



New Zealand Council Of
Christian Social Services



Te Kahui Atawhai O Te Motu Inc
National Collective Iwi Maori Social Services

RESIDENTIAL TENANCIES AMENDMENT BILL
NZCCSS and TE KAHUI ATAWHAI O TE MOTU INC
SUBMISSION TO SOCIAL SERVICES SELECT COMMITTEE
27th January 2016

1. Introduction

- 1.1 The New Zealand Council of Christian Social Services (NZCCSS) has six foundation members: the Anglican Care Network, Baptist Union of New Zealand, Catholic Social Services, Methodist Church of New Zealand, Presbyterian Support New Zealand Inc and the Salvation Army. NZCCSS works for a just and compassionate society in Aotearoa New Zealand. We see this as a continuation of the mission of Jesus Christ. In seeking to fulfil this mission, we are committed to giving priority to poor and vulnerable members of our society and to Te Tiriti O Waitangi.
- 1.2 Nationally, NZCCSS membership consists of multiple social service groups working from almost 640 separate organisational sites, which collectively provide over 1,200 social service programmes throughout New Zealand. Our members deliver a wide range of services that cover such areas as child and family services, services for older people, food-bank and emergency services, housing, budgeting, disability, addiction support, community development and employment services. Further details on NZCCSS can be found on our website www.nzccss.org.nz.
- 1.3 Te Kahui Atawhai o Te Motu Inc is the National collective of Iwi Maori Social service providers (all members are MSD approved s403 or s396). We have 180 member organisations. Our members are located throughout Aotearoa with a focus on servicing their communities to support and address whanau, hapu, Iwi needs. Housing is an ongoing challenge for the majority of whānau within these communities with many suffering from poor housing situations and the associated problems of such. It is our expectation of the Crown partner that adequate safe houses are provided. The current proposed changes to the legislation are unacceptable and should not proceed without consideration for the concerns raised in this submission. Once again Whānau, Hapu, Iwi will be effected and affected in a negative way.
- 1.4 We wish to have the opportunity to present an oral submission to the Select Committee to provide further information in support of this written submission.
- 1.5 Contact person for these comments is: Paul Barber, Policy Advisor, PO Box 12-090, Thorndon, Wellington, Ph (04) 473 2627 or paul.barber@nzccss.org.nz.

2. Summary

2.1 NZCCSS and Te Kahui o te Motu strongly support the objectives of this Bill to achieve “warmer, drier and easier to heat” properties and to “strengthen enforcement powers available” to officials administering the Residential Tenancies Act 1986 (RTA). The introduction of legislated minimum standards for insulation and smoke alarms in private rental housing through this Bill is a welcome recognition of the urgent need to improve rental housing quality in this country. This Bill is an encouraging first step in the right direction in a private rental market that is characterised by poor quality housing and insufficient enforcement activity by Government.

2.2 The Bill in its current form has several serious weaknesses and should not proceed into legislation without significant further amendment. The objectives of the Bill are unlikely to be achieved unless these weaknesses are addressed. The effectiveness of the legislation is strongly impacted by the quality of the supporting regulations that are also part of a separate consultation, so the comments in this submission relate to how the Bill and regulations will work together:

- **Opportunity to save lives:** Thousands of preventable hospital admissions and many early deaths occur each year that are linked to poor quality housing. Lives can be saved and wellbeing improved if Parliament sets high enough standards. An optimal impact prioritises health and wellbeing benefits over administrative costs to government. ***We recommend that the Bill aim for optimal health and wellbeing impact as the benchmark for setting standards.***
- **Insulation Standard too low:** The insulation standard that is included in the draft of the proposed supporting regulations to this Bill is too low and will most likely not deliver the health benefits intended. ***We recommend that the minimum standard should be the current standard building code standard and not an outdated 1978 standard.***
- **Too many exemptions:** It is not clear how many houses would be exempted under the proposed regulations but it should be the minimum possible. ***We recommend that retrofit of floor or ceiling insulation is still beneficial, even if only one is practical and should not be grounds for exemption.***
- **Heating, mould and ventilation excluded:** No standards for heating, mould or ventilation are included in the Bill yet the overwhelming weight of evidence shows that it is the combination of insulation, heating and adequate ventilation that is cost effective and likely to achieve optimal health benefits. ***We recommend that the minimum requirements be extended to include specifications for fixed heating, adequate ventilation and absence of mould.***

