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Submission on the Healthy Homes Amendment Bill (No. 2)

To the Select Committee

This submission was prepared by researchers from *He Kainga Oranga/ Housing and Health Research Programme* in the Department of Public Health, University of Otago, Wellington. The research team comprises a large group of multi-disciplinary scientists led by Professor Philippa Howden-Chapman. The group's research has been seminal in demonstrating the relationship between housing and health and is both internationally and nationally acclaimed. The group was awarded the Prime Minister's Science Prize in 2014.

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We wish to present to the Select Committee.

SUMMARY

The Bill proposes to amend the Residential Tenancies Act (RTA) 1986 by empowering the Ministry of Business, Innovation and Employment (MBIE) to set standards for heating, ventilation, minimum indoor temperature, drainage, draught-stopping, and insulation in rental housing.

We support the establishment of clear standards for heating, ventilation, drainage, draught-stopping, and insulation in rental housing. However, as it stands the Bill does not go far enough in ensuring New Zealand rental housing is healthy and safe for the occupants. It omits pressing safety issues, proposes a compliance regime that is not strong enough to ensure that all landlords meet the new standards, and will not come into force for all tenancies until at least 2022.

There is a major effort in establishing and enforcing any standard. For minimum additional effort there would be substantial additional population health and safety benefits. The limited scope of this Bill represents a missed opportunity.

We will not comment on what the regulations drafted by MBIE should contain. We hope to be given an opportunity to give feedback on draft regulations at a later stage. Whether or not these regulations are effective in improving population health outcomes depends in part on the details of these regulations, including the level of insulation required and the type of heating deemed adequate.

A summary of our submission is given below.

1. We support empowerment of MBIE to set standards for heating, insulation, ventilation, draught stopping, and drainage requirements. However, we are concerned that the Bill fails to address pressing safety issues in New Zealand rental housing. We recommend MBIE also be empowered to set standards for safety in rental housing. We further recommend that the Bill state that MBIE base standards on the latest science, or order to maximise health gains.
2. The Bill empowers MBIE to set a minimum indoor temperature. We note that guidelines on minimum indoor temperature are already established by the World Health Organization. It would be more practical for MBIE to focus on ensuring that a rental home is capable of being heated to a healthy minimum indoor temperature without unreasonable cost to the tenants. This involves attention to the extent of insulation, ventilation, draught stopping, and type of heating, as well as, in some cases, support for heating costs.
3. A shorter period of compliance should be introduced to meet the proposed changes. This will prevent another generation of pre-schoolers from living in cold and uninsulated housing. It is unreasonable that renters in long term tenancies should have to wait at least five years for their dwelling to be made compliant with the regulations.
4. Under the proposed method of enforcement, some landlords are unlikely to meet the standards. We recommend that the Bill set out a more reliable method of enforcing the standards, such as universal inspections or random audits, as are used to encourage compliance with tax laws. This will ensure that more landlords meet the standards. It will also remove the onus for policing rental housing quality from tenants, which supports security in rental housing.

DISCUSSION

1. **Minimum standards for rental housing should include safety requirements**

This Bill empowers MBIE (“the Department”) to set standards for rental homes regarding methods of heating and insulation, indoor temperatures, ventilation, draught stopping and drainage. Echoing the changes introduced under the Residential Tenancies Amendment Act 2016, this Bill does not address safety issues in rental housing. Safety issues are currently covered to a limited extent under the Building Act (2004), which defines a dangerous dwellings as one likely to cause injury or death to the occupants in the normal course of events (sec 121). Failing to empower MBIE to set safety standards limits the potential impact of the Bill in improving health outcomes and achieving cost savings.

The benefits of including safety provisions in the Bill are clear. An economic analysis of around 800 houses in Taranaki found that a set of simple and inexpensive measures including hand rails on stairs and grab rails in bathrooms resulted in a 26% reduction in injuries caused at home. [1] The social costs of injuries in the home in 2008 were estimated to be around \$13 billion, 3.5 times more than road injuries.[2] Economic modelling suggests that a nationwide programme of home safety assessment and modification would be extremely cost-effective[3]. An MBIE commissioned cost benefit analysis of a rental housing standard also found almost half of benefits came from safety measures; reducing hazards in the home would save \$456.5 million in ACC and other medical costs over twenty years. [4]

We recommend that MBIE’s responsibilities for ensuring healthy homes (under new section 132A) be amended to include measures aimed at improving safety. These standards should be based on the latest science and aimed at maximising health gains. Much of the recent research evidence regarding housing and health is available on our website [[www. healthyhousing.org.nz](http://www.healthyhousing.org.nz)].

In setting such standards, MBIE can draw on those already developed for the context of New Zealand rental housing, based on years of research [5]. In conjunction with five councils and the Green Building Council, the University of Otago has designed and tested a research-based Warrant of Fitness (WOF) that includes safety measures on private rental and council housing [6, 7]. This pre-test, alongside feedback from tenants, landlords and assessors, showed that the WOF was a robust and usable tool appropriate to New Zealand rental housing. The WoF has been designed to reduce the unintended consequences of partial policies, such as the current bill and is now being piloted with local councils to measure the benefits and costs to all parties.

In addition, the government has tested a Warrant of Fitness that includes safety measures on state housing [8, 9].

2. Establishing a minimum indoor temperature

The Bill amends the RTA to require MBIE to prepare and publish minimum standards; including describing what constitutes adequate indoor temperatures. However, the evidence is already clear on what constitutes adequate indoor temperatures. According to the World Health Organization [10], and supported by subsequent reviews of the evidence being prepared for International Housing and Health Guidelines [11], there is minimal risk to the health of people in housing where the minimum ambient air temperature is above 18 degrees.

