

In Confidence

Office of the Minister for Housing and Urban Development  
Chair, Cabinet Legislation Committee

## **RESIDENTIAL TENANCIES (HEALTHY HOMES STANDARDS) REGULATIONS 2019**

### **Proposal**

1. This paper seeks agreement to submit the Residential Tenancies (Healthy Homes Standards) Regulations 2019 to the Executive Council for approval.

### **Policy**

*Rental homes tend to be cold and damp*

2. Nearly a third of households (600,200) rent in New Zealand and a significant proportion of these rental homes are cold and damp.<sup>1,2</sup> Evidence shows that rental homes are more likely to be in poorer condition than owner-occupied homes with less fixed heating and a high incidence of mould.<sup>3</sup> Renters may lack the means to make particular changes to make their rental homes warmer and drier.

*Minimum standards for drier and warmer rental homes*

3. To address this issue, this Government passed the *Healthy Homes Guarantee Act 2017* (HHGA) in December 2017. The HHGA amended the *Residential Tenancies Act 1986* (RTA) principally to provide for regulations, which specifies healthy homes standards to make rental homes warmer and drier. The standards cover heating, insulation, ventilation, moisture ingress and drainage, and draught stopping.
4. A landlord's failure to meet the healthy homes standards would be an unlawful act under section 45(1A) of the RTA, and any breach could therefore be subject to exemplary damages of up to \$4000 under schedule 1A of the RTA.
5. In March 2018, Cabinet further agreed that ensuring everyone has a warm and dry home is a priority in order to improve the wellbeing of New Zealanders and their families [CPC-18-MIN-0001 refers].
6. A number of options for the standards were developed and the public was consulted on these from 4 September to 22 October 2018 [CAB-MIN-0401.01 refers]. On 12 December 2018, the Cabinet Social and Wellbeing Committee agreed to the

1 Statistics New Zealand estimate of number of households in private occupied dwellings, as at quarter ended March 2019 <https://www.stats.govt.nz/information-releases/dwelling-and-household-estimates-march-2019-quarter>

2 White, V. Jones, M., (2017) Warm, dry, healthy? *Insights from the 2015 House Condition Survey on insulation, ventilation, heating and mould in New Zealand houses*. SR372. BRANZ Ltd.

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following high level healthy homes standards [SWC-18-MIN-0196 and CAB-18-MIN-0641 refers]:

- 6.1. Heating - a fixed heating device, capable of achieving a minimum temperature of at least 18 degrees in the living room only.
  - 6.2. Insulation – the minimum level of ceiling and underfloor insulation must either meet the 2008 Building Code, or (for existing ceiling insulation) have a minimum thickness of 120mm.
  - 6.3. Ventilation – require openable windows in the living room, dining room, kitchen and bedrooms. Also appropriately sized extractor fan(s) in rooms with a bath or shower or indoor cooktop.
  - 6.4. Moisture ingress and drainage – ensure efficient drainage and guttering, downpipes and drains. Also install a ground moisture barrier for rental properties with an enclosed subfloor.
  - 6.5. Draught stopping – stop any unnecessary gaps or holes in walls, ceilings, windows, floors, and doors that cause noticeable draughts. All unused chimneys must be blocked.
7. Cabinet authorised me to make minor policy, transitional and technical amendments that are necessary to bring the regulations into effect by 1 July 2019 [SWC-18-MIN-0196 and CAB-18-MIN-0641 refers]. I have set out the changes I made under this authority in detail below. No new policy decisions are required.
  8. Cabinet invited me to issue drafting instructions to the Parliamentary Counsel Office for the standards to be drafted in regulations. The regulations will be implemented between 1 July 2019 and 30 June 2024.
  9. I seek Cabinet’s approval to lodge the Residential Tenancies (Healthy Homes Standards) Regulations 2019 to the Executive Council for approval.

### **Minor and consequential amendments**

10. Under the delegated authority from Cabinet outlined in paragraph 6 above, I made the minor policy, transitional and technical amendments set out below.