- **Compliance model is flawed:** The Bill relies on a private contractual approach to enforcement of standards. This means it relies on disclosure about compliance in tenancy agreements and complaints by tenants for remedying non-compliance. This is the weakest and least effective compliance model meaning lower rates of compliance and less benefit to tenants. ***We recommend that the compliance model be strengthened to an equivalent of the vehicle warrant of fitness approach.***
- **Tenant protections not sufficient:** The increased tenant protections included in the Bill are not sufficient to achieve a genuine improvement in the power balance between landlords and tenants. ***We recommend increased protections for tenants such as not allowing a property to be re-tenanted until minimum standards are met and work order requirements are completed.***
- **Enforcement requires additional resourcing:** Without a commitment to resourcing further enforcement activity by government administration, the increased powers granted to officials are unlikely to be effective in increasing compliance by landlords. ***We recommend that the Ministry be clearly tasked and resourced to proactively regulate the strengthened regulations.***
- **Right to Housing not enforceable:** New Zealand has ratified the International Covenant on Economic, Social and Cultural Rights but it is not enforceable under any legislation. ***We recommend that the Residential Tenancies Act, the Bill of Rights or other legislation be amended to specifically include the right to adequate housing for all New Zealanders.***

3. Background

- 3.1 It is more than five years since the last significant changes to the Residential Tenancies Act. The opportunities for Parliament to take direct and effective steps to improve the quality of housing in this country do not come frequently, so we urge this Parliament to do all it can based on our current knowledge of housing quality.
- 3.2 Every year there are more than 40,000 hospitalisations of children with respiratory conditions that are linked to poor housing quality (Professor Howden-Chapman, RadioNZ interview, June 2015 <http://www.radionz.co.nz/news/national/275458/'they're-getting-sick'>) some of those admissions result in death or lifelong health problems. Each winter there are an estimated 1600 early deaths among older people (“excess winter mortality”) that are linked to poor housing quality. This legislation can have a direct impact to reduce illness and death resulting from poor quality housing. Parliament has an opportunity to save lives.

- 3.3 Almost half of the New Zealand population now lives in rental housing, although only around a third of total households (Proposed Residential Tenancies Regulations for insulation and smoke alarms Discussion Document, p.7). This means that those who are renting tend to be larger and lower income households with a higher proportion of young children. The poor quality of private rental housing impacts directly on the health and wellbeing of vulnerable children at a very formative stage in their lives.
- 3.4 The private rental housing market is an unfair and unjust market place where those who have the least power, income and wealth exist on the “leftovers” of poor quality and inadequate housing. New Zealand Church Leaders’ statements have consistently called attention to “the responsibility of the State as providing for a just sharing of society’s wealth and resources for all its citizens. This includes: adequate income for everyone, fair taxation policies, access to good health care, affordable housing, and living sustainably. These are not privileges but part of the common heritage of humanity” (Church Leaders’ Vision for a Fair Society, 2011). It is the role of government to put in place laws, regulations and compliance mechanisms as well as social policies to help reduce the inherent unfairness in the lower end of the housing market.
- 3.5 New Zealand has signed up to international human rights agreements that include the right to housing. In 1978 New Zealand ratified the International Covenant on Economic, Social and Cultural Rights, that include the right to housing. These rights are not anchored into any legislation and therefore are not enforceable. The dire state of the lower end of the housing market requires at the very least that the Residential Tenancies Act (or other enabling legislation such as the Bill of Rights Act) be amended include reference to the right to housing
- 3.6 Social service agencies in our networks are reporting the huge difficulties faced by families and individuals to find any sort of housing. Those agencies report that the private sector rental housing at the lower end of the market that is available is frequently of poor standard. The situation is too serious not to act and unsubstantiated concerns about houses being withdrawn from the lower end of the property market are no reason to leave people to with no choice but to accept sub-standard, unsafe and unhealthy rental housing.
- 3.7 The private tenancy market is a place where inequalities of power, income and wealth have direct impacts on vulnerable people. Tenant rights are too weak and poorly enforced in this country, leaving vulnerable individuals and families suffering from either poor tenancy management or exploitative behaviour from landlords. Proactive and effective government intervention is required to ensure a fairer balance of rights between tenants and landlords.
- 3.8 Māori and Pacific families are more likely to be renting and as a result they are even more disproportionately impacted by poor quality rental housing. They are marginalised and discriminated against by the way the current private rental market operates.
- 3.9 A growing proportion of older people are entering retirement as renters and their health and wellbeing is greatly affected by the quality of the rental accommodation they

are living in.

