



File No. 1819-0233

10 OCT 2018

Ms Kate Day
fyi-request-8504-a16678e5@requests.fyi.org.nz

Dear Ms Day

Thank you for your email of 15 August 2018 requesting the following information under the Official Information Act 1982 (the Act):

1. *All advice (from internal or external sources) given to the current Minister for Housing regarding enforcement of the Healthy Homes Guarantee Act 2017.*
2. *All advice (from internal or external sources) given to the current Minister for Housing regarding the rental Warrant of Fitness concept, including but not limited to any evaluations of the voluntary scheme in Wellington, and any analysis of the WOF standard by the University of Otago Housing and Health Research Programme/He Kainga Oranga.*
3. *Any analysis done by, under contract to, or on behalf of MBIE used to assess different enforcement models for the Healthy Homes Guarantee Act 2017, including any comparisons of costs or estimated compliance rates of each.*
4. *I would also like to know:*
 - a. *How many equivalent full-time positions does MBIE currently have in its Tenancy Services Compliance and Investigations Team?*
 - b. *How many additional equivalent-full-time positions will MBIE hire/has MBIE hired to enforce the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 when these come into effect in July 2019? Where will these staff be based?*
 - c. *How many additional equivalent-full-time positions will MBIE hire/has MBIE hired to enforce the Healthy Homes Guarantee Act 2017? Where will these staff be based?*

In response to parts one, two and three of your request, 11 documents have been found within scope and are being released to you. They are summarised in the attached document schedule. Please note some information has been redacted as it falls outside the scope of the request, and some information has been withheld under the following sections of the Act:

- | | |
|-------------|--|
| 9(2)(a) | to protect the privacy of natural persons |
| 9(2)(f)(iv) | to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials |

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the decision to withhold information under section 9 of the Act is not outweighed by other considerations that render it desirable to make the information available in the public interest.

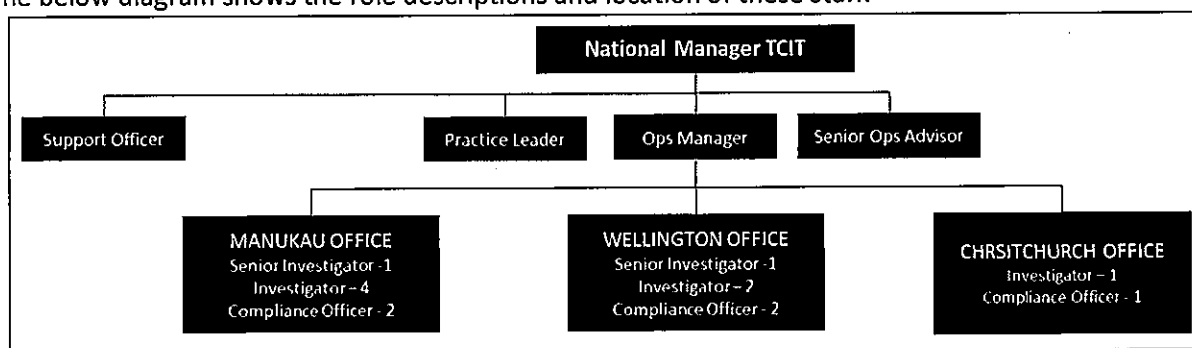
You have the right to seek an investigation and review of my decision by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz.

In response to part four of your request, please find requested information below

(a) How many equivalent full-time positions does MBIE currently have in its Tenancy Services Compliance and Investigations Team?

As at 30 June 2018 the Tenancy Compliance and Investigations Team (TCIT) comprised of 19 staff located in Auckland (Manukau), Wellington and Christchurch.

The below diagram shows the role descriptions and location of these staff.



Please note that all positions described and listed in this response are full-time positions.

(b) How many additional equivalent-full-time positions will MBIE hire/has MBIE hired to enforce the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 when these come into effect in July 2019? Where will these staff be based?

The Minister of Housing and Urban Development announced in Budget 2018 additional funding for TCIT in relation to its role ensuring compliance with standards made as a part of the Healthy Homes Guarantees Act.

TCIT is funded via Vote – Building & Housing. This information is available publicly here:

<https://treasury.govt.nz/publications/estimates/vote-building-and-housing-social-development-and-housing-sector-estimates-2017-2018>.

Since the announcement of the additional funding, TCIT has been moving to a Regional Office structure. The following positions have been appointed/advertised (with their locations noted):

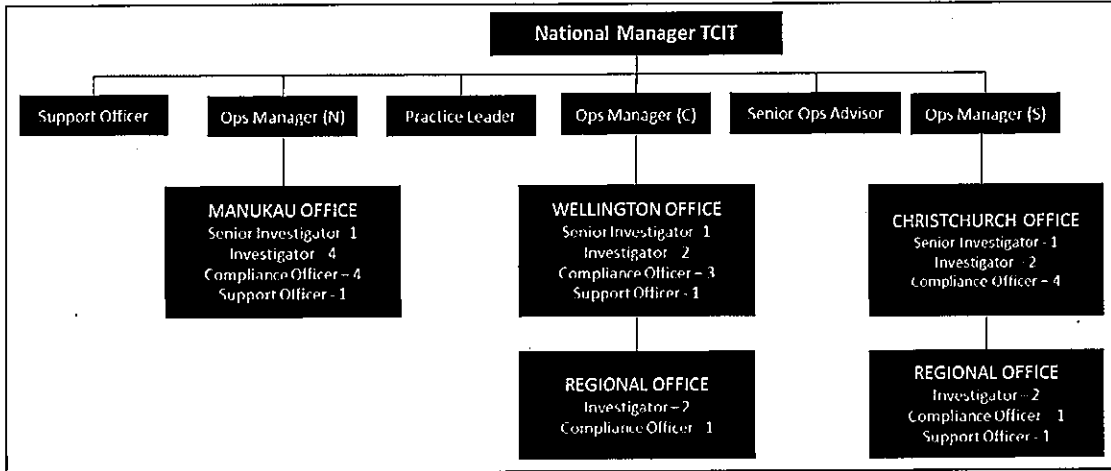
- Operations Manager Northern - Manukau
- Operations Manager Central – Wellington
- Investigator Southern – Christchurch
- Investigator Southern – Christchurch
- Compliance Officer x 2 Northern - Auckland
- Support Officer Northern – Manukau
- Support Officer Central – Wellington

The Northern Region will cover north of Pokeno, The Central Region will cover the remainder of the North Island, and the Southern Region will cover the South Island.

(c) How many additional equivalent-full-time positions will MBIE hire/has MBIE hired to enforce the Healthy Homes Guarantee Act 2017? Where will these staff be based?

As at 1 July 2019, and when fully funded, TCIT will comprise 39 staff located in the Northern, Central and Southern Regions. There will remain a small 'National Office' of 4 staff.

The below diagram shows the role descriptions and location of these staff:



The location of the Regional offices within the Central and Southern Regions are yet to be confirmed or announced and will be chosen based on geographic location and operational risk.

Yours sincerely

Claire Leadbetter
Manager, Tenancy & Rental Housing Quality
Housing and Urban Branch

Document Schedule

Ref #	Document Date	Document Title	Sections of the Act used
1	30 October 2017	Next Steps Healthy Homes Guarantee Bill (No 2)	9(2)(a)
2	6 November 2017	Talking points for seeking delegation to draft and approve a Supplementary Order Paper amending the Healthy Homes Guarantee Bill (No 2)	9(2)(a)
3	8 November 2017	Further advice on insulation requirements to be given effect by the Healthy Homes Guarantee Bill (No 2)	9(2)(a)
4	8 November 2017	Amending the Healthy Homes Guarantee Bill (No 2) by Supplementary Order Paper	9(2)(a) 9(2)(f)(iv)
5	13 November 2017	Committee of the whole House: Healthy Homes Guarantee Bill (No 2)	9(2)(a)
6	30 November 2017	Vote Building and Housing Indicative Budget Bids 2018	9(2)(a)
7	14 December 2017	Healthy Homes Guarantee Regulations development timeline	9(2)(a)
8	19 February 2018	Meeting with the Community Energy Network on 22 February 2018	9(2)(a)
9	6 March 2018	Accompanying the Tenancy Compliance and Investigation Team (TCIT) on a Boarding House Inspection on 9 March 2018	9(2)(a)
10	14 March 2018	Talking points for BRANZ Air Infiltration and Ventilation Centre workshop on 19 March 2018	9(2)(a)
11	16 March 2018	Talking points for Eco-Design Advisor Conference on 20 March 2018	9(2)(a)



BRIEFING

Next Steps Healthy Homes Guarantee Bill (No 2)

Date:	30 October 2017	Priority:	High
Security classification:	In Confidence	Tracking number:	0744 17-18

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister for Housing and Urban Development	Agree to the recommendations Refer this paper to the Hon Jenny Salesa, the Associate Minister for Housing and Urban Development	Tuesday 6 November 2017

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Claire Leadbetter	Manager, Construction and Housing Policy	04 901 8751	§9(2)(a)	✓
Cade Bedford	Graduate Policy Advisor, Construction and Housing Policy	04 901 4967		

The following departments/agencies have been consulted					
<input checked="" type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input checked="" type="checkbox"/> NZTE	<input checked="" type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MRD	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input checked="" type="checkbox"/> MoH
		<input checked="" type="checkbox"/> Other:	Housing New Zealand Corporation and Energy Efficiency & Conservation Authority		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

OFFICIAL INFORMATION ACT



BRIEFING

Next Steps Healthy Homes Guarantee Bill (No 2)

Date:	30 October 2017	Priority:	High
Security classification:	In Confidence	Tracking number:	0744 17-18

Purpose

In your meeting with officials on Friday 27 October 2017 you advised that passing the Healthy Homes Guarantee Bill (No 2) before the end of the year is one of the Government's 100 day commitments. This briefing provides initial advice on the next steps to progress the Healthy Homes Guarantee Bill (No 2), including seeking Cabinet agreement to:

- adopt the Healthy Homes Guarantee Bill (No 2) as a Government bill, and
- draft a Supplementary Order Paper (SOP) to address technical and policy issues with the Bill.

Officials are available to meet with you this week to discuss the scope and timing of any other proposal you may wish to include

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- Note** that the Healthy Homes Guarantee Bill (No 2) is a members bill in the name of Hon Andrew Little, and that, under Standing Orders, a Minister cannot promote a members bill
- Note** that officials consider that the most expeditious way to pass the Bill before the end of the year is to adopt it as a Government bill
- Agree** to seek Cabinet agreement to adopt the Healthy Homes Guarantee Bill (No 2) as a Government bill

Agree / Disagree

- Agree** that a Cabinet paper should be prepared to seek agreement for the Healthy Homes Guarantee Bill (No 2) to be amended to:

- focus on standards that define indoor temperatures that a property must be capable of achieving

Agree / Disagree

- set the standards through regulations made by Order in Council

Agree / Disagree



- iii. remove the obligation the Bill places on the Ministry to set standards and instead make this a discretionary activity

Agree / Disagree

- iv. set the deadlines for compliance after consulting with the building sector to ensure that there is sufficient industry capacity for landlords to comply by the deadline

Agree / Disagree

- v. retain the existing timeframes for compliance with existing insulation requirements under the *Residential Tenancies Act 1986*

Agree / Disagree

- vi. specify that standards in recommendation d(ii) will apply to boarding house tenancies

Agree / Disagree

- vii. set the maximum exemplary damage for non-compliance with standards at \$4,000 to align with existing exemplary damages under the *Residential Tenancies Act 1986*

Agree / Disagree

- viii. provide a right of entry, on notice, for landlords to carry out works to comply or prepare to comply with the standards

Agree / Disagree

- ix. include a transitional provision to allow the Bill to apply to existing tenancies, subject to commencement provisions to be given effect by regulation

Agree / Disagree

- x. expand the enforcement powers the Chief Executive of MBIE currently has under the Act to also allow for premises to be audited for the purpose of assessing compliance with the provisions in the Bill and require the Chief Executive to prepare and implement a programme for these inspections from time to time

Agree / Disagree

- xi. include an order for the purpose of complying with the standards in the definition of a work order

Agree / Disagree

- xii. include an order for the purpose of complying with the standards in the definition of a work order

Agree / Disagree



xiii. specify in section 66l that complying with the standards set in the regulations is an ongoing obligation for the boarding house landlord

Agree / Disagree

xiv. amend section 4 to include a provision affirming that the landlords statement does not affect the landlords duties under section 45(1) and 66l(1) to comply with the standards set out in regulations made in section 5

Agree / Disagree

xv. specify that a monetary payment as an alternative to a work order must not be made where that order relates enforcing compliance with the Bill

Agree / Disagree

e) **Discuss** with officials the implementation of the Bill in relation to Housing New Zealand Corporation and community housing providers

Agree / Disagree

f) **Note** that the briefing provides initial thinking of the scope of an Supplementary Order Paper

g) **Discuss** any other areas you would like advice on for improving the Healthy Homes Guarantee Bill (No 2)

Agree / Disagree

h) **Discuss** with officials the scope and timing for further advice on the compliance and enforcement approach to support implementation of the Bill and financial implications of programmes of inspection

Agree / Disagree

Claire Leadbetter

Manager, Construction and Housing Policy

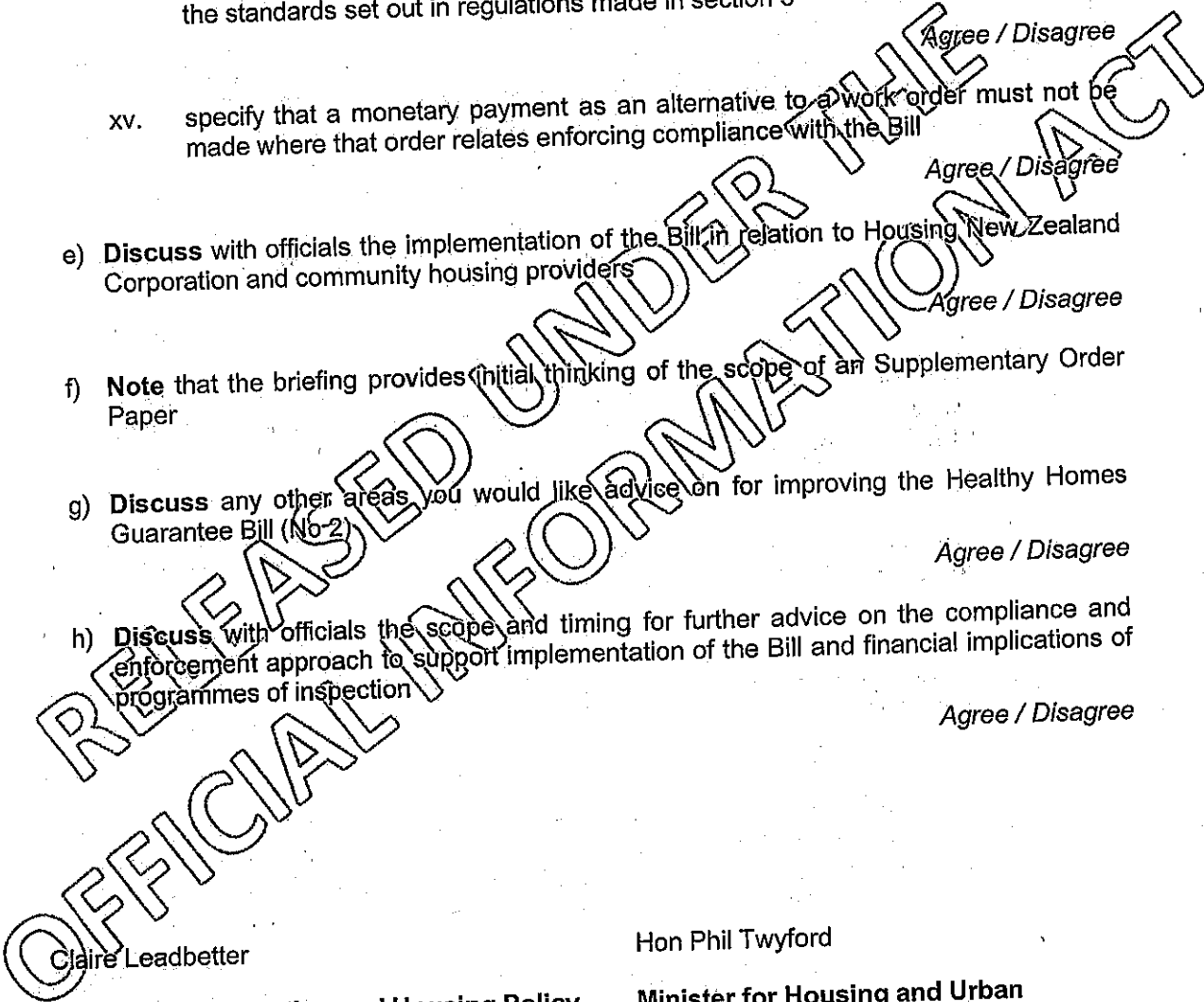
Construction and Housing Markets
Building, Resources and Markets, MBIE

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Hon Phil Twyford

**Minister for Housing and Urban
Development**

..... / /



Background

1. The Healthy Homes Guarantee Bill (No 2) (the Bill) amends the *Residential Tenancies Act 1986* (RTA) with the purpose of ensuring that every rental home in New Zealand meets minimum standards of heating and insulation.
2. The Bill was introduced as a private member's bill by Hon Andrew Little on 15 October 2015 and had its second reading on 26 July 2017.
3. Passing the Bill is one of the Government's first 100-days commitments.
4. The primary objective of this Bill is to make every rental home warm and dry while allowing sufficient flexibility for practical implementation. Officials have identified a number of amendments that can help the Bill to achieve this objective. We recommend making amendments to the Bill via an SOP to ensure that its provisions can be effectively implemented. These changes were recommended to the Select Committee but not agreed for report back to the House.