#### *Minor policy and technical amendments*

##### Heating standard

11. Cabinet’s agreed heating standard requires landlords to provide fixed heating devices in the living room only that are capable of achieving 18 degrees. Additionally, a number of heating devices were specified that cannot be used to meet the heating standard. These include:
  - 11.1. unflued gas heaters
  - 11.2. open fires

11.3. all electric heaters (except heatpumps) with a heating capacity greater than 2.4kW

11.4. multiple electric heaters (except heatpumps) in one room with a combined heating capacity greater than 2.4kW.<sup>4</sup>

**12.** The current wording of the standard allows different combinations of heating devices to be used to meet the heating standard. This provides flexibility to landlords so they can best cater for the heating needs of their property. For example, an L-shaped living room can be fitted with a woodburner at one end and a secondary heatpump at the other end.

**13.** Although the current wording of the standard allows flexibility to landlords, it also allows landlords to choose a combination of heating devices that minimises their capital cost on heating devices that may not be the most energy efficient or cost effective for a tenant to use. For example, a living space that requires 5kW of heating could be heated with a 3kW heat pump combined with a 2kW electric heater. Although this combination will meet the standard, it will be more costly to operate than a single 5kW heat pump.

**14.** While a flexible heating standard is important, it is equally important to ensure that heating devices are efficient and affordable to use. As a result of this, I have drafted the heating standard to restrict the use of electric heaters to living rooms that require up to and including 2.4kW of heating. The new wording no longer requires the following unacceptable heating devices to be specified:

14.1. all electric heaters (except heatpumps) with a heating capacity greater than 2.4kW

14.2. multiple electric heaters (except heatpumps) in one room with a combined heating capacity greater than 2.4kW.

**15.** Subsequently I have removed these two categories of unacceptable heating from the regulations.

#### Ventilation standard

**16.** Cabinet agreed to require appropriately sized extractor fans in rooms with a bath, shower, or indoor cooktop. I have made a minor policy decisions to specify in the regulations what is considered an appropriately sized fan.

**17.** I have specified the minimum sizes (diameter) for fans and flexible ducting to ensure they are appropriately sized. These are as follows:

17.1. Any fan provided to meet the healthy homes ventilation standard, including any connected flexible ducting, in rooms with a **shower or a bath**, must have a minimum diameter of **120mm** unless a maximum flowrate of not less than 25 litres per second can be achieved as installed, if installed after 1 July 2019.

<sup>4</sup> Previously worded as 'portable' electric heaters because portable electric heaters are not available at heating outputs greater than 2.4kW.

- 17.2. Any fan provided to meet the healthy homes ventilation standard, including any connected flexible ducting, installed after 1 July 2019 in rooms with a **cooktop**, must have a minimum diameter of **150mm** unless a maximum flowrate of not less than 50 litres per second can be achieved as installed.
- 17.3. Any fan provided to meet the ventilation standard, whether new or existing, must vent extracted air to the outside of the home.
- 18.** Cabinet agreed to a number of exceptions to the ventilation standard. After further consideration of the exemptions, I found an overlap between the following two exceptions:
- 18.1. If, at the time the home was built, it received building consent even though it did not have an openable window(s) in the relevant location.
- 18.2. If it is not reasonably practicable to create an openable window in the relevant location.
- 19.** Under my delegation to make minor and technical policy decisions, I have removed the second exemption because it is sufficiently addressed by the first exemption. Where an openable window was not practical the home would have required an alternative form of ventilation to be lawful at the time of construction and therefore would meet the first exemption. An example of this is some apartment buildings where an openable window is not practical and a whole house ventilation system is installed as an alternative.