4. Insulation Standard - Clause 6(3)

- 4.1 NZCCSS strongly supports the inclusion in this Bill of a requirement for rental properties to be insulated. The benefits of insulation in housing are not in question and it is an important milestone in housing legislation. Thousands of preventable hospital admissions and some early deaths occur each year that are linked to poor quality housing. Lives can be saved and wellbeing improved if Parliament sets high enough standards. An optimal impact priorities health and wellbeing benefits over administrative costs to government. ***We recommend that the Bill aim for optimal health and wellbeing impact as the benchmark for setting standards.***
- 4.2 The policy rationale behind this Bill seeks to “balance costs and benefits” with the rationale that the greatest benefit from insulation comes from the first 70mm of thickness (Regulatory Impact Statement, Paragraph 55). This fails to recognise that further benefits, an estimated 10% increase in thermal performance (Proposed Residential Tenancies Regulations for insulation and smoke alarms Discussion Document, p.14), are still obtainable by regulating to current building standards.
- 4.3 The insulation standard that is included in the draft of the proposed supporting regulations to this Bill is too low and will most likely not deliver the full health benefits intended. If landlords are going to be retrofitting then it makes sense for that retrofit aim to achieve the optimal outcome. It makes no sense for landlords who are retrofitting to be effectively encouraged to work to an outdated standard, when the building industry is already working to a modern and more effective standard. All houses built before 1978 should be required to retrofit to the current standard. Landlords with houses built after 1978 that are not insulated to current standards would simply have the option of disclosing this in the rental agreement or choosing to upgrade as well. ***We recommend that the minimum standard for insulation should be the current standard building code standard and not an outdated 1978 standard.***
- 4.4 An estimated 100,000 residential rental properties would be exempted under the proposed regulations because they cannot have ceiling and/or underfloor insulation retrofitted. This represents more than a fifth of all rental properties and likely some of the poorest quality. Around 35,000 of those dwellings have no access to both ceiling and underfloor space (*Cost benefit analysis for a minimum standard for rental housing*, Sapere Research Group, November 2014, p.32). The wording of the proposed exemption for properties where floor or ceiling retrofitting is not practical is not clear. It is unclear whether the whole building will be exempt if the ceiling cannot be retrofitted or whether there still be a requirement for floor insulation if practical. ***Retrofit of floor or ceiling insulation is still beneficial, even if only one is practical and we recommend that this should not be grounds for full exemption.***
- 4.5 The regulations also offer no way forward to addressing the lack of insulation in exempted properties. Such properties should not be permanently exempted. One option is to require the installation of a heat pump in such properties. This would deliver

health benefits that are important to vulnerable tenants, especially children and older people (*Cost benefit analysis for a minimum standard for rental housing*, Sapere Research Group, November 2014, p.32). **We recommend adding the requirement to install energy-efficient heating systems in properties that cannot be retrofitted with insulation in both ceiling and underfloor.**

- 4.6 No standards for heating, mould or ventilation are included in the Bill yet the weight of evidence shows that it is the combination of insulation, heating and adequate ventilation that is cost effective and likely to achieve optimal health benefits. Without this combination, the health benefits that are claimed for this Bill of \$2.10 for every dollar of cost (Regulatory Impact Statement, Para 56) are unlikely to be achieved.
- 4.7 We note the announcement of Dunedin and Wellington City Councils that they intend to implement a housing warrant of fitness scheme in 2016. The warrant of fitness criteria they plan to base this on is the one which has already been successfully trialled by five councils in 2014 (*Results from a Rental Housing Warrant of Fitness Pre-Test*, He Kainga Oranga/ Housing and Health Research Programme, University of Otago, May 2014). The criteria for this warrant of fitness include assessing whether there is a fixed form of heating, adequate ventilation in all rooms and absence of visible mould. **We recommend that the minimum requirements be extended to include specifications for fixed heating, adequate ventilation and absence of mould as the basis for a full housing warrant of fitness.**
- 4.8 The timeframe for implementation is too long. A four year timeframe for implementation seems too long, given the ongoing premature deaths and high levels of hospitalisation resulting from the poor quality housing. We also note concerns about the capacity of the industry to meet demand for retrofitting, especially if this peaks in the final year of 2019. **We recommend designing a tenant-focussed incentive scheme to encourage landlords to retrofit earlier (e.g. by paying a Warm Up NZ-style subsidy to early adopters in the two years)**

