

Ministry of Housing and Urban Development
Te Tūāpapa Kura Kāinga
PO Box 82, Wellington 6140

11/11/2022

RE: Transitional Housing Code of Practice

Community Housing Aotearoa – Ngā Wharerau o Aotearoa (CHA) thanks the Ministry of Housing and Urban Development – Te Tūāpapa Kura Kāinga for the opportunity to share our perspectives on the Transitional Housing Code of Practice (TH CoP). We have prepared this submission in response to the ‘Code of Practice for Transitional Housing and the related ‘Draft Code of Practice for Transitional Housing – Consultation Support Information September 2022’ (the Consultation Document).

CHA is an Incorporated Society and a peak body for the community housing sector. To achieve our vision of ‘all New Zealanders well-housed’, we have a strategic focus on supporting a well-functioning housing system and working toward the realisation of the right to housing. We are also mindful of the larger institutional and regulatory settings within which our members and other community organisations operate.

Our 80 provider members provide homes for nearly 30,000 kiwis nationally across 18,520 homes, and our 38 partner members include developers, consultants, and local councils. Community Housing Providers (CHPs) are primarily not for dividend entities that develop, own, and manage social and affordable housing stock, with rental and progressive homeownership tenure offerings. We work closely with national Māori housing advocate Te Matapihi, which represents Iwi-based and Māori community housing providers. More about us can be found [here](#).

Background and History

In 2017 – with information collected from providers – CHA began investigating how Transitional and Emergency Housing programmes operated. Of particular interest was how these services interacted with the Residential Tenancies Act (RTA) and the use of varied Agreements being entered into between providers and residents. Based on the information gathered, CHA advocated for the principles of the RTA (rights and responsibilities on both sides) to be used and a fit-for-purpose tenancy solution to be developed.

From 2018, the newly established Ministry of Housing and Urban Development (MHUD) continued to work with Tenancy Services and Crown Law to reach a common understanding of the legal issues in the Transitional Housing and Emergency Housing programmes. CHA received separate legal advice which concluded the RTA does apply to Transitional Housing, which we shared with MHUD. It was our understanding that the outcome of MHUD’s work would clarify the issues and provide specific legal resolution to protect tenants’ rights and clarify them within the RTA or other legislative instrument.

On the proviso that further policy work was undertaken to “create a clearer legislative position for Transitional Housing tenants”, CHA supported the exclusion of TH from the “full protection of the RTA [as it] does not align with its policy purpose as short-term accommodation for homeless families or the operations requirements of providers well”. In lieu of this separate legislative instrument, CHA suggested “one option might be to bring Transitional Housing into the Boarding Housing provisions of the Act ... as we believe this provides the appropriate balance of protection for tenants whilst giving landlords (providers) the necessary operational flexibility to manage the accommodation as Transitional Housing.”

The purposive exclusion of Transitional Housing from the Residential Tenancies Act (RTA) through an Amendment Act in 2020 necessitated the development of the Transitional Housing Code of Practice. CHA has been involved in The Code of Practice since it was announced in 2020.

CHA’s documented concern with the legal status of Transitional Housing predates the drafting of the CoP, the 2020 RTA Amendment, and the creation of the Ministry of Housing and Urban Development. Our messages and concerns have largely been consistent across this period. We have advocated for the development of a Code of Practice alongside legislative protections fit for the whānau- and outcome-focussed, rights- and strengths-based models of Transitional Housing. Our stated concerns in 2020 were that; Transitional Housing would be exempted from the RTA; no alternative fit-for-purpose legislative instrument for Transitional Housing or Emergency Housing would be implemented; and the previously conferred legislative rights of tenants and households under the RTA would be substituted for enforcement through contractual terms. We are disappointed to be two years down the road from voicing these concerns and in that very position.