#### Compliance statements in tenancy agreements

- 20.** The HHGA amends the RTA to require landlords to include in the tenancy agreement a signed statement that their rental home complies with the healthy homes standards.
- 21.** I made minor policy decisions about the information that must be included in a tenancy agreement. This information will be specified in the regulations. Landlords will be required to include the prescribed healthy homes compliance information outlined in Annex 1 in new, or renewed, tenancy agreements from 1 July 2020.
- 22.** For the heating, insulation and ventilation standards information on devices present must be included in the tenancy agreement. For the drainage and draught stopping standards, a high-level statement of compliance is sufficient because these standards are not easily described. Requiring the landlord to confirm compliance through these high-level statements will allow the tenants to present a stronger case to the Tenancy Tribunal (the Tribunal) and seek exemplary damages (a form of penalty) and a work order from the Tribunal.
- 23.** It would then be up to the Tribunal to assess any evidence and determine whether the standard is met. For example, a landlord would state in the agreement that “the property has effective drainage”. If the tenant lodges a complaint with the Tribunal, the tribunal would assess any evidence against the Standard (which, in this case, reflects the existing r 14 of the Housing Improvement Regulations 1947).

- 24.** Providing this information to tenants in the tenancy agreement before needing to comply with the standards will increase knowledge of the healthy homes standards and raise public awareness of the regulations. These are important components to ensure successful implementation and compliance with the new standards.
- 25.** The Ministry of Business, Innovation and Employment (MBIE) is tasked with providing education and information services and compliance functions for the rental sector. As part of this role MBIE provides a number of existing resources for supporting landlords to meet their obligations regarding tenancy agreements. It currently supplies a model tenancy agreement template and delivers support to landlords through seminars, plain English advice online and the call centre. MBIE is building on these resources to further support landlords and tenants. MBIE is developing an online tenancy agreement builder that allows landlords to create a customised tenancy agreement which works alongside the online heating tool to ensure the correct information is included in tenancy agreements. The heating tool is expected to be available in July 2019 when the regulations come into effect and the tenancy agreement builder is expected to be available prior to tenancy agreement requirements coming into effect on 1 July 2020.
- 26.** Landlords can also choose to seek professional advice or recommendations on the size of heating devices they should use. Groups such as the Community Energy Network (e.g. The Sustainability Trust), council Eco Design Advisors, home performance advisors, heating service providers and the New Zealand Green Building Council offer this sort of support.

#### Record keeping

- 27.** The HHGA allows regulations to be made prescribing the records or other documents that must be kept by landlords relating to the healthy homes standards. Landlords are already required by the RTA to keep records of any maintenance done to their rental home.
- 28.** Records can be requested by the Chief Executive of HUD and it is unlawful for a landlord to fail, without reasonable excuse, to provide documents where the Chief Executive has served appropriate notice.
- 29.** I made minor policy decisions setting out the documents that landlords could maintain to show compliance with the healthy homes standards. The prescribed documents are set out in Annex 2.

General exemption: introducing a partial exemption if the landlord is not the owner of the whole building

- 30.** Cabinet approved an exemption to the heating standard where the body corporate rules in a unit title may prevent compliance with the heating standard. For example, the body corporate rules may not allow heating units on common property.
- 31.** However, this exemption may not address all scenarios that prevent compliance under other shared ownership models such as cross leases. Furthermore, this exemption could apply to all the healthy homes standards as they could impact on

common property in shared ownership models. To address these issues, and to clarify the policy intent, I amended the exemption to be a general exemption applicable to all standards to cover situations where the landlord is not the owner of the whole tenancy building (situations beyond just the body corporate rules). This exemption will therefore be a general exemption, which applies to all the healthy homes standards.

- 32.** For this exemption to apply, the following criteria would need to be met:
- 32.1. the landlord is not the owner of the whole of the tenancy building, and
  - 32.2. the body corporate or other owners are preventing compliance with the standards, and
  - 32.3. the landlord has taken all reasonable steps to ensure the home complies to the maximum extent possible.

#### *Transitional provisions*

- 33.** In line with the authority from Cabinet, I have included transitional and related provisions in Schedule 1 of the regulations. The transitional provisions sets out:
- 33.1. the interaction between the new regulations (the Healthy Homes Standards) and the 2016 insulation regulations
  - 33.2. the requirements that will apply to fans installed prior to 1 July 2019 to meet the ventilation standard,
  - 33.3. the requirements that will apply to heaters installed prior to 1 July 2019 to meet the heating standard, and
  - 33.4. a general exemption where a landlord intends to demolish or substantially rebuild the home within 12 months.

