

Office of the Minister for Building and Housing

Cabinet Social Policy Committee

Insulation, smoke alarms and other residential tenancy improvements

Proposal

- 1 Following the trial in 2014 of 'Warrant of Fitness' standards on a sample of Housing New Zealand Corporation (HNZC) properties, this paper seeks agreement to four proposed amendments to the Residential Tenancies Act (RTA):
 - a new requirement for smoke alarms in all residential rental properties
 - new requirements for ceiling and underfloor insulation in residential rental properties (with specific exemptions), to be phased in between 2016 and 2019, with accompanying disclosure requirements for landlords
 - strengthened 'retaliatory notice' provisions, to increase tenants' confidence in exercising their rights, together with strengthened enforcement provisions for the Ministry of Business, Innovation and Employment to act in the most serious cases
 - changes to enable faster resolution of tenancy abandonment cases, to allow rental properties to be re-let more quickly.
- 2 The proposed RTA amendments will create new regulation-making powers allowing smoke alarms and insulation requirements to be prescribed in regulations. I will seek Cabinet agreement to the final regulations following public consultation in early 2016.
- 3 Alongside the RTA amendments I propose an information campaign promoting the new standards, and also informing tenants of their existing rights and responsibilities under the RTA (including in relation to existing property quality standards under the Housing Improvement Regulations).

Executive summary

Smoke alarm and insulation requirements

- 4 In 2014 Housing New Zealand Corporation (HNZC) trialled a broad package of 'Warrant of Fitness' standards on a sample of 400 properties. The package included elements such as: minimum height for balustrades, security stays on some windows to allow secure ventilation, and requiring more than one power point in living spaces.
- 5 Government needs to focus on maximising the benefits of rental standards relative to compliance costs, and on avoiding the need to take rental properties out of the market unnecessarily. Reducing rental supply by requiring landlords to comply with impractical

requirements would increase rents and create further hardship for low-income tenants. Taking into account the trial results and the results of cost benefit analysis, I do not believe there is a compelling rationale for requiring all residential rental properties to comply with a broad 'Warrant of Fitness'.

- 6 The new requirements which I propose focus on insulation and smoke alarms, which are not covered by existing regulations (the Housing Improvement Regulations), and where there are clear benefits for tenants, landlords and taxpayers.
- 7 Based on the limited information available, officials estimate that approximately 270,000 private residential rental properties are inadequately insulated (including approximately 150,000 rental properties occupied by low-income tenants)¹ and that approximately 120,000 rental properties do not have functional smoke alarms. Regulation is a logical next step, building on Government's investment since 2001 of more than \$500 million in total to insulate all state houses where practical, and subsidise retrofitting of insulation in 280,000 private residential properties.
- 8 On 23 February 2015, Cabinet agreed to give a Residential Tenancies Amendment Bill the priority of Category 2 (must be passed in 2015) on the 2015 legislative programme [CAB Min (15) 5/7 refers]. I propose to amend the Residential Tenancies Act (RTA) 1986 to allow standards for smoke alarms and insulation to be made by regulations.
- 9 Smoke alarm standards would apply to all residential tenancies. For insulation standards I propose a two-stage approach, focusing initially on social housing where tenants pay an income-related rent (by 1 July 2016), followed by the remainder of the residential rental market (by 1 July 2019). The insulation standard which I propose is approximately equivalent to that which applied nationally from 1978.
- 10 To minimise any negative impact on the supply of rental properties, and to recognise practical constraints, I propose three exemptions from the insulation requirements:
 - Properties where it is impractical to retrofit insulation due to the physical design of the property (for example limited space under the floor, or an inaccessible raked ceiling).
 - Properties which are sold and immediately rented back to the former owner-occupier, for a period of up to 12 months. This includes properties acquired by the New Zealand Transport Agency for roading purposes, or by private sector developers.
 - Properties where, within 12 months from the commencement of a tenancy, the landlord intends to demolish the property or to substantially rebuild parts of the property, and can provide evidence of having applied for the relevant resource consent and/or building consent for redevelopment or building work.
- 11 I also propose that from 1 July 2016, all new tenancy agreements must include a statement from the landlord or property manager about the extent of insulation in a property (ceiling, underfloor and walls). This information will help tenants make informed choices.
- 12 This paper seeks agreement to specify smoke alarm and insulation standards, as a basis for public consultation. Final standards and regulations would be agreed by Cabinet following passage of RTA amendments and public consultation.
- 13 I propose that the Housing Improvement Regulations remain in force for both rental and owner occupied properties, with no changes. These regulations include ventilation and prevention of dampness requirements, but are not well known. To improve landlord and tenant knowledge of existing requirements in relation to rental properties I propose an

¹ Excluding properties where it is not practical to insulate due to physical design of the property.

information campaign that will: promote new smoke alarm and insulation standards, provide information about existing requirements and remedies available to tenants, and also include practical information about preventing dampness and mould.

- 14 Where a tenant considers that a property does not meet the smoke alarm or insulation standards (or existing requirements under the Housing Improvement Regulations such as functioning water supply), they would be able to use existing processes to take a case to the Tenancy Tribunal. The application fee is currently \$20.44.
- 15 Anecdotal evidence indicates that some tenants are reluctant to take cases to the Tribunal for fear of being given notice by their landlord. This paper includes a proposal to strengthen the RTA provisions prohibiting 'retaliatory notice' by:
 - extending the period during which a tenant can apply to the Tribunal on the grounds of retaliatory notice from 14 to 28 days, and
 - making giving retaliatory notice an unlawful act with a maximum penalty of \$2000 (consistent with existing penalties for tenant harassment).
- 16 I also propose amending the RTA to allow MBIE to investigate and take direct action (for example Tenancy Tribunal proceedings) where severe breaches of the RTA are alleged, and there is a significant risk to tenant health and safety. Currently MBIE can only take action on behalf of a tenant, who must be willing to provide all necessary evidence.
- 17 I seek delegated authority for myself, and the Ministers of Finance, Social Housing and Justice to take decisions on details of the amendments required and additional funding for MBIE (estimated at up to ^{s 9(2)(f)}_(iv) million annually). In the context of Government expenditure of \$1.8 billion per year on Accommodation Supplement and Income Related Rent Supplement, I believe the increased funding is justified to help ensure decent living standards for the most vulnerable tenants.
- 18 I intend to announce proposed new smoke alarm and insulation requirements in July 2015. At the same time I intend to release the HNZC trial results, and supporting documents. Approximately four per cent of HNZC properties were fully compliant with the standards, with 25 per cent failing on only one or two items, and an overall average repair cost of \$600 per property. More than 90 per cent of properties met the insulation requirements, and almost all properties met smoke alarm requirements.

Tenancy abandonment

- 19 I also propose amending the RTA to improve processes for resolving tenancy abandonment cases, where the rent is in arrears and the tenant has vacated the property without giving notice. Cumbersome requirements and the implications for the rental market have been raised with me by landlords, HNZC, and property managers.
- 20 Modelled on the Victorian Civil and Administrative Tribunal in Australia, I propose a new power for landlords to enter a property with 24 hours' notice to confirm abandonment, hearing of abandonment cases 'on the papers' in specific circumstances and a ten working day statutory timeframe for the Tenancy Tribunal to hear these cases.

Background

- 21 In December 2013, Cabinet agreed that HNZC would trial a rental 'Warrant of Fitness' from early 2014 [CAB Min (13) 42/9 refers]. Cabinet directed officials to report back by 31 July 2014 on the trial results, cost implications for HNZC, applicability to private sector rentals including potential costs and benefits, and potential regulatory options for private sector rentals. That report was subsequently deferred and is fulfilled by this paper.

Related work

- 22 In 2012, the Children's Commissioner's Advisory Group Report on Solutions to Child Poverty recommended the introduction of a 'Warrant of Fitness' for rental accommodation. This recommendation has subsequently been included in reports from the Health and Maori Affairs select committees.
- 23 Five local authorities have also field-tested a rental 'Warrant of Fitness' developed by the Otago University Wellington Healthy Housing Programme (OU). The Mayors of these councils have written to me in support of central government introducing updated standards for residential tenancies.
- 24 On January 28 2015, I tabled the Government's response to the Select Committee Inquiry into Boarding Houses. The proposals in this paper will partly address recommendations made by the Committee in relation to health concerns with some boarding houses.

