

Departmental Disclosure Statement

Residential Tenancies Amendment Bill

A departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 November 2015.

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Part One: General Policy Statement

This Bill will amend the Residential Tenancies Act 1986 (the **RTA**) to require smoke alarms and insulation in residential rental properties, and other tenancy improvements.

The RTA currently places a general obligation on landlords to maintain the premises in a reasonable state of cleanliness and repair. Landlords are further required to comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises (including the Housing Improvement Regulations 1947). Examples include the provision of adequate ventilation and lighting, and an approved form of heating in every living room.

There is, however, no requirement in either the RTA or any other legislation for either smoke alarms or insulation to be provided at a premises. An objective of the Bill is to reduce fire-related fatalities and injuries and make rental properties warmer, drier, and easier to heat.

Anecdotal evidence indicates that vulnerable tenants are often unwilling to notify the Tenancy Tribunal of alleged breaches of the RTA. The RTA currently limits the power of government to work on behalf of the tenant where it is in the public interest to do so. An objective of the Bill is to strengthen enforcement powers available to the chief executive responsible for the administration of the RTA.

Reducing the length of time taken to resolve tenancy abandonment cases will also improve the efficiency of the residential rental market. The Bill aims to improve current Tenancy Tribunal mechanisms to expedite processing of these cases.

To meet these objectives, the Bill proposes to-

- create regulation-making powers to prescribe the type, location, quantities, and other technical requirements or exemptions for smoke alarms and insulation;
- clarify that these requirements apply to private residential rental properties, boarding houses, and houses where the tenant is paying an income-related rent (where the Housing Restructuring and Tenancy Matters Act 1992 applies);
- enable the chief executive to investigate and take cases direct to the Tenancy Tribunal in cases of alleged serious or persistent breaches of the RTA;
- create powers for persons authorised by the chief executive to enter a property, with notice, for the purposes of collecting non-invasive evidence of an alleged breach of the tenancy agreement or the RTA;
- enable the chief executive to require and collect information from landlords, including records of inspections, maintenance, and repairs and correspondence with the tenant;
- create an expedited process for deciding tenancy abandonment (possession) cases.

The impact of requiring the installation of smoke alarms and insulation has been analysed. Assuming full compliance with the smoke alarm requirements, for every dollar of costs the estimated benefits range from between \$8.80 and \$21.40. Full compliance with the smoke alarm requirements should also lead to 3 fewer fire-related fatalities per year. Assuming full compliance with the insulation requirements, for every dollar of costs the estimated benefit is \$1.90 over 20 years.

