

## **Q&A: Tenancy law changes**

### **1. What are the new insulation standards?**

The new insulation standards will require ceiling insulation with a minimum thickness of 70mm, covering all accessible areas above habitable spaces – except where clearances are required around downlights or flues. It will also require suspended timber subfloors to have underfloor insulation in reasonable condition, covering all the accessible subfloor area beneath habitable spaces. Concrete slabs count as underfloor insulation, as does another habitable space immediately below.

(A habitable space includes bedrooms, kitchens, living space, bathrooms, toilet, and laundry, but excludes garages and storage space (except where garages are used as living or sleeping areas.)

### **2. Why are the insulation standards not higher?**

These are minimum standards and are consistent with the national requirements for new buildings and alterations introduced in 1978. We are not wanting to require the replacement of insulation installed since then. The greatest benefits are obtained from this first minimum amount of insulation.

Property owners would be wise to install a greater level of insulation as the extra costs are not great. The new requirement that all new tenancy agreements from 1 July 2016 declare the level of insulation in the ceilings, walls and underfloor is also an incentive to have more than just the minimum.

### **3. When will insulation standards be put in place?**

There will be a two-stage approach to implementing the insulation standards:

- Social housing (housing where tenants pay an income-related rent for a Housing New Zealand (HNZ) or community housing provider home): by 1 July 2016; and
- Remainder of the residential rental market (including boarding houses): 1 July 2019.

Local authority housing and housing owned by Government other than HNZ (for example, properties owned by school Boards of Trustees) will be required to comply with insulation standards from 1 July 2019.

### **4. Why is the Government waiting until 1 July 2019 for the insulation requirements to be mandatory for privately tenanted properties?**

Officials estimate there are 180,000 rental properties that will require retrofitting of insulation. The three-year timeframe is seen as a reasonable period given the capacity of the industry to install insulation in this number of homes.

### **5. Will insulation requirements for landlords be tax deductible?**

This depends on whether it is replacement insulation or new insulation. New insulation is considered an improvement and as a capital expense. For most properties, the insulation investment will not be a tax deductible expense.

## 6. Are there any exemptions proposed to the insulation requirements?

Yes, there will be three exemptions:

1. *Properties where it's impractical to retrofit due to limitations in the property's physical design* – for example, because of limited under-floor space. (In these cases, retrofitting of insulation may be technically possible, but would involve unreasonable measures such as installing a false ceiling or taking up the floor.) It is estimated that approximately 100,000 properties will not be able to be cost effectively insulated.



Example 1: A property with a low subfloor and less than 350mm of clearance for which retrofitting insulation would require pulling up the floorboards or lifting the entire house.



Example 2: A flat-roofed property in which retrofitting insulation would require removing ceiling linings or re-roofing.

2. *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 NZ Transport Agency for roading projects, or by private developers.
3. *Properties where, within 12 months from the start of a tenancy, the landlord intends to demolish the property or substantially rebuild parts of the property.* The landlord will need to provide evidence that they applied for the relevant resource consent and/or building consent for redevelopment work.

## **7. How much will the insulation standards cost?**

The average cost of retrofitting both ceiling and floor insulation is approximately \$3300.

Landlords are responsible for costs of insulating their homes. They may be able to get a subsidy through the Warm up New Zealand: Healthy Homes programme, for which there is currently Budget provision until June 2016.

The level of subsidy to landlords varies between regions, depending on who the partnering organisation is with the Energy Efficiency and Conservation Authority. Eligibility for the scheme requires that:

- The house was built before 2000 and the head tenant has a Community Services Card; and
- There are children under 17 years, adults over 65 years or someone with high health needs living in the home.

Councils also offer Voluntary Targeted Rates for retrofitting insulation, which are essentially a loan tagged to the property, repaid through an addition to annual rates. This means that landlords do not have to make an upfront investment.

## **8. What are the new smoke alarm standards?**

The new smoke alarm standards will require a minimum of one working smoke alarm in the hall or similar, within three metres of each bedroom door. In a self-contained sleep-out, caravan or similar, a minimum of one working smoke alarm will be required, as per Fire Service recommendations.

The landlord must ensure the alarm is operational at the beginning of a tenancy and the tenant will be responsible for replacing batteries during the tenancy.

Where there are currently no smoke alarms, the new standard will require long-life photoelectric alarms. Long-life alarms cannot easily have the batteries removed, and are more cost-effective over time because batteries do not need to be replaced every six to 12 months.

Where there are existing smoke alarms, that are not long-life photoelectric, these do not need to be replaced immediately, but when they do need replacing, they should be replaced with long-life photoelectric alarms.

## **9. How much will the smoke alarm standards cost?**

Long-life photoelectric alarms cost approximately \$40 and last for up to 10 years.

A 9V battery-operated smoke alarm costs about \$12, with batteries needing replacement every six to 12 months.

## **10. Will the new standards apply to boarding houses and caravan parks?**

The new standards will apply to all tenancies under the Residential Tenancies Act 1986, so this includes boarding house tenancies, and caravans or cabins that are tenanted for longer than 28 days.

Caravans will be exempt from insulation requirements and cabins may be exempt, depending on the design. Smoke alarm requirements will apply to both caravans and cabins.

### **11. How does New Zealand law compare with Australia in respect of smoke alarms?**

Smoke alarms are a mandatory requirement in all states and territories of Australia.

### **12. How will people be informed about the new standards for smoke alarms and insulation?**

MBIE will run an information campaign that will promote the new insulation and smoke alarm standards, as well as provide information about existing requirements and remedies available to tenants. The campaign will also include practical information about preventing dampness and mould.

### **13. How will compliance be monitored and enforced?**

Where a tenant considers a property doesn't meet the insulation or smoke standards (or existing requirements under the Housing Improvement Regulations, they will be able to use existing processes to take a case to the Tenancy Tribunal and the Tribunal can make a work order, and order exemplary damages of up to \$3000.

There are, however, a small minority of landlords seek to take advantage of vulnerable tenants. Where severe breaches of the Residential Tenancy Act are alleged, the Government believes it is appropriate that it is able to investigate and, if necessary, take direct action against such landlords, rather than on behalf of a tenant. That is why the Government will also provide MBIE with new powers to take direct action in the most serious cases, and there is a significant risk to tenant health and safety.

### **14. How will the strengthened retaliatory provisions work?**

The Government recognises that some tenants may be reluctant to complain for fear of eviction despite the Residential Tenancies Act prohibiting retaliatory notices. Retaliatory notices refer to when a landlord gives a tenant notice to leave the property in retaliation for the tenant exercising his/her rights.

Currently, the Tenancy Tribunal can set aside an eviction notice where it considers it has been wholly or partly motivated by the tenant exercising their rights. However, the tenant only has 14 days to make an application for this and MBIE has found that tenants often pursue this option too late. To reduce barriers to tenants exercising their rights, the Government is therefore strengthening retaliatory notice provisions and extending the application period from 14 to 28 days.

It will also become an unlawful act for a landlord to give retaliatory notice, with a maximum penalty of \$2000.

### **15. What other changes are being proposed to improve enforcement of the current tenancy laws in regard to the standards of rental properties?**

We are also:

- Removing the ability for a landlord to make a payment to a tenant instead of complying with a work order, where the work order relates to smoke alarm or insulation standards, or the Housing Improvement Regulations. This is to ensure that rental properties are maintained for current and future tenants.
- Currently 'intentional breach' of a work order is an unlawful act, with a maximum penalty of up to \$3000. The RTA will be amended to make 'breach without reasonable excuse'

an unlawful act, with the penalty remaining unchanged. This removes a potential landlord defence of 'forgetfulness.'

## **16. What are the details of the tenancy abandonment changes?**

The problem is that once a tenant has abandoned the property, it can take a landlord up to six weeks to confirm the property has been abandoned and to get a Tribunal hearing for giving them possession of the property.

The new changes are modelled on the approach taken to abandoned tenancies in Victoria, Australia. The three key changes are:

### *1. Allow landlords 24 hours' notice of entry on suspicion of abandonment*

Currently, landlords can only inspect a property monthly, after giving 48 hours' notice of inspection. Under the new changes, where rent is at least 14 days in arrears, a landlord would be allowed to enter a rental property 24 hours after giving notice to confirm a reasonable suspicion that a property is abandoned, regardless of whether the landlord has already inspected the property within the last four weeks.

The landlord must have reasonable grounds to support their subsequent application to the Tribunal for suspecting abandonment, for example:

- Tenant not responding to usual forms of communication;
- Landlord's view of property from the street indicates house is empty and tenant has abandoned; or
- Neighbours do not know where tenant is/provide evidence tenants have left.

### *2. Abuse of this power to be an unlawful act*

Abuse of this power by a landlord will constitute a breach of tenant privacy with a fine of up to \$2000.

### *3. New statutory request for abandonment (possession) applications to be heard within 10 working days*

The proposed changes to the Act that abandonment (possession) applications be heard by the Tenancy Tribunal 'on the papers' (without the parties being present) within ten working days of receipt, where reasonably practicable and subject to the following conditions:

- 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
- 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
- The application is uncontested by the tenant.

## **17. What were the results of the trial warrant of fitness carried out on Housing New Zealand (HNZ) properties?**

The trial housing warrant of fitness carried out last year on a sample of 400 HNZ properties was made up of 49 criteria. Four per cent of properties met all 49 requirements, 62 per cent met 45 or more and 90 per cent met 40 or more. One per cent of properties met less than 20 of the 49 requirements.

399 of the 400 properties that were inspected met the fire alarm requirement. Four per cent did not meet the ceiling insulation requirement and eight per cent did not meet the underfloor

ceiling requirement. The main reason for the bulk of properties that did not meet the insulation requirements was incomplete coverage.

The common areas of non-compliance were for things like security stays on ground floor windows (73 per cent); stairs, decks, handrails and balustrades meeting specific depth or height requirements (28 per cent); windows that can be readily opened and closed (28 per cent); hot water temperatures being within the range of 50-60°C (27 per cent); and bedrooms having a minimum of two fixed power points (27 per cent).

The Government is satisfied that the important issues in the warrant of fitness are already required by existing regulations. Other issues like security stays on windows, and having two power points in bedrooms and living rooms are not sufficiently important enough to be an absolute requirement. For other issues, the Government believes the information campaign is the better tool to improve the standard of housing.