CHA’s Position on TH CoP’s Legal Status

It has always been – and continues to be – CHA’s position that the rights of households need to be clearly defined through legislation with a mandated tribunal or judicial body to enforce and uphold the rights of all parties. Since Transitional Housing was removed from the RTA in 2020, providers have been operating without clear frameworks for rights, responsibilities, obligations, and dispute resolution. The TH CoP is a step in the right direction but it is not obvious how it fits within contracting frameworks, MSD accreditation, operating guidelines, and organisational policies to ensure there is a consistency of service by all providers. Furthermore, the absence of related legislation undermines the legal rights of all parties involved in TH programmes.

Community Housing Providers (CHPs) are regulated by the Community Housing Regulatory Authority



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(CHRA) through a rigorous registration and annual monitoring process where CHRA has visibility of end-to-end policies in Tenancy Management, Asset Management, Governance, Financial Viability, and Management. By contrast, TH Providers have effectively received funding parity with CHPs but the processes associated with TH contracting and policy/procedure auditing are far less rigorous. The CHRA registration process creates accountability for providers and tenants through legal standards and a proactive, mandated, and fit-for-purpose regulator. The landscape of contracting processes and the TH CoP (in lieu of formalised legislation) are insufficient to establish a similar level of practice as in the Public Housing sector, despite equivalent funding and similar households served.

CHA fundamentally and unequivocally believes that Aotearoa New Zealand's social and legal systems should be geared for the progressive realisation of the Right to a Decent Home for all our people. Removing the formal legal safeguards - established previously for Transitional Housing through the RTA and the Tenancy Tribunal - could be considered a failure of our Human Rights' commitments as a regressive step for the ability of those in the TH programme to access justice. There are currently 5,520 contracted TH places, each representing a household (or a group of households since 2020) without clear legal rights or protections.

Involvement with the TH CoP

CHA has hosted representatives from Te Tūāpapa Kura Kainga – Ministry of Housing and Urban Development and facilitated three feedback sessions discussing the TH CoP with TH providers, community law groups, motel operators, and other related professionals. CHA is delivering two separate submissions regarding the TH CoP. A separate submission will reflect the feedback received from Providers, Community Law Centres, Motel Operators, and during and following the three feedback sessions facilitated by CHA. Much of that content is specific to the operational aspects of the TH CoP. This submission as it follows below reflects CHA's system-level perspectives on the TH CoP. While CHA believes that the TH CoP and related rights should be affirmed in legislation, we believe we have a responsibility to offer feedback on the CoP in its current form to make it the best it can be moving forward.

This submission will continue with some general comments on the TH CoP which are not directly addressed through the submission format provided in the Consultation Document. The latter half of this submission will respond following the submission format.

General Comments on the TH CoP

During the engagements facilitated by CHA, providers were very willing to share their operational realities. It became clear that many aspects of the TH CoP were still not clear and that many providers have unique services determined by location, cohort, values and principles, and the building / living environment. These realities need to be balanced with the rights, responsibilities, and obligations that the TH CoP seeks to establish. Having the enforcement or oversight of the TH CoP rest in contracts undermines this purpose as exceptions and changes will be made through the contract relationship that are not transparent, consistent, or adequately considered.

CHA is concerned that the opaque contracting environment currently used for Transitional Housing creates inconsistencies of services and rights between various providers, and in turn, households in their service. While contexts between providers are often unique and some flexibility in contracting may be desired to fit particular models, the loosely prescribed contracting framework can lead to significant differences in funding dedicated to providers for their service which ultimately impacts the rights of households.

The standards and documents underpinning the TH system can seem both confused and confusing. It is unclear why some provisions are included in the TH CoP and others contained in the Operating Guidelines for Providers of Transitional Housing (“the Guidelines”) when both are effectively enforced through contracting. “The Code sets out the rights and responsibilities for Providers, Motel Operators and Households”, however, the Operating Guidelines similarly establish the responsibilities of Providers. For instance, Healthy Homes compliance could be included in either document as it pertinent to the Provider-Household relationship and the HUD-Provider relationship. Placing this in the TH CoP transfers the responsibility of ensuring compliance with Healthy Homes from HUD’s contracting process to Households which are ill-equipped to seek recourse and compliance. Alongside the previously cited concerns of discretionary contracting practices, this adds to the general confusion of TH standards.