Possible alternatives for achieving the objectives of this Bill could have included a warrant of fitness regime for rental properties. However, this option was not progressed as it was not considered the most cost-effective mechanism for achieving the outcomes identified.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Cost Benefit Analysis for a Minimum Standard for Rental Housing, MBIE, 10 November 2014 http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/cost-benefit-analysis-minimum-standard-rental-housing-report-prepared-for-mbie.pdf</p> <p>Trial of Rental Housing Warrant of Fitness Scheme with Housing New Zealand, MBIE, June 2014 http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/trial-rental-housing-wof-scheme-housing-nz-report.pdf</p> <p>Thermal insulation in New Zealand homes: A Status Report, Beacon Pathway Limited, March 2008 http://www.beaconpathway.co.nz/images/uploads/Final_Report_TE210_Thermal_Insulation_in_NZ.pdf</p> <p>House Condition Survey- Condition Comparison by Tenure, BRANZ, 2010 http://www.branz.co.nz/cms_show_download.php?id=53af2b0c2e5ca5169a0176996bba7ee88de082c0</p> <p>Cost Benefit Analysis of the Warm Up New Zealand: Heat Smart Programme (Final Report), Grimes, A et al, 2011, revised 2012 http://www.motu.org.nz/publications/detail/cost_benefit_analysis_of_the_warm_up_new_zealand_heat_smart_programme.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Residential Tenancy Abandonment, MBIE, 18 May 2015 http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-residential%20tenancyabandonment.pdf</p> <p>Smoke Alarms and Insulation in Residential Rental Properties, MBIE, 23 June 2015 http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-smoke-alarms-insulation-residential-rental-properties.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>Residential Tenancy Abandonment:</p> <p>“The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Business, Innovation and Employment and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. The evidence that there is a substantial problem to be addressed is largely anecdotal and this makes it difficult to assess the likely benefits of addressing it. Furthermore, more quantification and analysis would be possible from existing data to demonstrate more precisely what the benefits of the proposals would be. However, for the most part the measures proposed, over and above activity already under way, are low cost and consistent with good regulatory and administrative practice, which appears commensurate with the evidence of the scale of the problem.</p> <p>The exception to this is the proposal to introduce a statutory time limit for Tribunal hearings. Given that the timeframe has already been substantially reduced and it is not alleged that the tribunal is mis-prioritising or under-utilising its resources in regards to abandonment cases, it does not appear convincing to argue that the benefits of creating a statutory timeframe would justify the potential costs. As well as the legal risks to the Crown, these costs include possible impacts on other Tribunal cases and the weakening of the principle that courts should be able to regulate their own practice and procedure. For these reasons, this particular recommended option does not flow from the analysis.”</p> <p>Smoke Alarms and Insulation:</p> <p>“The Regulatory Impact Analysis Team (RIAT) in the Treasury has reviewed the RIS. RIAT considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.</p> <p>The very restrictive way in which the objectives have been drafted prevents consideration of alternative means of pursuing better health outcomes for tenants, including addressing issues identified in the RIS as being more prevalent in rental properties. This means it is not possible to be confident that the full range of potential options has been properly examined.</p> <p>A careful effort has been made to identify, describe, and where possible quantify, the likely impacts of the proposed options, and these are clearly set out. However, the impact in practice will be highly dependent on the responses of individual tenants and landlords, which is difficult to assess given the limited amount of consultation that has been undertaken. This, combined with limitations in data availability, mean that these estimates remain highly uncertain. We note in particular that the cost-benefit analysis for smoke alarms is dependent on an assumption of high or full compliance, for which no basis is given.</p> <p>We would recommend that more consideration be given to a monitoring plan which will enable better informed analysis in any future reform. It appears unlikely that administrative data from contact centres and Tribunal applications alone will enable proper assessment of the impact on supply and rent levels and the effectiveness of enforcement mechanisms.”</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
The cost benefit analysis for compliance with the insulation requirement has been refined using a more representative sample of properties. The revised estimate indicates that the benefit of insulation is \$1.90 for every \$1 of cost over 20 years. This estimate is lower than the \$2.20 benefit for every \$1 cost used in the Regulatory Impact Analysis.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Cost Benefit Analysis for a Minimum Standard for Rental Housing, MBIE, 10 November 2014 http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/cost-benefit-analysis-minimum-standard-rental-housing-report-prepared-for-mbie.pdf</p> <p>Insulation, smoke alarms and other residential tenancy improvements, 26 June 2015 http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/cabinet-paper-insulation-smoke-alarms-other-tenancy-improvements-jul2015.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Cost Benefit Analysis for a Minimum Standard for Rental Housing, MBIE, 10 November 2014 http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/cost-benefit-analysis-minimum-standard-rental-housing-report-prepared-for-mbie.pdf</p> <p>To support new requirements for insulation, smoke alarms and tenancy abandonment, MBIE will run an information campaign. The campaign will promote the smoke alarm and insulation standards (once agreed in regulations) and will also include guidance on how to assess whether insulation complies.</p> <p>The enforcement regime is scalable to meet the nature and level of compliance.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Bill's effect is localised to the New Zealand domestic residential rental market, however, the amendment is consistent with New Zealand's international obligation to protect the right of people in New Zealand to enjoy adequate housing. This obligation can be found in a number of ratified international treaties, including article 25(1) Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child, to which the proposed amendments are particularly relevant due to the positive impacts on the health and wellbeing of children in rental households, particularly low-income families.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Puni Kokiri has been involved in the development of the requirements for smoke alarms and insulation in residential rental properties. Their comments did not indicate that any of the proposals in the Residential Tenancies Amendment Bill were inconsistent with the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