Status quo and problems

5. The quality of rental properties is regulated by the RTA and the *Housing Improvement Regulations 1947*. The RTA requires landlords to provide the premises in a reasonable state of cleanliness and repair, maintain the premises in a reasonable state of repair, and comply with all requirements relating to building, health, and safety, which includes the *Housing Improvement Regulations 1947*.
6. The *Housing Improvement Regulations 1947* create minimum requirements that housing must meet. The regulations include provisions for heating, light, ventilation, drainage and dampness. These apply to all houses regardless of tenure.
7. Local authorities are responsible for the enforcement of these regulations within their districts. The premises must comply with each of these requirements unless it complied with an equivalent requirement in the Building Code at the time it was built. However, enforcement of the *Housing Improvement Regulations* has been difficult because of inter-regional differences in requirements set by local authorities.
8. Following passage of the Residential Tenancies Amendment Act 2016 in July 2016, the RTA also requires landlords to comply with smoke alarm and insulation regulations. Mechanisms for compliance and enforcement, together with resourcing for compliance activities, are in place to support the implementation of the smoke alarm and insulation regulations.
9. The Bill would improve the current regime by providing the basis for nationally consistent standards of heating and insulation in rental properties. We consider that a focus on the quality of rental properties is warranted because it would focus efforts on the part of the market where greatest benefits can be realised.

Officials recommend adopting the Bill as a Government bill

10. Under the Standing Orders, a Minister cannot promote a member's bill. On becoming a Minister, a member is obliged to transfer responsibility for a member's bill to a non-ministerial colleague or adopt the Bill as a Government bill.

11. To expedite the progression of the Bill within the next 100 days, we recommend you speak to Minister Little about adopting the Bill as a Government bill. Adopting the Bill as a Government bill under Standing Order 272 will allow for more House time to be allocated to the Bill and the Leader of the House will have more control over the timing of the consideration of the Bill in Parliament.
12. On your direction, officials can prepare a Cabinet paper that seeks agreement to adopt the Bill as a Government bill. Once you have obtained this agreement it would then be necessary for you to write to the Speaker to advise him that the Bill has been adopted as a Government Bill. We recommend that the paper you take to Cabinet should also seek delegated authority to issue drafting instructions to the Parliamentary Council Office to draft a Supplementary Order Paper (SOP) giving effect to the proposals outlined in this briefing, and for that SOP to be tabled during the Committee of the whole House stage without a requirement to return to the Cabinet Legislation Committee.
13. An alternative option you have is for the Bill to be progressed as a member's bill by a non-ministerial college. However, if Parliamentary business is reinstated to the position it was prior to dissolution, there will be two member's bills and one local bill ahead of the Healthy Homes Guarantee Bill on the order paper.

Officials recommend four areas of amendment to the Bill

14. We recommend the following amendments be incorporated through a SOP submitted at the Committee of the whole House stage to ensure the effective implementation of the Bill.
15. These amendments have been formulated as a result of the policy process that MBIE undertook in support of the Select Committee's consideration of the Bill and are informed by matters raised in public submissions through that process. We welcome your thoughts on any further amendments for improving the Bill.

Define methods of heating in respect to having sufficient heating capacity to reach a prescribed temperature

16. The Bill currently requires MBIE to prepare and publish standards that describe what constitutes adequate:
 - methods of heating
 - methods of insulation
 - indoor temperatures
 - ventilation
 - draught stopping
 - drainage
17. The Bill also requires that the standards describe what constitutes acceptable methods of measuring the adequacy of the features above.
18. The way that the standards are currently framed in the Bill would make it difficult to set and enforce the standards. For example, the Bill currently requires MBIE to publish standards of adequate indoor temperatures. A prescribed standard of this nature would be dependent on the steps tenants take to maintain a particular indoor temperature, such as using heating devices appropriately and drawing curtains at night.

19. Since indoor temperatures are an outcome of the features of a property along with tenant behaviour, it would be difficult to assign responsibility for ensuring that a particular indoor temperature is maintained. It would be more practical to hold landlords accountable for the heating capacity of a property.
20. We therefore recommend reframing the heating standards to be performance based. In the case of indoor temperatures, this would mean that the standards could define the range of indoor temperatures that a property must be capable of achieving and the method by which it is achieved. The standard could also include descriptions of what methods could be used to determine whether standards have been met including what exemptions are available.
21. Officials anticipate that in practice an online calculator could be used by tenants and landlords to understand the standards. The calculator could take into account matters such as insulation levels, climate region, number of external walls and the ratio of windows to walls. There will be costs in delivering this tool which will be addressed as part of the Regulatory Impact Assessment process during the development of the regulations.

Give effect to standards by regulation

22. Clause 6 of the Bill requires MBIE to prepare and publish standards of heating and insulation. However, the Bill does not clearly specify the legal status of the standards, nor the process to be followed to set them.
23. We recommend setting the standards by regulations made by Order in Council. This would be consistent with the approach taken throughout the rest of the RTA. In addition, the Legislation Advisory and Design Committee guidelines suggest that it is appropriate for delegated legislation, such as regulations, to be used to set technical matters required for the implementation of an Act. Some of the reasons provided for this include the flexibility to update specific details through regulation as required and the ability to account for potential contingencies through regulation such as circumstances where an exemption from heating requirements might be justified.
24. Regulations can be made by either a Minister or the Governor-General. Guidelines stipulate that it is appropriate for the Governor-General to hold this power "when the potential exists to significantly affect the population, a large number of people, or human rights". Given the large proportion of the population (both landlords and renters) which would be affected by the introduction of the standards and the costs involved, we consider that it is appropriate for the standards to be set by the Governor General. The practical effect of this is that regulations would need to be approved by Cabinet and then submitted to the Executive Council for signing.
25. Giving effect to standards by regulations would be consistent with the approach in section 138B of the RTA that allows for standards to be set for insulation. If you agree to set the standards under the Bill by regulation, we will work with PCO to find the method of drafting that will best give effect to this intent. One potential option would be to repeal and replace existing section 138B with a new section inserted by the Bill that covers all aspects of the Healthy Homes Guarantee Bill.

Remove the duty placed on MBIE to develop standards

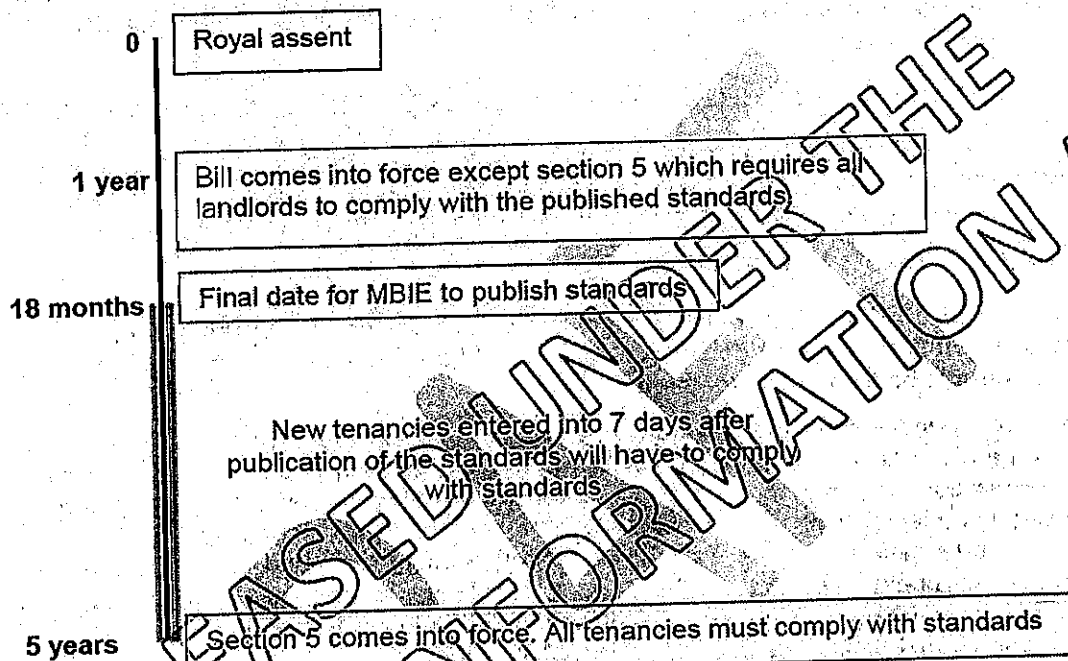
26. The Bill currently places a duty obligation on MBIE to develop the required standards. This is inconsistent with other regulation making provisions within the RTA such as section 138B which empower the making of regulations, but do not prescribe an

obligation on any department to do so. Officials recommend removing the duty in the Bill as this is not required in order for you to commission this from MBIE.

Clarify timeframes for standard setting and compliance

27. We understand that the commencement provisions of the Bill are intended to work as follows.

Figure 1: Timeframe for implementing standards



Timeframe for MBIE to publish standards

28. The Bill sets a deadline for MBIE to publish the standards (as soon as practicable as and not later than 6 months after the date that clause 6 comes into force). Effectively, MBIE will have 18 months to develop and consult on standards for heating, ventilation, draught-stopping, and drainage. We consider this timeframe to be tight but achievable.

Timeframes for complying with standards

29. As drafted, the Bill would come into force 12 months after receiving Royal assent, with MBIE publishing standards no more than six months later. Any new tenancy agreements entered into seven days after the publication of standards will need to comply with those standards. This means that landlords signing new tenancies could have to start complying with new standards within just over 18 months of the passage of the Bill.

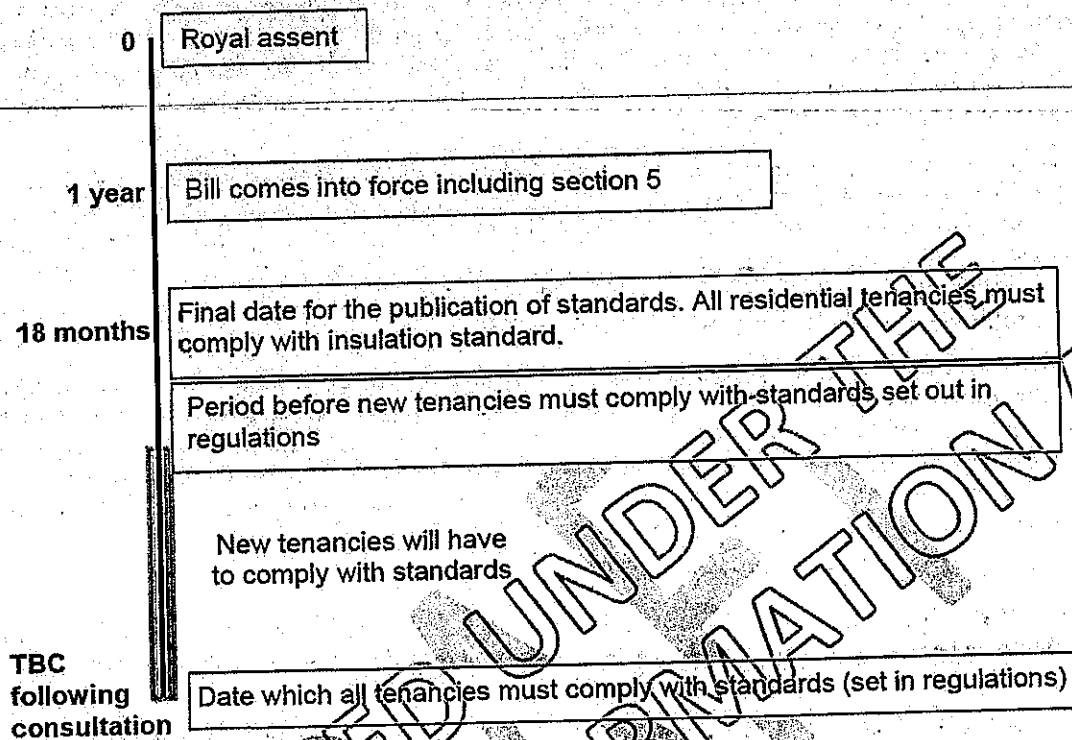
30. Building sector capacity constraints may limit the effective implementation of the policy, particularly for the supply and installation of heating devices. At select committee, some stakeholders and officials also expressed concern that the timeframe of seven days between publication and compliance with standards for all new tenancy agreements was too short a timeframe given the potential for standards to require substantial work.

31. We therefore recommend setting the deadlines for compliance (for both new tenancies entered into and all other tenancies) following consultation on the new standards. This will help establish the impact of building sector capacity on timeframes. Advice on the lead times required for effective information and education campaigns to help landlords comply with the new requirements would also inform timeframes. The timeframes for compliance can then be set out in the regulations.
32. The previous policy regarding minimum insulation requirements was implemented earlier for Housing New Zealand Corporation (HNZC) and community housing providers than for the private rental market. This was because the majority of properties were already insulated. We would welcome a discussion with you about whether there is any expectation that these housing providers should also be required to meet the heating requirements sooner than the private rental market.
33. In the case of heating, in comparison to insulation, it is possible that a substantial number of public housing properties will require upgrades. Setting a final deadline for compliance following consultation on the specific requirements will ensure any alternative requirements for public housing providers can also be fully considered. Income Related Rent Subsidies may not be sufficient to meet these costs. More information about the fiscal implications of the Bill is outlined later in this briefing.

Timeframes for implementing insulation standards

34. The *Residential Tenancies Amendment Act 2016* came into force on 1 July 2016. In addition to requiring smoke alarms be installed in all rental properties, the Amendment Act requires:
- all rental homes to have insulation. Social housing (where tenants pay an income related rent) must be insulated by 1 July 2016 and all other rental homes by July 2019
 - landlords are required to provide a statement on the tenancy agreement for any new tenancy signed since 1 July 2016 about the location, type and condition of insulation in the rental home.
35. We recommend that the timeframes for existing insulation requirements be retained. Significant information and education efforts have been made to inform landlords and tenants of the new insulation requirements. Changing the timeframes for implementing the existing requirements could create confusion and would impose additional costs to the sector in terms of information and education (eg costs to property managers of contacting and informing landlords of new compliance timeframes).

Figure 2: Proposed timeline for implementing standards



Other minor amendments

Application of standards to boarding house tenancies

36. At present, the Bill amends section 45 of the RTA to impose an obligation on private landlords to comply with certain standards but does not apply a similar obligation in respect of boarding house landlords. The Bill does however amend section 13A of the RTA which applies to boarding houses. Therefore, while the obligation to include a statement in the tenancy agreement under section 13A will apply in the case of boarding house tenancies, a boarding house landlord does not have an obligation under section 66I to comply with the published standards. We recommend that standards should also apply to boarding house tenancies. Since there are features and characteristics of a boarding house tenancy which distinguish it from other residential tenancies, we also recommend that any standards should be able to impose different requirements for boarding houses.

Align the Bill with existing exemplary damage values

37. Due to the Bill being drafted prior to the implementation of the *Residential Tenancies Amendment Act 2016*, the Bill does not align with existing enforcement mechanisms.

