly. The consent process and restrictions and definition of *minor changes* in this clause are sufficient and appropriate.

13. Clause 24 – Prohibiting assignment of tenancy

- a. We support this clause about prohibiting the assignment of a social housing tenancy as found in the new section 43A.

- b. We also support the guidelines of the new sections 43B and 43C in this clause detailing the formal and legal assignment of a tenancy. These sections strengthen the good relationships that many landlords and tenants have.
- c. Connected to this clause 24, we also support clause 26 about the reasonable recovery of expenses incurred during this assignment process.

14. Clause 27 – Landlord’s responsibilities

- a. We support this clause. But we contend that the landlord should be required to give this information even if the tenant has not yet requested it. This should be made mandatory. This should be presented by the landlord as soon as, or alongside, the signing of the tenancy agreement. Good landlords who have followed or fulfilled their healthy homes standards responsibilities should be proud to present this information to prospective tenants because it indicates their adherence to the set standards.
- b. However, we also submit that a formal but simple checklist or guideline of healthy homes standards should be developed by MBIE as a standard form to be presented to tenants under this clause. This could simply list down all the relevant standards required by the Act, and then have room on the form where the landlord completes (with evidence) how and when this standard was achieved for this property. This should be easy to read, technical jargon-free and in plain English so the tenant is fully aware at the outset of the standard of this property. For those prospective tenants who do not have English as a first language, we submit that access to the Government’s language line or other appropriate services or organisations should be promoted about the standards of this property.

15. Clauses regarding Termination

- a. **Clauses 31 and 32 – Circumstances where tenancies are terminated and termination by notice**
 - i. These clauses remove the landlords’ ability to end a periodic tenancy on 90 days’ notice without giving a reason. The Salvation Army affirms that central to this Bill should be ensuring more security of tenure for tenants. We have noted our unique position of being a landlord (social housing) and tenant (transitional housing) through our housing provision, and also a general advocate for stronger rights for tenants throughout the country. We have some concerns that these new amendments are still too broad and subjective and could be arbitrarily used by some landlords to unjustifiably end tenancies.
 - 1. Consequently, we submit to the Select Committee some positions that could be seen as contradictory. But these positions emerge

from our unique position as a tenants' rights advocate, but also as a landlord and tenant.

2. Our view is that security of tenure is critical for the development of stable, healthy and well individuals, whanau and communities. This must be provided for and protected in this Bill. Additionally, in light of that, we submit that the ability to end a periodic tenancy without notice, particularly in a social housing tenancy, should remain in the principal Act and not be removed through this Bill.
3. But we submit that this option should be used only as a last resort by community housing providers like The Salvation Army, after a thorough process has been used by these providers with the tenants in question. In a private rental context, we submit that this option should also only be used as a last resort option by landlords. Again, we emphasise the importance of improving security of tenure for tenants.
4. In both the social housing and private rental contexts, we contend that justifiable, specific and reasonable reasons must be appropriately used and documented by the landlord who wants to end this periodic tenancy. These reasons cannot be frivolous and must be reasonable. The requirements or reasons listed in clause 32 are in our view still quite broad and loose and do not in fact give the security of tenure this Bill is meant to provide for tenants. Monitoring these situations is crucial to ensure security and stability of tenure.
5. Finally, in this section we want to acknowledge again the importance of properly funding and resourcing tenancy advocacy and support services. In our experience, termination of tenancies are hugely emotional and complex processes. There have been clients that we have wanted to terminate their tenancy and who we have tried to support during the Tenancy Tribunal procedure. But many of the complex needs clients or tenants we serve in our housing programmes struggle through the Tribunal's hearing process. Tenants have rights of redress and appeal in the Tribunal. But many need robust support, especially if they have had their tenancy ended under these sections of the principal Act.