#### *Transitional provisions for existing fans*

- 34.** Some rental properties may already have fans installed in rooms with a bath or shower, or a cooktop. However, the performance of these fans may not meet the requirements set for new fans that are installed on or after 1 July 2019.
- 35.** I have included a transitional provision in the regulations to deal with existing fans. Fans that were installed before 1 July 2019 and that do not meet the performance requirements of the ventilation standard, will continue to be considered compliant as long as these fans comply with the requirement that extracted air must be vented to the outside of the home.
- 36.** As these fans need to be replaced over time, their performance will have to comply with the full requirements of the ventilation standard.

#### *Transitional provisions for existing heaters*

- 37.** Not all rental properties will require a new heating device to be installed. Some rental properties may already have a heating device installed but it may be undersized and not have sufficient heating capacity to meet the heating standard. Transitional provisions are included in the regulations to address:
- 37.1. existing heating device that have a heating output that is within 10 percent of the heating requirements of the room, and
  - 37.2. existing heating devices that do not meet the heating requirements of the room.
- 38.** For a heating device that has a heating output that is within 10 percent of the heating requirements of the room, I have introduced a transitional provision that sets a tolerance of 10 percent for existing heaters installed prior to 1 July 2019. This only applies to heating devices with a heating capacity greater than 2.4kW.
- 39.** This is to allow for situations where the existing heater is slightly undersized and does not meet the heating output required by the heating tool. The marginal benefit of the increase in heat output will not justify the cost of an additional heater. As devices are replaced over time, the tolerance will no longer be required.
- 40.** For existing heating devices that do not meet the heating requirements of the room, I have introduced a transitional provision that allow electric heaters to be used to ‘top up’ the existing heating devices installed before 1 July 2019. The ‘topping up’ would be restricted to a maximum of 1.5kW and can only be used in homes that require more than 2.4kW of heating. This provision would prevent existing heating devices from needing to be replaced and provides a low cost option for increasing the heating output where a large fixed heater is already present.
- 41.** Where ‘topping up’ is used, tenants will face relatively higher operating costs but this is balanced against the landlords’ cost of having to replace an existing functional heating device. As these devices reach end of life, new devices would need to be appropriately sized and remove the need for ‘topping up’.

Transitional provisions for a general exemption: Exemption for dwellings where the landlord intends to demolish or substantially rebuild the dwelling

- 42.** Cabinet agreed that a general exemption should apply to the five healthy homes standards where the landlord has an intention to demolish or substantially rebuild the rental home. This exemption is stated in the Cabinet paper as “where the landlord intends to demolish or substantially rebuild the home within 12 months and applied for any necessary resource consent or building consent before the tenancy commenced” [CAB18-MIN-0641 refers].
- 43.** This exemption is carried over from the Residential Tenancies (Smoke Alarms and Insulation) Regulations. It is particularly relevant for large scale development programmes where developers buy out residential properties but the properties remain rented until development can begin.

- 44.** The current wording of the exemption explicitly excludes existing tenancies that have been in place before 1 July 2021. I have therefore decided to include a transitional provision to deal with tenancies that have been in place before 1 July 2024 by removing the requirement that a landlord need to apply for a resource or building consent before the commencement of the tenancy. This exemption will still only cover a maximum period of 12 months from when compliance with the healthy homes standards is required and will only be able to be used once. This is to preclude misuse of the exemption.

**Interface between the Healthy Homes Standards Regulations and the Housing Improvement Regulations 1947**

- 45.** Like the Residential Tenancies (Healthy Homes Standards) Regulations 2019, the Housing Improvement Regulations 1947 (HIR) also set minimum requirements to ensure houses are warm, safe, dry and sanitary. The HIR however covers a wider set of requirements (such as room size, overcrowding, and sewerage) and applies to all homes (owner occupied and rental homes).

**46.**

s 9(2)(f)(iv)

**47.**

**48.**

**Timing and 28-day rule**

- 49.** I propose that the Residential Tenancies (Healthy Homes Standards) Regulations 2019 come into force on 1 July 2019.
- 50.** The RTA anticipates regulations to be in place by 1 July 2019.