Rationale for not implementing a broad 'Warrant of Fitness'

- 25 In 2014 Housing New Zealand Corporation (HNZC) trialed a broad package of 'Warrant of Fitness' standards on a sample of 400 properties. (Trial results are discussed in paragraphs 69-70). The package was based on factors in residential properties which affect tenants' health and safety, and was intended to inform Government decisions on rental standards. As such, the trial package included elements such as: minimum height for balustrades, security stays on some windows to allow secure ventilation, and requiring more than one power point in living spaces.
- 26 Government needs to focus on maximising the benefits of rental standards relative to compliance costs, and on avoiding the need to take rental properties out of the market unnecessarily. Reducing rental supply by requiring landlords to comply with impractical requirements would increase rents and create further hardship for low-income tenants. Taking into account the trial results and the results of cost benefit analysis, I do not believe there is a compelling rationale for requiring all residential rental properties to comply with a broad 'Warrant of Fitness'.
- 27 The compliance costs for a comprehensive 'Warrant of Fitness' regime similar to that for motor vehicles (with annual inspections) are estimated at between \$65 million and \$135 million per year.² These costs would be likely to be passed on to tenants. I do not believe this would be cost-effective for tenants, landlords or society as a whole.
- 28 The new requirements which I propose focus on insulation and smoke alarms, which are not covered by existing regulations (the Housing Improvement Regulations), and where there are clear benefits for tenants, landlords and taxpayers. Regulation is a logical next step, building on Government's investment since 2002 of more than \$500 million in total to insulate all state houses where practical, and retrofit insulation in 280,000 residential properties since 2009, through the Warm Up New Zealand programmes (including 45,000 rental properties).
- 29 The table below shows the number of properties where Government has funded retrofitting of insulation since 2002.

² Based on a range of \$150-\$300 per inspection, depending on the extent of WoF requirements and expertise needed.

Table 1: properties where Government has funded retrofitting of insulation (HNZC and Warm Up New Zealand programmes) 2002-2015

	2002	2003	2004	2005	2006	2007	2008
Number of state houses insulated per year	2,593	2,619	3,038	2,317	2,249	2,194	2,296

	2009	2010	2011	2012	2013	2014	2015	Total number insulated
Number of state houses insulated per year	5,103	8,417	2,557	4,921	8,295	1,435	-	48,034
Total number of properties insulated through WUNZ per year (commenced in July 2009)	23,699*	54,119	52,488	67,870	44,981	30,226	6,228**	279,611
Number of rental properties insulated through WUNZ per year (commenced in July 2009)	3,797	8,673	7,211	8,505	5,699	9,701	1,753**	45,339

* July to December 2009 (inclusive);** January to May 2015 (inclusive)

30 Landlord take-up has increased under the current Warm Up New Zealand: Healthy Homes programme which is targeted to low income households: approximately 33 per cent of the 37,200 properties insulated under this programme have been residential rentals.

31 However, a proportion of private sector landlords continue to be reluctant to insulate. Reasons include a perception that the benefits of insulation accrue mainly to tenants, a perception that retrofitting insulation is costly and/or disruptive, and high rental demand in some areas reducing landlord incentives to improve properties to attract tenants.

32 Landlords will still be required to comply with the existing requirements contained in the Housing Improvement Regulations, for example in relation to sanitation and cooking facilities. I am not proposing any changes to the regulations. Local authorities also have responsibility for enforcing aspects of housing quality under the Health Act and the Building Act as well as the Housing Improvement Regulations, and I do not propose any change to local authority responsibilities in this regard.³

New requirements for smoke alarms and insulation: problem definition

33 Approximately 450,000 New Zealand households live in rental properties,⁴ including approximately 64,000 households who rent from HNZC. Nationally 30 per cent of

³ Local authorities will not be able to enforce insulation and smoke alarm standards to be created under the Residential Tenancies Act, but can take action where properties are 'dangerous' or 'insanitary', or create a public health hazard.

⁴ Census 2013.

households now rent their home, increasing to 35 per cent in Auckland and 58 per cent of low-income households in Auckland.⁵

- 34 The RTA currently specifies that rental properties must be ‘provided and maintained in a reasonable state of repair’. Detailed minimum standards for all residential dwellings are prescribed in the Housing Improvement Regulations. The regulations are fundamentally sound, but do not include insulation or smoke alarms, both of which are now standard for new properties.
- 35 Lack of insulation in rental housing contributes to poor health outcomes, particularly for children in low-income families, with long-term economic and social impacts. The BRANZ 2010 House Condition Surve, found that 43 per cent of rental properties had moderate to high levels of mould, compared with 25 per cent of owner occupied properties.
- 36 Officials estimate that approximately 270,000 private sector rental properties would not meet the moderate insulation standard which I am proposing, including approximately 150,000 properties occupied by low-income tenants.
- 37 New Zealand Fire Service data shows that over the last six years 34 fatalities are known to have occurred in residential rental properties. A further 13 may have been in rental properties. Of the known rental properties where fatalities occurred, half had no evidence of a smoke alarm having been present in the property. Fire safety education including promotion of smoke alarms has had limited uptake among low-income groups, who are overrepresented in rental accommodation and fire fatalities.
- 38 International evidence indicates that having operational smoke alarms can reduce fire fatalities by one third to one half.⁶ Injuries from fires are also likely to be reduced, as is damage to the landlord’s property. All Australian states and territories require smoke alarms in residential rental properties.

Summary of proposed legislative changes

- 39 To contribute to better health and safety outcomes for tenants (particularly for children), I propose amending the RTA, as shown in the summary table below.

<p>Smoke alarm and insulation requirements</p> <p>a. Include a requirement that all residential tenancies must have smoke alarms that meet the standards prescribed by regulations. Regulations would come into force from 1 July 2016. Failure to comply with smoke alarm or insulation requirements would be covered by an existing unlawful act (s 45 (1A)) relating to landlord responsibilities, with a maximum penalty of \$3000.</p>
<p>b. Include a regulation-making power to prescribe standards for smoke alarms in regulations.</p>
<p>c. Include a requirement that landlords must ensure that residential rental premises have insulation that meets the standards prescribed by regulations.</p>
<p>d. Include a regulation-making power to prescribe standards for insulation, including the ability to prescribe exclusions.</p> <p>Insulation standards would come into force from the following dates:</p> <ul style="list-style-type: none"> i. 1 July 2016 for HNZC and Community Housing Provider tenancies where tenants pay an income related rent. (For a new tenancy commencing after 1 July 2016 where a tenant

⁵ Household income of under \$20,000 annually.