38. The Bill currently sets a maximum level of exemplary damages of \$3,000 for non-compliance with standards. This is less than the current maximum level of exemplary damages of \$4,000 for non-compliance with smoke alarm or insulation requirements introduced by the *Residential Tenancies Amendment Act 2016*. For consistency, we suggest the values in the Bill are aligned with the existing RTA provisions. That is \$3000 for failure to state compliance in the tenancy agreement and \$4000 for non-compliance with the standards. Preliminary discussions with the Ministry of Justice (who have

responsibility for vetting new penalties proposed in legislation) indicate they are comfortable with the proposed new penalty levels.

Right of entry for landlords for the purpose of complying with the standards

39. The RTA currently allows landlords a right of entry for maintenance and inspections including for the purpose of complying or preparing to comply with requirements for smoke alarms or insulation. We recommend providing a right of entry provision to allow landlords to comply with the proposed standards in the Bill. Tenants would need to be notified 24 hours in advance as required under other rights of entry.

Expand the Ministry's enforcement function

40. The Chief Executive of MBIE currently has a range of enforcement powers under the Act. Consistent with discussions at select committee, we propose that these provisions are expanded to allow for the audit of premises for the purpose of assessing compliance with the proposals in the Bill. In addition, we propose that the Chief Executive be required to prepare and implement a programme for these inspections to ensure that enforcement activity is undertaken in a structured way.

Specify the provisions of the Bill apply to existing tenancies under schedule

41. We suggest adding a transitional provision to the Bill specifying that the Bill will apply to existing tenancies. A staged approach to commencement can then be given effect to by regulations that will set out the specifics for when compliance with each part will be required.

Amend the interpretation of 'work order'

42. For rectifying non-compliance within the RTA the Tenancy Tribunal can issue work orders requiring parties to correct non-compliance. The definition currently includes a provision for requirements in regards to smoke alarms and insulation. We recommend that the Tribunal be able to make work orders requiring a landlord to take action so that the premises comply with the standards.

Landlord's ongoing obligation

43. We recommend specifying in section 66I that complying with the standards set in the regulations is an ongoing obligation. This connects the proposals in the Bill with landlords existing landlord obligations under the RTA.

Landlord's statement of compliance

44. We recommend amending section 4 of the Bill to include a provision affirming that the landlord's statement of compliance with the Bill does not affect the landlords existing duties under the RTA.

Preclude the Tenancy Tribunal from ordering a monetary payment to be made in lieu of a work order

45. As the changes to be made through this Bill relate to the health and safety of the premises, we consider that the Bill should preclude the Tenancy Tribunal from ordering a monetary payment to be made in lieu of a work order, where that work order relates to failure to comply with any standard set out in the regulations.

46. This is consistent with current provisions under the RTA, which do not allow a monetary payment to be made as an alternative to a work order where that order relates to:

- smoke alarms;
- insulation;
- a failure to comply with a standard of fitness or other requirement applying by virtue of section 120C of the Health Act 1956;
- a failure to comply with any other requirement relating to health or safety under any enactment.

Fiscal implications

Public housing

47. HNZC and community housing providers will face increased costs to comply with the new standards. Initial rough estimates are that around 30,000 HNZC properties may require additional fixed heating, however, this is highly dependent on the exact standard set. If this estimate is accurate, the compliance cost for HNZC could be up to \$90 million in capital upgrade costs. There are also likely to be additional programme and tenancy management costs required to implement changed processes, as well as ongoing increased maintenance and repair costs.
48. There are several options for covering the cost of upgrades to HNZC and community housing properties. These include:
- a Budget appropriation to cover the upfront costs of compliance
 - a Budget appropriation to cover the increase of Income Related Rent Subsidy resulting from the increased market value of improved properties
 - an expectation that HNZC will fund the compliance costs out of retained dividends.
49. The Ministry of Social Development and MBIE will be able provide you with further advice on the cost of upgrades to HNZC and community housing providers as part of a Cabinet paper adopting the Bill as a Government bill.

Private rentals

50. For the private market, on average we expect a capital cost of \$2,800 per house should a heat pump be specified as a compliant form of heating. Assuming an operational life of ten years, this would result in an amortised cost for landlords of around \$5 per week. Early analysis estimates 185,000 private rentals will require additional heating at a total cost of \$510 million.

51. Further clarification on the composition of proposed standards for draught proofing, ventilation and drainage is required before total costs can be more accurately determined. However, it may be possible for property owners to offset some of these costs through your manifesto commitment to provide grants of up to \$2,000 to home owners and landlords for upgrading insulation and heating.

52. We understand that these grants are proposed to be funded by making changes to the tax treatment of property speculation. Both budget and legislative changes would be required to bring this into effect and sufficient lead in time would also be needed for the Energy Efficiency Conservation authority (EECA) to operationalise this new scheme. You may

therefore wish to engage the Ministers with portfolio responsibility for Revenue and Energy and Resources on this proposal shortly to ensure that any new funding can be operationalised in time to support landlords to comply with new obligations under the Healthy Homes Guarantee Bill. We can support you in this discussion.

Compliance and enforcement costs

53. If the existing compliance model is extended to cover new standards under the Bill, the additional compliance and enforcement costs are estimated at \$3.6 million over a four year implementation period. Additional information and education costs are estimated at \$4 million over the same four year implementation period which could cover radio, print and targeted social media campaigns.
54. The budget and cost implications of any compliance and enforcement activity will be established during the development of the regulations. We anticipate that this will include a Budget bid.
55. We understand programmes of inspection of tenanted premises performed by MBIE were discussed at Select Committee. Undertaking samples of inspections of tenanted premises to monitor and assess compliance is enabled by recommendation d (x) above and would be the next logical extension to the current enforcement and compliance approach.
56. We would welcome a discussion with you about the scale of any possible programmes of inspections. Should you wish to progress this amendment, officials will work alongside the Ministry of Justice in developing advice on whether the considerations outlined above for inclusion in the Cabinet paper.

Assessing the wider benefits and costs

57. For the private market on average we expect a capital cost of \$2,800 (heat-pump) per house to meet an anticipated heating standard. A heat pump is likely the lowest cost option for complying. The capital cost is averaged from 31,000 installations of efficient (Energy Star) heat pumps between 2009 and 2012 as part of EECA's Warm Up New Zealand Programme. Early analysis estimates 185,000 private rentals will require additional heating at a total cost of \$510 million.
58. We have not yet estimated the benefits of introducing new minimum standards, although they are likely to result in health cost savings to tenants and the Crown. We have commissioned a cost-benefit analysis of home heating from the New Zealand Institute of Economic Research. We expect to have this report finalised for your review in late November 2017.
59. Private landlords may seek to increase rents to cover the cost of compliance in the short-run, however their ability to do so is moderated by tenants' ability to pay and the effect of that on market rents. At the margins some landlords may consider these costs too much to bear in their current business model and choose to exit the market. These properties are likely to be sold to other landlords capable of meeting the requirements or to owner occupiers.
60. Further analysis of ventilation, draught stopping and drainage standards is required to determine the potential costs and benefits.

Risks and mitigation

61. The Ministry has identified the following risks that we are seeking to better understand in order to advise you of their materiality and the mitigations that could apply:

Risk	Likelihood	Severity	Mitigations
Industry capacity constraints may limit the effective implementation of the policy, particularly for the supply and installation of heating devices.	High	Depends on the timeframe for compliance – the shorter the timeframe, the more severe the impact of capacity constraints is likely to be.	Develop robust estimates for the number of properties that would need to be retrofitted, and consult with industry about its ability to build capacity. Set timeframes accordingly.
Landlords may leave it until the last minute to comply, which could create excess demand and push up the costs to comply.	High	Could be significant given that it is possible that hundreds of thousands of houses may require work to comply.	Based on the lessons from the introduction of insulation requirements, we could design the policy to mitigate this risk, e.g. by requiring compliance when a new tenancy is signed, rather than by a certain date. You may also want to consider how grants might be used to incentivise early compliance.
Landlords may seek to increase rents to cover the cost of compliance in the short-run.	Moderate	The ability of landlords to pass compliance costs on to tenants is moderated by tenants' ability to pay, and the effect of that on market rents.	Market rents are largely determined by supply and demand. Increasing the supply of housing overall will help mitigate rent increases. You may also want to consider how grants might be used to offset this risk.

Risk	Likelihood	Severity	Mitigations
Bringing in new standards may impact on landlord composition. For instance, small 'mum and dad' landlords may find it difficult to raise the capital to comply with the standards. Some landlords with limited cash flow may choose to exit the market prior to the standards coming into force.	Moderate	This is unlikely to negatively affect the market. While some landlords will exit the market, their properties are likely to be purchased by owner-occupiers, or investors who have the capital to bring the property up to compliance.	You may want to consider how grants might help offset this risk.
Practical constraints resulting in concessions about the ability of some properties to meet the standard will create loopholes.	Low	Based on our experience with implementing insulation standards, we consider that opportunities to circumvent the requirements can be minimised.	Setting the requirements through regulations will help officials to design practical exemptions, and will make it easier to update the requirements should evidence of inappropriate application of exemptions come to light.

Consultation

62. The following agencies have been consulted: the Ministry for Social Development, HNZA, the Energy Efficiency and Conservation Authority, Treasury, and the Ministry of Health. The Department of Prime Minister and Cabinet and the Parliamentary Counsel Office were informed.

Next steps

63. Following your discussions with Minister Little, we recommend that you direct MBIE to prepare a Cabinet paper adopting the Bill as a Government bill in your name. This paper can also seek agreement to prepare a SOP containing the proposed changes to the Bill.

64. MBIE officials are expecting guidance from Treasury on the Regulatory Impact Assessment requirements for 100 day priorities.

65. A draft timeline for passing the bill as a Government bill this year is outlined below.

Key dates	Process if delegated authority sought
Week of 6 November	Agency consultation of Cabinet Paper and finalising Regulatory Impact Assessment
Thursday 16 November (sitting week*)	Lodge paper for Cabinet Committee
Week of 20 November (sitting week*)	Seeking delegated authority for approving SOP from Cabinet Committee
Monday 27 November	Cabinet and Parliamentary Counsel Office (PCO) Drafting
Week of 4 December (sitting week*)	PCO Drafting
Week of 11 December (sitting week*)	Committee of the whole and Third Reading (Urgency may be required)
Monday 18 December	Royal assent

*Based on 2017 sitting calendar issued in November 2016

66. Once reinstated, the Bill can continue through its remaining stages. The proposed process for developing standards following the enactment of the Bill is as follows:

- Prepare a discussion document seeking stakeholder comment on potential standards. We will provide you a Cabinet paper seeking agreement to release the discussion document before commencing consultation.
- provide you with an analysis of submissions and advice on recommended standards which would form the basis of your recommendations to Cabinet
- seek Cabinet agreement to the standards and, if set through regulations, seek agreement to issue drafting instructions to Parliamentary Counsel Office
- draft the regulations giving effect to the standards
- (optional) consult stakeholders on an exposure draft (options for partial consultation are available)
- finalise drafting of the regulations and seek Cabinet agreement to submit an Order in Council to bring them into force.



AIDE MEMOIRE

Talking points for seeking delegation to draft and approve a Supplementary Order Paper amending the Healthy Homes Guarantee Bill (No 2)

Date:	6 November 2017	Priority:	Urgent
Security Classification:	In Confidence	Tracker number:	0838 17-18

Information for Minister(s)
Hon Phil Twyford Minister for Housing and Urban Development

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Claire Leadbetter	Manager, Construction and Housing Policy	04 901 8751	✓
Cade Bedford	Graduate Policy Advisor, Construction and Housing Policy	04 901 4967	

The following departments/agencies have been consulted [double click box & click 'checked']					
<input type="checkbox"/> Treasury	<input checked="" type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:		N/A or [Insert agency]; [Insert agency]			

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



AIDE MEMOIRE

Talking points for seeking delegation to draft and approve a Supplementary Order Paper amending the Healthy Homes Guarantee Bill (No 2)

Date:	6 November 2017	Priority:	Urgent
Security Classification:	In Confidence	Tracker number:	0838 17-18

Purpose

On Monday 6 November 2017 we understand Hon Chris Hipkins will be taking an oral item to Cabinet seeking delegations from Cabinet for you and him to authorise the drafting for and approve a Supplementary Order Paper (SOP) that will amend the Healthy Homes Guarantee Bill (No 2).

This delegation is needed as the Bill will now be debated in the week commencing 13 November 2017.

This aide memoire provides you with talking points to support your discussion at Cabinet.

Claire Leadbetter

Manager, Construction and Housing Policy

Construction and Housing Markets
Building, Resources and Markets, MBIE

..... / /

Comment

Overview of the Supplementary Order Paper

1. On Monday 6 November 2017 we understand Hon Chris Hipkins will be taking an oral item to Cabinet seeking delegations from Cabinet for you and him to authorise the drafting for and approve a Supplementary Order Paper (SOP) that will amend the Healthy Homes Guarantee Bill (No 2).
2. This delegation is needed as the Bill will now be debated in the week commencing 13 November 2017.

3. The key amendments in the SOP relate to:
 - Defining methods of heating in respect to having sufficient heating capacity to reach a prescribed temperature
 - Giving effect to standards by regulation
 - Clarifying timeframes for standard setting and compliance
 - Amending the Ministry of Business, Innovation and Employment (MBIE) current powers of inspection to allow proactive programmes of inspection to ensure compliance with the regulations, and
 - Other minor amendments
4. Talking points are annexed to this Aide Memoire to support discussion with your colleagues at Cabinet.
5. Following Cabinet's agreement officials will work with Parliamentary Counsel Office (PCO) to provide a SOP by Thursday 9 November.

Annexes

- **Annex 1: Talking points**

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OFFICIAL INFORMATION ACT

Annex 1: Talking points

Background on the Healthy Homes Guarantee Bill (No2)

1 The Healthy Homes Guarantee Bill amends the Residential Tenancies Act to ensure that every rental home in New Zealand meets minimum standards of heating and insulation.

2 It achieves this by creating powers to specify standards for:

- insulation
- heating
- ventilation
- draught stopping, and
- drainage.

3 The Bill improves the current regime by providing the basis for nationally consistent standards that will create warmer, dryer and healthier rental homes.

4 The Bill commences 12 months from Royal Assent and regulations will be published six months afterwards.

Overview of the proposed SOP

5 Amendments to the Bill will be incorporated through a Supplementary Order Paper (SOP).

6 These amendments have been informed by select committee consideration of the Bill.

7 The key changes in the SOP are:

- define methods of heating in respect to having sufficient heating capacity to reach a prescribed temperature
- give effect to standards by regulation made by Order in Council
- clarify timeframes for standard setting and compliance
 - new tenancies will need to comply 90 days after regulations are published
 - all Housing New Zealand and Community Housing Provider properties comply within 2 years of the regulations
 - all tenancies must comply 5 years after the regulations are published
- amend the Ministry's current powers of inspection to allow proactive programmes of inspection to ensure compliance with the regulations
 - these inspection powers will be premised on the Tribunal being satisfied that the inspection is necessary or desirable to effectively monitor compliance with the standards proposed in the Bill
- other minor technical, minor policy and drafting amendments.

8 Officials are also exploring whether a clarification provision is needed to allow standards for heating devices to exceed levels set in the current Building Code

Progression of the Bill

9 Officials expect to have an SOP ready for the leader of the House and me to sign off later this week

10 The Bill and the SOP will be debated in the House in the week commencing Monday 13 November.

11 While the priority right now is to pass the Bill, during the development of the regulations I am interested in talking to a number of ministers to support policy objectives relevant to their portfolios including:

- Hon Dr Megan Woods, Minister of Energy and Resources, in relation to the setting of the insulation and heating subsidy scheme
- Hon Carmel Sepuloni, Minister for Social Development in relation to winter energy payments
- Hon David Parker, Minister for the Environment in relation to achieving air quality objectives, and
- Hon James Shaw, Minister for Climate Change on how the regulations interact with meeting our obligations under the Paris Climate Agreement.

12 I am very interested in all our officials working together to progress these objectives.

13 I expect to seek further Cabinet decisions on the regulations in the first quarter of 2018.

14 The broader scope for regulation and powers enabling an inspection regime mean I will need to request funding in Budget 2018 to cover

- enforcement and compliance costs (ongoing)
- information and education campaigns costs (during the implementation of the Bill)
- monitoring, evaluation costs, and
- other fiscal implications for the Crown.

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BRIEFING

Further advice on insulation requirements to be given effect by the Healthy Homes Guarantee Bill (No 2)

Date:	8 November 2017	Priority:	High
Security classification:	In Confidence	Tracking number:	0860 17-18

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Housing and Urban Development	Discuss the content of this briefing with officials.	13 November 2017

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Claire Leadbetter	Manager, Construction and Housing Policy	04 901 8751	§ 9(2)(a)	✓
Jo Doyle	General Manager, Construction and Housing Markets	04 901 8730	§ 9(2)(a)	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

RELEASED UNDER THE OFFICIAL INFORMATION ACT



BRIEFING

Further advice on insulation requirements to be given effect by the Healthy Homes Guarantee Bill (No 2)

Date:	8 November 2017	Priority:	High
Security classification:	In Confidence	Tracking number:	0860-17-18

Purpose

To provide you with:

- background information on insulation requirements under the Residential Tenancies Act 1986 and associated regulations; and
- advice on the potential costs and benefits of reconsidering insulation requirements through the Healthy Homes Guarantee Bill (No 2).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Discuss** the content of this briefing with officials.

Agree / Disagree

Claire Leadbetter
Manager, Construction and Housing Policy
Building, Resources and Markets, MBIE

..... / /

Hon Phil Twyford
Minister of Housing and Urban
Development

..... / /

Background

The insulation requirements introduced for rental properties in 2016 and a summary of their implementation

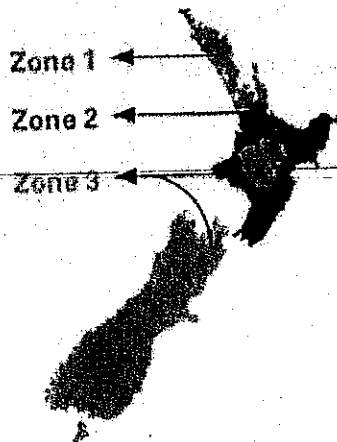
1. Following the passage of the Residential Tenancies Amendment Act in July 2016, and the promulgation of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, all rental homes covered by the Residential Tenancies Act (RTA) must meet minimum insulation requirements by 1 July 2019 unless the property meets exemption criteria.
2. If the level of insulation in a rental property does not meet the R-value¹, equivalent to the 1978 minimum thermal requirements, then the landlord must retrofit ceiling and underfloor insulation to meet the current Building Code requirements (the 2008 standard). Top-ups over existing ceiling installations are a permitted means of complying where the total R-value of the existing and the new insulation combined would meet the new thermal performance requirements.
3. During the policy development process, consideration was also given to setting the threshold for requiring a landlord to retrofit insulation at the minimum thermal requirements for the 2001 Building Code or the 2008 Building Code. The 1978 requirements were selected as the baseline because they:
 - provide the greatest benefit, which comes from upgrading houses with no insulation, as the incremental benefits of insulation reduce as the R-value increases;
 - reduce the potential impacts on the rental market, which would be limited to requiring around 40 percent of rental stock to be retrofitted, approximately 180,000 properties, and avoids the need for landlords to take rental properties out of the market unnecessarily; and
 - maximise the likely benefits of the proposed insulation requirements relative to the compliance costs.

History of insulation requirements in New Zealand

4. Requirements for insulating new houses and additions were first introduced nationally on 1 April 1978 under the Local Government Amendment Act 1974. Some houses built prior to 1978 had insulation installed during construction (some Councils required insulation prior to this) but most did not.
5. The New Zealand Building Code then superseded these requirements with new minimum requirements for new houses in 2001. The Code divides the country into three zones based on climate, with higher levels of insulation required in colder zones (see map of climate zones on next page).

¹ The R-Value is a rating which measures how well insulation can resist heat flow.

Figure One: Climate Zones in New Zealand



6. Requirements changed again through a revision to the Building Code which took effect in 2008. A summary of current and historic requirements is presented in the table below.

Table One: Level of insulation required for new build houses

Year	Level of insulation required for new build houses (construction R-values)			
Pre-1978	None (unless required by local Council)			
	Timber framed minimum		Masonry minimum	
1978-2000	Ceiling Walls Underfloor	R 1.9 R 1.5 R 0.9	Ceiling Walls Underfloor	R 1.5 R 0.8 R 0.9
	Zones 1 and 2 minimum (North Island excluding Central Plateau)		Zone 3 minimum (South Island and Central Plateau)	
2001-2007	Ceiling Walls Underfloor	R 1.9 R 1.5 R 1.3	Ceiling Walls Underfloor	R 2.5 R 1.9 R 1.3
2008 - now	Ceiling Walls Underfloor Glazing Skylights	R 2.9 R 1.9 R 1.3 R 0.26 R 0.26	Ceiling Walls Underfloor Glazing Skylights	R 3.3 R 2.0 R 1.3 R 0.26 R 0.31

Advice

7. You have asked for information on the advantages and disadvantages of imposing new insulation requirements for rental properties through the Healthy Homes Guarantee Bill (No 2) (The Bill) which would supersede the requirements introduced in 2016.
8. The key question you asked us to address in this advice was at what threshold landlords should be required to upgrade ceiling or floor insulation in their properties. All properties if upgraded must then meet current Building Code requirements as a minimum.
9. The table below sets out three options.

Table Two: Analysis of different insulation threshold levels

	Estimated number of properties that would be affected ²	Nature of work required ³	Estimated costs	Estimated Benefits	Cost/benefit
Option One Keep the 1978 insulation requirement as currently specified in the RTA as the standard. Rental properties that do not have this level of insulation will need to have insulation installed to the 2008 Building Code standard.	180,000	Install insulation where it doesn't currently exist	\$447m	\$835m	A benefit cost ratio of \$1.90 over 20 years for every \$1 spent
Option Two Increase the requirement to the 2001 Building Code standard. Rental properties that do not meet this level of insulation would need to have insulation installed to the 2008 Building Code standard.	200,000 – 210,000	Install insulation where it doesn't currently exist (pre 1978 properties) and top up insulation in properties built between 1978-2001 to meet 2008 requirements.	\$515m	\$835m	A benefit cost ratio of \$1.60 over 20 years for every \$1 spent
Option Three Increase the threshold to the 2008 Building Code standard. All rental properties would need to meet this standard irrespective of when they are built.	280,000 properties	Install insulation where it doesn't currently exist (pre 1978 properties) and top up insulation in properties built between 1978-2008 to meet 2008 requirements	Unknown	Unknown	Unknown

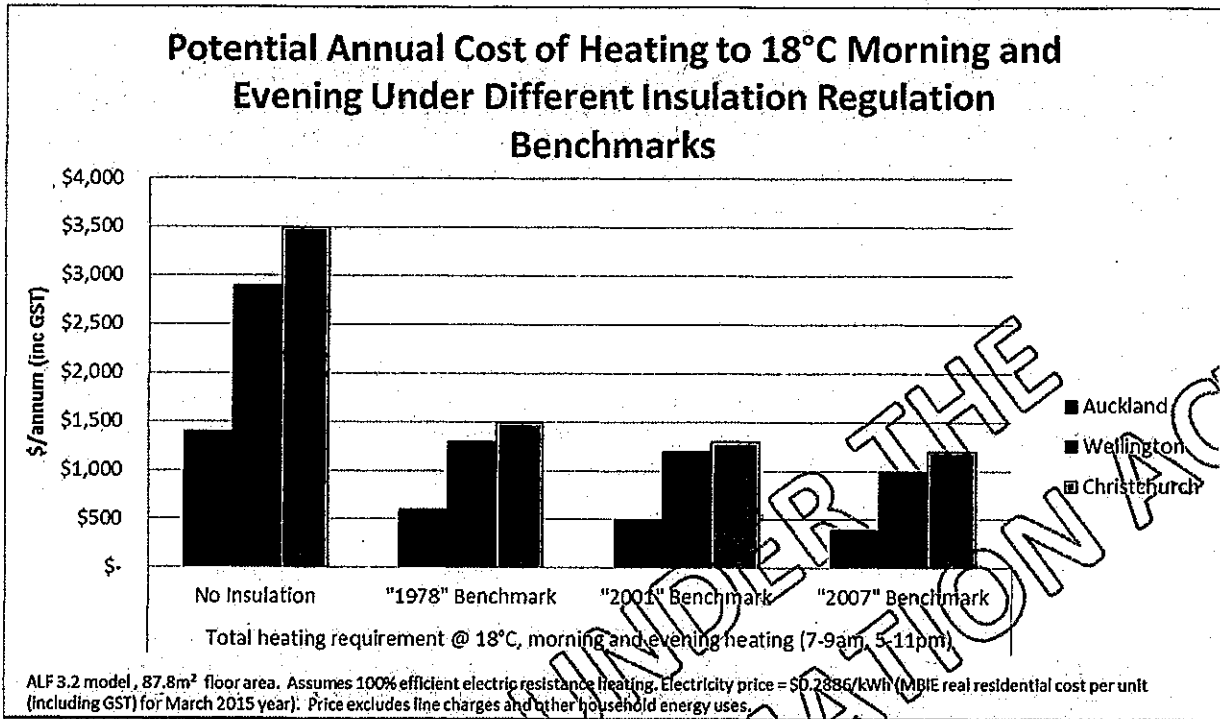
² The Energy Efficiency and Conservation Authority (EECA) has rightly pointed out that these numbers are based on the 2010 BRANZ House Condition Survey and that a more recent addition of this report was published earlier this year that draws on data from 2015. A comparison between these two reports shows that the percentage of properties with no ceiling or floor insulation reduced between 2010 and 2015 indicating that the rental market was shifting to provide insulation prior to the 2016 requirements coming into effect. The Ministry is able to re-run the figures above for you at a later date to incorporate recent data if you wish.

³ Technically, the Building Code standards referred to also encompass a requirement to insulate walls. However, due to the substantial building cost involved in retrofitting wall insulation in exchange for a relatively minor gain in thermal performance our assumption is that any revised requirement would be for floor insulation and ceiling insulation only.

Benefits to increasing the required level of insulation for rental properties

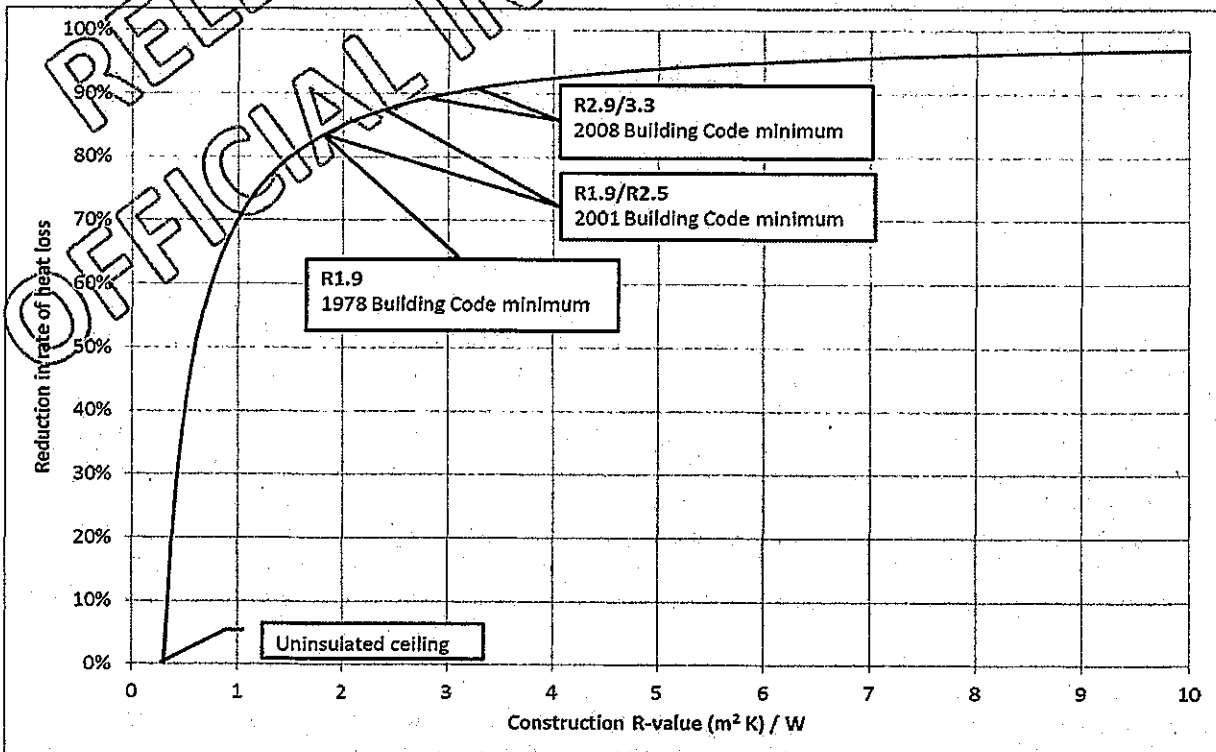
10. Incorporating a more recent insulation standard for rental properties, such as that set out in the 2001 or 2008 Building Code is likely to be welcomed by tenants and tenant advocacy groups, the insulation industry, and the public health sector. Around half of the submissions the Ministry of Business, Innovation and Employment (the Ministry) received in response to a 2016 discussion document suggested that adopting the 1978 insulation requirement for existing rental properties was either too low or inadequate.
11. The submitters that did not support this approach generally favoured adopting the 2008 Building Code standard in its place. Doing so would mean that every rental property in New Zealand that can practically have insulation installed would be subject to the 2008 insulation requirements irrespective of when that property was built. This would reduce confusion about what requirements apply to which properties.
12. This approach would also have the advantage of ensuring that no rental property in New Zealand is likely to have insulation that is older than 10 to 15 years at the time that new requirements come into force. The practical effect of this is that benefits for the thermal performance of properties may be realised from recent advancements in the way in which insulation is installed, in addition to the increased capability of the insulation itself. Broadly similar benefits would be seen through adopting the 2001 Building Code standard, but to a lesser extent.
13. Generally, increasing the standard of insulation will result in some benefits for the health and comfort of tenants. It could also reduce levels of energy consumption which would help advance the Government's aspirations for New Zealand to achieve zero carbon emissions by 2050. These benefits are most likely to arise in colder parts of the country such as the South Island and the Central Plateau. This is because as more has become known about thermal resistance over time, the optimal insulation requirements for these parts of the country have evolved to a greater extent than the requirements for other geographic areas. The greatest discrepancy between the 1978 requirements and the 2001 or 2008 requirements is evident in these areas.
14. However, noting that the benefits of increasing levels of insulation are diminishing rather than exponential, care is needed to ensure that the benefits of requiring a greater level of insulation are not overstated. The Ministry compiled Figures Two and Three below to support consideration of the policy to be given effect by insulation regulations in 2016. While we have not had the opportunity to update Figure Two with current electricity price data, we consider that the general trend is still valid for the purpose of this briefing. It shows that while substantial reductions in heating costs are possible when retrofitting a house with no insulation to that of the 1978 requirements, the reduction in energy required to heat a room to 18 degrees Celsius when shifting from the 1978 standard to subsequent standards is only modest.

Figure Two: Estimated energy savings from different levels of insulation



- Expressed differently, the greatest reductions in heat loss through a ceiling are achieved between R-values of 0 and 2 with gains thereafter flattening off. The effect of this is that while the specification in the 2008 Building Code for an R-Value of 2.9 provides the greatest absolute benefit, the effect of upgrading from the 1978 required R-Value of 1.9 is limited, provided that the existing insulation is in good repair and still performing at its full potential.

Figure Three: Reduction in ceiling heat loss at different R-values



Disadvantages to increasing the required level of insulation for rental properties

Increased costs to landlords

16. Increasing the insulation requirements would impose additional costs for some landlords on top of other requirements to be given effect to by the Bill, such as home heating. If the 2008 Building Code standard was mandated for all rental properties, rental properties that are only ten years old will likely need to have work undertaken to comply. Furthermore, a cohort of landlords that have proactively assessed whether they comply with the existing requirements may have to undertake further work to comply with a more modern standard.

Potential for increased costs for the Crown

17. As with other aspects of the Bill, complying with new obligations has the potential to impose costs for the Crown as a provider of Public Housing Services. Housing New Zealand has previously advised that all its properties would comply with a 2001 minimum level. If the requirements were increased to those in the 2008 Building Code, additional costs may occur through the need to inspect and upgrade these properties.

Industry capacity

18. It is possible that the insulation installation workforce will not be able to meet expected demand should additional properties require inspection and upgrade to comply with a more modern insulation standard. Previously, the industry has advised the Ministry that it didn't have significant concerns about its ability to meet the additional premises that would be captured by a requirement to meet the 2001 standard. However, more recently the industry has informed us that it is concerned about slow uptake to insulate rental properties. This means if all landlords were to seek professionals to install insulation prior to the 2019 deadline it's likely that the sector would not have sufficient capacity to meet this demand prior to July 2019. This could cause issues of transitional non-compliance.
19. We consider that a phased approach to compliance dates could assist with this. For example, retaining the current 1 July 2019 compliance date for all homes that do not meet 1978 minimum thermal requirements, and introducing later compliance dates for all other homes⁴ may help to alleviate any industry capacity issues. In developing the compliance dates for inclusion in the Regulations, officials will work further with industry to ensure that industry capacity is not a barrier to meeting the legislative requirements.

Information provision and compliance

20. While the Ministry has enforcement capability that it will be able to exercise against landlords who do not comply with requirements once in force, its ability to do so is limited by capacity constraints. With this in mind, we consider that you can only make progress on the outcomes for renters you are seeking at the national level if there is a high level of self-compliance.
21. Engaging landlords in the 2016 requirements and motivating behaviour change has proved to be challenging. Initially, activity to prepare for the 2019 deadline was slow and awareness amongst both tenants and landlords was limited. However, a baseline awareness survey undertaken in May this year demonstrated that of the nearly fifty percent of landlords whose properties were not yet compliant with the requirements, 37 percent intended to install insulation prior to May 2018, and a further 23.2 percent intended to do so prior to the 1 July 2019 deadline.

⁴ Which could take the form of a single compliance date for all other homes, or an earlier date could be introduced for homes that do not meet the 2001 minimum insulation requirements.

22. Any change to the insulation requirement through the Bill could risk this level of engagement. Landlords who have recently installed insulation at the time it comes into effect are not expected to be disadvantaged as they would have already insulated to the most recent requirements. However, landlords that currently intend to insulate but are yet to do so are likely to hold off should they be confused about the exact requirements that apply to them. This is likely to decrease the percentage of rental properties that are insulated ahead of the 2018 winter.

23. In addition, there is a risk that the percentage of landlords purposely intending to not comply with insulation requirements could increase from the estimated 24 per cent of landlords who currently do not have insulation installed. This could arise through both an objection in principle to government changing requirements and also out of concern that if requirements have changed once they may do so again, creating a perceived risk to landlords that their investment now will be overtaken by future regulation. This risk may be compounded should landlords become aware of new insulation requirements at the same time that other requirements are announced through the Bill.

24. The Ministry considers that a substantial revision to its information and education programmes would be needed. Firstly, to mitigate the behaviour risks outlined above for the landlords of the 180,000 properties affected by the current requirement, but also to capture the landlords of the additional properties that could be subject to a revised requirement. This is particularly important if the additional landlords captured by the new requirements have not engaged with programmes to date on the basis that they considered their properties to already be compliant.

25. Of the \$2.74 million appropriated for information and education programmes over the five years from 2015 to 2020, \$2 million is already committed through to June 2018. Should you wish to increase the insulation requirements, further funding would need to be made available to ensure they are adequately publicised and to assist in minimising market confusion. In addition, while we would endeavour to respond to your direction to increase insulation requirements promptly, due to the nature of the programmes we currently have in the market⁵, which include mediums such as bus back advertising, it may not be possible to withdraw information on the old requirements in a short timeframe once your new requirements have been announced.

⁵ The Ministry has recently launched a four month summer advertising campaign that concludes in February 2018 informing tenants and landlords about insulation requirements and encouraging landlords to get their rentals up to standard before the July 2019 deadline. Media channels include bus backs, nationwide radio, digital advertising and social media. We are able to provide you with a briefing at your convenience should you require further information of the four year RTA information campaign and associated activities.



BRIEFING

Amending the Healthy Homes Guarantee Bill (No 2) by Supplementary Order Paper

Date:	8 November 2017	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	0877 17418

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister for Housing and Urban Development	Agree to the recommendations Refer this paper to the Hon Jenny Salesa, the Associate Minister for Housing and Urban Development	11am Thursday 9 November 2017
Hon Chris Hipkins Leader of the House	Agree to the recommendations	11am Thursday 9 November 2017

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Claire Leadbette	Manager, Construction and Housing Policy	04 901 8751	§19(2)(a)	✓
Cade Bedford	Graduate Policy Advisor, Construction and Housing Policy	04 901 4967		

The following departments/agencies have been consulted					
<input checked="" type="checkbox"/> Treasury	<input checked="" type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input checked="" type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input checked="" type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input checked="" type="checkbox"/> TPK	<input checked="" type="checkbox"/> MoH
		<input checked="" type="checkbox"/> Other:	HNZC, DPMC and EECA		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



BRIEFING

Amending the Healthy Homes Guarantee Bill (No 2) by Supplementary Order Paper

Date:	8 November 2017	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	0877 17-18

Purpose

On Monday 6 November Cabinet authorised you and Minister Hipkins, the Leader of the House, to issue drafting instructions to Parliamentary Counsel and to approve a Supplementary Order Paper amending the Healthy Homes Guarantee Bill (No 2).

This briefing seeks your agreement on a number of policy decisions for amending the Healthy Homes Guarantee Bill (No 2) by Supplementary Order Paper.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a) Note that you and Hon Chris Hipkins received delegated authority from Cabinet on Monday 6 November 2017 to authorise the drafting of, and approve a Supplementary Order Paper to amend the Healthy Homes Guarantee Bill (No 2).
- b) Note that the Healthy Homes Guarantee Bill (No 2) amends the *Residential Tenancies Act 1986* to require MBIE to prepare and publish standards of heating and insulation for residential premises. The standards are required to specify what constitute adequate:
 - i. methods of heating
 - ii. methods of insulation
 - iii. indoor temperatures
 - iv. ventilation
 - v. draught stopping; and
 - vi. drainage
- c) Agree that a Supplementary Order Paper should be prepared to amend the Healthy Homes Guarantee Bill (No 2) in the following ways:

Regulation making power

- i. replace the current requirement for MBIE to prepare and publish standards with a power to make regulations by Order in Council that can :

In Confidence



- a) set standards about the indoor temperature and other outcomes that must be capable of being achieved by the premises, and also what constitutes adequate methods of insulation, heating, draught stopping, ventilation and drainage;
- b) Provide flexibility by allowing exemptions, the imposition of different standards; for different descriptions of landlords, premises, climatic regions of New Zealand and other circumstances

Agree / Disagree

- ii. allow standards to set adequate moisture control by specifying the ventilation standard as ventilation and moisture control

Agree / Disagree

- iii. allow regulations to specify further detail with respect to the statement of compliance that landlords will be required to provide tenants, including additional information that must be included in that statement and how long it must be retained.

Agree / Disagree

- iv. allow standards to exceed levels set in the current Building Code where necessary

Agree / Disagree

Commencement and compliance dates

replace the provisions around commencement and compliance dates with the following framework:

- a. the Healthy Homes Guarantee Bill (No 2) will commence on 1 July 2019
- b. all residential tenancies must comply with the regulations within five years of the Healthy Homes Guarantee Bill (No 2) commencing;
- c. earlier compliance dates may be prescribed by the regulations in some circumstances.

Agree / Disagree

- vi. the regulation making power will be broad enough to allow grace periods to be set for new tenancies

Agree / Disagree

- vii. maintain the insulation and smoke alarm standards set under The Residential Tenancies Amendment Act 2016 until 1 July 2019, where by all properties should be compliant.

Agree / Disagree



- viii. repeal the provisions in the RTA that provide for the making of standards relating to insulation on the basis that these will be replaced by the new Healthy Homes standards to be made on 1 July 2019.

Agree / Disagree

Monitoring and compliance

- ix. give the Chief Executive of MBIE a function of monitoring and assessing compliance with the new standards and the power to create proactive programmes of inspection from time to time to carry out that function.

Agree / Disagree

- x. ensure that the Chief Executive may use existing powers under the RTA to support the new function:

- a. powers to request the production of documents from landlords and tenants relating to the tenancy and premises
- b. the ability to apply to the Tribunal for an order authorizing entry to carry out inspections in accordance with a programme of inspection developed by the Chief Executive
- c. make that entry subject to the standard requirements in section 123D of the RTA (including notice obligations, ability to take samples and carry out tests, duties to assist, protection from liability and offences)
- d. give the Tribunal the authority to grant an order authorizing entry if satisfied that the Chief Executive has reasonable grounds to believe that the order is reasonably necessary for the purposes of carrying out the inspection programme.

Agree / Disagree

- xi. change the maximum exemplary damage for non-compliance with standards under the Bill from \$3,000 to \$4,000 to align with existing exemplary for failing to meet similar landlord obligations under the RTA

Agree / Disagree

- xii. amend the provisions of the Bill that relate to a landlord's statement of compliance so that the landlord has an obligation to sign a statement on the commencement of each tenancy or renewal. And also provide that additional detail with respect to the statement can be provided in regulations

Agree / Disagree

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- xiii. make it an unlawful act (within the meaning of the Act) for the landlord to fail to give the statement of compliance or to give a false or misleading statement, consistent with the current insulation compliance statement in s13A(1F) with a maximum exemplary damage of \$500

Agree / Disagree

Landlord entry power and work orders

- xiv. provide a right of entry, on notice, for landlords to carry out works to comply or prepare to comply with the standards, consistent with powers for insulation and smoke alarm regulations.

Agree / Disagree

- xv. include an Order of the Tribunal for the purpose of complying with the standards in the definition of a work order

Agree / Disagree

- xvi. specify that a monetary payment as an alternative to a work order must not be made where that order relates to enforcing compliance with the Healthy Homes Guarantee Bill (No.2)

Agree / Disagree

Clarify application to boarding houses and existing tenancies

- xvii. clarify that the standards and other requirements imposed by the Healthy Homes Guarantee Bill (No.2) will apply to existing tenancies

Agree / Disagree

- xviii. provide that the standards set in regulations will also apply to boarding house tenancies

Agree / Disagree

- xix. provide that that complying with the standards set in the regulations is an ongoing obligation for the boarding house landlord

Agree / Disagree



d) **Note** the broader scope for regulation and powers enabling an inspection regime mean MBIE will need to request funding in Budget 2018 to cover:

- i. enforcement and compliance costs (ongoing)
- ii. information and education campaigns costs (during the implementation of the Healthy Homes Guarantee Bill (No 2))
- iii. monitoring, evaluation costs, and
- iv. other fiscal implications for the Crown.

e) **Agree** to discuss the timing of the insulation and heating subsidy scheme with the Minister for Revenue and the Minister for Energy and Resources.

Agree / Disagree

f) **Note** that you will be asked to review and approve the draft Supplementary Order Paper by Friday 10 November. The draft will be subject to further proofing and editorial changes by PCO as per ordinary processes

Agree / Disagree

Claire Leadbetter

Manager, Construction and Housing Policy

Construction and Housing Markets,
Building, Resources and Markets, MBIE

..... / /

Hon Phil Twyford

**Minister for Housing and Urban
Development**

..... / /

Hon Chris Hipkins

Leader of the House

..... / /

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Background

- 1 The Healthy Homes Guarantee Bill (No 2) (the Bill) amends the *Residential Tenancies Act 1986* (RTA) with the purpose of ensuring that every rental home in New Zealand meets minimum standards of heating, insulation, ventilation, draught stopping and drainage.
- 2 The Bill was introduced as a private members bill by Hon Andrew Little on 15 October 2015 and had its second reading on 26 July 2017.
- 3 Passing the Bill is one of the Government's first 100-days commitments.
- 4 There are strong public-health arguments for promoting warm and dry homes.^{1,2,3,4,5} Effective heating, insulation and ventilation can directly reduce illness, by helping maintain a minimum air temperature; and indirectly reduce illness by controlling relative humidity, lowering dampness, and inhibiting the growth of mould and fungi.
- 5 Renters and owner-occupiers alike may suffer negative health effects from living in substandard properties. However, renters are more likely to live in such properties, are less likely to have the financial means to change their circumstances and, even if renters did have the financial means, they lack the autonomy to make changes to the property that could improve their experience. Focussing on the quality of rental properties is a priority as the lowest quality houses are concentrated in the rental market.^{1,6}
- 6 Poor quality and insecure rental housing disproportionately affects the health, education, and/or employment outcomes of particular groups. Māori, Pacific Peoples and children are all over-represented in renting households, and an increasing proportion of older people are likely to rent in retirement.

Status quo

- 7 The quality of rental properties is regulated by the RTA and the *Housing Improvement Regulations 1947* (HIR). The RTA requires landlords to provide the premises in a reasonable state of cleanliness and repair, maintain the premises in a reasonable state of repair, and comply with all requirements relating to building, health and safety, which includes the HIR.

¹ Evaluation of HNZA Healthy Housing programme.

<http://www.hnzc.co.nz/publications/the-healthy-housing-programme-outcomes-evaluation>

² Aylin et al, Temperature, housing, deprivation and their relationship to excess winter mortality in Great Britain, 1986–1996 (2001); and Wilkinson P et al., Cold Comfort: The Social and Environmental Determinants of Excess Winter Death in England, 1986-1996. Bristol: The Policy Press (2001).

³ Minimum home temperature thresholds for health in winter: A systematic literature review, Public Health England (2014).

⁴ WHO: Health Impact of Low Indoor Temperatures, Copenhagen (1985).

⁵ Cost Benefit Analysis of the WUNZ:Heat Smart Programme, Motu report, 2012)

⁶ Building Research Association of New Zealand (BRANZ) House Condition Survey

8 Recent amendments to the RTA also require landlords to install smoke alarms and have minimum levels of insulation in the roof and underfloor by 1 June 2019. New mechanisms for compliance and enforcement, together with resourcing for compliance activities, have been put in place to support the implementation of these requirements.

9 The HIR create minimum requirements that housing must meet. The regulations include, among other requirements, provisions for heating, light, ventilation, drainage, and dampness. These apply to all houses regardless of tenure.

10 Local authorities are responsible for the enforcement of these regulations within their districts. However, enforcement of the HIR has been difficult because of inter-regional differences in requirements set by local authorities and the limited resources local authorities have available to enforce these regulations.

11 Clause 6 of the HIR is a notable example; clause 6 requires that "every living room shall be fitted with a fireplace and chimney or other approved form of heating". To date, clause 6 has rarely been enforced as intended because local authorities, as the responsible body, have not in most cases indicated what constitutes an 'approved' form of heating.

Improving the current regime

12 The Bill would improve the current quality of rental properties by setting nationally consistent standards of heating, insulation, ventilation, draught stopping and drainage in rental properties. Ministry of Business, Innovation and Employment (MBIE) officials consider that a focus on the quality of rental properties is warranted because it would focus efforts on the part of the market where greatest benefits can be realised.

13 Rental tenants are at risk from a lack of adequate sources of heat because, unlike owner-occupiers, rental tenants have fewer options available to them. The options for tenants whose landlords have not provided fixed heating sources are restricted to portable, low-power electric heaters, and un-flued gas heaters. Furthermore, where a heating device, such as a un-flued fixed gas heater, has been installed by the landlord, it may still be unsatisfactory in terms of heating capacity and efficiency.

14 Unless they have permission from their landlords, renters are unable to install sources of heating with a higher heating output, such as heat pumps or log burners. Even with this permission, tenants are not likely to be able to meet the expense of installing fixed heating devices of sufficient capacity due to affordability constraints. They would also have poor incentive to do such work as most tenancies in NZ are not long-term fixed tenancies and some can be ended with 90 days or 42 days notice. Installing multiple portable electric heaters is often not a viable option

because the maximum current rating of a plug-in circuit is limited to 10 amps (equating to one 2.4 kilowatt heater)⁷.

- 15 The Bill also allows regulations to be created in respect of draught stopping, ventilation, and drainage. These factors contribute to a property's thermal performance and contribute significantly to health outcomes.

Amending the Healthy Homes Guarantee Bill (No 2) by Supplementary Order Paper to address technical and policy matters with the Bill

- 16 Officials recommend the following amendments to the Bill be incorporated through a Supplementary Order Paper (SOP) submitted at the Committee of the whole House stage to ensure the effective implementation of the Bill.

- 17 Key amendments relate to:

- regulation making powers
- commencement and compliance dates
- monitoring and compliance, and

- 18 These amendments have been formulated as a result of the policy process that MBIE undertook in support of the Select Committee's consideration of the Bill and further discussion with Parliamentary Counsel Office (PCO) during the finalisation of the SOP. They are informed by matters raised in public submissions through the select committee process and work undertaken following recent discussions with you.

- 19 Further work will be required to develop the specific standards to be included in the regulations following the passage of the Bill. Separately, we have provided draft key messages on the approach to heating standards. A separate briefing is being prepared for you on options for insulation standards.

Define methods of heating in respect to having sufficient heating capacity to reach a prescribed temperature

- 20 The way that the heating and indoor temperature standards are currently framed in the Bill would make it difficult to set and enforce a heating standard. The Bill currently requires MBIE to publish standards of adequate indoor temperatures. Performance against a prescribed standard of this nature would be dependent on the steps tenants take to maintain a particular indoor temperature, such as using heating devices appropriately and drawing curtains at night.

- 21 Since indoor temperatures are an outcome of the features of a property along with tenant behaviour, it would be difficult to assign responsibility for ensuring that a

⁷ Typically each area of a dwelling is served by one circuit-breaker connected to a maximum of 12 power sockets; the current carrying capacity of the circuit breaker (e.g. 10 amps) is shared between the sockets. Therefore each area of a dwelling can typically only have one plug in heater.

particular indoor temperature is maintained. It would be more practical to hold landlords accountable for the heating capacity of a property.

- 22 We therefore recommend reframing the heating standards to define a minimum indoor temperature that a property must be capable of achieving and the method by which it is achieved. The standard could also include descriptions of what methods could be used to determine whether standards have been met including what exemptions are available.
- 23 To provide further flexibility the standards could also impose different requirements for different descriptions of landlords, premises, climatic regions of New Zealand, and other circumstances.

Specifying the ventilation standard as ventilation and moisture control

- 24 Building system experts have advised us the current list of standards may not cover some important aspects necessary to ensure a warm, dry and healthy home. One example is excess subfloor moisture which can impact on the internal environment of homes. We recommend amending the ventilation standards to ventilation and moisture control to allow the regulations to address excess moisture in a home. One potential intervention that would come under this new definition is to require on ground subfloor vapour barriers which prevent rising damp.

Relationship between RTA, the Building Act 2004 and the New Zealand Building Code

- 25 Nothing in the *Building Act 2004* can impose performance criteria additional to or more restrictive than the New Zealand Building Code. The New Zealand Building Code applies to new building work and would likely apply to heating sources that are attached to the building, or some options for ventilation, such as mechanical ventilation in kitchen areas.
- 26 Officials seek your agreement that the heating regulations, under the RTA, may impose requirements that are additional or more restrictive than the performance criteria in the New Zealand Building Code.
- 27 Amendments to the New Zealand Building Code may be desirable to align aspects of the regulations and the New Zealand Building Code. Any required amendments will be considered during the development of the regulations. We will provide advice as part of developing options for the regulations and suggest opportunities for you to discuss with the Minister for Building and Construction.

Give effect to standards by regulation

- 28 Clause 6 of the Bill requires MBIE to prepare and publish standards of heating and insulation. However, the Bill does not clearly specify the legal status of the standards, nor the process to be followed to set them.
- 29 The Bill currently places an *obligation* on MBIE to develop the required standards. This is inconsistent with other regulation making provisions within the RTA such as section 138B which *empower* the making of regulations, but does not prescribe an

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obligation on the department to do so. We recommend removing the obligation in the Bill as this is not required in order to deliver on the purpose of the Bill.

- 30 We recommend setting the standards by regulations made by Order in Council. This would be consistent with the approach taken throughout the rest of the RTA. In addition, the Legislation Advisory and Design Committee guidelines suggest that it is appropriate for delegated legislation, such as regulations, to be used to set technical matters required for the implementation of an Act. Some of the reasons provided for this include the flexibility to update specific details through regulation as required and the ability to account for potential contingencies through regulation such as circumstances where an exemption from heating requirements might be justified.
- 31 While regulations can be made by either a Minister or the Governor-General, guidelines stipulate that it is appropriate for the Governor-General to hold this power "when the potential exists to significantly affect the population, a large number of people, or human rights". Given the large proportion of the population (both landlords and renters) which would be affected by the introduction of the standards and the costs involved, MBIE considers that it is appropriate for the standards to be set by the Governor General. The practical effect of this is that regulations would need to be approved by Cabinet and then submitted to the Executive Council for signing.
- 32 As part of implementing the new standards by regulations we also recommend repealing the existing regulation making powers for insulation on the basis that these will be replaced by the new Healthy Homes standards to be made on 1 July 2019. Repealing these provisions will not occur until 1 July 2019 and the current insulation requirements would apply up until then.

Clarify timeframes for standard setting and compliance

Timeframes for complying with all standards

- 33 The bill as reported back from Select Committee would come into force 12 months after receiving Royal assent, with MBIE publishing standards no more than six months later. Any new tenancy agreements entered into seven days after the publication of standards will need to comply with those standards.
- 34 Building sector capacity constraints may limit the effective implementation of the policy, particularly for the supply and installation of heating devices. At select committee, some stakeholders and officials expressed concern that the timeframe of seven days between publication and compliance with standards for all new tenancy agreements was too short a timeframe given the potential for standards to require substantial work.
- 35 We recommend the Bill is amended to commence on 1 July 2019 with an endpoint compliance date 5 years following commencement. Earlier compliance dates for new tenancies or specific groups such as Housing New Zealand Corporation (HNZC) and community housing providers (CHPs) can be set in the regulations following further consultation. Commencing on 1 July 2019 is approximately 18 months from the Bill passing and aligns with the final compliance date for existing insulation regulations.

This will provide clarity for stakeholders in understanding their obligations under the Bill and their obligation to comply with the current regulations. It will also allow MBIE 18 months to consult and draft regulations.

~~Transitioning from existing regulations for insulation~~

- 36 The *Residential Tenancies Amendment Act 2016* requires properties that do not meet the 1978 Building Code insulation standard to install roof and underfloor insulation to the 2008 Building Code standard. Properties that met the 1978 standard and where the insulation remains in good condition do not have to make any upgrade.
- 37 We recommend that the timeframes for existing insulation requirements be retained. Significant information and education efforts have been made to inform landlords and tenants of the new insulation requirements. Changing the timeframes for implementing the existing requirements could create confusion and would impose additional costs to the sector in terms of information and education (e.g. costs to property managers of contacting and informing landlords of new compliance timeframes).
- 38 These regulations will continue until 1 July 2019, where by all properties should be compliant. On 1 July 2019 the Bill will commence and *The Residential Tenancies Amendment Act 2016* insulation regulations will be repealed and replaced by the Healthy Homes standards.

Expand the Ministry's enforcement function

- 39 The Chief Executive of MBIE currently has a range of enforcement powers under the Act. These enforcement powers include the power to require the production of information and documents from landlords and tenants, and to enter and inspect premises. Authorised persons exercising the entry power must obtain an order from the Tribunal and give notice to both the landlord and tenant.
- 40 MBIE officials propose that the Chief Executive be given a new proactive function of assessing and monitoring compliance with the proposed Healthy Homes Standards (i.e. not in response to a breach). In addition, we propose that the Chief Executive have discretion to prepare and implement a programme for these inspections to ensure that enforcement activity is undertaken in a structured way.

41 To achieve this, the SOP:

- includes a provision that amends the RTA and enables the chief executive of MBIE to prepare and implement programmes of inspection to monitor and assess compliance with the regulations.
- enables the Tribunal to issue an order authorising inspection for the purpose of implementing programmes of inspection.

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- 42 The new powers would allow proactive requests for documents and inspections, and would not require a breach to have been alleged or suspected before they can be used.
- 43 The inspections would be made subject to the requirements that currently apply to Tribunal ordered inspections under section 123D of the Act. These cover what notice must be given prior to inspection, what can be done during the inspection (taking samples, carry out tests etc), identification, authorising of other persons to carry out inspection, duties to assist, immunities for people carrying out inspections and offences for obstruction or failing to assist where the Act required. Additionally, the Tribunal will retain the power to impose conditions on the inspection under section 123E of the Act.
- 44 The additional inspection powers would allow adequate monitoring of compliance with the new regulations and help deter non-compliance. The inspections could follow a staged approach with properties included in the programme of inspection first being approached for proof of compliance and then an inspection only required where proof of compliance is not provided.

Other amendments

Landlord's statement of compliance

- 45 The Bill amends section 13A of the RTA to require both private and boarding house landlords to include a statement in the tenancy agreement that the property complies with certain standards. We recommend that a failure to comply with the obligation to give the statement, or the giving of a false or misleading statement should be an unlawful under the RTA with maximum exemplary damages of \$500. This would be consistent with the maximum damages that could be imposed for breaching the statement obligation relating to the current insulation requirements.
- 46 We also recommend that regulations can specify further detail with respect to the statement, including additional information that landlords would be required to include in the statement.

Application of standards to boarding house tenancies

- 47 The Bill amends section 45 of the RTA to impose an obligation on private landlords to comply with those standards but does not apply a similar obligation in respect of boarding house landlords. We recommend that standards should also apply to boarding house tenancies.
- 48 Since there are features and characteristics of a boarding house tenancy which distinguish it from other residential tenancies, we also recommend that any standards should be able to impose different requirements for boarding houses.

Align the Bill with existing exemplary damage values

- 49 Due to the Bill being drafted prior to the implementation of the *Residential Tenancies Amendment Act 2016*, the Bill does not align with existing enforcement mechanisms.

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- 50 The Bill currently sets a maximum level of exemplary damages of \$3,000 for non-compliance with standards. This is less than the current maximum level of exemplary damages of \$4,000 for non-compliance with smoke alarm or insulation requirements introduced by the *Residential Tenancies Amendment Act 2016*. For consistency, we recommend aligning the values in the Bill with the existing RTA provisions. That is \$3000 for failure to state compliance in the tenancy agreement and \$4000 for non-compliance with the standards. The Ministry of Justice (who have responsibility for vetting new penalties proposed in legislation) indicate they are comfortable with the proposed new penalty levels.

Right of entry for landlords for the purpose of complying with the standards

- 51 The RTA currently allows landlords a right of entry for maintenance and inspections including for the purpose of complying or preparing to comply with requirements for smoke alarms or insulation. We recommend providing a right of entry provision to allow landlords to comply with the proposed standards in the Bill. We recommend that this right of entry be subject to the same requirements around notice and restriction of entry time as entries carried out for the purposes of complying with the existing insulation requirements.

Specify the provisions of the Bill apply to existing tenancies

- 52 We suggest adding a provision to the Bill to make it clear that the Bill and the standards will apply to existing tenancies. This does not affect the staged approach that the Bill outlines for compliance.

Amend the interpretation of work order

- 53 For rectifying non-compliance within the RTA the Tenancy Tribunal can issue work orders requiring parties to correct non-compliance. The definition currently includes a provision for requirements in regards to smoke alarms and insulation. We recommend that the Tribunal be able to make work orders requiring a landlord to take action so that the premises comply with the standards.

- 54 As the changes to be made through this Bill relate to the health and safety of the premises, we consider that the Bill should preclude the Tenancy Tribunal from ordering a monetary payment to be made in lieu of a work order, where that work order relates to failure to comply with any standard set out in the regulations.

- 55 This is consistent with current provisions under the RTA, which do not allow a monetary payment to be made as an alternative to a work order where that order relates to:

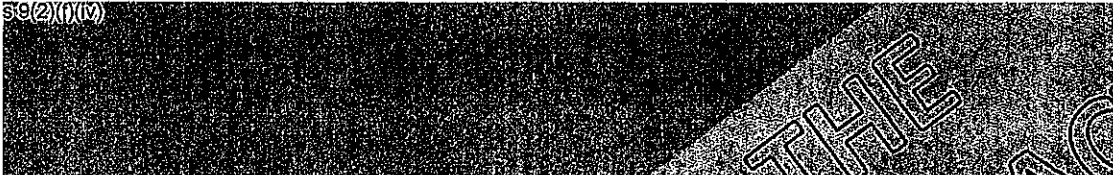
- smoke alarms;
- insulation;
- a failure to comply with a standard of fitness or other requirement applying by virtue of section 120C of the Health Act 1956;
- a failure to comply with any other requirement relating to health or safety under any enactment.

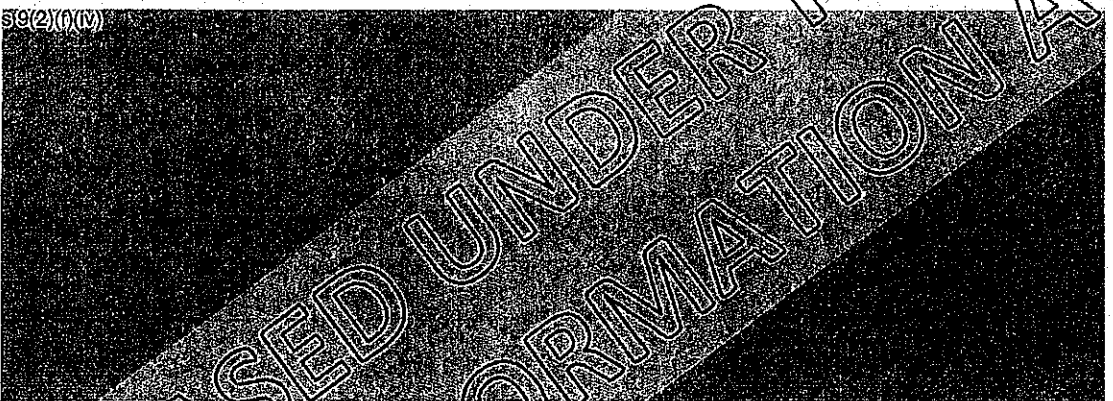
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Landlord's ongoing obligation

- 56 We recommend specifying in section 66I that complying with the standards set in the regulations is an ongoing obligation. This connects the proposals in the Bill with landlords existing landlord obligations under the RTA.

Stake holder engagement

57 s9(2)(f)(iv)


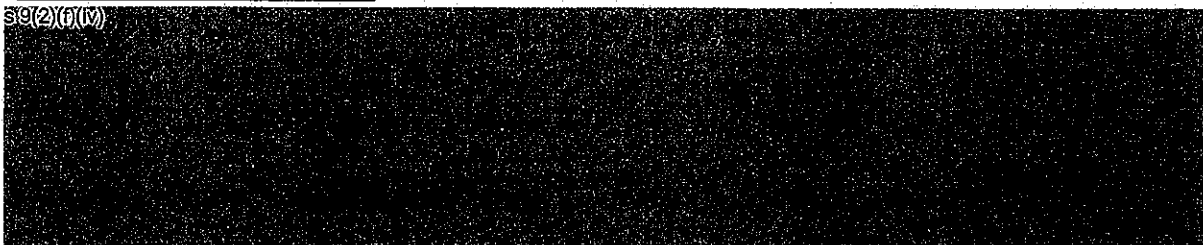
58 s9(2)(f)(iv)


Monitoring, evaluation and review

- 59 A monitoring and evaluation plan will be developed once regulations have been agreed. This plan will leverage existing monitoring and evaluation activity around the impact of housing quality on health outcomes.

- 60 MBIE expects the monitoring and evaluation work will assist it to ensure the regulations are operating as planned; achieving their intended outcomes; and balance costs and benefits appropriately.

- 61 The budget implications of any monitoring and evaluation activity will be established during the development of the regulations. We anticipate this will include a Budget bid.

s9(2)(f)(iv)


Consultation

- 62 The following agencies have been consulted on this briefing: the Ministry for Social Development (MSD), Treasury, Ministry for the Environment, Te Puni Kōkiri, Ministry of Justice and the Ministry of Health.
- 63 The following Crown Entities have been consulted Housing New Zealand Corporation, and the Energy Efficiency and Conservation Authority.
- 64 The Department of Prime Minister and Cabinet, the Ministry for Pacific Peoples and the Parliamentary Counsel Office were informed.

Financial Implications

- 65 Further clarification on the composition of proposed standards for insulation, heating, draught proofing, ventilation, and drainage is required before total costs can be more accurately determined.
- 66 The following financial implications focus on introducing a heating requirement for the living room only. More detailed costs for insulation, ventilation and moisture control, draught stopping and drainage will be determined during the development of the regulations.

Public housing

- 67 The costs on introducing the heating requirement include the upfront cost of installation⁹ Income Related Rent Subsidy (IRRS) increases to cover the associated increase in market rent and administrative costs.
- 68 HNZC and CHPs will face increased costs to comply with the new standards. Initial estimates are that around 31,000 HNZC properties may require additional fixed heating, however this is highly dependent on the exact standard set. If this estimate is accurate, the compliance cost for HNZC could be up to \$87 million in capital upgrade costs.
- 69 Of the 4,920 CHP owned properties (including market renters, as of the 31 October), 3,640 of them are HNZC transfers. Assuming that HNZC transfers are in the same condition as current HNZC owned properties, MSD estimates that about 1,820 of these properties may require additional fixed heating.
- 70 MSD estimates that approximately 800 out of the remaining 1,280 CHP properties (most of which are new builds) have sufficient heating capacity. Therefore in addition to the 31,000 HNZC properties, we estimate that approximately an extra 2,300 CHP owned properties may require additional fixed heating
- 71 MSD estimates that the compliance cost for CHPs for additional fixed heating will be \$6.4 million, resulting in a total compliance cost of approximately \$93.4 million for

⁹ Capital heating costs are based on the average cost of installing a heat-pump through EECA's Warm up New Zealand Heating Scheme.

public housing stock. Given that this cost is focused on heating compliance, we anticipate that the true cost of upgrading the public housing stock to account for other standards set once they have been determined could be in excess of \$100 million

72 Amortising the cost of heating upgrades over a ten year operational life, MSD estimates approximately a \$5.40 increase to market rent (per week) for the properties upgraded. IRRS will increase in-line with market rent so, on an annual basis, an extra estimated \$8 million will be required for HNZC and \$0.6 million will be required for CHPs, giving as a total figure of \$8.6 million per year.

73 HNZC are likely experience additional programme and tenancy management costs required to implement changed processes, as well as on-going increased maintenance and repair costs. Project management costs to rollout the installation of an estimated 31,000 heaters over two years are estimated at \$330,000 per annum.

74 MSD anticipates that upfront capital costs will need to be provided to CHPs who do not have a sufficient cash flow to make the investments in order to ensure security of CHP supply. There are several options for covering the cost of upgrades to HNZC and community housing properties. The costs and means of covering costs will be assessed in more detail during the development of the regulations. The options include:

- a Budget appropriation to cover the upfront costs of compliance
- a Budget appropriation to cover the increase of Income Related Rent Subsidy resulting from the increased market value of improved properties
- an expectation that HNZC will fund the compliance costs out of retained dividends
- HNZC reprioritising funding earmarked for other upgrades to housing stock to cover the cost of compliance in the first instance.

75 Any Budget bids to cover the cost of compliance would be sought through the Budget cycle in advance of the commencement of regulations.

Private rentals

76 For the private market, the amortised cost for landlords will also be around \$5.40 per week. Early analysis estimates 185,000 private rentals will require additional heating at a total cost of around \$518 million. However, depending on the design of the scheme it may be possible for property owners to offset some of these costs through your manifesto commitment to provide grants of up to \$2,000 to home owners and landlords for upgrading insulation and heating.

77 The costs of the new regulations to both private and public landlords will depend on the cost of bringing properties up to the required standard. The scale of cost will vary based on the current standard of properties, and the cost of materials and labour to upgrade properties. The ultimate incidence of this cost is likely to be split between landlords and tenants (through rent increases).

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- 78 A heating and insulation grant scheme could support landlords to comply with new obligations under the Bill. The timing for budget and legislative changes required to implement the scheme will be important. Sufficient lead in time is needed for the Energy Efficiency Conservation Authority (EECA) to operationalise a new heating and insulation grants scheme. We recommend discussing the timing of the scheme with the Minister for Revenue and the Minister for Energy and Resources.

Compliance and enforcement costs

- 79 We propose extending the existing compliance and enforcement approach to cover new standards under the Bill. A rough order cost of the additional compliance and enforcement costs are estimated at \$900,000 per year into our years. This would allow for 200 additional inspections per year.
- 80 Information and education costs are estimated at \$1 million per year plus overheads and additional funding to cover the cost of developing and running an online tool for heating requirements. The campaign could cover radio, print, and targeted social media and the bulk of the costs would be experienced over the 5 year proposed implementation period. To maximise compliance the information and education campaign would be run over the period the regulations are implemented.
- 81 Further clarity on the budget and cost implications of any compliance and enforcement activity, including impacts on the tenancy tribunal will be established during the development of the regulations. We anticipate that this will include a Budget bid.

Next steps

Table 1: Key dates for progressing the Bill

Key dates	Action
11am Thursday 9 November	Ministerial decisions on SOP content
Late Thursday 9 November	Ministers review draft SOP
Friday 10 November	Ministers approve draft SOP Disclosure statement and RIS provided for your information
Monday 13 November (sitting week)	Approve and Lodge SOP Support material for the House provided (speaking notes, clause-by-clause of Bill and SOP, key messages)
Tuesday 14 – Thursday 16 November	Committee of the whole House and Third Reading
Monday 20 November	Royal assent

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AIDE MEMOIRE

Committee of the whole House: Healthy Homes Guarantee Bill (No 2)

Date:	13 November 2017	Priority:	High
Security Classification:	In Confidence	Tracker number:	0985 17-18

Information for Minister
Hon Phil Twyford Minister of Housing and Urban Development
Hon Jenny Salesa Associate Minister of Housing and Urban Development

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Claire Leadbetter	Manager, Construction and Housing Policy	04 901 8751	✓
Cade Bedford	Graduate Policy Advisor, Construction and Housing Policy	04 901 4967	

The following departments/agencies have been consulted:					
<input checked="" type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:		N/A			

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

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AIDE MEMOIRE

Committee of the whole House: Healthy Homes Guarantee Bill (No 2)

Date:	13 November 2017	Priority:	High
Security Classification:	In Confidence	Tracker number:	0985 17-18

Purpose

This aide memoire provides you with supporting material for the Committee of the whole House (Committee) stage of the Healthy Homes Guarantee Bill (No. 2). The Committee stage is expected on Tuesday, 14 November 2017.

C. D. Leadbetter

Claire Leadbetter
Manager, Construction and Housing Policy
T: 021 808 787
Ministry of Business, Innovation and Employment
13/11/17

Comment

- On Tuesday 14 November 2017, the Healthy Homes Guarantee Bill (No 2) (**the Bill**) is expected to be considered by the Committee of the whole House (**the Committee**). The Bill amends the Residential Tenancies Act 1986 with the purpose of ensuring that every rental home in New Zealand meets minimum standards of heating, insulation, ventilation, draught stopping, drainage and moisture ingress.
- On Monday, 6 November 2017, Cabinet authorised you and the Leader of the House, Hon Chris Hipkins, to have power to Act to take decisions on a Supplementary Order Paper (SOP) to the Bill [CAB-17-MIN-0500 refers]. The final SOP was provided to you and Minister Hipkins earlier today for approval. The amendments proposed by the SOP include:
 - general policy clarifications such as the shift from prescriptive to performance based standards;
 - amendments to take account of the Residential Tenancies Amendment Act 2016 (which superseded some of the original drafting of the Bill); and
 - amendments dealing with monitoring and assessment of compliance, and minor and technical changes.

3. Subject to agreement from yourself and the Leader of the House, the final SOP will be sent for printing. Once this process is complete (it can take one to two hours) the Office of the Clerk will contact your office for authorisation to release the SOP (at which point it will be published on the legislation website and hard copies will be made available for members).
4. The following documents are attached to support the Bill's passage through the Committee stage:
 - clause by clause analysis of the SOP and Bill;
 - talking points;
 - reactive Q&As; and
 - talking points on the Bill and SOP.
5. A draft press release has also been provided to your office for consideration.

Annexes

- Annex 1:** Clause by clause analysis of the Supplementary Order Paper and Healthy Homes Guarantee Bill
- Annex 2:** Speech notes
- Annex 3:** Reactive Q&As
- Annex 4:** Talking points on the Healthy Homes Guarantee Bill
- Annex 5:** Talking points on the Supplementary Order Paper

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**Annex 1: Clause by clause analysis of the Supplementary Order Paper
and Healthy Homes Guarantee Bill**

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Clause-by-clause analysis of the Supplementary Order Paper (SOP) that amends the Healthy Homes Guarantee Bill (No 2) 2015 (the Bill)

Among other things, the SOP amends the Bill to enable the Governor-General to make regulations through an Order in Council to establish minimum standards relating to healthy homes (e.g. heating).

The Bill will come partially into effect on 1 July 2019 and will become fully operative no later than 1 July 2024.

Table 1: Clause-by-clause analysis of the Healthy Homes Guarantee Bill (No 2) SOP

Clause	Amendment by SOP	Effect of the amendment	Comments
2	<p>In subclause (1), replace "section 5" with "the following provisions come into force on the day after the date on which this Act receives the Royal assent: sections 3 and 8(1) and the schedule, in relation only to the item in the schedule relating to Schedule 1AA of the principal Act; and section 8(2)(3)."</p> <p>In subclause (2), replace "12 months after the date on which it receives the Royal assent" with "on 1 July 2019".</p>	<p>These amendments provide for the Bill, except for some technical provisions, to come into force on 1 July 2019.</p>	<p>Implementation dates for healthy homes standards will be set in regulations.</p> <p>It is intended that the new standards will also come into force on 1 July 2019.</p> <p>Phased implementation of the obligation to comply is provided for in the amendments to Schedule 1AA.</p>
4	<p>In subclause (1), repeal section 13A(1A)(C).</p> <p>In subclause (2), replace new section 13A(1A) to (1B) with new section 13A(1CA) and (1CB).</p> <p>Insert subclause (3), which amends section 13A(1D) by inserting "or (1CA)" after "subsection (1A)".</p> <p>Insert subclause (4), which inserts new section 13A(1DA).</p> <p>Insert subclause (5), which replaces section 13A(1E) with new section 13A(1E).</p> <p>Insert subclause (6), which amends section 13A(1F)(a) and (b) by inserting "(1CA), or (1CB)" after "subsection (1A)".</p>	<p>These amendments clarify a landlord's obligations to provide tenants with a statement that the landlord will comply with the healthy homes standards and clarify that this statement does not affect the landlord's duties with respect to insulation requirements or the healthy homes standards.</p> <p>The amendments also provide that it will be an unlawful act if the landlord fails to comply with the requirement to provide the signed statement, or includes anything in the statement that the landlord knows to be false or misleading.</p>	<p>For a new tenancy, tenancy renewal, or tenancy variation, on or after 1 July 2019, the landlord will be required to include a statement in the tenancy agreement or tenancy renewal that the landlord will comply with healthy homes standards and include any information prescribed by regulations.</p> <p>This statement must be signed by the landlord.</p>

Clause	Amendment by SOP	Effect of the amendment	Comments
5	<p>In subclause (1), replace section 45(1)(bb) with a requirement to "comply with the healthy homes standards".</p> <p>In subclause (2), repeal section 45(1)(bc), (1B), and (1C).</p>	<p>These amendments are consequential to the amendments to clause 6 (see below) and will require landlords to comply with the healthy homes standards.</p>	<p>A landlord's responsibility to comply with the healthy homes standard will apply to all new or renewed tenancy types, whether income-related rent tenancies or other tenancies.</p> <p>The requirements for boarding house tenancies are dealt with in the Schedule of the Bill.</p> <p>Sections 45(1)(bc), (1B) and (1C) will become redundant as a result of other amendments in the Bill.</p>
6	<p>Replace section 138B (Regulations in respect of insulation) with a new section 138B (Healthy homes standards), instead of inserting a new section 132A (Function of Ensuring Healthy Homes)</p> <p>Insert new section 138C that relates to how the healthy homes standards can interact with other requirements in other enactments relating to buildings, health, or safety</p>	<p>New section 132A would have imposed a function on MBIE to prepare and publish minimum standards for heating and insulation for residential premises.</p> <p>The amendment to clause 6 of the Bill will change this proposed function into a power of the Governor General to make regulations setting out standards (healthy homes standards) with which landlords must comply.</p> <p>The power to make regulations setting healthy homes standards will replace the current power of the Governor General in section 138B to make regulations in respect of insulation.</p>	<p>New section 138B clarifies that healthy homes standards may include standards about outcomes that must be capable of being achieved.</p> <p>New section 138B also enables regulations to include exceptions to the healthy homes standards.</p> <p>Regulations may also prescribe information that must be included in a landlord's statement about compliance with the healthy homes standards and prescribe the records and other documents to be retained by landlords.</p> <p>The healthy homes standards will be able to impose requirements that are different to those that might be required under other enactments.</p>

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Clause	Amendment by SOP	Effect of the amendment	Comments
7	<p>In subclause (1), replace the new item in Schedule 1A relating to the Healthy Homes Guarantee with amendments to the item relating to section 13A(1F)</p> <p>In subclause (2), amend the new item relating to section 45(1A) by replacing the amount of \$3,000 with an amount of \$4,000 and by replacing the reference to "standards of heating and insulation" with references to "smoke alarms" and "the healthy homes standards".</p>	<p>The amendments in subclause (1) are consequential to the amendments in clause 4 that relate to a landlord's statement of compliance with the healthy homes standards.</p> <p>The amendments to subclause (2) are consequential to other amendments relating to healthy home standards. In addition, the maximum amount that may be awarded for unlawful acts under section 45(1A) of the principal Act is increased from \$3,000 to \$4,000.</p>	<p>The amendments to subclause (1) relate to the unlawful acts of a landlord – failing to provide a statement of compliance, providing a false or misleading statement, or failing to comply with the healthy homes standards.</p> <p>Under section 13A(1F) of Schedule 1A, the Tenancy Tribunal will have discretion to award an exemplary damage of up to \$500 for failing to provide a statement of compliance, or for providing a false or misleading statement.</p> <p>The Residential Tenancies Amendment Act 2016 increased the maximum amount that may be awarded for unlawful acts under section 45(1A) from \$3,000 to \$4,000 and the Bill is not intended to reverse that increase.</p>
8	<p>Subclause (1) amends the Residential Tenancies Act 1986 as set out in the Schedule to the Bill.</p> <p>Subclauses (2) and (3) amend the Residential Tenancies Amendment Act 2016 by repealing sections 2(3) and (4), 4(2), 6(4), 14(2) and (5), 18(2) and 44(2).</p>	<p>The Schedule to the Bill sets out related and consequential amendments to the Residential Tenancies Act 1986 (see below).</p> <p>Some provisions in the Residential Tenancies Amendment Act 2016 will become redundant and the Bill therefore repeals these provisions.</p>	
Schedule	<p>The Schedule makes the following related and consequential amendments to the Residential Tenancies Act 1986 (RTA):</p> <ul style="list-style-type: none"> • amends section 2 by: <ul style="list-style-type: none"> – inserting a new definition of "healthy homes standards" – repealing the definitions of "income-related rent tenancy" and "New Zealand Standard" – amending the definition of "work order" so that it refers to complying with healthy homes standards (instead of complying with insulation requirements imposed by regulations) 		

Clause	Amendment by SOP	Effect of the amendment	Comments
Schedule	<ul style="list-style-type: none"> amends section 48 so that the landlord's right of entry includes entry for the purpose of complying, or preparing to comply, with the healthy homes standards (instead of with insulation requirements imposed by regulations) 		
	<ul style="list-style-type: none"> amends section 66I so that boarding house landlords are required to comply with the healthy homes standards amends section 66S so that the purposes for which a landlord may enter a boarding room under a notice of entry include to comply, or prepare to comply, with the healthy homes standards (instead of to comply with insulation requirements imposed by regulations) amends section 78 so that the Tenancy Tribunal cannot make a payment order as an alternative to compliance with a work order relating to a failure to comply with the healthy homes standard amends section 123 so that the functions of the Chief Executive include monitoring and assessing compliance by landlords with the healthy home standards amends section 123A to require landlords to retain prescribed records and other documents relating to the landlord's compliance with the healthy homes standards inserts new section 123CA, which gives the Chief Executive the power to arrange programmes of inspections for premises for the purpose of monitoring and assessing compliance with the healthy homes standards 		<p>Healthy homes standards will apply to boarding house tenancies.</p> <p>The amendment to section 123, together with new section 123CA, will enable the Chief Executive of MBIE to monitor and assess compliance with healthy homes standards through programmes of inspection.</p>

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Clause	Amendment by SOP	Effect of the amendment	Comments
Schedule	<ul style="list-style-type: none"> • amends section 123E so that the chief executive can apply to the Tribunal for an order authorising an inspection to implement the programme of inspection related to monitoring and assessing compliance with the healthy homes standards • amends Schedule 1A so that the item relating to section 66I(4) refers to “the healthy homes standards” instead of “insulation” <p>The Schedule also amends Schedule 1AA of the Residential Tenancies Act 1986 by inserting new transitional provisions relating to the Bill</p> <p>These transitional provisions include:</p> <ul style="list-style-type: none"> • provisions stating that the amendments relating to a landlord’s statement apply to a tenancy agreement made before 1 July 2019 only if the tenancy is renewed, or varied, on or after 1 July 2019 • provisions that allow regulations to provide for the obligation of landlords to comply with the healthy homes standards to be introduced in phases • provisions that relate to the current insulation requirements in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 • provisions that clarify that landlords may still exercise the right of entry currently in the Residential Tenancies Act apply to entry for compliance or prospective compliance with the 2016 smoke alarm and insulation regulations. 		<p>There is a longstop date for compliance with the healthy homes standards of 1 July 2024.</p> <p>Includes provisions enabling regulations to provide for the obligation of landlords to comply with healthy homes standards to be introduced in phases</p> <p>It is intended that, on 1 July 2019, the current insulation requirements will be incorporated into the healthy homes standards and the insulation requirements in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 will be revoked.</p>

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Annex 2: Speech notes

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Speech notes on the Healthy Homes Guarantee Bill (No 2)

- This Government is committed to improving the experience of renters in New Zealand.
- A key part on delivering on this commitment is ensuring that rental properties are of a quality that enables renters to live healthy lives and contribute to New Zealand society.
- The Healthy Homes Guarantee Bill aims to address a lack of clearly defined, widely accepted, and readily enforceable minimum standards for important aspects of housing quality for rental premises.
- There are strong public health arguments for requiring warm and dry homes.
- Effective heating, insulation and ventilation can directly reduce illness by helping maintain a minimum air temperature, and indirectly reduce illness by controlling relative humidity, lowering dampness, and inhibiting the growth of mould and fungi.
- Renters are more likely to live in sub-standard properties affected by these kind of issues, are less likely to have the financial means to change their circumstances, and even if renters did have the financial means, they lack the autonomy to make changes to the property that could improve their experience.
- Earlier this year the Building Research Association of New Zealand (BRANZ) released results contrasting the condition of rental and owner-occupied homes and found that nearly a third of rentals had higher levels of ambient/relative/atmospheric dampness compared to owner-occupied homes.
- People living in rental accommodation deserve a reset of what the Government will and won't accept in terms of minimum standards and that's why this Government is committed to passing this Bill in its first 100 days in office.
- This Bill will enable the Government to implement minimum standards (the healthy homes standards) under which landlords have to ensure their rental properties have appropriate heating, insulation, ventilation, draught stopping, drainage, and moisture ingress control.
- These healthy homes standards will be implemented through supplementary regulations, developed following consultation with the public.
- Public consultation on the regulations will be an important part of this process to make sure that we get these healthy homes standards right and improve the experience of renters in New Zealand.
- The Bill also allows for the standards to be phased in between 1 July 2019 and 1 July 2024, providing landlords with ample time to understand and comply with what is expected of them.

- Landlords will be required to provide a statement to all new, renewed or varied tenancy agreements after 1 July 2019 outlining their commitment to complying with the new minimum standards.
- Failure to provide this statement, providing a false or misleading statement, or not complying with the minimum standards by the date prescribed in the regulations after this date will be an offence under this Bill.
- The Bill will allow the Ministry of Business, Innovation and Employment to plan and implement programmes of inspection to support the implementation and enforcement of these minimum standards.
- We think it is crucial that we improve the experience for renters in New Zealand by supporting improvements in the safety and quality of rental properties.
- Passing this Bill is the first step in enabling new regulations on minimum standards for healthy homes and delivers on one of this Government's key first 100 day priorities.
- Passing legislation empowers the Government to implement minimum standards that have the force of law. These will be developed in conjunction with appropriate stakeholders and then consulted on with the public. Any required changes will be made, and these standards will then be made law by being passed as supplementary regulations under the Act.

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Annex 3: Reactive Q&As

Why does the Bill focus on rental properties?

Regardless of the type of tenure, cold and damp living conditions can cause serious health problems, particularly for children and older people.

Renters and owner-occupiers alike may suffer negative health effects from living in substandard properties. However, renters are more likely to live in such properties, are less likely to have the financial means to change their circumstances and, even if they did, generally lack the autonomy to make changes to the property that could improve their experience.

There is also a case for focussing on the quality of rental properties because the lowest quality houses are concentrated in the rental market.

How will the Bill improve housing quality?

The Healthy Homes Guarantee Bill allows us to set clear modern minimum standards for rental properties. Over the next 18 months my officials will be working with industry stakeholders, health professionals and the public to set standards that will be effective and functional in providing warm and dry rental houses.

While developing these standards officials will determine realistic compliance times so landlords know what they need to do to make sure their properties are up to scratch and when they need to comply by. The Government intends to support landlords and home owners create warmer drier homes with a insulation and heating subsidy scheme.

The standards will focus on insulation, heating, ventilation, draught stopping, drainage and moisture ingress. All of which are essential components to maintaining a warm, dry and healthy home.

What about owner occupiers?

The Bill amends the *Residential Tenancies Act 1986* which does not apply to owner occupiers.

This government intends to support those that want make their homes healthy through our insulation and heating subsidies scheme which is currently being developed.

Will tenants need to pay rent if the rental property they have been living in is not compliant with the standards?

Landlords will have sufficient time to make any required upgrades or maintenance to meet the healthy homes standards. Once the standards are in effect, breaches of them will be an unlawful act and various enforcement mechanisms will apply.

The Tenancy Tribunal will have the power to issue work orders for the purpose of ensuring landlords comply with the healthy home standards. Because the standards relate to the health and safety of the property the Tribunal will not be able to order the payment of money as an alternative to complying with the Healthy Homes Standards.

If a tenant discovers that the property that they are renting does not comply with the healthy home standards, can they stop paying rent?

No – tenants cannot stop paying rent and must continue paying rent until the tenancy is terminated.

However, they could apply to the Tenancy Tribunal for a rent reduction or other orders until the breach is remedied.

Do the amendments apply to boarding houses?

Yes. The standards made under the Bill will provide for the different ways the healthy homes standards could be applied to boarding houses.

Will this drive landlords out of the market?

The government intends to give landlords and homeowners access to grants for the purpose of upgrading insulation and heating and will consider how that scheme can support the implementation of the regulations under the Healthy Homes Guarantee Bill where possible.

However at the margins we expect that some landlords may not have the cash flow to make the changes to comply. Some landlords may choose to put their properties on the market. These homes may be sold to other investors who are able to make the changes required or to first home buyers who may be keen to improve the property themselves.

The Government will seek feedback from interested parties during public consultation on the new regulations to determine the impact of the proposed healthy homes standards.

Do you intend to exceed the Building Code?

The Building Act 2004 and Building Code are generally forward looking. They do not require the performance of existing buildings to be upgraded, except in specific circumstances.

We expect some of the healthy homes standards could impose requirements that are additional to (or more onerous) than the performance criteria in the New Zealand Building Code, such as heating in houses which is not required in residential houses currently.

During the development of the healthy homes standards my officials will assess whether amendments to the Building Code will be required to align the healthy homes standards and the Building Code.

How will I make my apartment comply?

Certain types of buildings may be exempt from the new heating regulations. This could include apartments or passive energy efficient design houses for example.

I have asked officials to think about situations where substantial building work required would merit an exemption and these matters will be reflected in the final standards.

What rooms will have to comply with the heating regulations?

The Government will seek feedback on the benefits and cost of the specific areas to be covered by the new regulations during the consultation process.

Initial modelling indicates that most bedrooms can be adequately heated by plug-in heaters, but officials will be seeking feedback from stakeholders and industry experts on this during the consultation phase of developing the regulations.

What happens to the current insulation requirements?

The existing requirements in the RTA for underfloor and ceiling insulation will remain in force. That is all residential properties that do not meet the 1978 Building Code standard for roof and underfloor insulation will need to bring the property up to the current building code for ceiling and underfloor insulation by 1 July 2019. From 1 July 2019, the current standards will be superseded by those to be developed under the Healthy Homes Guarantee Bill.

As long as the premises that have recently upgraded did so in accordance with the existing regulations, they will not need to do anything further to comply with the Healthy Homes Guarantee Bill. Rather, the question I will consider in the development of insulation standards under the Healthy Homes Guarantee Bill is whether the properties that do not meet the current trigger for needing to upgrade insulation should have then have the requirement to do so extended to them.

How much will this cost landlords?

The financial implications of the regulations will be assessed during the development of and consultation on the regulations.

However initial estimates are that the average costs of installing a heating device is about \$2800 (GST exclusive) for a heat pump, or \$3500 (GST exclusive) for a woodburner. Depending on the size of the space they are heating, the extent of window area, and the level of insulation some landlords will need to spend more to get a device with a higher heating capacity.

Ceiling and underfloor insulation typically costs around \$3000 but most landlords will have installed ceiling and underfloor insulation to the current building code level under the current insulation regulations in the RTA.

I do not expect that standards for ventilation, draught stopping, drainage and moisture ingress will impose high costs on landlords beyond what is already provided for in other legislation.

The government intends to give landlords and householders access to grants for upgrading insulation and heating. I will be working with my colleague, the Minister of Energy and Resources (Hon Dr Megan Woods) to develop this scheme and make sure it supports the implementation of the regulations under the Healthy Homes Guarantee Bill where possible.

Requirements exist within the Housing Improvement Regulations and Building Code why set new regulations?

There are requirements in the Building Code and Housing Improvement Regulations that aim to make warm and dry homes but in most cases the Building Code does not apply retrospectively so our existing housing stock continues to be behind modern housing requirements.

While the Housing Improvement Regulations 1947 support healthy homes there is limited understanding of the requirements and there can be variation among regions on what is required. The Healthy Homes Guarantee Bill will provide legislative clarity clearly stating at a national level some of the key standards that must be met by landlords.

How will the healthy homes standards be enforced?

All landlords will need to make a statement of compliance in the tenancy agreement to inform the tenants that they comply with the healthy homes standards and outline how they comply i.e. insulation levels and what heating is installed.

The Tenancy Tribunal will continue to be available for both tenants and landlords to use if they think the other party is not keeping to their end of the tenancy agreement.

The Ministry of Business, Innovation and Employment's enforcement powers will be expanded under the Bill to enable the monitoring and assessment of compliance by landlords with the healthy homes standards.

The Bill also allows an audit programme, so that enforcement activity will not be overly reliant on tenants actively complaining in order to ensure compliance.

What enforcement powers does MBIE currently have?

The Tenancy Compliance and Investigations Team at the Ministry of Business, Innovation and Employment was established in July 2016. The team focusses on the most vulnerable tenants and actively works to ensure a well-functioning market where participants perform with integrity and confidence. The team's statutory powers include:

- the ability to require landlords to provide documentation
- the right of entry to inspect premises (with the Tribunal's permission)
- the ability to take applications to the Tenancy Tribunal without tenant permission
- the ability to make public comment in relation to any landlord.

Key numbers:

- Rapid growth of the team to meet demand has resulted in expansion to a total of 20 staff located in Auckland (8), Wellington (10) and Christchurch (2).
- The team has opened 552 investigation and audit files, with 176 cases currently open.
- Four successful applications to the Tenancy Tribunal have awarded exemplary damages and other orders against the landlord sending a clear message to the market that non-compliant behaviour will not be tolerated.
- A recent case involved a landlord who was fined over \$38,000 for failing to lodge bonds for 54 separate tenancies.

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Annex 4: Talking points on the Healthy Homes Guarantee Bill

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Talking Points on Healthy Homes Guarantee Bill (No 2)

- The Healthy Homes Guarantee Bill (No 2) (the Bill) will improve the current quality of rental properties by setting nationally consistent standards of heating, insulation, ventilation, draught stopping and drainage in rental properties.
- The Government considers these improvements to the current regime are important because it focuses efforts on the segment of the market where the greatest benefits can be realised.
- Rental tenants are at risk from a lack of adequate sources of heat because, unlike owner-occupiers, rental tenants need their landlords approval to install a fixed form of heating.
- This Bill is one of Labour's 100 day commitments. Poor quality and insecure rental housing disproportionately affects the health, education and/or employment outcomes of particular groups, particularly Maori and Pacific Peoples, and increasingly older people.
- The Bill will come into force on 1 July 2019, with minimum standards to be prescribed in regulations, to allow appropriate time for landlords to make the required changes. This bedding in period will provide stakeholders an opportunity to be involved in the consultation that MBIE will run on the regulations.
- The Supplementary Order Paper provides changes to the Bill that allow the Chief Executive of MBIE to be given a new proactive function of assessing and monitoring compliance with the proposed Healthy Homes Standards. These inspections will be subject to the same requirements (notice periods and actions undertaken in the inspections) that currently apply to tribunal ordered inspections.
- The additional inspection powers will allow adequate monitoring of compliance with the new regulations and help deter non-compliance. A monitoring and evaluation plan will be developed once regulations have been agreed – this plan will leverage existing monitoring and evaluation activity around the impact of housing quality on health outcomes. The budget implications of this monitoring and evaluation will be established during the development of the regulations.
- The Bill amends the Residential Tenancies Act 1986 (the RTA) to require both private and boarding house landlords to include a statement in the tenancy agreement that the property complies with certain standards, with penalties applied for failure to provide a statement or providing a misleading statement.
- The Bill also makes it an unlawful act for a landlord to not provide a statement, or provide a misleading statement, that their property complies with the healthy homes standards.

- Landlords face exemplary damages of up to \$500 for failing to provide a statement of compliance and \$4000 for failing to comply with the standards by the prescribed date.
- MBIE will also gain a new monitoring and audit function to help enforce landlord compliance with the healthy homes standards.
- The healthy homes standards implemented under this Bill will be a fair and practical improvement for the lives of renters and improve outcomes for New Zealand overall.

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Annex 5: Talking points on the Supplementary Order Paper

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Talking points on the Supplementary Order Paper

Commencement and compliance dates

- The Bill as reported back from Select Committee would have come into force 12 months after receiving Royal assent, with MBIE publishing standards no more than six months after that point.
- The Bill will now come into force on 1 July 2019 with an end point compliance date of five years later (1 July 2024) which is now covered in Schedule 1AA of the Bill.
- The implementation dates for new healthy homes standards will be set in regulations enabling a phasing in of different healthy homes standards (see the Transitional Provisions below).
- The timeframes for existing insulation requirements implemented under the Residential Tenancies Amendment Act 2016 will be retained. Significant information and education efforts have already been made to inform landlords and tenants of the new insulation requirements.

Regulation making powers

- The SOP amends the Bill so that the Governor-General has the power to make regulations by Order in Council that prescribe healthy homes standards that landlords must comply with.
- The requirements with respect to insulation will now be covered by the healthy homes standards from 1 July 2019.
- The SOP also enables regulations made with respect to healthy homes standards to:
 - include exceptions to the healthy homes standards (for example for passive design homes);
 - to prescribe information that must be included in a landlord's statement with regards to compliance with the healthy homes standards; and
 - to prescribe records that must be retained in regard to compliance with the healthy homes standards.

Landlord obligations

- The SOP clarifies that a landlord has an obligation to provide the tenant with a statement that the landlord complies with the healthy homes standards.
- The landlord is now required to provide such a statement when the tenancy is first signed, and whenever the tenancy agreement is varied or renewed.

- It will be an unlawful act if the landlord:
 - fails to provide a statement or knowingly provides a false or misleading statement relating to compliance with the healthy homes standards; or
 - fails to comply with the healthy homes standards by the date prescribed in regulations made with respect to healthy homes standards.
- Landlords face exemplary damages of up to \$500 for failing to provide a statement of compliance and \$4000 for failing to comply with the standards by the prescribed date.

Transitional provisions

- The transitional provisions clarify that a landlord is required to provide a statement on compliance with the healthy homes standards to a tenant. This obligation relates to a new, renewed, or varied tenancy signed after 1 July 2019.
- Compliance with the standards will be able to be implemented in phases under the regulations as long as compliance occurs before 1 July 2024.

Other related and consequential amendments to the RTA

- The healthy homes standards will be extended to apply to boarding house tenancies
- A landlord's right of entry will be expanded from compliance with the insulation standards to the healthy homes standards
- The Tenancy Tribunal will not be able to make a payment order as an alternative to compliance with a work order relating to a failure to comply with the healthy homes standards.
- The Chief Executive of MBIE will be empowered to monitor and assess compliance with the healthy homes standards through programmes of inspection.
- The regulations could also require landlords to retain records and other documents relating to the landlords compliance with the healthy homes standards.