## **Compliance**

- 51.** These regulations comply with:
- 51.1. the principles of the Treaty of Waitangi;
  - 51.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 51.3. the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
  - 51.4. relevant international standards and obligations;
  - 51.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Regulations Review Committee**

- 52.** There are no anticipated grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 319.

## **Certification by Parliamentary Counsel**

- 53.** The Residential Tenancies (Healthy Homes Standards) Regulations 2019 is certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

## **Impact Analysis**

- 54.** The Ministry of Housing and Urban Development prepared a Regulatory Impact Assessment (RIA), "Healthy Home Standards", in accordance with the necessary requirements. The RIA was submitted at the time that Cabinet approval was sought of the policy relating to the regulations [SWC-18-MIN-0196 and CAB-18-MIN-0641 refers].

## **Publicity**

- 55.** Cabinet agreed in April 2018 to run an information campaign to support the implementation of the standards. In agreeing to the campaign, Cabinet allocated \$5.24 million to support the information and education campaign.
- 56.** An information and education campaign will be delivered from July 2019 to help landlords, tenants and other stakeholders understand the new requirements and make compliance as easy as possible. The campaign strategy is currently under development and will be informed by a diversity of stakeholder interviews including with Councils, health groups, energy efficiency organisations, property investor and property manager representatives, ethnic and rural groups, iwi and tenant advocacy groups. It is intended that the campaign will run for five years.

- 57.** In addition to the information and education campaign, my officials are currently drafting guidance documents that will be available to interested parties. The guidance documents will provide additional information about the standards and help landlords to comply.
- 58.** I expect to announce the Gazettal of the regulations on the day they are Gazetted (approximately 9 May 2019). Further reactive and proactive communications material will be developed by my officials to support this announcement.

### **Proactive release**

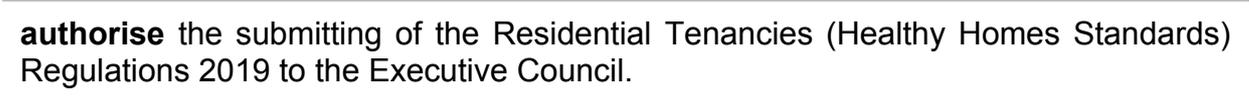
- 59.** I propose to proactively release this paper in whole within the next 30 business days.

### **Consultation**

- 60.** This paper was prepared by the Ministry of Housing and Urban Development. The following agencies were consulted: the Energy Efficiency and Conservation Authority, the Ministry of Health, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Ministry of Social Development, Housing New Zealand Corporation, the New Zealand Defence Force, the Ministry of Education, Land Information New Zealand, the Department of Corrections the Ministry for the Environment, Te Puni Kōkiri, Heritage New Zealand Pouhere Taonga, the Treasury. The Department of the Prime Minister and Cabinet was also informed.
- 61.** An extensive consultation process was undertaken to develop the healthy homes standards. The public was consulted from 4 September to 22 October 2018 and 1,777 submissions were received and analysed. The public consultation process was supplemented with workshops with targeted groups of stakeholders, such as the New Zealand Property Investors Federation, tenant advocacy groups, researchers, the Real Estate Institute of New Zealand, the Independent Property Managers Association, registered community housing providers, key building industry representatives, and iwi housing providers and health advocates.
- 62.** In addition to the public consultation process, significant consultation took place with government agencies. The proposed standards were considered with the Energy Efficiency and Conservation Authority, the Ministry of Health, the Ministry of Social Development, Housing New Zealand Corporation, The Ministry for the Environment, Te Puni Kōkiri, Heritage New Zealand Pouhere Taonga, the Treasury, and the Department of the Prime Minister and Cabinet. The Inland Revenue Department was also consulted in the development of the options for the proposed standards.
- 63.** Ministry of Housing and Urban Development officials have also consulted with relevant agencies on the potential impact of the healthy homes standards on their housing stock, including Housing New Zealand Corporation, the Ministry of Social Development, the New Zealand Defence Force, the Ministry of Education, Land Information New Zealand, the Department of Corrections, and Te Puni Kōkiri.

