



27 January 2016

Submission on the Residential Tenancies Amendment Bill

To the Social Services Committee

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

We can appear before the committee to speak to the submission.

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The following can also appear in support of our submission:

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Submission

Summary

He Kainga Oranga/The Housing and Health Research Programme supports the intent of the Residential Tenancies Amendment Bill, but recommends changes to enhance, extend and strengthen the measures it introduces to implement that intent.

Over a third of people in New Zealand live in rental housing.¹ It is commendable that these households might look forward to a warmer winter and greater fire safety. Our concern is that the Bill does too little to address the poor condition of rental housing and takes full effect too slowly. Our proposals for changes to the Bill are summarised in the list below. Evidence, reasoning and possible solutions for our comments are presented in the following paragraphs.

1. We support the decision to set insulation and smoke alarm requirements by regulation rather than under the primary Act. However, limiting the regulations to insulation and smoke alarm requirements will not ensure warm, dry and safe housing for renters. Allowing regulations to be made on housing standards more broadly could achieve this.
2. A shorter period of compliance should be introduced to meet the proposed changes to prevent another generation of pre-schoolers from continuing to live in cold uninsulated housing.
3. Section 78(2) will – as it stands – allow landlords to pay out tenants instead of complying with some existing housing standards; and needs to include reference to section 45 of the Residential Tenancies Act 1986.
4. A more reliable method of enforcement of housing standards, like those used to encourage compliance with tax laws, should be used removing the risks to security of tenure for tenants who take action when there is non-compliance by landlords.
5. Security of tenure is closely linked to the issue of enforcement and the proper provision of homes in the rental sector. A review of security of tenure in the rental market is warranted.

Discussion

1. Clause 138B allows for regulations in respect of insulation to be set by Order in Council. We support the setting of insulation standards by Order in Council rather than enactment. We recommend extending Clause 138B to include other aspects of housing safety and health. The current limitation of the housing regulations to insulation and smoke alarms will not ensure warm, dry and safe housing for renters. Mandating changes to wider housing standards could do this. Time and resources would have been better spent ensuring our rental housing regulations are clearly and comprehensively set out. We will reserve more detailed comment on the content of the regulations for the submission on the "proposed Residential Tenancies Regulations for insulation and smoke alarms".
 - a. There are no requirements for housing safety in the proposed changes. 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.² The social cost of injuries in the home in 2008 were estimated to be around \$13 billion, 3.5 times more than road injuries.³ An MBIE commissioned cost benefit analysis of a rental standard also found almost half of benefits came from safety measures.⁴ Our cars are subject to a comprehensive

warrant of fitness while our houses, which are responsible for a higher injury cost, are not.

- b. Heating is also not addressed in the Bill. An insulated but unheated – or underheated – home will be cold. Provisions for heating in rental housing are the norm in similar countries. For instance, Ireland, which has a similar mean annual temperature, requires every room to have a fixed heating appliance.⁵ We have no such requirement. The Housing Improvement Regulations (1947) Reg 6 require that "Every living room shall be fitted with a fireplace and chimney or other approved form of heating".⁶ This has often been deemed to be an electric socket. A District Court judge noted that "In my judgement, a power point is not a "form of heating" and could not be reasonably approved by a local authority under the regulations."⁷ If the HIR are to be the focus of an education campaign, this 'approved' form of heating will need to be clarified.
- c. An evidence based set of housing standards that clearly link housing conditions with health and safety outcomes would provide a straightforward and simple standard for rental housing, as can be seen in places like the UK and Ireland. The Housing and Health Research Programme has developed a set of minimum standards for housing that will be rolled out in Wellington and Dunedin.⁸ In these cities, clear requirements for housing that will ensure a dry, warm and safe house will be set out for landlords to follow.

2. Clause 2 (2) and (3)

The dates of commencement in clauses 2(2) and 2(3) should be brought forward. As the Bill stands, renters in uninsulated housing will have to wait until 2019 for a warmer winter. The compliance period should be reduced for many reasons:

- a. The health benefits to tenants^{9,10} (and to the taxpayer through lower health costs⁹) should occur as soon as possible.
- b. There has been wide publicity of the problems caused by cold, damp rental housing.¹¹
- c. Lack of insulation contributes to a house being unable to be lived in without dampness occurring¹⁰ – which is contrary to the requirement that rental housing be free from dampness (Housing Improvement Regulations 1947, Reg 15).
- d. The cost of installing insulation and smoke alarms is a relatively minor cost compared to the cost of capital of owning a rental property.
- e. There are insulation subsidies for landlords who have tenants who have a community services card and other needs.
- f. Banks regularly lend for such house improvements, and the cost improves the quality and resale value of the house.¹²

3. Clause 20 Section 28 amended (Orders of Tribunal)

Clause 20 requires rewording so that the amendment to section 78 includes all relevant requirements relating to the condition of a rental house. At present it is limited to sec 120c of The Health Act 1956. The wording suggested by Lyndon Rogers from the Anglican Advocacy in his submission achieves this inclusion. We support his suggestion that the Clause 20 amendment to section 78 (2) AA be reworded as follows:

(2AA) Subsection (2) does not apply if the work order, or any part of the work order, relates to any of the following:

- (a) Smoke alarms:
- (b) Insulation:
- (c) a failure to comply with a standard of fitness or other requirement applying by virtue of section 45 [1][a] to [ca] Residential Tenancies Act 1986.

4. Enforcement, and Clause 15 Section 54 amended (Tribunal may declare retaliatory notice of no effect). The chosen method of enforcement will require tenants to follow up landlord non-compliance. Tenants may fear risking their tenancy in making a complaint to their landlord about the condition of their house. Supporting documentation for the Bill overstates the likely impact of retaliatory notice provisions for the protection of tenants. While we support the increase from 14 to 28 days in which a claim of retaliatory eviction might be made, in practice it may have little effect on the confidence of tenants to take complaints against landlords. Continuing a tenancy after a retaliatory notice is awarded would be difficult for a tenant and thus an eviction would likely remain. This is because it is unclear whether the retaliatory notice provision is effective – increasing the amount of time given to tenants to file a complaint may have little effect on tenant confidence if a landlord can serve 90 days' notice on a tenant at any time without reason. Instead, "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".¹³ Due to the nature of the rental housing market and the "inverse housing law",¹⁴ 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. 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
5. Closely related to the issue of enforcement of housing conditions is security of tenure. Housing law researcher David Cowan has argued that housing condition protections are "rendered practically useless by the temporary nature ... of private renting".¹⁵ 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. A 2000 commission on the residential rental sector in Ireland – a country whose private rental sector has many similarities to ours – resulted in the introduction of four-year tenancies in Ireland and provides an example of how security of tenure might be strengthened in New Zealand. Given the increasing difficulty that many New Zealanders have in gaining secure tenure through buying their own home, further debate and action on strengthening tenure security in private rental housing is necessary.

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