<p>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</p>	<p>No</p>
<p>Comment from Bill of Rights Act team at Ministry of Justice</p> <p><i>Section 21 New Zealand Bill of Rights Act - Unreasonable search and seizure</i></p> <p>Landlord's right of entry (clause 14) – This appears to be reasonable given the prior notification, the prerequisite that rent is in arrear, and the requirement for the landlord to have reasonable cause to believe that the premises have been abandoned.</p> <p>Requirement to produce documents to chief executive of MBIE (clause 33) - This power must be exercised reasonably and the offence does not apply to tenants, so this does not appear to be an unreasonable search for the purposes of section 21 of BORA.</p> <p>Power of entry to inspect premises (clause 33) – We consider this to also be reasonable mainly because the inspection must be authorised by the Tenancy Tribunal, and the landlord and tenant must get a written notice in advance.</p> <p><i>Section 27(1) New Zealand Bill of Rights Act - Natural justice</i></p> <p>Process for abandonment applications (clause 25) - We have considered whether the 10 working day timeframe gives enough notice to the tenant. The timeframe, although short for both contacting the tenant and determining the application, appears to be reasonable.</p> <p>This is because of the prerequisite of rent arrears before making an abandonment application, and the landlord's right of entry to enter the premises to verify whether they have been abandoned before making such an application.</p>	

Offences, penalties and court jurisdictions

<p>3.4. Does this Bill create, amend, or remove:</p>	
<p>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</p>	<p>YES</p>
<p>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</p>	<p>YES</p>

The Bill will provide for the following new unlawful acts, to be added to Schedule 1A of the Act:

a. Where a landlord has entered the property without reasonable grounds for suspicion of abandonment. The maximum penalty the Tenancy Tribunal shall order in case of such a breach is up to \$2,000.

b. Failure by a landlord (or person acting on the landlord's behalf) to state in the tenancy agreement the extent of insulation. The maximum penalty the Tenancy Tribunal shall order in case of such a breach is up to \$500.

c. Where a landlord (or person acting on the landlord's behalf) has knowingly provided misleading information when stating the extent of insulation. The maximum penalty the Tenancy Tribunal shall order in case of such a breach is up to \$500.

d. Where a landlord gives a termination notice in retaliation for the tenant exercising any of their rights under the tenancy agreement, the Act, any other Act or a complaint by the tenant against the landlord. The maximum penalty the Tenancy Tribunal shall order in case of such a breach is up to \$2,000. The tenant application period for alleged retaliatory notice is to be extended from 14 to 28 days.

e. Landlords failing to keep records required under the Act including the Tenancy Agreement, reports of inspections, records of repairs and maintenance and correspondence between the landlord and the tenant, with a maximum penalty of \$200.

f. Landlords failing to provide a required item listed in paragraph 17(e) above to the Chief Executive when requested, with a maximum penalty of \$1,000.

Section 133(2) will be amended to increase the penalty for failure to comply with the Chief Executive's request for terms of the Tenancy Agreement from \$400 to \$2,000.