⁶ See [https://www.ufv.ca/media/assets/ccjr/reports-and-publications/Smoke_Alarms_Work\\$!2c_But_not_Forever.pdf](https://www.ufv.ca/media/assets/ccjr/reports-and-publications/Smoke_Alarms_Work$!2c_But_not_Forever.pdf) and <http://www.nfpa.org/research/reports-and-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires>

<p>pays an income related rent, a landlord would have 90 days from the commencement of the tenancy to retrofit insulation as necessary.)</p> <p>ii. 1 July 2019 for all remaining residential tenancies covered by the RTA (new and existing tenancies), including boarding house tenancies.</p>
<p>e. For all new tenancies from 1 July 2016, require a landlord (or person acting on the landlord's behalf, including a property manager) to state, as part of the required contents of the tenancy agreement, the extent of insulation in the ceiling, underfloor and walls. MBIE will amend the model tenancy agreement form accordingly.</p>
<p>f. Make failure by a landlord (or person acting on the landlord's behalf, including a property manager) to state in a tenancy agreement the extent of insulation an unlawful act, with a maximum penalty of \$500. Also make knowingly providing misleading information an unlawful act, with a maximum penalty of \$500.</p>
<p>Retaliatory notice</p> <p>g. Extend the tenant application period for alleged retaliatory notice from 14 days to 28 days, and make giving retaliatory notice an unlawful act with a penalty of up to \$2000 (consistent with existing penalties for landlord harassment of a tenant).</p>
<p>Strengthened enforcement powers for MBIE in cases of severe breach of the RTA</p> <p>h. Clarify and extend the powers of the Chief Executive of MBIE to investigate and take direct action where severe breaches of the RTA are alleged, and there is a significant risk to tenant health and safety. Authority to decide matters of detail to be delegated to the Ministers of Finance, Social Housing, Justice and Building and Housing. (See paragraphs 59-65).</p>
<p>Other minor changes to existing provisions</p> <p>i. Currently 'intentional breach' of a work order is an unlawful act, with a maximum penalty of up to \$3000. Amend s 108(2A) of the RTA to make 'breach without reasonable excuse' an unlawful act, with the penalty remaining unchanged. This removes a potential landlord defence of 'forgetfulness'.</p> <p>j. Currently the Tenancy Tribunal can order a monetary payment as an alternative to a work order (s 78 (2)). Remove this provision in relation to work orders for compliance with smoke alarm and insulation requirements, as well as compliance with the requirements prescribed in the Housing Improvement Regulations (for example functioning sanitation).</p>

Summary of proposed process

40 The table below summarises my intended process and timeframes.

Cabinet policy decision to amend the Residential Tenancies Act; Cabinet agreement to specific smoke alarm and insulation standards as a basis for public consultation. Agreement in principle to strengthen MBIE enforcement powers.	July 2015
Policy announcement, with release of potential smoke alarm and insulation standards and supporting documents.	July 2015
LEG considers draft Residential Tenancies Amendment Bill	September/October 2015
Introduction of Residential Tenancies Amendment Bill	October/November 2015
Select Committee reports back, Residential Tenancies Amendment Bill	Early 2016

enacted	
Public consultation on detail of smoke alarm and insulation standards	To be confirmed
Smoke alarm and insulation regulations finalised	May/June 2016
MBIE provides information about new requirements; transition period for landlords	2016 - ongoing
Smoke alarm regulations come into force for all residential tenancies. Insulation requirements come into force for HNZC and registered Community Housing Providers where tenants pay an income related rent. Insulation disclosure requirements come into force for all residential tenancies.	1 July 2016
Insulation regulations come into force for all remaining residential tenancies.	1 July 2019

- 41 I intend announcing the introduction of a Residential Tenancies Amendment Bill in July 2015. Due to the high level of public interest in residential rental quality, as part of my announcement I intend releasing a document indicating potential smoke alarm and insulation standards. I am seeking Cabinet agreement to the detail of the potential standards (paragraphs 44 and 53 below), as a basis for public consultation. The final standards will be agreed by Cabinet following public consultation.
- 42 I intend to release four other documents as part of my announcement:
- a. the results of the HNZC Warrant of Fitness trial (summarised in paragraphs 69-70)
 - b. indicative cost benefit analysis results of applying the Warrant of Fitness standard trialled with HNZC to private sector rentals
 - c. the final report of the Technical Advisory Group for the HNZC trial.
 - d. this Cabinet paper.
- 43 Officials have already received a number of Official Information Act requests in relation to information in these documents. Following Cabinet decisions on whether to proceed with amendments to the RTA, I am advised that there will be no valid grounds for withholding these documents.

Detail of proposed insulation and smoke alarm standards, and cost benefit analysis

Insulation

- 44 I seek Cabinet agreement to the following potential standard for insulation, as a basis for public consultation. The standard is approximately equivalent to the first nationwide insulation standards for residential properties, introduced in 1978.
- a. *Ceiling insulation (minimum thickness of 70 mm) must cover all the accessible ceiling area above habitable spaces (i.e. spaces used for daily activities), except where insulation clearances are required (for example around some downlights and flues). A garage is considered habitable space if it is used as a living space. Habitable spaces immediately above count as ceiling insulation (for example, in an apartment building).*
 - b. *A suspended subfloor must have underfloor insulation in reasonable condition, covering all the accessible subfloor area beneath the habitable spaces. A concrete*

slab counts as underfloor insulation, as does another habitable space immediately below.

Proposed exclusions from insulation requirements

- 45 To minimise any negative impact on the supply of rental properties, and to recognise practical constraints, I propose three exemptions from the insulation requirements:
- a. Properties where it is impractical to retrofit insulation due to the physical design of the property (for example limited space under the floor, or an inaccessible raked ceiling).
 - b. Properties which are sold and immediately rented back to the former owner-occupier, for a period of up to 12 months. This includes properties acquired by the New Zealand Transport Agency for roading purposes, or by private sector developers.
 - c. Properties where, within 12 months from the commencement of a tenancy, the landlord intends to demolish the property or to substantially rebuild parts of the property, and can provide evidence of having applied for the relevant resource consent and/or building consent for redevelopment or building work.
- 46 Excluding properties where it is not practical to insulate is critical for achieving feasible regulations. Extrapolating from very limited data in the 2010 BRANZ House Condition Survey, officials estimate that up to 70,000 private sector rental properties cannot have ceiling insulation practically retrofitted, and up to 120,000 cannot practically have underfloor insulation retrofitted. Available data does not show the degree of overlap (i.e. properties where neither ceiling nor underfloor can practically be retrofitted). In the absence of exemptions, removing more than 100,000 properties from the rental market would significantly increase supply challenges, putting further pressure on rents and increasing overcrowding.
- 47 The proposed insulation standard is lower than that used for the Warm Up New Zealand programme (which retrofits where ceiling insulation is less than 120 mm thick) and lower than current Building Code requirements for new builds. My proposed standard balances costs and benefits, recognising that the greatest benefits of retrofitting ceiling insulation come from the first 70 mm of thickness.
- 48 Officials estimate that approximately 180,000 residential rentals would require upgrades to ceiling and/or underfloor insulation to meet the proposed standards. This figure excludes properties which cannot be practically insulated. A 2012 evaluation of Warm Up New Zealand found annual health benefits averaging \$637 per household, plus limited energy savings.⁷ Average costs of retrofitting both ceiling and floor insulation are approximately \$3300.⁸ This translates to benefits of \$2.10 for every dollar of costs, over 20 years.
- 49 The analysis does not include long-term benefits of improved child health, such as improved adult health and labour market outcomes. Benefits to landlords from reduced long-term maintenance and reduced tenant turnover are also not included.
- 50 Landlords of low-income tenant households (those eligible for a Community Services Card) with particular health needs, children under 17, or people aged over 65 may be eligible for subsidised insulation through Warm Up New Zealand: Healthy Homes. A small contribution from landlords is requested, but not required. Warm Up New Zealand

⁷ Grimes, A et al (2011, revised 2012) Cost Benefit Analysis of the Warm Up New Zealand: Heat Smart Programme (Final Report), http://www.motu.org.nz/publications/detail/cost_benefit_analysis_of_the_warm_up_new_zealand_heat_smart_programme. Low-income households had higher average benefits (\$854), but cost benefit analysis in this paper uses the general household figure for a conservative result.

⁸ Figures from the Energy Efficiency and Conservation Authority.

is currently funded until June 2016. Government has not made decisions at this point on whether to extend the programme to complement regulation.

- 51 Prevention of dampness and mould is also significantly dependent on day-to-day management of the property (such as opening windows). I am not proposing strengthening or amending, ventilation and dryness standards which already exist under the Housing Improvement Regulations. Rather than further regulation in this area, I propose an information campaign for tenants and landlords, which includes the benefits of ventilation and practical 'how-to' advice to prevent dampness. In designing the campaign my officials will draw on information already delivered by EECA, and will work with other agencies which support tenants.
- 52 The campaign will also inform tenants of their existing rights and responsibilities under the RTA (including in relation to existing property quality standards under the Housing Improvement Regulations).

