

# Departmental Disclosure Statement

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Healthy Homes Guarantee Bill (No 2)
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This departmental disclosure statement relates to a Bill that was originally introduced as a Member's Bill, which the government has now decided to adopt and to further amend.

It identifies:

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

The disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 November 2017

**Contents**

Contents..... 2

Part One: General Policy Statement ..... 3

Part Two: Background Material and Policy Information ..... 6

Part Three: Testing of Legislative Content..... 9

Part Four: Significant Legislative Features ..... 12

## Part One: General Policy Statement

The Healthy Homes Guarantee Bill (No 2) was introduced as a Member's Bill on 15 October 2015, with the following General Policy Statement:

"This Bill amends the Residential Tenancies Act 1986 with the purpose of ensuring that every rental home in New Zealand meets minimum standards of heating and insulation. MBIE is to set the standards and landlords are to meet the standards.

Landlords already have obligations under the Residential Tenancies Act with respect to the properties they let out. However, there is no guidance about the specific standards they must meet to ensure warm and dry accommodation.

This Bill amends the Residential Tenancies Act to empower the Ministry of Business, Innovation, and Employment to set minimum standards for heating and insulation in rental properties within 6 months.

The Bill also amends the Act to require all landlords to meet the standards.

These standards will ensure every home is warm and dry while allowing sufficient flexibility for practical implementation.

The requirement to meet the standards will apply to all tenancy agreements made within a year of the Act coming into force. The natural process of tenant turnover will see most tenancy agreements containing the requirement by the end of 5 years. At that point, all residential tenancies must meet the standards."

The Government subsequently adopted the Bill and produced this Supplementary Order Paper (SOP) to amend it. The amendments proposed by the SOP include policy clarifications, amendments to take account of the Residential Tenancies Amendment Act 2016 (which superseded some of the original drafting of the Bill), amendments dealing with monitoring and assessment of compliance, and minor and technical changes.

The SOP proposes amendments to *clause 2*, which is the commencement clause. These amendments provide for most of the Bill to come into force on 1 July 2019. The transitional provisions for the Bill (see note on *the Schedule* below, amendments to Schedule 1AA of the principal Act), and some technical amendments proposed in *new clause 8(2) and (3)*, will come into force on the day after the date of Royal assent.

The SOP proposes amendments to *clause 4*, which amends section 13A of the principal Act (contents of tenancy agreement). The proposed amendments clarify a landlord's obligations to provide the tenant with statements that the landlord will comply with the healthy homes standards (see note on amendments to *clause 6* below). The landlord will be required to provide a statement when the tenancy agreement is first signed and whenever the tenancy agreement is renewed. The landlord will commit an unlawful act if the landlord fails to provide the statement or if the statement includes anything that the landlord knows to be false or misleading.

The SOP proposes amendments to *clause 5*, which amends section 45 of the principal Act (landlord's responsibilities). The proposed amendments are in consequence of the proposed amendments to *clause 6* and will require landlords to comply with the healthy

homes standards (see note on amendments to *clause 6* below). A failure by a landlord to comply with the healthy homes standards will be an unlawful act.

The SOP proposes amendments to *clause 6*, which currently inserts *new section 132A* into the principal Act. *New section 132A* would impose a function on the Ministry of Business, Innovation, and Employment (MBIE) to prepare and publish minimum standards for heating and insulation for residential premises. The proposed amendments to *clause 6* include amendments that would do the following:

- convert MBIE's function into a power of the Governor-General to make regulations that provide for standards (the healthy homes standards) with which landlords must comply;
- provide for the new power to replace the current power of the Governor-General in section 138B of the principal Act to impose requirements on landlords in respect of insulation, which was inserted by the Residential Tenancies Amendment Act 2016. Requirements in respect of insulation will now be covered by the healthy homes standards;
- clarify that the healthy homes standards may include standards about the indoor temperatures, and other outcomes (for example, levels of moisture and humidity), that must be capable of being achieved in premises;
- permit regulations made under the new power to include exceptions to the healthy homes standards, to prescribe information that must be included in landlords' statements about compliance with the healthy homes standards (see note on amendments to *clause 4* above), and to prescribe records and other documents that landlords must retain in relation to their compliance with the healthy homes standards.

*Clause 7* amends Schedule 1A of the principal Act (maximum amounts awardable by the Tenancy Tribunal for unlawful acts). The SOP proposes replacing *clause 7(1)* in consequence of the amendments proposed to *clause 4*. The amendments proposed to *clause 7(2)* would increase, from \$3,000 to \$4,000, the maximum amount that may be awarded for unlawful acts under section 45(1A) of the principal Act, including a failure by a landlord to comply with the healthy homes standards. This maximum amount was increased, from \$3,000 to \$4,000, by the Residential Tenancies Amendment Act 2016 and it is not the intention of the Bill to reverse that increase.

The SOP proposes a number of related and consequential amendments to the principal Act that are set out in the Schedule (introduced by *new clause 8(1)*). The amendments include the following:

- an amendment to section 66I of the principal Act to extend the healthy homes standards to boarding house tenancies (and a consequential amendment to Schedule 1A of the principal Act);
- amendments to sections 2(1), 48(2), 66S(1), and 78(2AA) of the principal Act to reflect the proposed replacement of the current power under section 138B of the principal Act to impose requirements in respect of insulation with the new power to provide for the healthy homes standards (see note on amendments to *clause 6* above):

- an amendment to section 123(1) of the principal Act to give the chief executive of MBIE the function of monitoring and assessing compliance by landlords with the healthy homes standards. This new function is supplemented with the insertion of *new section 123CA* into the principal Act (and related amendments to section 123E of the principal Act). This would give the chief executive of MBIE the power to arrange programmes of inspections of premises for the purpose of monitoring and assessing compliance with the healthy homes standards:
- an amendment to section 123A(1) of the principal Act to require landlords to retain prescribed records and other documents relating to their compliance with the healthy homes standards:
- amendments to Schedule 1AA of the principal Act, which contains transitional provisions. The transitional provisions proposed for the Bill include the following:
  - a provision clarifying that the amendments made by the Bill apply to tenancies whether commencing before, on, or after the date on which the amendments come into force:
  - provisions clarifying that the amendments made by the Bill relating to statements to be provided by landlords (see note on amendments to *clause 4* above) apply to a tenancy agreement made before 1 July 2019 only if the tenancy agreement is varied or renewed on or after that date:
  - provisions that permit regulations to provide for the obligation of landlords to comply with the healthy homes standards to be introduced in phases. The regulations made for the purpose of phasing in the obligation will cover tenancies that commence before 1 July 2024. The phasing-in of the obligation must be completed by that date:
  - provisions that permit regulations providing for the healthy homes standards to be made in advance of 1 July 2019 (to come into force on that date):
  - provisions that give landlords rights of access to premises before 1 July 2019 for the purpose of preparing to comply with the healthy homes standards:
  - provisions that clarify that landlords will continue to have rights of access to premises prior to 1 July 2019 in relation to the insulation requirements contained in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016:
  - other provisions relating to the insulation requirements contained in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. It is currently envisaged that, on 1 July 2019, requirements relating to insulation will be incorporated into the healthy homes standards and that the insulation requirements contained in the 2016 regulations will be revoked.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p><i>The healthy housing programme: Report of the outcomes evaluation (year three).</i> Housing New Zealand Corporation (2007). (accessible at <a href="http://thehub.superu.govt.nz/publication/healthy-housing-programme-report-outcomes-evaluation-year-three">http://thehub.superu.govt.nz/publication/healthy-housing-programme-report-outcomes-evaluation-year-three</a>)</p> <p><i>Warm, dry, healthy? Insights from the 2015 House Condition Survey on insulation, ventilation, heating and mould in New Zealand houses.</i> Building Research Association of New Zealand (2017). (accessible at <a href="https://www.branz.co.nz/cms_show_download.php?id=50335e67bb00f3e0464097be1d4d71ac8a85f6bf">https://www.branz.co.nz/cms_show_download.php?id=50335e67bb00f3e0464097be1d4d71ac8a85f6bf</a>)</p> <p><i>Minimum home temperature thresholds for health in winter: A systematic literature review.</i> Public Health England (2014). (accessible at <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468196/Min_temp_threshold_for_homes_in_winter.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468196/Min_temp_threshold_for_homes_in_winter.pdf</a>)</p> <p><i>Temperature, housing, deprivation and their relationship to excess winter mortality in Great Britain, 1986–1996</i> (2001); Aylin P, et al. <i>Int J Epidemiol</i> 2001;30:1100-8 (accessible at <a href="https://academic.oup.com/ije/article/30/5/1100/724186">https://academic.oup.com/ije/article/30/5/1100/724186</a>)</p> <p><i>Cold Comfort: The Social and Environmental Determinants of Excess Winter Death in England, 1986–1996.</i> Wilkinson P, et al. The Policy Press. Bristol (2001). (accessible at <a href="https://www.jrf.org.uk/report/cold-comfort-social-and-environmental-determinants-excess-winter-deaths-england-1986-1996">https://www.jrf.org.uk/report/cold-comfort-social-and-environmental-determinants-excess-winter-deaths-england-1986-1996</a>)</p> <p><i>Health Impact of Low Indoor Temperatures.</i> World Health Organisation (WHO), Copenhagen (1985). (Draft update WHO guidelines have re-confirmed 18°C as the minimum temperature based on physiological data). (accessible at <a href="http://www.euro.who.int/_data/assets/pdf_file/0008/97091/E89887.pdf">http://www.euro.who.int/_data/assets/pdf_file/0008/97091/E89887.pdf</a>)</p> <p><i>Damp indoor spaces and health.</i> Institute of Medicine (US). National Academies Press, (2004). (accessible at <a href="https://www.ncbi.nlm.nih.gov/books/NBK215643/">https://www.ncbi.nlm.nih.gov/books/NBK215643/</a>)</p> <p><i>Energy use in New Zealand households, Final Report,</i> BRANZ Study Report SR 221. Building Research Association of New Zealand, (2010). (accessible at <a href="https://www.branz.co.nz/heep">https://www.branz.co.nz/heep</a>)</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>N/A</b>

## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<p>The Bill was originally a Member's Bill and was adopted by the Government late in the Parliamentary process. The Government has made a manifesto commitment to pass the Bill in its first 100 days. Due to this compressed timeframe, a Regulatory Impact Assessment (RIA) was not provided at the time the Government decided to adopt the Bill.</p> <p>Some impact analysis has been prepared subsequently. For further information, refer to the answer to question 2.4.</p>	

<b>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?</b>	<b>NO</b>

<b>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?</b>	<b>N/A</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>MBIE prepared some analysis of the Bill's potential impact, after it was adopted as a Government Bill. See <i>Heating and insulation standards for residential rental properties</i>, MBIE, 10 November 2017 (accessible at: <a href="http://www.mbie.govt.nz/info-services/housing-property/housing-quality">http://www.mbie.govt.nz/info-services/housing-property/housing-quality</a>).</p>	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>See <i>Heating and insulation standards for residential rental properties</i>, MBIE, 10 November 2017 (accessible at: <a href="http://www.mbie.govt.nz/info-services/housing-property/housing-quality">http://www.mbie.govt.nz/info-services/housing-property/housing-quality</a>).</p> <p>The impact assessment includes initial estimates of the costs of upgrading heating in public housing. The information is focussed on the cost of additional heating requirements because this is likely to be the highest compliance cost that is additional to requirements in existing laws.</p> <p>The cost to private landlords will depend both on the current state of their properties and on the exact standards set in regulations.</p> <p>Further clarification on the composition of proposed standards for insulation, heating, draught proofing, ventilation, controlling moisture ingress, and drainage is required before total costs can be determined accurately. Such standards will be developed and introduced through regulations at a later stage and there will be an opportunity to consider costs through the assessment process for the regulations.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>MBIE will provide further advice on these matters to inform policy decisions to be made during the process of developing regulations.</p>	



## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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MFAT has been consulted on the proposals as modified by the SOP.

The Bill's effect is localised to the New Zealand domestic residential rental market. The amendment, which will improve the health and well-being of people living in rental households, particularly children and low income families, is consistent with New Zealand's international obligations under the International Covenant on Economic Social and Cultural Rights, which recognise the right to adequate housing and a continuous improvement of living conditions. The right to adequate housing can also be found in the Convention on the Rights of a Child and the Universal Declaration on Human Rights.

### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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Te Puni Kōkiri was consulted on the proposals as modified by the SOP. Their comments did not indicate that any of the proposals in the Bill are inconsistent with the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>
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NO

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Bill creates some new unlawful acts.</p> <p>Where the Tribunal is satisfied that an unlawful act has been committed by one of the parties, it may order the payment of an amount by one party to the other in the nature of exemplary damages. Unlawful acts under the Residential Tenancies Act 1986 (RTA) are not offences and do not give rise to penalties.</p> <p>It will become an unlawful act for a landlord (including boarding house landlords) to fail to give the statement as to compliance with the Healthy Homes Standards or to include in that statement anything the landlord knows to be false or misleading. The maximum exemplary damages for this unlawful act will be \$500 (see clause 4(6), and schedule 1A of the RTA).</p> <p>It will become an unlawful act for landlords (including boarding house landlords) to fail to comply with the obligation to comply with the Healthy Homes Standards. The maximum exemplary damages for this unlawful act will be \$4,000 (see clause 5 and the amendment to section 66I in the Schedule).</p> <p>The amendments to section 123E of the Act in the Schedule will give the Tenancy Tribunal the power to authorise the inspection of a premises where the Tribunal is satisfied that the chief executive of MBIE has reasonable grounds to believe that the order sought is reasonably necessary for the purpose of implementing a programme of inspection under new section 123A.</p> <p>The amendment to section 2(1) of the Act in the Schedule will enable the Tribunal to make work orders with respect to compliance with the Healthy Homes Standards.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice Offence and Penalties Vetting team was consulted on the proposed level of damages relating to clause 5 and was informed of the proposed unlawful act relating to clause 4(6).</p>	

## Privacy issues

<b>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?</b>	<b>NO</b>
<p>The amendments to section 123A of the RTA will require certain records related to compliance with the Healthy Homes Standards to be retained by the landlord and produced to the chief executive of MBIE if required.</p> <p>While the documents may incidentally contain some personal information, it is intended that the records concerned will relate to the premises itself and actions taken by the landlord to comply with the Healthy Homes Standards. These records will be used to determine whether the landlord has complied with their legal obligations with respect to the Healthy Homes Standards.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>

## 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>The Government Administration Select Committee received 85 substantive submissions on the Bill. These included submissions from local government entities, public health organisations, NGOs and churches, interest groups, charities, professional bodies, community trusts, student associations, the Council of Trade Unions and a number of individuals.</p> <p>In addition, approximately 7143 'standard form' submissions (i.e. auto-fill submissions) were sent to the offices of the Labour Party via their website which were then forwarded to the Committee. Of these, 805 submissions were considered to be unique and distinct submissions for the Select Committee's consideration because they included additional text. Many of these submitters expressed in principle support for the intention of the Bill without engaging in detail on the mechanism used to give effect to that intention.</p> <p>Of a total of 890 distinct submissions, six individual submitters opposed the Bill. Three submitters appeared to support the principles behind the Bill but withheld their support overall because it either did not go far enough or they were concerned costs would ultimately be borne by tenants. No submissions were received from interested groups associated with landlords.</p> <p>Key themes emerged in submissions raised in support of the Bill, although some of them are outside the scope of this particular Bill. The following themes were in scope:</p> <ul style="list-style-type: none"><li>• general support for the Bill's intention to ensure that rental homes meet minimum standards relating to heating and insulation;</li><li>• the standards that could help deliver on the Bill's objective of healthy homes; and</li><li>• the need to get better clarity as to roles and responsibilities around compliance and enforcement.</li></ul> <p>There has been no further external consultation on the Government's proposed amendments to the Bill. These amendments are, however, broadly consistent with matters that have been discussed previously with stakeholders through the Select Committee's consultation.</p> <p>The Bill provides a framework for developing detailed regulations that will give effect to the standards. MBIE intends to seek Cabinet approval to undertake stakeholder consultation on the 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

## 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

### 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

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual 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?	NO

### 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

### 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

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 6 provides for regulations to be made that provide for Healthy Homes Standards with which landlords must comply. The regulations are made by the Governor-General by Order in Council. Healthy Homes Standards may include standards about indoor temperatures and other outcomes (for example, levels of moisture and humidity) that must be capable of being achieved in premises. For the purpose of complying with these capability requirements, Healthy Homes Standards can also set out other requirements in relation to heating, ventilation, moisture ingress, draught stopping, drainage and other matters.</p> <p>The regulations can also make provision for ways of determining whether or not standards have been met, include exceptions to the standards, prescribe information that must be included in the statement of compliance, and prescribe documents to be retained. Regulations will also be able to make different provision for different descriptions of landlords, premises and areas in New Zealand.</p> <p>The regulations can also prescribe earlier compliance dates for the standards (see clause 11(7) and (8) in the Schedule).</p>	

#### Any other unusual provisions or features

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