### **Recommendations**

**64.** I recommend the Cabinet Legislation Committee:

1. **note** that on 12 December 2018 the Cabinet Social Wellbeing Committee agreed to the proposed healthy homes standards as allowed under the *Healthy Homes Guarantee Act 2017*. The healthy homes standards set minimum standards for rental properties in relation to heating, insulation, ventilation, moisture ingress and draught stopping [SWC-18-MIN-0196 and CAB-18-MIN-0641 refers].
2. **note** that the Residential Tenancies (Healthy Homes Standards) Regulations 2019 will give effect to the decision referred to in recommendation 1 above.
3. **note** that Cabinet authorised the Minister of Housing and Urban Development to make any further minor policy, transitional and technical decisions (including records required for compliance) necessary to bring regulations into effect by 1 July 2019.
4. **note** that under the delegated authority set out in recommendation 3 above, the Minister of Housing and Urban Development has made the minor and technical policy decisions set out in this paper.
5.  s 9(2)(f)(iv)
6. 
7. **authorise** the submitting of the Residential Tenancies (Healthy Homes Standards) Regulations 2019 to the Executive Council.
8. **note** that the Residential Tenancies (Healthy Homes Standards) Regulations 2019 will come into force on 1 July 2019.

Authorised for lodgement

Hon Phil Twyford

Minister for Housing and Urban Development

## **Annex 1: Information to be provided in new or renewed tenancy agreements from 1 July 2020**

### *Heating standard*

1. Landlords will be required to provide:
  - a. The type and heating output of heating devices present; and
  - b. The required heating capacity to reach at least 18 degrees; and
  - c. If an exemption applies to the home, a description of how the home meets the exemption.

### *Insulation standard*

2. The following prescribed information will be carried over from existing requirements:
  - a. Information must be provided on the location, type and condition of insulation present in the underfloor, ceilings and walls (existing requirement from 2016 insulation regulations).
3. With the following supplementary requirement:
  - a. The R value or thickness of any ceiling and underfloor insulation; and
  - b. If an exemption applies to the home, a description of how the home meets the exemption.

### *Ventilation standard*

4. Landlords will be required to provide:
  - a. The size and location of extractor fans present in the home; and
  - b. State whether openable windows are present in all habitable spaces; and
  - c. If an exemption applies to the home, a description of how the home meets the exemption.

### *Moisture ingress and drainage standard*

5. Landlords will be required to provide:
  - a. An indication of whether a ground moisture barrier is present; and
  - b. State whether efficient drainage is present at the property; and
  - c. If an exemption applies to the home, a description of how the home meets the exemption.

### *Draught stopping standard*

6. Landlords will be required to provide:
  - a. An indication of what blocked open fireplaces are present; and
  - b. State whether the home is free from unreasonable gaps and holes in any building elements; and
  - c. If an exemption applies to the home, a description of how the home meets the exemption.

## **Annex 2: Documents landlords could maintain to show compliance with the healthy homes standards**

1. Landlords will be required to keep sufficient records from the following list to showcase compliance with the healthy homes standards:
  - d. Code compliance certificate
  - e. Records from the heating tool
  - f. Certificate of acceptance
  - g. Receipts from building practitioners.
  - h. Invoices from building practitioners and/or other service providers.
  - i. Receipts for any building materials and/or elements.
  - j. Photographic evidence of compliance.
  - k. Records of work from building practitioners or Independently Qualified Persons.
  - l. A professional evaluation performed by a Licenced Building Practitioner, Independent Qualified Person or any other relevant professional.
  - m. A Building Warrant of Fitness or Compliance Schedule, where the extractor fans are part of a larger ventilation system and the ventilation system is a specified system
  - n. Land Information Memorandum (LIM) or Building information reports or part of these reports that reasonably shows compliance.
  - o. Product manuals/schedules for devices installed for the purpose of compliance with the standards.
  - p. Any other salient documents/records that will reasonably show compliance