Smoke alarms

- 53 I seek Cabinet agreement to the following potential standard for smoke alarms, as a basis for public consultation.
- a. *There must be at a minimum one working smoke alarm in the hall or similar, within three metres of each bedroom door.⁹ In a self-contained sleepout, caravan or similar there must be a minimum of one working smoke alarm in the sleepout or caravan.¹⁰*
 - b. *It is the landlord's responsibility to ensure the alarm is operational at the beginning of each new tenancy, and the tenant's responsibility to replace batteries (if required) during the tenancy, and report defective smoke alarms to the landlord.*
 - c. *Long life (10 year) photoelectric alarms are required to be installed where there are no existing alarms.*
 - d. *Where there are existing alarms, these are to be replaced by long life photoelectric alarms at the end of the life of the existing alarm. Hardwired smoke alarms are also acceptable.*
- 54 Long life photoelectric alarms significantly increase the likelihood of alarms remaining operational over time, as batteries cannot be removed and last for up to 10 years. The additional cost (around \$40 compared to around \$12 for a 9V battery-operated smoke alarm) is recouped within 3-4 years, as batteries do not have to be replaced every 6-12 months.
- 55 Requiring smoke alarms in all residential rental properties will potentially prevent three fire fatalities per year, with annual benefits of \$9.0 million.¹¹ Between 15 and 40 per cent of rental properties are estimated to not currently have operational smoke alarms. Based on a cost of \$40 for a 10 year alarm, total costs over 20 years (discounted at 8 per cent) are estimated at between \$4.1 million and \$10.0 million. For every dollar of costs, estimated benefits range between \$8.80 and \$21.40. The cost benefit analysis does not include injuries prevented due to the presence of smoke alarms and reduced property damage.

⁹ This is the New Zealand Fire Service recommended minimum, although NZFS also encourage installation of smoke alarms inside bedrooms.

¹⁰ In a caravan, NZFS recommends attaching a smoke alarm with velcro, so that it can be removed easily while cooking. Caravans would only be required to have smoke alarms where they are occupied permanently and are subject to the RTA.

¹¹ Using the New Zealand Transport Agency figure of \$3.0 million for the Value of a Statistical Life.

Enforcement and retaliatory notice

Enforcement by tenants through the Tenancy Tribunal

- 56 Where a tenant considers that their rental property does not meet the smoke alarm or insulation standards, the tenant would first approach the landlord or property manager. If the issue is not resolved, the tenant can take a case to the Tenancy Tribunal. This is the same process as currently applies under the RTA. The Tribunal can make a work order, and/or order exemplary damages of up to \$3000.
- 57 I recognise that, based on anecdotal evidence, vulnerable tenants may be reluctant to complain for fear of eviction (despite the RTA prohibiting 'retaliatory notice'). Currently the Tenancy Tribunal can set aside notice where it considers that notice has been wholly or partly motivated by the tenant exercising their rights. However, the tenant only has 14 days to apply. Currently tenants often contact MBIE too late to pursue this option.
- 58 To reduce barriers to tenants exercising their rights, I propose strengthening retaliatory notice provisions. This would involve extending the application period from 14 to 28 days, and making it an unlawful act for a landlord to give retaliatory notice, with a maximum penalty of \$2000 (consistent with existing penalties for harassment of a tenant). Establishing that notice is retaliatory can be difficult (because under the RTA landlords are entitled to give 90 days' notice with no reason), but these measures, combined with better information to tenants, will reduce barriers.

Strengthening enforcement by the Ministry of Business, Innovation and Employment

- 59 There is likely to be a public expectation that government will actively enforce smoke alarm and insulation standards. However, the RTA is currently based on contractual relationships between landlords and tenants, with a limited role for government. MBIE provides guidance to tenants and landlords to enable parties to resolve disputes directly. If direct resolution is unsuccessful, MBIE advises parties on how they can take appropriate action through mediation and the Tenancy Tribunal.
- 60 Under the RTA, the Chief Executive of MBIE is able to commence or take over Tenancy Tribunal proceedings on behalf of a tenant or landlord, where this is in the public interest. This power has only been used twice in the past two decades and relies in practice on the party being willing to provide necessary evidence to the Chief Executive. A party must also be willing to have their name associated with the proceedings and (in most cases) published on the Tenancy Tribunal decisions database. Anecdotal evidence indicates that fear of retribution may dissuade some tenants from pursuing complaints.
- 61 A small minority of landlords take advantage of vulnerable tenants. I believe that where severe breaches of the RTA are alleged, it is appropriate for Government to take direct action against such landlords in its own right, rather than on behalf of a tenant. I therefore propose amending the RTA to give the Chief Executive of MBIE appropriate powers to investigate and take action directly, where severe breaches are alleged, and there is a significant risk to tenant health and safety.
- 62 An example of the type of case where MBIE might consider taking direct action was reported in February 2015: a Christchurch landlord was housing 20 tenants in huts and caravans on his car wrecking yard, with portaloos, and showers in a converted container.¹² Substandard accommodation is often also associated with RTA breaches in relation to tenant bonds and privacy.
- 63 Details of the necessary amendments need to be worked through, including ensuring compliance with the Bill of Rights Act s 9(2)(f)(iv)

¹² <http://www.stuff.co.nz/national/65660403/Illegal-hovel-could-face-closure>

s 9(2)(f)(iv)

I seek Cabinet agreement to delegate decisions on the details of the necessary RTA amendments (and additional funding identified below) to myself, and the Ministers of Finance, Social Housing and Justice.

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s 9(2)(f)(iv)

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Potential impacts on rent levels and rental supply

66 Surveys indicate that for most investment properties financial gain is primarily derived from capital gains rather than rental income. Officials have modelled the potential impact on private sector rents of the proposed smoke alarm and insulation standards. Assuming that landlords expect the same yield on investment in property upgrades as the overall

rental yield,¹³ weekly rents may increase by up to \$3.20 (for a property which required installation of ceiling insulation, underfloor insulation and one smoke alarm, and did not receive any government subsidy).

67 It is not possible to predict the decisions which individual landlords would make with regard to rent increases. If some individual landlords chose to impose rent increases beyond a reasonable yield on investment, this could exacerbate overcrowding in some cases, and could result in increased Accommodation Supplement and Income Related Rent Subsidy costs.

Monitoring and review

68 I propose that the Ministry of Business, Innovation and Employment monitor the impact of the smoke alarm and insulation requirements, and strengthened enforcement, and review the effect of insulation regulations one year after they come into full effect in 2019, with outcomes to be reported to Cabinet.

Lessons from Housing New Zealand trial and cost implications for social housing providers

69 The HNZC trial in early 2014 provided useful information to inform Government decisions. The trial tested the practicality of a package of standards on a representative sample of 400 HNZC properties. Four per cent complied with all of the draft standards, 25 per cent failed on one or two items and 69 per cent failed on five items or fewer.¹⁴

70 The most common areas of failure were: missing security stays on applicable windows, lack of appropriate heating in properties which could not be insulated, windows not opening/closing or significantly damaged, handrails/balustrades being missing or unsafe, and hot water temperature. The average repair cost per property was approximately \$600. Where urgent repairs were identified during the trial, these have been remediated. Non-urgent repairs on properties in the sample were undertaken during 2014/15.

71 One of the most common breaches was lack of window security stays which cost less than \$20 each. It is difficult to justify an inspection cost of \$150-\$300 when the actual cost of the work is a fraction of this and can be done by the tenant or landlord without intrusion.

72 Based on media coverage of the local authority Warrant of Fitness trial in 2014, it is likely that release of the results will lead to criticisms of HNZC property maintenance and calls for improvement. The HNZC results do not identify particular properties assessed. Surveys indicate that private rental stock is likely to be less compliant.

Financial implications for HNZC of proposed smoke alarm and insulation standards

73 HNZC estimated costs of upgrading insulation in the sample properties at approximately \$40,000 in total. Extrapolating to the broader HNZC portfolio, upgrade costs to meet the proposed smoke alarm and insulation standards could be approximately \$10.0 million.