b. Clause 35 – Terminating social housing tenancies

- i. We support this clause. We acknowledge this can be a very difficult situation, especially for the tenant. But as a social housing landlord, there are various circumstances where a tenancy needs to be ended within the parameters of the agreement. The parameters in this clause are appropriate.
- ii. We did discuss the need to ensure another suitable housing option for tenants in this situation. The reality is that tenants in this situation will still be on the social housing register, and in our experience many of these tenants will come through transitional housing arrangements if their social housing tenancy has been ended. Still, this process needs to be monitored effectively to ensure this tenant and their whanau do not face added hardship.^{pa}
- iii. Again, we note the omission of adequate provisions clarifying the position of transitional housing clients or tenants within this Bill. We note the strong recommendations from Community Housing Aotearoa (CHA) in their submission to the RTA consultation in 2018. We particularly support their recommendations that *additional policy work needs doing to create a clearer legislative position for Transitional Housing tenants*⁶, and possibly bringing transitional housing into the boarding house provisions of the RTA.⁷
- iv. Our Salvation Army Transitional Housing service uses an Occupancy Agreement to define the landlord-tenant relationship and set of rights. However, this Bill and other RTA and housing related reviews and Bills still do not clarify the position of transitional housing arrangements. Again, this echoes our call for a more comprehensive review of the RTA, and also more detailed policy work to affirm the actual legislative position and framework transitional housing operates within.

c. Clause 36 – Termination for non-payment of rent, damage or assault

- i. We support this clause.

d. Clause 37 – Termination for anti-social behaviour

- i. We support this clause of the Bill. Please note our responses to clauses 31 and 32 above that address some of these issues. We do note that the definition of *anti-social behaviour* is very short and subjective. We submit that this definition needs further detail and clarification. For example, if

⁶ CHA submission to RTA consultation, 2018, page 7.

⁷ Ibid.

numerous noise complaints are lodged by neighbours about a tenant within a 90-day period, does this constitute anti-social behaviour?

16. Clause 45 – Obligations around boarding houses

- a. We submit one of the glaring omissions in the Bill is more regulation around boarding houses. In the 2018 RTA consultation, there was a lot of information requested from submitters around boarding houses. Again, as we submitted in 2018, a major, coordinated and comprehensive reform of the law around boarding houses is urgently needed. In our 2018 submission, we also advocated that;
 - i. A warrant of fitness framework is essential for healthy and suitable boarding houses;
 - ii. That there is a clear and statutory duty of care for government departments when welfare payments are paid directly to these boarding houses (or quasi-boarding house companies). For example, if a client's Accommodation Supplement is being paid to a boarding house, then surely there must be a duty of care for the Ministry of Social Development to ensure the client is receiving adequate and safe housing and care in that boarding house situation;
 - iii. Stronger regulation and enforcement of penalties is needed against boarding houses in general, but especially those who breach the required standards.
- b. We support this clause 45. However, The Salvation Army submits that are serious issues if there is no actual and definitive tenancy agreement. We have become aware of the years of quasi-boarding house institutions particularly in Auckland that operate as boarding houses but do not fully come within the protections and guidelines of the boarding house laws. The security of tenure of these people is particularly important given that many of these tenants are from very vulnerable backgrounds and situations.
- c. We submit that there should be a provision included in this clause where the landlord must, when giving notice that the property is to be sold or disposed of, also include notice or clarification about whether or not the property will continue as a boarding house, and also whether there is likely to be a rent increase as per clause 19 of this Bill.

17. Clause 51 – Suppression Orders

- a. The Salvation Army submits that the default position for all Tenancy Tribunal hearings is that all names should be anonymised to ensure that there is no future discrimination for the parties regarding any other tenancy agreements. We do

support the provision in clause 51. But all names and identifying details should be kept anonymous to ensure that no 'blacklist' of tenants emerges after the resolution of cases. We support due process and the progression of natural justice by the Tribunal. But tenants who may have had their tenancy terminated in one property should not have their rights or search for another alternative housing option put at risk or prejudiced by previous hearings.