Furthermore, efforts to contain the policies managing the Household-Provider relationship in a 20 page document – by contrast the RTA is closer to 250 – is fraught, especially given the absence of a well-resourced and mandated regulator or an Independent Dispute Resolution service capable of creating precedent. If HUD does not have sight of IDR service rulings, it is unclear if HUD is best equipped to update the TH CoP or their contracting processes to reflect issues regularly brought before IDR services. Given that the TH CoP is not a legislative instrument we also recommend there is greater information in the TH CoP regarding the process for reviewing and updating the TH CoP to ensure it reflects best practice and addresses any IDR findings, in lieu of their ability to create precedent.

One of the major concerns with the CoP is how/if it will similarly establish the standards for Youth/Rangatahi Transitional Housing and what work will be done to make it fit for that purpose.



Outcome 1 – A Housing Agreement Between the Provider and Household

Q1 – Do you broadly support the mandatory Housing Agreement with minimum requirements? Yes/No. Please tell us why.

Yes – It is necessary to establish a formal relationship between the Provider, Household, and Motel Operator in lieu of a Tenancy Agreement. Similarly, including in the Housing Agreement minimum requirements and standards establishes clear expectations, rights, and responsibilities for all parties.

The enforcement mechanism of the Housing Agreement is still unclear. Tenancy Agreements establish a legal relationship and give effect to the relevant provisions of the Residential Tenancies Act. How this will function in the context of the TH CoP and the related contracting framework is not apparent. These issues will be further highlighted in our comments on the Independent Dispute Resolution Service.

Q2 – Is there anything you think should be added or removed from the proposed list of things to include in the Housing Agreement?

The Housing Agreement needs to create room for Providers to list a maximum number of persons that may ordinarily reside in premises OR state that only the listed Household members may ordinarily reside in the premises. One (or both with some modification) of these provisions feel necessary to ensure that the number of people residing in a property does not exceed a reasonable level for the property. Additionally, it may be worth including a clause prohibiting subleasing or assignment of housing to non-Household members.

Q3 – Would a template of a Housing Agreement, like the tenancy agreement templates provided by Tenancy Services, be useful to you? Yes/No. Please tell us why.

Yes – CHA strongly supports the creation of a template Housing Agreement to ensure Households largely have consistent rights and responsibilities regardless of the Provider or Motel Operator. A lack of formalized legislation which establishes legal responsibilities between parties necessitates the creation of a sample Housing Agreement. Template Housing Agreements – regardless of whether they are adopted by Providers – will offer a greater understanding of the minimum standards associated with the TH CoP. Drafting template Housing Agreements and allowing these to be publicly accessed could allow Households within TH programmes to understand their minimum legal rights and where their Housing Agreements may not satisfy these standards.

Q4 – What might be some ways that we can make a housing agreement easier to understand for Households? This will help us prepare a template if useful to the sector.

It would be beneficial for Households and Providers that any template Housing Agreement has associated material which explains the content of the Housing Agreement in various languages and in accessible formats to clearly communicate the content of the Housing Agreement to all parties. Template Tenancy Agreements from Tenancy Services are similarly accompanied by materials which convey Tenant- and Landlord- specific information in accessible forms which elaborate on the rights and responsibilities of the

parties established in the RTA, but not necessarily elaborated on in the Tenancy Agreement. We recommend this approach be emulated for the TH CoP. We also recommend they are produced in numerous languages as this would also mitigate some of the financial burden associated with the provision of interpreters by the Provider as established in Section 2 of Outcome 1.

It would also be beneficial to offer an overview of the contents of the TH CoP and the rights and responsibilities of parties alongside the Housing Agreement. This is standard practice for Tenancy Services' template Tenancy Agreements and provides important information for tenants. We continue by discussing what could be included in the materials attached to the Housing Agreement below.