Financial implications for Community Housing Providers of proposed smoke alarm and insulation standards

¹³ This differs from the modelling in Appendix 3 of the Sapere CBA, which assumes that landlords seek to recover 100 per cent of costs. Rental yield varies across regions (source: ASB, 2014). Auckland: 3.6 per cent, Canterbury: 4.9 per cent, Wellington: 4.8 per cent.

¹⁴ Causes of failure include older stock built prior to Building Code and modern expectations, tenant damage and tenants not reporting maintenance requirements. The results of the HNZC trial are similar to the local authority trial against the OU standards, which assessed a mixture of council housing and self-selected private rentals.

74 No data is available on the quality of Community Housing Provider (CHP) properties. The impact of my proposed standards will vary among CHPs: for those with relatively new properties the impact will be negligible, but those with older properties (including properties previously acquired from HNZC) may need to upgrade insulation. Public consultation on the proposed standards will provide better information about potential CHP costs.

Stakeholder consultation

75 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). No consultation has occurred on the more specific smoke alarm and insulation proposals in this paper.

76 However, NZPIF has advised that it supports requiring smoke alarms in all residential rentals, and also supports a focus on insulation (and heating) rather than broader minimum standards. NZPIF also considers that more landlords should be encouraged to provide insulation (and heating), through financial incentives including greater tax deductibility.¹⁵

77 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.

78 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.

Tenancy abandonment proposal

79 I propose to amend the RTA to improve the current process for dealing with tenancy abandonment. Currently, the RTA allows a landlord to make an application to the Tenancy Tribunal for an order terminating a tenancy where it is satisfied that:

- a. the tenant has abandoned the premises without giving notice; and
- b. the rent is in arrears.

80 Of the 37,000 applications to the Tenancy Tribunal in the year ended November 2014, 884 sought termination for abandonment (2.3 per cent of the total). This is consistent with previous years. However, Tribunal applications may understate the scale of the issue. Anecdotal evidence from one region indicates that up to 10 per cent of landlords may be affected by tenancy abandonment issues. Some landlords may be choosing not to enter what they perceive to be a slow and cumbersome Tribunal process to terminate an abandoned tenancy, and may be taking action outside the RTA.

Problem definition

81 The current speed of handling tenancy abandonment cases creates a housing supply issue. This is because the rental property is not available to the market until the tenancy is officially terminated by the Tenancy Tribunal. A landlord currently has to follow the following steps to regain possession of their property and return it to the market:

¹⁵ Maintenance costs where elements are replaced 'like-for-like' are tax deductible for landlords. Topping up existing insulation is tax deductible, but retrofitting insulation where none previously existed is a capital improvement and therefore not deductible.

- a. verify rent is in arrears
- b. confirm the property has been abandoned
- c. apply to the Tenancy Tribunal for an order for possession (and termination of the tenancy, rent arrears, bond refund and exemplary damages), and continuation of the application so the landlord can go back at a later date to claim for any costs for cleaning, damage, and repairs once costs have been determined.

82 It can take a landlord up to four weeks to confirm the property has been abandoned (current RTA requirements permit only one landlord inspection every four weeks), and then an average of 8.6 working days to get a Tenancy Tribunal hearing for a possession order (including serving notice on the tenant of the hearing).¹⁶

83 A vacant rental property is not just a cost to a landlord, but also imposes costs on tenants as the property cannot be occupied until the previous tenancy has been terminated. The rental market as a whole is negatively affected.

84 Other jurisdictions deal with abandonment differently from New Zealand's current approach. For example, in Australia, the Victoria Civil and Administrative Tribunal (VCAT) is required to hear abandonment (possession) cases within five working days of receipt of application. In addition, the Victoria Residential Tenancies Act permits a landlord who has reasonable grounds to believe a tenant has abandoned the premises to enter the premises after 24 hours' notice.

Proposed amendments

85 I intend to make amendments to the RTA to provide an expedited two-step process to allow landlords to return abandoned properties to the market more quickly. This process is described in the table on the next page.

86 In order to ensure the natural justice interests of the tenant are met, the RTA requires a Tenancy Adjudicator to test the landlord's evidence of abandonment. Abandonment applications have been declined in a small number of cases, due to evidence being obtained that the property was not actually abandoned. These cases highlight the need to ensure adequate checks and balances.

87 I propose to amend the RTA to introduce a statutory timeframe of ten working days, where practicable, for abandonment (possession) cases to be heard by the Tenancy Tribunal, under the conditions specified in the table on the next page. This will provide landlords with greater certainty. Statutory timeframes for determining cases exist for other tribunals in some circumstances.

88 In practice, responsibility for meeting the timeframe would sit with the Chief Executives of MBIE and the Ministry of Justice, which share responsibility for Tenancy Tribunal administration, as well as with the Tribunal itself. Introducing a statutory time frame creates a risk that if the timeframe cannot be met in some cases due to circumstances beyond Government's control, Tenancy Tribunal decisions could be legally challenged. The Crown could also be sued for breach of statutory duty. I consider that these risks are outweighed by the benefits of returning rental properties to the market more quickly.

89 I have considered an alternative first step proposed by the Principal Tenancy Adjudicator of requiring the landlord to apply for leave to enter the property to confirm abandonment after 24 hours' notice. However, on balance, I consider that in most cases this option imposes additional requirements on a landlord relative to the status quo, with additional

¹⁶ This is calculated from receipt of the application. Online applications were introduced in November 2014. In main centres abandonment cases are typically heard within 6-9 working days where the application is complete and clearly presents as an abandonment case. Some abandonment cases are initially only about rent arrears, so proceed to mediation, and later become abandonment cases. These are excluded from the average.

costs for landlords and Government. I believe that the potential for abuse by landlords can be managed through an existing penalty of up to \$2000 for a landlord breach of tenant privacy.

Proposed expedited process for possession hearings within a statutory timeframe	
<p>1. Give landlord permission to enter property to confirm abandonment after 24 hours' notice</p> <p>Amend s 48(2) of Residential Tenancies Act to permit a landlord to enter the property to confirm abandonment after 24 hours' notice, regardless of whether the landlord has already inspected the property within the last four weeks.</p> <p>Rent must be at least 14 days in arrears, and the landlord must have reasonable grounds for suspecting abandonment, for example:</p> <ul style="list-style-type: none"> • Tenant not responding to usual forms of communication • Landlord's view of property from the street indicates tenant has abandoned • Neighbour's advice that tenant has moved out. <p>Abuse of this power by a landlord will constitute a breach of tenant privacy, which is an existing unlawful act under the RTA, with a penalty of up to \$2,000.</p>	<p>2. Tenancy Tribunal hearing for possession of the property within ten working days</p> <p>As part of their application, the landlord provides firm evidence of abandonment following inspection of the property:</p> <ul style="list-style-type: none"> • Photos of property's interior • Evidence of rent arrears • Other applicable evidence <p>The Tenancy Tribunal hears the application 'on the papers' within ten working days of receipt of application (providing that the application is complete, and the landlord has a valid email address for the tenant, to allow expedited notice of service)*. ¹⁷</p> <p>The RTA would specify a statutory timeframe for scheduling of abandonment (possession) hearings of 'ten working days from receipt of application, where reasonably practicable'.</p> <p>MBIE would also text the tenant where a mobile number is provided by the landlord, advising that the tenant check their email.</p> <p>The expedited process and statutory timeframe would not apply:</p> <ul style="list-style-type: none"> • if the Adjudicator requires more information following submission of all evidence • if a tenant indicates they want to contest the application. <p>In these cases, the expedited process would not apply and the case would proceed to either mediation or a standard hearing within normal timeframes. (This would be rare, but ensures procedural fairness.)</p>

*Where the landlord does not have a valid email address, notice will be served on the tenant by mail (standard process), with notice deemed to have been served after four working days (RTA s136). The application can then be heard 'on the papers', but not within the ten-day statutory timeframe.