Section 78 will be amended to remove the ability for the Tenancy Tribunal to order a monetary payment instead of a work order, where a work order has been issued in relation to smoke alarms, insulation or requirements under section 120C of the Health Act 1956.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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The Ministry of Justice has been consulted about the provisions contained in the Bill. The Ministry of Justice was consulted during the drafting process on the provisions that relate the Tribunal, inspection powers, unlawful acts and the abandonment process. Queries raised by the Ministry of Justice were answered and minor drafting improvements were implemented.
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Privacy issues

<p>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</p>	<p>YES</p>
<p>The Bill amends the powers of the chief executive of MBIE to allow the chief executive to publish comments about particular persons who are or have been landlords. While the Bill involves the disclosure of personal information, it does not affect the privacy of landlords or tenants as the names will have already been publically released in Tribunal decisions.</p> <p>Clause 123A requires certain records to be retained by the landlord and produced to the chief executive if required. While the documents may contain personal information, the documents that are required to be retained primarily inform the tenant and landlord relationship and document how obligations under the Act are being complied with. The documents will assist all parties to determine whether obligations under the Act are being complied with.</p>	

<p>3.5.1 Was the Privacy Commissioner consulted about these provisions</p>	<p>NO</p>

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Officials have undertaken high-level consultation on implementing a 'Warrant of Fitness' or similar with the New Zealand Property Investors Federation (NZPIF) and the Auckland and Christchurch Tenant Protection Associations (TPA).</p> <p>The Rental Housing Warrant of Fitness Technical Advisory Group (the TAG) was established by the Minister of Housing Hon Dr Nick Smith in December 2013, to advise on the Warrant of Fitness criteria to be trialled by Housing New Zealand (HNZC) during 2014. The HNZC trial involved assessing 500 properties across New Zealand as a representative sample of the HNZC portfolio of approximately 60,000 properties.</p> <p>Organisations represented on the TAG were selected by the Minister, to provide a range of technical expertise. The TAG was not intended as a means of stakeholder consultation, and was not required to provide unanimous advice.</p> <p>http://www.mbie.govt.nz/info-services/housing-property/pdf-document-library/rental-housing-wof-technical-advisory-group-final-report.pdf</p> <p>MBIE intends to run a public consultation in early 2016 on the proposed regulations. The regulations will set out how much insulation will be required, the standards of that insulation and what properties will be excluded. They also set out requirements for smoke alarms, requiring long-life photoelectric alarms to be installed within three metres of each bedroom and any sleep out or self-contained caravan. In a multi-level unit there must be a working smoke alarm on each level.</p> <p>The new rules will apply only to tenancies covered by the Residential Tenancies Act 1986, including boarding houses.</p> <p>The TPA supported having a broad set of minimum requirements on landlords, and also considered that there was a need for additional enforcement powers. Both Auckland and Christchurch TPA groups provided MBIE with proposed minimum requirements.</p> <p>A wide range of other parties have an interest in rental housing quality, including property managers, territorial authorities, health experts and researchers. These parties will have opportunities for input during the Select Committee process and during consultation on regulations.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
Sections 166 and 167 of the Search and Surveillance Act 2012 apply in relation to the powers of an authorised person who is undertaking an inspection of premises.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
The Act already has a process for the Tribunal to make certain determinations. However, the changes amend two decision making powers. Firstly, they remove the ability of the Tenancy Tribunal to order the landlord to pay a monetary payment instead of a work order. Secondly, they expedite Tribunal hearings on tenancy abandonment.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clauses 37 and 38 provide for regulations to be made by the Governor-General by Order in Council on the recommendation of the Minister of Housing.</p> <p>The regulations will impose requirements on landlords to install smoke alarms and insulation in their rental properties and specify technical detail in relation to smoke alarms and insulation, with some specific exceptions. The provision relating to smoke alarms comes into force on 1 July 2016 for all tenancies. The provision relating to insulation comes into force for income-related rent tenancies on 1 July 2016 and all other tenancies on 1 July 2019.</p> <p>The Minister is required to consult interested persons before recommending the making of regulations. The regulations will be subject to the safeguards contained in the Legislation Act 2012 (including disallowance). The Regulations Review Committee also has a role in the scrutiny of the making of regulations under Standing Orders 318 and 319.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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