CHA believes that there should be greater information offered to Households and Providers about the information which Providers can inquire about from the Households which are relevant to the provision of Transitional Housing. In light of the 2020 Privacy Act update, a Housing Agreement should clarify what information is appropriate (and what is inappropriate) for a Provider to inquire/collect from a Household in the context of Transitional Housing provision. We recommend that the standards are adapted from those listed by the Privacy Commissioner here: <https://privacy.org.nz/resources-2/renting/> to match the nature of Transitional Housing and satisfy HUD's intention that there be parity of rights of tenants in the private market and Households in TH places wherever appropriate.

CHA's General Comments on Outcome 1

Boarding House Tenancy Agreements provides an adequate template for TH Housing Agreements and the related provisions of the TH CoP. The timeframes and processes for Boarding Houses are appropriately adjusted for a publicly supported short-term accommodation environments and are legislatively established in the RTA. It is unclear why allowances were made within the RTA for Boarding Houses, but TH was purposively excluded to the detriment of all parties involved in the TH.

CHA has concerns about the definition of "Adult" in the TH CoP and the requirement in Outcome 1 Section 5 for an "Adult Household member" to sign the Housing Agreement. The TH CoP defines "Adult" as those over the age of 18, creating uncertainty about the ability of 16-17 year olds in rangatahi/youth transitional housing to sign their Housing Agreements. These concerns will need to be addressed before the CoP is finalised.

More information in the Housing Agreement is required regarding the charging of utility costs. More information regarding how a service charge is set and reviewed – including how refunds are calculated and administered in the event of overcharge – would provide clarity to the Household about how their utilities contributions are being managed.

Housing Agreements should clarify if the Provider receives funding for utilities charges through their contract with HUD. It is important to have transparency between Households and Providers about utilities charges to ensure any subsidisation enabled by utilities funding through HUD contracts are conferred onto Households. We also more widely question why it is not standard for HUD to fund utility costs across all TH contracts to alleviate financial strain on Households in TH programmes.

Similar to the standards established in the RTA, Housing Agreements should be required to be accompanied by a Healthy Homes Compliance Statement (or an Intent to Comply Statement). Part of compliance with the Healthy Homes Standards are the mechanisms for notification of tenants so it is consistent to mandate that Housing Agreements are accompanied with Healthy Homes documentation. Similarly, it is our opinion that Housing Agreements should also include the details of any methamphetamine report conducted in the



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property. The meth report should stipulate when the test was taken, the level of contamination (if any), the areas tested, and any remedial actions undertaken.

It is also unclear about the legal status of Housing Agreements generally, if it establishes a legal occupation for the household, and therefore the legality of trespass notices by providers.



Outcome 2 – An Informative Housing Induction Process

Q1 – Do you broadly support a mandatory induction process with specific information to be provided? Yes/No. Please tell us why.

CHA broadly supports a mandatory induction process with specific information, but it is important to note that - for the most part – Households are often applying and moving into TH at difficult points in their lives and they may be in urgent need of immediate shelter and support. Considerations needs to be given to what information is essential when they are offered, accepted and moving into housing, and how this information is provided and explained. Overly prescriptive induction procedures may be burdensome and another time drain on Households who just want a warm, dry, and safe home. A one-off process is unlikely to be sufficient to convey the rights, responsibilities, and obligations of Households and Providers.

Q2 – Is the proposed list of information, and things to show the Household, acceptable? Is there anything you think should be added or removed? Please tell us why.

Q3 – Do you broadly support the general provision that rules set by Providers and Motel Operators should be reasonable? Yes/No. Please tell us why.

Yes - The Code of Practice stipulates that “any Provider-specific Transitional Housing Programme or housing site-specific rules that the Household must comply with during their stay” may be included in the Housing Agreement. It may be prudent to ensure that any additional rules do not unduly affect the ability of Households to have a “Pleasant Living Environment Largely Free from Interruption”. To this effect it may be beneficial to establish principles which clarify if additional rules are congruent with the rights of the Household and therefore “reasonable”. These provisions could be modelled on section 66O of the Residential Tenancies Act, which requires providers to take into account human rights and human dignity when developing rules and policies. The appropriateness of site- and provider-specific rules should be considered in the contracting process for TH places, while recognising rights-based principles and the context of the Provider’s service and model.