A minimum indoor temperature for housing is difficult to monitor and enforce in the kinds of housing typical of New Zealand’s rental sector. While a landlord can ensure there is insulation and heating that could be used to warm a home to a minimum temperature, making sure it reaches that temperature is clearly impractical, as tenants choose whether to use heating. In some cases, it is fuel

poverty (energy affordability relative to income) that prevents healthy indoor temperatures [12]. Rather, MBIE should be responsible for setting standards that look at the overall thermal efficiency of a dwelling, including insulation, ventilation, draught stopping, and heating. These standards would aim to ensure that it is possible and affordable to heat the dwelling to a healthy minimum indoor temperature.

3. Comprehensive minimum rental housing standards should be introduced urgently

a. Disclosure

The Bill amends the RTA such that landlords are required to disclose to tenants in their tenancy agreement that rental homes meet the set standards for heating, insulation, and temperatures. In general we support this amendment as it brings New Zealand a little closer to European Union standards. However, while this would apply to new tenancy agreements 7 days after the standards have been published, it would only apply to all tenancies five years after the new standards have been published. We recommend that these disclosure requirements are brought into force immediately, rather than in five years. We acknowledge that disclosure requirements for insulation and smoke alarms will be introduced on 1 July 2016 under the Residential Tenancies Amendment Act 2016.

b. Compliance

The Bill amends the RTA so that only tenancies created 7 days after MBIE publishes the regulations are required to comply with the new standards of heating and insulation. Tenancies in existence at the time the regulations are published will have to comply with the regulations five years from that date. This would mean that the standards would not be introduced until at least 2022 for some dwellings.

We recommend that the date for compliance is brought forward, particularly in view of the fact that landlords were already informed of changes to rental housing standards in mid-2015.

We note that under the Residential Tenancies Amendment Act 2016, some aspects of compliance with the measures in the current Bill will occur sooner: social landlords will be required to meet minimum insulation standards by 1 July 2016, and all private landlords will be required to meet minimum insulations standards by 1 July 2019.

The compliance period should be reduced for many reasons:

- i. The health benefits to tenants [13, 14] (and to the taxpayer through lower health costs)[15] should occur as soon as possible.
- ii. There has been wide publicity of the problems caused by cold, damp rental housing [16].
- iii. Lack of insulation contributes to a house being unable to be lived in without dampness occurring [14] – which is contrary to the requirement that rental housing be free from dampness (Housing Improvement Regulations 1947, Reg 15).
- iv. The cost of installing insulation, heating, ventilation, draught stopping and drainage is relatively minor compared with the cost of capital of owning a rental property.
- v. There are insulation subsidies for landlords who have tenants with a community services card and other needs. We note that funding for insulation subsidies has been significantly

reduced under the recent Budget and will cease altogether in two years, despite the fact that 600,000 homes are still uninsulated. Funding for insulation should be increased [17].

vi. Banks regularly lend for such house improvements, and the cost improves the quality and resale value of the house [18].

c. *Confusion in the drafting of Sections 4 and 5*

Section 4 of the Bill sets out different time periods for new and existing tenancies to comply with the regulations published by MBIE and disclose such compliance by MBIE. It is confusing to then have Section 5 held back for five years once the regulations are published. Legislation should be as clear and simple as possible. It is unclear why this complicated structure was chosen.

4. Effective rental housing standards require effective enforcement measures

The Bill amends the RTA so that landlords are required to comply with new standards. However, it does not amend how standards are enforced under the RTA, which means that current problems in enforcing RTA standards will remain if the Bill is passed into law. We consider this a serious omission.

The Bill requires landlords to comply with new standards. If landlords do not comply, tenants can follow up in the Tenancy Tribunal. The chosen method of enforcement assumes: that landlords are able to accurately assess the state of insulation in the rental home; that they state this in the tenancy agreement; that tenants are able to accurately assess the state of the insulation and other standards; and that, if the landlord fails to comply, the tenant reports the breaches to Tenancy Services.

Under this method of “market forces” enforcement, it has been estimated that a third of landlords will not comply. Tenants may fear risking their tenancy by making a complaint to their landlord about the condition of their house: “unless a tenant is signed up to a fixed-term tenancy or are confident that they can deal amicably with their landlord to achieve the required housing condition improvement, they may refrain from raising issues of housing quality”[19]. While protections against retaliatory eviction extended under the Residential Tenancies Amendment Act 2016 are aimed at ensuring tenants are not evicted for making complaints, there remain strong disincentives to tenants reporting problems with their rental housing [20].

In addition, the rental market is very tight in some part of the country. Tenants with low incomes who are desperate to find a home have a strong incentive to turn a blind eye to a landlord’s non-compliance with the standards. In addition, due to the nature of the rental housing market and the “inverse housing law” [21] tenants who are least likely to have confidence to make complaints against their landlords are also those who are most likely to live in properties with deferred maintenance.

Security of tenure is closely related to the issue of enforcement of housing. Housing law researcher David Cowan has argued that housing condition protections are “rendered practically useless by the temporary nature ... of private renting”[22]. This is because tenants may fear eviction or non-renewal of their lease if they complain about unmet standards. This temporary nature of private

renting, established in New Zealand through our very minimal provisions for security of tenure, is a critical component of the creation of home and remains an outstanding issue that should urgently be addressed.

Methods of enforcement should remove some of the onus for upholding housing standards from tenants. We support a tax-compliance or motor-vehicle WOF model as suggested in the MBIE commissioned cost-benefit report on housing standards [4]. Under such enforcement regimes, it has been estimated that 80-90% of landlords will comply, ensuring that far more tenants will benefit from improved housing. We therefore recommend that the Bill be amended to state that the standards will be enforced via universal or spot-check inspections by qualified assessors.

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