90 I also propose other legislative amendments that will support an expedited service for possession applications in the case of abandonment, as follows:

- a. Enabling notice of a Tenancy Tribunal hearing to be served more quickly and conveniently by requiring both landlords and tenants to provide an email address

¹⁷ It is the tenant's responsibility to inform the landlord if they change their email address. If an email 'bounces back', the address would be regarded as not valid. Otherwise MBIE has to assume that an address supplied by the tenant is still valid. Currently notice is typically served by mail to the abandoned property, so many tenants do not receive notice of a hearing – service by email is likely to increase the chance of a tenant receiving the notice, particularly when accompanied by a text message. 90 per cent of abandonment cases are not contested by the tenant.

and mobile phone number in the tenancy agreement, unless either party does not have one or both. (Email is already a legal address for service. The mobile number would not be an address for service but would allow tenants to be sent a text advising them to check their email).

- b. Explicitly permit substituted service under the RTA where a tenant cannot be located.¹⁸ The form of substituted service will be modelled on the current requirements for this process in the District Court Rules 2009.

91 In addition to these proposed legislative changes, MBIE and the Ministry of Justice are working on wider system changes to Tenancy Tribunal processes as part of the Government's Better Public Services work programme. Operational changes involve updating paper-based systems, making more use of technology, and the centralised management of some applications in order to avoid regional delays.

Stakeholder consultation

92 Officials have undertaken high-level consultation on the proposals in this paper with the New Zealand Property Investors Federation (NZPIF) and the Auckland and Christchurch Tenant Protection Associations.

93 The two Tenant Protection Associations considered that abandonment is a high priority issue, and that reasons behind tenancy abandonment are complex. Suggested improvements included:

- a. Improvements to MBIE's advice, information and education for both tenants and landlords, including reiterating the importance of providing alternative contact details for each party
- b. inclusion in the standard Tenancy Agreement form provided by MBIE of an explanation of 'abandonment' and possible consequences
- c. giving abandonment cases high priority for Tenancy Tribunal processing.

94 The Tenant Protection Associations have requested a definition of 'abandonment'. I propose to amend the RTA to provide the following definition (proposed by the Principal Tenancy Adjudicator): "an abandonment occurs when a tenant unlawfully departs the premises with no intention of returning and no intention of honouring his or her obligations under the lease". The proposal also addresses the Tenant Protection Associations' request for alternative contact details for each party and for the Tenancy Tribunal to give abandonment cases high priority.

95 The NZPIF was concerned about the loss of landlord income arising from rent arrears and abandonment, which they identify as \$1,939.00 per application to the Tenancy Tribunal. Operational changes, including the new Fastrack service, are being implemented to speed up the process of getting agreement between parties on payment of rent arrears.

96 Other parties will have opportunities for input during the Select Committee process.

Consultation

97 The following departments were consulted on this paper: the Ministry of Health, Ministry of Social Development (including the Office of Disability Issues), the Treasury, Te Puni Kokiri, Ministry of Pacific Island Affairs, Ministry of Justice, Canterbury Earthquake

¹⁸ Substituted service can include serving the notice on a relative or partner of the tenant (who is known to be in contact with the party) or serving notice on the other party at their workplace, or service by email, Facebook, or a newspaper advertisement.

Recovery Authority and Department of Internal Affairs. The Department of Prime Minister and Cabinet has been informed.

- 98 The Accident Compensation Corporation, the Office of the Children's Commissioner, the Energy Efficiency and Conservation Authority, the New Zealand Fire Service, Housing New Zealand and the Real Estate Agents Authority were also consulted.
- 99 In addition, the following agencies have been consulted with respect to implications for Crown-owned residential rental properties: Housing New Zealand, Ministry of Education, New Zealand Defence Force, New Zealand Police, Department of Corrections, New Zealand Transport Agency, Department of Conservation, KiwiRail, Ministry of Justice (Office of Treaty Settlements), Land Information New Zealand and Ministry of Social Development.
- 100 The Principal Tenancy Adjudicator was consulted on a broader proposal to introduce minimum quality standards for residential tenancies, and on abandonment. The Principal Tenancy Adjudicator noted that there is anecdotal evidence of abuse of the abandonment process by some landlords, and that it is important that the tenant have sufficient notice of a hearing to respond. The Principal Tenancy Adjudicator supports the proposal to permit hearing abandonment cases 'on the papers' but does not support the introduction of a statutory timeframe on the Tenancy Tribunal to hear abandonment cases.
- 101 The Ministry of Justice is working closely with MBIE to improve the performance of the Tenancy Tribunal through non-legislative initiatives. It notes that the Tenancy Tribunal is already one of the quickest in the justice sector. The Ministry of Justice does not oppose the proposal to introduce a statutory time frame for abandonment cases, but considers that the statutory timeframe would not result in additional benefits over and above the operational changes proposed.

Financial implications

Smoke alarm and insulation standards

- 102 Between 2016 and 2020 MBIE will undertake an information campaign to promote the new smoke alarm and insulation requirements, as well as practical advice on how to prevent dampness and mould in residential rental properties, and information about tenant rights and responsibilities.
- 103 To fund the campaign, I propose transferring \$1.5 million from the Departmental Output Expense: Weathertight Services in 2015/16 into a new Multi-Year Appropriation Departmental Output Expense: Provision of Information to Increase Tenant Health and Safety in Residential Rental Properties. The Multi-Year Appropriation will cover the period 2015/16-2019/20, to allow flexibility to time peaks of campaign activity with the staged implementation date for the standards.
- 104 In addition to the information campaign, additional implementation costs for MBIE are estimated at approximately \$4.0 million per year. This includes the cost of increased Tenancy Tribunal applications, increased volumes of telephone and email queries to the MBIE contact centre, and estimated costs for the Chief Executive of MBIE to investigate and take action in cases of severe alleged breaches of the RTA, where there is a significant threat to tenant health and safety. Subject to passage of the RTA Amendment Bill, I seek Cabinet agreement in principle to new Crown funding of up to ^{s 9(2)(f)(iv)} million per year from 2016/17, with authority delegated to the Ministers of Finance, Social Housing, Justice, and Building and Housing to confirm final funding.
- 105 I am reprioritising available funding to undertake an information campaign. Further reprioritisation as an alternative to new funding for strengthening MBIE enforcement

would require reducing frontline staff and/or Tenancy Tribunal case management and administrative support. Reducing staff would reduce service quality to landlords and tenants by increasing response times for queries to the contact centre (which receives 220,000 tenancy queries a year), and/or increasing the time taken to process and schedule Tenancy Tribunal hearings. These outcomes are contrary to the better functioning rental market which the Government is seeking. In the context of Government expenditure of \$1.8 billion per year on Accommodation Supplement and Income Related Rent Subsidy, I consider that a small increase in MBIE funding for enforcement is justified.

106 The Ministry of Justice may also incur additional costs in relation to increased Tenancy Tribunal applications.

Other Government-owned residential rental properties

107 Apart from HNZA properties, central government (including school boards of trustees) also owns approximately 5500 residential rental properties. Some are temporary holdings, for example properties acquired by NZTA for roading purposes. Many properties are older and uninsulated. Some agencies have upgrade programmes in place and others are actively disposing of properties no longer required for operational purposes.

108 These properties fall within the scope of the RTA, meaning agencies would be required to comply. Individual agencies may need to reprioritise or seek additional funding to comply with the standards, or may choose to dispose of uninsulated properties.

109 The Ministry of Justice (Office of Treaty Settlements) believes that costs for approximately 400 land-banked properties would be approximately \$1.6 million. The Ministry has been criticised in the media for renting poorly insulated properties.

Tenancy abandonment

110 MBIE does not consider that the tenancy abandonment proposal will result in any significant increased costs. There is a small risk that the total number of abandonment applications to the Tenancy Tribunal will increase, if landlords who have previously not complied with process requirements to gain possession, decide to comply and go through the expedited Tenancy Tribunal process.

Human rights

111 Details of proposed additional enforcement powers for the Chief Executive of MBIE need to be worked through. In addition, the proposal raises issues of natural justice in relation to notice provisions in tenancy abandonment cases. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once detailed decisions on enforcement powers have been made and the legislation has been drafted. Officials from the Ministry of Justice and Ministry of Business, Innovation and Employment will work together on consistency with the Bill of Rights Act.