CHA’s general comments on Outcome 2

CHA believes that it may not always be practicable for Providers (and Motel Operators) to take photos during the tour of the housing with the Household. It may be more practical to also allow Providers to take photos throughout a pre-occupation inspection, provided to the Household in the tour of the housing, and then agreed that they reflect the actual condition at time of signing the Housing Agreement. If the parties do not agree that they reflect actual condition, additional photos can be taken on the tour but requiring all photos to be taken at the tour may be time-consuming and detrimental for Provider and Household.



Outcome 3 – Healthy and Safe Housing

Q1 – Do you broadly support the requirement to meet Healthy Homes Standards? Yes/No. Please tell us why.

Yes – CHA broadly supports the requirement that TH places meet the Healthy Homes Standards as an important step in realising the right to a habitable home for Households in the Transitional Housing Programme and providing greater parity with those in the rental market.

Q2 – How feasible do you think it is for Transitional Housing Providers to be able to comply with the Healthy Homes Standards by these dates? What are the barriers to compliance? If these dates are not feasible what dates would be and why?

CHA supports adhering to the compliance dates as they are outlined in the TH CoP, with some opportunity for providers to apply for extensions of compliance through HUD. Providers should provide written justification for the extension and a plan stating how they intend to fully comply with the Healthy Homes standards within an agreed period. HUD would then need to sign off on that extension and be accountable for monitoring if the timeframes in the plan to comply are being met. To this end, we recommend somewhere in the contracting framework and/or in the TH CoP there is a clear approach to applying for and granting extensions.

CHA recognises that for many Providers there can be great difficulty in bringing their properties up to Healthy Homes Standards, potentially exacerbated by the short timeframe between the circulation of this draft Code of Practice, its eventual adoption into the contracting process, and the timeframes associated with Healthy Homes compliance. This may be further complicated by the lease or ownership model used by the providers and their relationship with property owners. However, the intent of this provision and the critical need for Transitional Housing stock to be healthy for Households does necessitate Healthy Homes compliance or some other equivalent as early as practicable.

The other complexity that potentially arises is the two different timeframes associated with satisfying the Healthy Homes Standards for Transitional Housing places based on if the housing is owned or managed by a registered Community Housing Provider or not. Consequently, two Households in the Transitional Housing programmes could have significant differences in the health of the home based on if the Provider is CHRA-registered or not, despite the two Households receiving the same service and paying the same rents. This disparity is concerning as these Households may have little opportunity to dictate who is the Provider of their Transitional Housing.

It is also worth noting that any difficulty in complying with the Healthy Homes standards for TH Providers is in part due to the widespread contracting of TH places without clear quality standards. If the intention to include Healthy Homes provisions in the TH CoP were signalled to TH Providers in 2020 and considered in the contracting framework, then compliance within Healthy Homes timeframes would likely have been eased. By understanding TH as HUD funding a high-quality service, then it would have been appropriate for Healthy Homes compliance to be included in the Operational Guidelines when these were drafted.

The Code of Practice for Transitional Housing should create specific amended standards (based on the Healthy Homes Standards) for transitional housing provided in a motel contracted by MHUD to provide motel units.



Q3 – Is the process for dealing with property damage and repairs well covered? Yes/No. Please tell us why.

Yes (with some change) – CHA believes reworking Clause 9 of Outcome 3 is required to acknowledge the existing power imbalance between Providers and Households. Households should be “encouraged to notify” – rather than “must notify” - Providers as soon as possible after the discovery of damage. Our concern is that this could be used as a punitive provision which may be used to justify the non-voluntary exiting of Households who fail to report property damage for valid concerns.