5. Compliance model is too weak (Clause 16 (3)):

- 5.1 The Bill relies on a private contractual approach to enforcement of standards. This means it relies on disclosure about compliance in tenancy agreements and complaints by tenants for remedying non-compliance. This is a much weaker and less effective compliance model meaning lower rates of compliance and less benefit to tenants. It can be expected that only about two thirds of landlords will comply under such an approach, compared to 90% for a full warrant of fitness approach, such as that used for motor vehicles (*Cost benefit analysis for a minimum standard for rental housing*, Sapere Research Group, November 2014, p.30). It is most likely that many of the non-compliant landlords would be those renting out poorer quality housing to lower income tenants, meaning that the health and wellbeing benefits to tenants that would otherwise be achieved are missed out on in the very places where they are most needed. The rationale for not using a stronger model is that it would involve “substantial resourcing implications” (Regulatory Impact Statement, Paragraph 70). This means that

government's attempt to save itself enforcement costs comes at direct expense of the most vulnerable in our communities and continuing high costs to our health and welfare systems. ***We recommend that the compliance model be strengthened to an equivalent of the vehicle warrant of fitness approach.***

6. Tenant protections not sufficient (Clause 11 and Clause 35)

- 6.1 The increased tenant protections included in the Bill are welcome but are not sufficient to achieve a genuine improvement in the power balance between landlords and tenants. The increase in the time allowed for tenants to complain about a retaliatory eviction is a welcome strengthening of tenant rights. However, the experience of our social services agencies is that tenants are extremely reluctant to complain and fear the consequences for their relationship with their landlord and for future tenancies. Without further measures to protect tenants' rights and security of tenure, these changes will have little impact. ***We recommend increased protections for tenants such as not allowing a property to be re-tenanted until minimum standards are met and work order requirements are completed.***
- 6.2 The increase in the maximum fine from \$400 to \$2,000 (Clause 35) is welcome but the question remains whether \$2,000 maximum is still too low, representing little more than a month's rental for average Auckland, Christchurch or Wellington properties.
- 6.3 The Tenancy Tribunal needs to be made more effective for tenants in the way it works. Most Tribunal work comes from landlords, who are usually better resourced and more practiced in dealing with the legal processes of the Tribunal. Tenants are frequently unaware of their rights or not skilled or confident enough to feel able to make use of the options for resolving disputes that the Tribunal offers. Vulnerable tenants for whom English is a second language, or with poor literacy, mental health issues, require proactive support to claim their rights under this Bill and other legislation.

7. Enforcement requires additional resourcing:

- 7.1 Without a commitment to resourcing further enforcement activity by government administration, the increased powers granted to officials in this Bill are unlikely to be effective in increasing compliance by landlords. Existing legislation gives the authorities power to take over tenancy disputes and investigate landlords, but this power has been used only twice in the last 20 years (Cabinet Social Policy Committee, 2015, p.11). To our knowledge, there are only a small number of officials involved in regulatory and enforcement activity relating to residential tenancies. Without significant increase in the number and powers of these officials, the legislative changes will have little impact. ***We recommend that the Ministry be clearly tasked and resourced to proactively regulate the strengthened regulations.***

8. Right to Housing not enforceable:

- 8.1 New Zealand has ratified the International Covenant on International Covenant on Economic, Social and Cultural Rights but it is not enforceable under any legislation.

Courts in New Zealand have shown a great reluctance to actively interpret existing housing legislation in manner consistent with the international human rights obligations imposed by ratifying the Covenant. However, we note that recent Supreme Court decisions relating to international human rights in other areas use a “presumption of consistency” by which the Court interprets legislation in a way that presumes Parliament’s intent in creating legislation is to do so consistently with its international obligations (*Paper Walls*, L. Rogers, Anglican Social Justice Unit of the Anglican Diocese of Christchurch, 2013, p.66). ***We recommend that the Residential Tenancies Act, the Bill of Rights or other legislation be amended to specifically include the right to adequate housing for all New Zealanders***