Legislative implications

112 Proposals in this paper require amendments to the Residential Tenancies Act, and subsequent creation of regulations. On 23 February 2015, Cabinet agreed that a Residential Tenancies Amendment Bill would have a priority of 'Category 2: must be passed in 2015' on the 2015 legislative programme [CAB Min (15) 5/7 refers].

Regulatory impact analysis

113 The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper. Two Regulatory Impact Statements (RIS) are attached, one for the indicative smoke alarm and insulation standards and one for tenancy abandonment. A final Regulatory Impact Statement will be developed for smoke alarm and insulation standards following public consultation.

Smoke alarms and insulation

114 The Regulatory Impact Analysis Team (RIAT) in the Treasury has reviewed the smoke alarm and insulation RIS. RIAT considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria. As well as lacking analysis (particularly of the proposals to strengthen enforcement powers, rec 8), there has been inadequate consultation.

115 Given the broad and pervasive nature of the problem definition, the objectives are narrowly defined, preventing consideration of alternative standards and methods of improving health outcomes for tenants. RIAT is not confident that the range of potential options has received adequate analysis, particularly for enforcement.

116 The RIS does identify, describe, and where possible quantify, likely impacts of the proposals. However, the impact in practice will be highly dependent on the responses of individual tenants and landlords, which are difficult to assess given the limited consultation. RIAT notes in particular that the cost-benefit analysis for smoke alarms is dependent on an assumption of high or full compliance. There is also a lack of discussion about the potential for landlords to pass on to tenants increased costs of insulation (in the form of higher rents).

117 Finally, the RIS does not differentiate the proposal to strengthen enforcement powers for RTA breaches from the proposed standards for insulation, despite these options addressing different problems. RIAT recommends that more consideration be given to including enforcement matters in the monitoring plan which should enable informed analysis in any future reform.

Tenancy abandonment

118 The RIAT also reviewed the tenancy abandonment RIS prepared by MBIE and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

119 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.

120 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.

121 As discussed in paragraph 88, I consider that the benefits of providing greater certainty for landlords and returning properties to the rental market more quickly outweigh risks associated with introducing a statutory timeframe.

Gender implications

122 This policy proposal has no gender implications.

Disability perspective

123 Disabled people, and families with disabled members, including children, have a critical need for housing which is safe and healthy. They are also more likely to live in rental housing (including boarding houses) due to low incomes. Where disabled people, including people with age-related disabilities, rent unsafe and inaccessible housing they are more likely to experience accidents and injuries. The insulation and smoke alarm standards proposal in this paper will help to ensure that the needs of disabled people for safe and healthy housing are better met.

Publicity

124 I propose announcing in July 2015 my intent to introduce a RTA Amendment Bill. As part of this announcement, I propose publicly releasing the HNZC trial results, Technical Advisory Group report, indicative cost benefit analysis for private sector rentals, the indicative smoke alarm and insulation standards, and this Cabinet paper.

Recommendations

125 The Minister of Building and Housing recommends that the Committee:

Smoke alarm and insulation standards for residential tenancies

- 1 **note** that Cabinet agreed in December 2013 that Housing New Zealand Corporation (HNZC) trial a rental 'Warrant of Fitness', with results to be reported back to Cabinet by 31 July 2014, together with costs for HNZC, and potential costs, benefits and regulatory options for application in the private rental sector [CAB Min (13) 42/9 refers]
- 2 **note** that approximately 4 per cent of HNZC properties were fully compliant with the broad package of standards which were trialled, with 25 per cent failing on only one or two items, and an overall average repair cost of \$600 per property .
- 3 **note** that following the HNZC trial, the Warrant of Fitness proposal has been refined to focus only on smoke alarms and insulation, where there are clear benefits to tenants, landlords and taxpayers relative to costs
- 4 **agree** to the following proposed policy changes to improve the functioning of the rental property market by amending the Residential Tenancies Act 1986 (RTA):
 - 4.1 Include a requirement that all residential tenancies must have smoke alarms that meet the standards prescribed by regulations
 - 4.2 Include a regulation-making power to prescribe standards for smoke alarms in regulations for different classes of residential rental accommodation
 - 4.3 Include a requirement that from the following dates residential rental premises must meet the insulation standards prescribed in regulations:

- 4.3.1 1 July 2016: HNZC and Community Housing Provider tenancies where tenants pay an income related rent
- 4.3.2 1 July 2019: all remaining residential rental tenancies covered by the RTA
- 4.4 Include a regulation-making power to prescribe standards for insulation for different classes of residential rental accommodation in regulations, including the ability for exclusions
- 4.5 From 1 July 2016, for all new tenancies, require a landlord (or person acting on the landlord's behalf, including a property manager) to state, as part of the required contents of the tenancy agreement, the extent of insulation in the ceiling, underfloor and walls
- 4.6 Make failure by a landlord (or person acting on the landlord's behalf) to state in the tenancy agreement the extent of insulation an unlawful act, with a maximum penalty of \$500
- 4.7 Make it an unlawful act for a landlord (or person acting on the landlord's behalf) to knowingly provide misleading information when stating the extent of insulation, with a maximum penalty of \$500
- 4.8 Specify that between 1 July 2016 and 30 June 2019 where a new tenancy commences and the tenant pays an income related rent, the landlord must comply with insulation requirements within 90 days of the commencement of the tenancy
- 4.9 Specify that smoke alarm and insulation standards will be enforceable by a tenant through the Tenancy Tribunal at the point where a tenant considers that the standards are not met
- 4.10 Extend the tenant application period for alleged retaliatory notice from 14 to 28 days, and make the giving of retaliatory notice an unlawful act with a maximum penalty of up to \$2000.
- 4.11 Remove the ability of the Tenancy Tribunal to order a monetary payment instead of a work order (s 78 (2)), where the work order relates to compliance with property quality standards specified in the RTA or the Housing Improvement Regulations
- 4.12 Make breach of a work order 'without reasonable excuse' an unlawful act (with an existing penalty of up to \$3000, rather than 'intentional breach' of a work order (s 108 (2A))
- 5 **agree** to the following smoke alarm standard as a basis for public consultation, with the final standard to be agreed by Cabinet following public consultation in early 2016, and prescribed in regulations:
 - 5.1 There must be at a minimum one working smoke alarm in the hall or similar, within three metres of each bedroom door. In a self-contained caravan, sleepout or similar there must be a minimum of one working smoke alarm.
 - 5.2 It is the landlord's responsibility to ensure the alarm is operational at the beginning of each new tenancy, and the tenant's responsibility to replace batteries (if required) during the tenancy, and report defective smoke alarms to the landlord.
 - 5.3 Long life (ten year) alarms are required to be installed where there are no existing alarms.