We also note that there is no distinction in the TH CoP between “fair wear and tear” and damage – as there is in the RTA. To this effect we recommend a provision is included whereby there is a standard for acceptable damage that could be reasonably expected to be incurred across the stay in the housing and therefore Households should not be required to pay for the repair of such damage.

We have heard from some Providers that some Households prefer to be present when maintenance is undertaken. Consequently, we suggest that Provision 13 in Outcome 3 be reworked to require Providers and Households to make best efforts to agree where possible when maintenance is undertaken. If an agreement cannot be reached, Providers should then be encouraged to restrict planned maintenance to times when the housing is vacant.

Q4 – Do you broadly support the proposed quality measures for transitional housing (clean, warm, dry, pest free)? Yes/No. Are there any other quality measures that you think should be included?

Yes (with some additions) – While these are good quality principles and measures generally, CHA reserves some concerns that these are not defined in the TH CoP, empowered by legislation, or refined through precedent. For instance, “clean” may mean free from contaminants in the TH CoP. Without definitions, regulation, or precedent, the particular standards associated with contamination are arbitrary and open to interpretation of Independent Dispute Resolution Services potentially with monetary implications for Households or Providers.

CHA’s general comments on Outcome 3

In reference to Clause 6 in Outcome 3, CHA believes that any temporary changes required to make the housing accessible and/or safe for a Household with varied needs should be included in TH contracts as a reimbursable sum.

An alternative approach to rehousing Households who may require changes that are not able to be conducted in a timely fashion, may be to offer the Household the opportunity to attend a viewing of the property to ascertain the suitability of housing prior to the offer/acceptance of the place. The Household and Provider can then discuss any additions/changes that are required and any challenges that may prevent the additions/changes from being made in a timely manner. This offers greater visibility and a mutual understanding of the needs of the Household and the timeline for being able to conduct the required changes/additions before the Household accepts the place.

Additionally, there are needs to be provisions in the TH CoP for smoke alarms to be installed in properties. These standards on clause 6 of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, but should require providers rather than tenants to replace worn-out batteries.



Outcome 4 – A Pleasant Environment Largely Free From Interruption

Q1 – Do you broadly support the provisions requiring Providers to supply housing, chattels and storage to ensure a pleasant living environment for Households in Transitional Housing? Yes/No. Please tell us why.

Yes – CHA agrees with the sentiment of Outcome 4 but we retain concerns that “Pleasant Living Environment” and “Free from Interruption” are undefined terms which have no precedent, unlike the equivalent standards in the RTA. Using the RTA equivalents - “maintain the premises in a reasonable condition.” and “quiet enjoyment” – would allow IDR services to contextualise Tenancy Tribunal precedents for TH. If the intention is for these terms to differ from those used by the RTA, CHA recommends these standards should be further defined in the CoP and clarify the difference between the RTA standards.

The provision of storage can be a difficult, expensive, and time-consuming for process for Providers. In our engagements with Providers this was cited as an issue which should require further detail to include a monetary value (and potentially some recognition of potential sentimental value) for goods to be stored by the Provider.

Q2 – Do you broadly support the proposed process around anti-social behaviour? Does it go into sufficient detail? Yes/No. Please tell us why. Does it get the balance right between the rights of Households and the rights of other Households/Providers? Yes/No. Please tell us why.

No – We appreciate efforts to align this element of security of tenure with the RTA given our previously stated support for Transitional Housing being included in the RTA. However, it is our position that this is one clause that should not be lifted wholesale from the RTA without due consideration of the nature of Transitional Housing. For example, the ASB policy is intrinsically at odds with the stated aim of Transitional Housing to provide housing for 12 weeks (84 days’).

Due in part to a lack of certainty about the thresholds and processes around non-voluntary exits, it may be prudent to reassess this policy with input from providers.

CHA also retains questions over how Anti-Social Behaviour notice exits relate to non-voluntary exits under 2b(ii c) in Outcome 5. It is currently unclear if these are considered separate processes or if ASB notices are the evidence required to satisfy 2b(ii c) in Outcome 5. If not, it may be appropriate for these processes to be clarified in the TH CoP. We recommend there is generally greater clarity - contained in a single section – about the relationship between the ASB notice policy and exits.

Q3 – Are the proposed requirements for inspections appropriate? Do you foresee any problems with this approach? Yes/No. Please tell us why.

No comments

General Comments on Outcome 4

Subsection 12 of Outcome 4 stipulates “the Provider’s policies and procedures must prioritise Household member safety (including LGBTQIA and rangatahi Household members)”. While CHA is supportive of the impetus of this policy, we do also note that inquiring about the sexual orientation or gender identity of tenants is considered “unnecessary and privacy-intrusive” by the Privacy Commissioner and expect that it is similarly inappropriate for TH provision. People in Households may voluntarily present information regarding their gender identity and sexual orientation, but it is important to note that this subsection may put undue expectations on Providers to inquire about this information

Outcome 5 – A Transparent and Fair Exit Process

Q1 – Do the proposed provisions around a transparent and fair exit process meet the needs of Providers and Households? Yes/No. Please tell us why.

No – There are provisions within the Outcome 5 that are at odds with the rights-based position.

One concern is the lack of policy surrounding Provision 1 and Provision 2a(i) in Outcome 5, particularly pertaining to instances where long-term housing is found *for* a Household by Provider. It is unclear if Households have an obligation to move into the long-term alternative or be considered that the Household has contributed to their own unmet housing need. This is a highly salient and significant issue given the under-supply of truly affordable housing and the number of Households in TH. Households may face pressure to move to long-term properties and be set up to fail if the housing does not satisfy their housing aspirations, needs, or rights.

CHA reserves some concerns that Provision 10 in Outcome 5 is contributing to debt and a cycle of homelessness. The contexts surrounding abandonment or non-voluntary exits are often varied and Households should not face punitive reaction from MSD or be denied their right to access Government support as a result. The TH CoP should provide due process for residents to appeal a ‘non-voluntary exit’ particularly where that exit may result in them being required to repay an EH SNG or be declined for future grants. We believe the IDR process as it is currently outlined in the TH CoP is not equipped to achieve this.

We recommend in 2a (iii) that there are some allowances made for when Providers are made aware that a member of a Household may be experiencing domestic violence, it may be beneficial for a member of the Household to continue to remain in the housing even if 7 days of vacancy has been exceeded.

Q3 – Do you have any other comments or concerns with this outcome?

CHA believes on principle that no one should be evicted into homelessness, however, we also recognise the operational realities of Providers and the need to maintain safety and a pleasant living environment. It may be necessary for Providers to exit Households who are posing health and safety risks (including where residents have been charged by Police) to other Households or staff. Providers play a vital role in finding housing alternatives, but this responsibility should not fall solely on the Provider. Given that government has the responsibility to provide temporary emergency housing for people who are homeless, in our view this process should place the primary obligation to find alternative housing on the government agency (Ministry of Social Development (MSD) and/or MHUD) rather than on the Provider. The process should also include an obligation to consider whānau, hapū, marae, iwi and whenua connections, and access to ongoing support programmes such as mental health or drug/alcohol counselling, so that where possible clients are not relocated significantly far away from their natural supports.

Alongside the above process, we suggest that the TH CoP (and/or the Operational Guidelines) should also establish a process for handover from the Provider back to government agencies (most often MSD) when a client exits their housing, regardless of whether this exit is voluntary or non-voluntary. This handover process should ensure that the resident receives appropriate ongoing support, rather than only ensuring that MSD/MHUD funding to the Provider ceases for that client.

Section 2b(ii) implies there is the ability to be exited from *either* the housing *or* the Transitional Housing Programme. CHA would appreciate clarification on this point and if there are different thresholds for this. Additionally, we have questions regarding if transfers could be considered an exit from the housing and therefore a non-voluntary exit given that this term is not defined and the aforementioned provision suggests there is a distinction between exit from TH Programme and the housing.



Outcome 6 – A Straightforward Mechanism for Resolving Issues

Q1 – Do you broadly support independent resolution to resolve disputes around transitional housing accommodation? Yes/No. Please tell us why.

No – we have numerous concerns with independent disputes resolution (IDR) services being used to resolve disputes around TH accommodation. We believe there needs to be clearer policies about how these IDR services will operate, report their rulings, and the mandate they will have.

We have some concerns that if the provider is responsible for the cost of an IDR service, it may not be viewed by the household as “independent” and this may contribute to perceptions of power imbalance between households and providers. For transparency and fairness, this service needs to exist separately and truly independently from providers and households.

A legislatively established and a centralised independent dispute resolution body (akin to the Tenancy Tribunal) with a clear mandate would create greater accountability between parties, clarity of process, and generally improving Households’ access to justice. The model being suggested through the CoP is too fragmented to ensure there is consistency of ruling, service, and rights.

Q2 – Will the proposal of an Independent Disputes Resolution be workable in general? Yes/No. Please tell us why.

No - as above.

Q3 – Are the resolution timeframes realistic? Do they give a good balance between the need to resolve matters quickly and the practicalities of organising dispute resolution? Yes/No. Please tell us why.

No – CHA appreciates attempts to expedite access to justice for households and providers, but the timeframes are largely unrealistic. The current Tenancy Tribunal process frequently exceeds those outlined in the TH CoP for the IDR services.

Q4 – Do you have any other comments or concerns with this outcome?

The dispute resolution service as it is drafted in the CoP is highly problematic. There are no mechanisms for ensuring there is consistency or transparency of decisions between Providers and IDR services. Furthermore, it is similarly unclear if IDR services will have any precedent setting or sharing powers. This latter point is especially significant given the TH CoP is not an all-encompassing document. A quasi-judicial body is required to bring life to the CoP through the creation of precedent on disputes which are not covered specifically by the TH CoP. It is unclear if IDR services will have precedent making powers or even the mandate to rule on TH disputes which are not covered by the CoP. We recommend there be some mechanism for how decisions of IDR services are shared and published to help guide future service delivery and decision making. IDR decisions could be reported to HUD who is then responsible to distribute anonymised rulings to all contracted Providers to foster the creation of common standards/positions through precedent.

One concern regards how failures to satisfy Healthy Homes compliance will be mediated for disputes

between Providers and Households. The implementation of Healthy Homes Standards into the TH CoP ostensibly offers relative parity in terms of the habitability of properties which fall under the RTA and the Transitional Housing programme. This parity does not appear to extend to the mediation of Healthy Homes-related compliance disputes. CHA reserves a concern that Households may not be eligible to receive compensation from Providers who fail to comply with the Healthy Homes Standards as tenants under the RTA may be able to receive through the Tenancy Tribunal. Many questions remain about how IDR services will function, two of which are; will the IDR services have the mandate to impart penalties and compensation? and will Tenancy Tribunal rulings related to Healthy Homes compliance be recognised for its material relevance in TH disputes?

The TH CoP could also be clearer on if IDR services can make rulings on damage costs which exceed the security deposit. Additionally, more clarity is desired about what ability IDR services will have to make binding decisions regarding exits, damages, recourse, or any other rulings. For instance, the Tenancy Tribunal are able to order an enforceable eviction with support from the Police but there is uncertainty about how a similar function may work for IDR services.

Concluding remarks

Community Housing Aotearoa – Ngā Wharerau o Aotearoa (CHA) thanks the Ministry of Housing and Urban Development – Te Tūāpapa Kura Kāinga for the opportunity to share our perspectives on the Transitional Housing Code of Practice. We are eager to continue our engagement with HUD on the TH CoP moving forward and encourage HUD to get in touch with us if our expertise could be beneficial.

Ngā mihi,

Vic Crockford, CEO, Community Housing Aotearoa – Ngā Wharerau o Aotearoa