- 5.4 Where there are existing alarms, these are to be replaced by long life alarms at the end of the life of the existing alarm. Hardwired smoke alarms are also acceptable.
- 6 **agree** to the following insulation standard as a basis for public consultation, with the final standard to be agreed by Cabinet following public consultation in early 2016, and prescribed in regulations:
- 6.1 Ceiling insulation (minimum thickness of 70 mm) must cover all applicable habitable spaces (i.e. spaces used for daily activities), excluding spaces required around downlights and flues. Another property immediately above counts as ceiling insulation.
- 6.2 A suspended subfloor must have underfloor insulation in reasonable condition, covering all applicable habitable spaces. A concrete slab counts as underfloor insulation, as does a garage or another property immediately below.
- 7 **agree** to the following exclusions from insulation requirements:
- 7.1 Where it is not practical to retrofit insulation because of the physical design of the property
- 7.2 Where, within 12 months from the commencement of a tenancy, the landlord intends to demolish or substantially rebuild all or part of the property, and can provide evidence of having applied for the necessary resource consent and/or building consent for redevelopment or building work
- 7.3 A time-limited exemption (12 months) where a property is purchased and immediately rented back to the former owner-occupier

Strengthening enforcement

- 8 **agree in principle** to amend the RTA to strengthen the ability of the Chief Executive of the Ministry of Business, Innovation and Employment to investigate and take direct action in cases of severe alleged breaches where there is a significant risk to tenant health and safety
- 9 **authorise** the Ministers of Finance, Social Housing, Justice, and Building and Housing to take detailed decisions on amendments to the RTA to strengthen enforcement
- 10 **agree** to amend the scope of the Residential Tenancies and Unit Titles Services appropriation to allow for compliance and enforcement activity:
- “This appropriation is limited to the provision of residential tenancy and unit title dispute resolution services, information, education, advice and compliance and enforcement activities; administration and investment of residential tenancy bond monies; provision of administrative support to the State Housing Appeals Authority.”
- 11 **agree in principle** to new Crown funding of up to ^{s 9(2)(f)(iv)} million in 2016/17 and out years for the Residential Tenancies and Unit Title Services Departmental Output Expense, for the Ministry of Business, Innovation and Employment to undertake compliance and enforcement functions under the RTA
- 12 **authorise** the Ministers of Finance, Social Housing, Justice, and Building and Housing to confirm new Crown funding requirements for MBIE to undertake compliance and enforcement functions under the RTA
- 13 **agree** that an information campaign to promote the smoke alarm and insulation standards also include promotion of ventilation and information about existing property quality requirements

- 14 **agree** to establish the following new multi-year appropriation, to run from 1 July 2015 to 30 June 2020:

Vote	Appropriation Minister	Title	Type	Scope
Building and Housing	Minister for Building and Housing	Information to increase residential tenants' health and safety 2015 - 2020	Departmental Output Expense	This appropriation is limited to providing information to increase tenant health and safety in residential rental properties

- 15 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 13 above:

	\$m – increase/(decrease)				
Vote Building and Housing Minister for Building and Housing	2015/16	2016/17	2017/18	2018/19	2019/20
Departmental Output Expense: Weathertight Services (funded by revenue Crown)	(1.500)				
Departmental Output Expense: Provision of information to increase tenant health and safety in residential rental properties (funded by revenue Crown)			1.500		

- 16 **note** that the indicative spending profile for the new multi-year appropriation described in recommendation 14 above is as follows:

	\$m – increase/(decrease)				
Indicative spending profile	2015/16	2016/17	2017/18	2018/19	2019/20
	0.400	0.300	0.200	0.200	0.400

- 17 **agree** that the proposed change to appropriations above be included in the 2015/16 Supplementary Estimates and that in the interim, the increase be met from Imprest Supply

Other issues

- 18 **note** that the smoke alarm and insulation standards proposal will contribute to Government commitments regarding boarding house quality as noted in the Government response to the Select Committee inquiry, tabled on 28 January 2015
- 19 **note** that the Minister for Building and Housing intends to announce the proposed smoke alarm and insulation requirements in July 2015, and to publicly release the

following documents: potential smoke alarm and insulation standards, the detailed HNZC Warrant of Fitness trial results, indicative cost benefit analysis undertaken for private sector rentals and the final report of the Technical Advisory Group for the HNZC trial

20 **note** that:

20.1 cost benefit analysis indicates overall benefits to society over 20 years of between \$8.80 and \$21.40 for every dollar of smoke alarm costs, and of \$2.10 for every dollar of insulation costs (not including long-term economic and social benefits of improved child health, or reduced maintenance costs for landlords)

20.2 predicted rent impacts overall are very small, based on modelling of landlords' expected yield on investment, but that some landlords may choose to increase rent more significantly

21 **note** that central government (including school boards of trustees) also owns approximately 5500 non-HNZC residential rental properties, some of which may need to be insulated, with some agencies likely to seek additional funding for this

22 **agree** that the Ministry of Business, Innovation and Employment monitor the impact of the smoke alarm and insulation requirements and strengthened enforcement activity, and review the impact of insulation changes one year after insulation regulations come into full effect in 2019, and report the outcomes to Cabinet

Tenancy abandonment

23 **agree** to the following proposed policy changes to improve the functioning of the rental property market by amending the RTA:

23.1 where rent is at least 14 days in arrears, allow a landlord 24 hours' notice of entry to enter a rental property to confirm a reasonable suspicion that a property is abandoned, regardless of whether the landlord has already inspected the property in the last four weeks

23.2 make explicit that entering a property under the power in recommendation 24.1 without reasonable grounds for suspicion of abandonment is an unlawful act which breaches a tenant's privacy, and is subject to an existing penalty for such an act of up to \$2000

23.3 include a definition of "abandonment" as proposed by the Principal Tenancy Adjudicator: "an abandonment occurs when a tenant unlawfully departs the premises with no intention of returning and no intention of honouring his or her obligations under the tenancy agreement"

23.4 permit minor process improvements to be made to align with operational changes

23.5 allow the Tenancy Tribunal to decide abandonment (possession) applications 'on the papers' where the following conditions apply:

23.5.1 the landlord has provided a valid email address which was provided by the tenant in the tenancy agreement, or subsequently, to allow expedited service of notice of a hearing

23.5.2 the application is complete and includes all required information and supporting documents, including evidence of rent arrears of at least 14 days and evidence to support a reasonable suspicion of abandonment

23.5.3 the application is uncontested by the tenant

23.6 introduce a statutory requirement that abandonment (possession) applications be heard by the Tenancy Tribunal on the papers within ten working days of receipt, where reasonably practicable and where the conditions in recommendation 23.5 above apply

Process amendments

24 **agree** to the following amendments to the RTA to recognise technological change and align Tenancy Tribunal procedure with other courts:

24.1 enable notice of a Tenancy Tribunal hearing to be served more quickly and conveniently by requiring landlords and tenants to provide both an email address and mobile phone number in the tenancy agreement, unless either party does not have one or both

24.2 allow substituted service where a tenant or landlord is unable to be contacted through other means of service, following the substituted service requirements of the District Court Rules 2009

Legislative change

25 **invite** the Minister for Building and Housing to issue drafting instructions to the Parliamentary Counsel Office for an RTA Amendment Bill

26 **note** that the RTA Amendment Bill has priority 2 on the 2015 legislation programme

27 **agree** that subject to a RTA Amendment Bill being passed by the end of 2015, changes in the Bill will come into effect from the day after the date on which the bill is given Royal Assent

28 **authorise** the Minister for Building and Housing to make decisions consistent with the overall policy decisions in this paper on any issues that arise during the drafting process of the amendments to the RTA or the regulations prescribing smoke alarms and insulation standards.

Hon Dr Nick Smith

Minister for Building and Housing

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Annex 1: Existing ventilation and dryness requirements under the Housing Improvement Regulations 1947

9 (1) Every bathroom or water closet compartment shall have as 1 of its sides an external wall in which is fitted at least 1 window directly opening to the external air, unless other adequate means of ventilation are provided to the satisfaction of the local authority.

11 (1) Every habitable room shall be provided with 1 or more windows so situated in an external wall or external walls that adequate light is admitted.

(3) The windows of each habitable room shall be so constructed that windows with an area amounting to not less than one-twentieth part of the area of the floor of the room can be opened for the admission of air.

(4) Every room which is not a habitable room shall be provided with such window or windows as the local authority may consider necessary for the adequate lighting and ventilation thereof.

14 (3) Under every part of every house where the floor is of timber construction there shall be adequate space and vents to ensure proper ventilation for the protection of the floor from damp and decay.

15 Every house shall be free from dampness.

17 (1) The materials of which each house is constructed shall be sound, durable, and, where subject to the effects of the weather, weatherproof, and shall be maintained in such a condition.

Landlord responsibilities under the Residential Tenancies Act 1986

45 Landlord's responsibilities

(1) The landlord shall—

(a) provide the premises in a reasonable state of cleanliness; and

(b) provide and maintain the premises in a reasonable state of repair **having regard to the age and character of the premises** and the period during which the premises are likely to remain habitable and available for residential purposes; and

(c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises;