

Regulatory Impact Statement

Smoke alarms and insulation in residential rental properties

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business Innovation and Employment (MBIE).

It provides an analysis of options to increase the proportion of residential rental properties which have functioning smoke alarms and insulation, to improve health outcomes for tenants, particularly children.

There is considerable uncertainty regarding some of the estimates contained in this RIS. This uncertainty arises particularly in relation to:

- the limited data available on the quality of New Zealand housing generally. Statistics New Zealand is considering how to gather better information on housing quality.
- limited information on the current condition of New Zealand rental housing – the BRANZ House Condition Survey 2010 is the best source of information, but is based on a small sample of 108 representative rental properties. This data has been supplemented with data from the Warm Up New Zealand scheme, but we do not know how many other houses have been insulated outside the scheme.
- limited information on likely landlord and tenant responses to different interventions.

Public consultation has been limited in scope at this point. Two key groups representing landlords (New Zealand Property Investors Federation) and tenants (Tenant Protection Associations) were consulted in early 2014 on issues and high-level options in relation to quality of residential rental properties. There will be an opportunity for further public consultation through the Select Committee process and consultation on the specific smoke alarm and insulation standards to be developed.

Given the uncertainty surrounding many of the estimates in this RIS, the estimates should generally be treated with caution. Despite this uncertainty, the estimates inform decision making by indicating the direction and order of magnitude of the quantities being estimated.

Other contributors to poor housing

While the physical attributes of a property have a significant effect on the health of tenants, there are also other important factors:

- overcrowding, which is linked to unaffordability of rental property, but also has other causes;
- fuel poverty, which limits the household's ability to heat; and
- occupant behaviour (such as not opening windows to ensure adequate ventilation).

These issues cannot be addressed through property standards.

Kevan Scott

23 June 2015

Manager, Housing Policy Integration

Ministry of Business, Innovation and Employment

Executive summary

1. As part of Budget 2013, the Government announced that it would develop a rental housing Warrant of Fitness for initial implementation in Housing New Zealand Corporation (HNZC) properties. The Warrant of Fitness standards were trialled on a sample of HNZC properties in 2014, with input from a Technical Advisory Group.
2. Government has subsequently refined the Warrant of Fitness standards to focus on smoke alarms, and ceiling and underfloor insulation. Other requirements such as sanitation and cooking facilities already exist for residential rental properties under the Health Improvement Regulations 1947, which remain in force and will continue to apply.
3. The objective of the policy proposal is to improve the functioning of the New Zealand residential rental market by:
 - a. Reducing fire-related fatalities in residential rental properties
 - b. Making residential rental properties drier and easier to heat, to improve health outcomes (particularly for children).
4. This regulatory Impact Statement (RIS) analyses the following options.
5. Reducing fire related fatalities in residential rental properties:
 - a. regulate smoke alarms under the Residential Tenancies Act (RTA)
 - b. education of tenants and landlords, to encourage voluntary uptake
6. Making residential rental properties drier and easier to heat:
 - a. regulate insulation under the RTA
 - b. education of tenants and landlords, to encourage voluntary uptake
 - c. extend government Warm Up New Zealand subsidy
 - d. make retrofitting insulation tax deductible.
7. The RIS does not make recommendations regarding options.

Status quo and problem definition

8. Approximately 450,000 New Zealand households live in rental properties,¹ including approximately 68,000 households who rent from HNZC. Nationally 30 per cent of households now rent their home, increasing to 35 per cent in Auckland and 58 per cent of low-income households in Auckland.²
9. The RTA currently specifies that rental properties must be 'provided and maintained in a reasonable state of repair'. Detailed minimum standards for all residential dwellings (owner-occupied and rental) are prescribed in the Housing Improvement Regulations 1947 (under the Health Act 1956). The 1947 regulations reflect expectations of that time: as such, they do not include insulation or smoke alarms, both of which are now standard for newly built houses.
10. The Tenancy Tribunal relies on the Housing Improvement Regulations in some circumstances when it is applying the 'reasonable state of repair' test, but has indicated that updated standards would be welcome. The Tenancy Tribunal cannot currently make a work order for landlords to install insulation or smoke alarms because there is

¹ Census 2013.

² Household income of under \$20,000 annually.

no legislative requirement for them in older residential rental properties (pre-1991 Building Code).

11. Territorial Authorities also have powers under both the Building Act 2004 and the Health Act 1956 in relation to all substandard residential properties, but these powers are rarely used and are intended for extreme immediate risks to health.³
12. Lack of insulation in rental housing contributes to poor health outcomes, particularly for children in low-income families, with long-term economic and social impacts. The BRANZ 2010 House Condition Survey, found that 43 per cent of rental properties had moderate to high levels of mould, compared with 25 per cent of owner occupied properties. Aspects of housing which have the greatest impact on health (persistent cold, dampness and the presence of mould) are often not readily visible to tenants on initial inspection and only become apparent over time.
13. Poor quality rental housing particularly affects certain groups, including Māori, who are disproportionately represented in the lower quartile of the rental market. Children under five and elderly people are also particularly at risk of health consequences because they spend more of their time at home.
14. Officials estimate that approximately 180,000 private sector rental properties (including approximately 90,000 occupied by low-income tenants) would not meet a moderate ceiling and underfloor insulation standard.⁴ For landlords, persistent cold, dampness and mould reduce the lifetime of internal wall linings and other components, and increase long-term maintenance costs.
15. New Zealand Fire Service data shows that over the last six years 34 fire fatalities are known to have occurred in residential rental properties. A further 13 may have been in rental properties. Of the known rental properties where fatalities occurred, half had no evidence of a smoke alarm, having been present in the property. Fire safety education including promotion of smoke alarms has had limited uptake among low-income groups, who are overrepresented in rental accommodation.⁵
16. Under the RTA, landlords are required to ensure their properties comply with all health and safety and any other legislation that applies to the premises. Where a tenant considers that their rental property does not meet the smoke alarm or insulation standards, the tenant would first approach the landlord or property manager. If the issue is not resolved, the tenant can take a case to the Tenancy Tribunal. The Tribunal can make a work order, and/or order exemplary damages of up to \$3000.
17. International evidence indicates that having operational smoke alarms can reduce fire fatalities by one third to one half.⁶ Injuries from fires are also likely to be reduced, as is damage to the landlord's property. All Australian states and territories require smoke alarms in residential rental properties.

³ No changes to these local authority powers are proposed.

⁴ This excludes properties where it is not practical to retrofit insulation, for example because there is insufficient crawl space under the floor.

⁵ New Zealand Fire Service Commission (2006) *Fire Knowledge Research Qualitative Research Report (Research Report Number 61)*

⁶ Garis, L and Clare, J. (2012) *Smoke Alarms Work, but Not Forever*.

https://www.ufv.ca/media/assets/ccjr/reports-and-publications/Smoke_Alarms_Work%2c_But_not_Forever.pdf and Ahrens, M (2014) *Smoke Alarms in US Home Fires* <http://www.nfpa.org/research/reports-and-statistics/fire-safety-equipment/smoke-alarms-in-us-home-fires>

18. MBIE currently spends approximately \$1.0 million annually on advice, information and education for tenants and landlords via websites and information packs. This includes information regarding rights and obligations in relation to property condition, informing tenants of the risks associated with living in poor quality housing, providing tenants with a 14-Day Notice to Remedy letter to send to the landlord who has not met their responsibility to keep the property in a reasonable state of repair), and informing landlords of the benefits to them from maintaining properties in reasonable condition (including reduced maintenance costs, longer tenure of tenants, easier to secure preferred tenants).

Housing New Zealand Corporation Trial

19. In December 2013 Cabinet agreed that HNZC would trial a 'Warrant of Fitness' in a representative sample of 400 properties. The trial was designed to test the feasibility of a draft package of standards and an assessment tool. The proposed standards were intended to allow a conscientious landlord or tenant to assess their property without the need for specialist expertise.
20. 69 per cent of HNZC properties in the sample failed on five or fewer criteria. This is similar to Warrant of Fitness trials run by the Otago University Wellington Healthy Housing Programme (in Council and self-selected private sector rental properties). Causes of failure include older stock built prior to the Building Code, modern housing expectations, tenant damage, and tenants not reporting maintenance requirements. The top five areas where properties failed were:
 - a. missing security stays on windows for secure ventilation while tenants are not home (73 per cent of properties, with stays required on one window in each ground floor bedroom, living room and kitchen);
 - b. lack of appropriate heating supplied in properties where ceiling and/or underfloor insulation could not practically be installed (33 per cent of properties);
 - c. windows in poor condition/not functioning (28 per cent of properties);
 - d. balustrades and handrails on stairs/decks too low, not functioning, missing or a climbing risk for children (28 per cent of properties); and
 - e. hot water was too hot or too cold (27 per cent of properties, noting that tenants sometimes turn hot water cylinders off or down, to save power).
21. One HNZC property in the sample of 400 did not have a functioning smoke alarm. Of properties which could be practically insulated, 21 properties (8 per cent) did not meet underfloor insulation requirements, and 13 properties (4 per cent) did not meet ceiling insulation requirements. HNZC estimated insulation costs at approximately \$40,000 for properties in the sample.
22. HNZC has undertaken an insulation retrofit programme across its portfolio and treats non-functional smoke alarms as requiring urgent replacement. Both the insulation and smoke alarm results for HNZC are significantly higher (i.e. more properties meet requirements) than expected results for private sector rentals (based on data from the BRANZ House Condition Survey 2010 and the Energy Efficiency and Conservation Authority). The cost benefit analysis in this Regulatory Impact Statement focuses primarily on private sector rentals.

Technical Advisory Group for the HNZC Trial

23. The Rental Housing Warrant of Fitness Technical Advisory Group (the TAG) was established by the Minister of Housing in December 2013 to advise on the Warrant of Fitness criteria trialled by HNZC in 2014 (including insulation and smoke alarms).

24. Organisations represented on the TAG were selected by the Minister, to provide a range of technical expertise. The TAG was not intended as a means of stakeholder consultation, and was not required to provide unanimous advice. TAG membership and expertise is provided in the table below:

Table 1: Membership of Technical Advisory Group

Organisation	Expertise/perspective
Beacon Pathway	Housing quality, including retrofitting houses
BRANZ	Building performance, assessing house condition
New Zealand Property Investors Federation	Private sector landlord perspective on rental quality and property management
Local Government NZ	Social housing, Building Act, consenting process
Master Builders	Feasibility and cost of retrofitting existing houses
HNZ Product Manager	Technical knowledge of HNZ standards and specifications
District Health Board	Health impacts of housing
ACC	Health aspects of housing
Energy Efficiency and Conservation Authority	Insulation, ventilation and moisture prevention
HNZ Researcher	Monitoring and evaluation, specific knowledge of previous HNZ research on tenants' well-being etc.

25. The trial and advice from the TAG provided useful information about feasibility, assessment and remediation costs, and the potential future for application beyond HNZC properties.

Rationale for not implementing a broad 'Warrant of Fitness'

26. The HNZC trial of a broad package of 'Warrant of Fitness' standards was based on factors in residential tenancies which affect tenants' health and safety, and was intended to inform Government decisions on rental standards. As such, the trial package included elements such as: minimum height for balustrades, security stays on some windows to allow secure ventilation, and requiring more than one power point in living spaces.

27. Government needs to focus on maximising the benefits of rental standards relative to compliance cost, and on avoiding the need to take rental properties out of the market unnecessarily. Reducing rental supply by requiring landlords to comply with impractical requirements would increase rents and create further hardship for low-income tenants. Taking into account the trial results and the results of cost benefit analysis, it is not proposed to require all residential rental properties to comply with a broad 'Warrant of Fitness'.

28. Instead it is proposed to focus on new requirements for insulation and smoke alarms, which are not covered by existing regulations (the Housing Improvement Regulations 1947), and where there are clear benefits for tenants, landlords and taxpayers. Based on the limited information available, officials estimate that approximately 180,000 residential rental properties are inadequately insulated (including approximately 90,000

rental properties occupied by low-income tenants)⁷ and that approximately 120,000 rental properties do not have functional smoke alarms.

29. Since 2001 Government has invested more than \$500 million in total to insulate all state houses where practical, and retrofit insulation in 280,000 residential properties, through the Warm Up New Zealand programmes (including 45,000 rental properties).
30. Landlord take-up has increased under the current Warm Up New Zealand: Healthy Homes programme which is targeted to low income households. Approximately 33 percent of the 37,200 properties insulated under this programme have been residential rentals. However, a proportion of private sector landlords continue to be reluctant to insulate. Reasons include a perception that the benefits of insulation accrue mainly to tenants, a perception that retrofitting insulation is costly and/or disruptive, and a high rental demand in some areas reducing landlord incentives to improve properties to attract tenants.
31. Regulating insulation standards to improve living conditions for tenants, particularly the most vulnerable, is a logical progression for Government.
32. Landlords will still be required to comply with the existing requirements contained in the Housing Improvement Regulations, for example in relation to sanitation and cooking facilities. Local authorities also have a role in enforcing aspects of housing quality under the Health Act and the Building Act as well as the Housing Improvement Regulations.

Objective

33. The objective of the policy proposal is to improve the functioning of the New Zealand residential rental market by:
 - a. Reducing fire-related fatalities in residential rental properties
 - b. Making residential rental properties drier and easier to heat, to improve health outcomes (particularly for children).

Options and impact analysis: reducing fire-related fatalities

Option 1: smoke alarm regulation under the Residential Tenancies Act

34. Option 1 is to amend the RTA to require all residential rental properties to meet smoke alarm standards to be prescribed by regulations under the RTA. This requires a new regulation making power. Smoke alarm regulations are proposed to come into force from 1 July 2016.
35. Failure to comply with smoke alarm requirements would be covered by an existing unlawful act (s 45 (1A)) relating to landlord responsibilities, with a maximum penalty of \$3000.
36. Government proposes the following potential standard for smoke alarms, as a basis for public consultation. The standard would apply to all residential rental properties.
 - a. *For each bedroom, there must be at a minimum one working smoke alarm in the hall or similar, within three metres of the bedroom door.⁸ In a self-contained sleepout, caravan or similar there must be a minimum of one working smoke alarm.*

⁷ Excluding properties where it is not practical to insulate due to physical design of the property.

- b. *It is the landlord's responsibility to ensure the alarm is operational at the beginning of each new tenancy, and the tenant's responsibility to replace batteries (if required) during the tenancy, and report defective smoke alarms to the landlord.*
 - c. *Long life (10 year) photoelectric alarms are required to be installed where there are no existing alarms.*
 - d. *Where there are existing alarms, these are to be replaced by long life photoelectric alarms at the end of the life of the existing alarm. Hardwired smoke alarms are also acceptable.*
37. Long life photoelectric alarms significantly increase the likelihood of alarms remaining operational over time, as batteries cannot be removed and last for up to 10 years. The additional cost (around \$30-40 compared to around \$12 for a 9V battery-operated smoke alarm) is recouped within 3-4 years, as batteries do not have to be replaced every 6-12 months.
38. Requiring smoke alarms in all residential rental properties will potentially prevent three fire fatalities per year. There is debate around the best value of statistical life, a measure commonly used in road transport evaluation procedures. Some suggest that the value of statistical life for fire-related events is lower than that for road transport, which stands at about \$3.9 million in 2013.⁹ Others suggest the opposite is true.¹⁰ We have used a conservative figure of \$3.0 million per fatality. This implies benefits of avoided mortality that are monetised at \$9.0 million per year.
39. Current estimates of the proportion of rental properties which do not have operational smoke alarms range between 15 and 40 per cent. Based on a cost of \$40 for a 10 year alarm, total costs over 20 years (discounted at 8 per cent) are estimated at between \$4.1 million and \$10.0 million. Assuming full compliance, for every dollar of costs, estimated benefits range between \$8.80 and \$21.40.
40. The cost benefit analysis does not include injuries prevented due to the presence of smoke alarms and reduced property damage.

Option 2: education of landlords and tenants to encourage voluntary take-up of smoke alarms

41. Option 2 would involve MBIE educating landlords and tenants of the benefits of installing smoke alarms and ensuring they continue to work over time. This option is essentially the status quo, as the Fire Service currently runs a public information programme. It would not be a good use of taxpayer funds for MBIE to also conduct an education programme. Fire Service public information programmes have had relatively limited effect on reducing the incidence of residential fires among high-risk groups, including low-income tenants.¹¹

Assessment of options against criteria, relative to status quo:

⁸ This is the New Zealand Fire Service recommended minimum, although NZFS also encourage installation of smoke alarms inside bedrooms.

⁹ Sanderson, K., Goodchild, M., Nana, G., and Slack, A. (2007). "The Value of Statistical Life for Fire Regulatory Impact Statements." Wellington. BERL

¹⁰ Miller, T. (1990) "The Plausible Range for the Value of Life – Red Herrings Among the Mackerel" *Journal of Forensic Economics*, 3(3), pp. 17-39; and Access Economics (2008). *The Health of Nations: The Value of a Statistical Life*. Report for Australian Safety and Compensation Council.

¹¹ New Zealand Fire Service Commission Research Report Number 8, 2000, *Improving the Fire Safety Knowledge and Practices of Vulnerable Groups*, New Zealand Fire Service Commission Research Report Number 25, 2002 *Vulnerability and the Translation of Safety Knowledge*; NZ Fire Service Commission Research Report Number 128, 2013 *Fire Safety Housing Features*

42. The table below sets out each of the options for reducing fire fatalities in residential rental properties against four criteria:

1. Likely effectiveness in achieving objective, and flow-on consequences
2. Overall costs and benefits to society over 20 years (8% discount rate)
3. Administration costs to landlords and tenants (time and money costs)
4. Operational impact for government.

Table 2: Analysis of options to reduce fire fatalities in residential rental properties

Criteria	Status Quo	Option 1: regulations under RTA	Option 2: education of landlords and tenants
1. Likely effectiveness in achieving objective, and flow- on consequences	Low	Medium-high. Dependent on compliance and enforcement. If high compliance is achieved, and the final standard requires long life alarms this option is likely to be highly effective. Flow-on rent increases likely to be limited as smoke alarm costs are relatively low (approximately \$40 for a ten-year smoke alarm).	Low. Landlords of low-income tenants are unlikely to voluntarily install smoke alarms. Unless long life alarms are installed, the rate of failure over time is high (for example batteries are not replaced).
2. Overall costs and benefits to society over 20 years (8% discount rate)	Not applicable	High (if high compliance). Estimated costs between \$4.1 million and \$10.0 million. Estimated benefits of \$8.80 - \$21.40 for every \$1.00 of costs. (Benefits only account for reduced fire fatalities, and do not include reduced injuries and property damage)	Not assessed.
3. Minimise administration costs to landlords and tenants (time and money costs)	No existing administration costs in relation to smoke alarms. Tenants cannot enforce smoke alarms through the Tenancy Tribunal.	Low-medium Landlords need to familiarise themselves with updated requirements. Some tenants will want to understand the new requirements.	Low: Same as status quo
4. Operational impact for government	MBIE currently delivers information and education to tenants and landlords, some of which relates to	Medium: Cost for MBIE in provision of additional information and advice, potential for increased	Low: same as status quo.

	housing condition, and administers the Tenancy Tribunal (shared responsibility with Ministry of Justice).	number of Tenancy Tribunal applications.	
--	---	--	--

Options and impact analysis: making residential rental properties drier and easier to heat

Option 1: Regulation under Residential Tenancies Act

43. Option 1 is to amend the RTA to require that landlords must ensure that residential rental premises have insulation that meets the standards prescribed in regulations. This requires a new regulation making power, to set standards for ceiling and underfloor insulation by Order in Council.
44. A staged implementation approach is proposed:
- by 1 July 2016, require ceiling and underfloor insulation in all social housing properties where tenants pay an Income Related Rent (Housing New Zealand Corporation (HNZC) and registered Community Housing Providers).
 - by 1 July 2019, require ceiling and underfloor insulation in all remaining residential rental properties.
45. Taking a staged approach will allow Government to assess progress and refine standards if necessary before applying insulation standards across the whole residential rental market by 1 July 2019.
46. Exclusions from the insulation requirements would apply in the following cases:
- a. Properties where it is impractical to retrofit insulation due to the physical design of the property (for example limited space under the floor, or where the rental property is a caravan).
 - b. Properties which are sold and immediately rented back to the former owner-occupier, for a period of up to 12 months. This includes properties acquired by the New Zealand Transport Agency for roading purposes, or by private sector developers.
 - c. Where the landlord intends to demolish the property within 12 months from the commencement of a tenancy, and can provide evidence of having applied for the relevant resource consent and/or building consent for redevelopment.
 - d. Parts of the property which the landlord intends to substantially rebuild within 12 months of the commencement of a tenancy, where the landlord can provide evidence of having applied for a building consent for the building work.
47. For a new tenancy commencing after 1 July 2016 where a tenant pays an Income Related Rent, a landlord would have 90 days from the commencement of the tenancy to retrofit insulation.
48. Failure to comply with insulation requirements would be covered by an existing unlawful act (s 45 (1A)) relating to landlord responsibilities, with a maximum penalty of \$3000.
49. Landlords will still be required to comply with the existing requirements contained in the Housing Improvement Regulations 1947, for example in relation to sanitation and cooking facilities. No changes are proposed to the 1947 regulations (or any changes to the ability of local authorities to enforce the Housing Improvement Regulations, Health Act or Building Act).

50. For a boarding house, or other residential rental with room-by-room tenancy agreements, the insulation requirement would apply to the whole dwelling. It would not be practical to only insulate the ceiling or underfloor of some bedrooms and not others.
51. For all new tenancies from 1 July 2016, a landlord (or person acting on the landlord's behalf, including a property manager) would be required to state, as part of the required contents of the tenancy agreement, the extent of insulation in the ceiling, underfloor and walls. MBIE would amend the model tenancy agreement form accordingly.
52. Failure by a landlord (or person acting on the landlord's behalf, including a property manager) to state in a tenancy agreement the extent of insulation is an unlawful act, with a penalty of up to \$2000 (consistent with existing penalties for landlord harassment of a tenant).
53. The new requirements would be supported by an information campaign run by MBIE to promote the smoke alarms and insulation standards also include promotion of ventilation and practical advice to reduce internal moisture, as dampness and mould depend significantly on tenant behaviour.

Proposed insulation standard

54. Government proposes the following potential standard for insulation, as a basis for public consultation. The standard was trialled with HNZC, with some subsequent refinements for practicality:
 - a. *Ceiling insulation (minimum thickness of 70 mm) must cover all the accessible ceiling area above habitable spaces (i.e. spaces used for daily activities), except where insulation clearances are required (for example around some downlights and flues). A garage is considered habitable space if it is used as a living space. Habitable spaces immediately above count as ceiling insulation (for example, in an apartment building).*
 - b. *A suspended subfloor must have underfloor insulation in reasonable condition, covering all the accessible subfloor area beneath the habitable spaces. A concrete slab counts as underfloor insulation, as does another habitable space immediately below.*
55. The standard is lower than that used for the Warm Up New Zealand programme (which retrofits ceiling insulation to 120 mm). The proposed standard balances costs and benefits, recognising that the greatest benefits of retrofitting ceiling insulation come from the first 70 mm of thickness.

Costs and benefits

56. Officials estimate that approximately 180,000 residential rentals would require upgrades to ceiling and/or underfloor insulation to meet the proposed standards (including approximately 90,000 residential rentals occupied by low-income tenants). This figure excludes an estimated 100,000 residential rental properties which cannot practically have ceiling insulation and/or underfloor insulation retrofitted.¹² A 2012 evaluation of Warm Up New Zealand found annual short-term health benefits of \$637 per household, plus limited energy savings.¹³ Average costs of retrofitting both ceiling and floor insulation are approximately \$3300.¹⁴ Assuming full compliance, this translates to benefits of \$2.10 for every dollar of costs, over 20 years.

¹² Based on extrapolation from the 2010 BRANZ House Condition Survey

¹³ Grimes, A et al (2011, revised 2012) Cost Benefit Analysis of the Warm Up New Zealand: Heat Smart Programme (Final Report),

http://www.motu.org.nz/publications/detail/cost_benefit_analysis_of_the_warm_up_new_zealand_heat_smart_programme

¹⁴ Figures from the Energy Efficiency and Conservation Authority.

57. The analysis does not include long-term benefits of improved child health, such as improved adult health and labour market outcomes. Benefits to landlords from reduced long-term maintenance and reduced tenant turnover are also not included.
58. Landlords of low-income tenant households (those eligible for a Community Services Card) with particular health needs, children under 17, or people aged over 65 may be eligible for subsidised insulation through Warm Up New Zealand. Warm Up New Zealand is currently funded until June 2016, but is not available in all regions of New Zealand.¹⁵ Mortgage top ups and Voluntary Targeted Rates schemes through local authorities may also be a financing option.¹⁶
59. Implementation of smoke alarm and insulation standards would have financial implications for MBIE and the Ministry of Justice in relation to provision of information, responding to queries and potentially increased Tenancy Tribunal applications. Increased costs for MBIE are estimated at around \$300,000 per year
60. Apart from HNZN properties, central government (including school boards of trustees) also owns approximately 5500 residential rental properties. Some are temporary holdings, for example properties acquired by NZTA for roading purposes. Many properties are older and uninsulated. Some agencies have upgrade programmes in place and others are actively disposing of properties no longer required for operational purposes.

Enforcement by tenants through the Tenancy Tribunal and retaliatory notice

61. Where a tenant considers that their rental property does not meet the smoke alarm or insulation standards, the tenant would first approach the landlord or property manager. If the issue is not resolved, the tenant can take a case to the Tenancy Tribunal. This is the same process as currently applies under the RTA. The Tribunal can make a work order, and/or order exemplary damages of up to \$3000.

Rationale for strengthened enforcement powers

62. Based on anecdotal evidence, some tenants may be reluctant to complain for fear of eviction (despite the RTA prohibiting 'retaliatory notice'). Currently the Tenancy Tribunal can set aside notice where it considers that notice has been wholly or partly motivated by the tenant exercising their rights. However, the tenant only has 14 days to apply. Currently tenants often contact MBIE too late to pursue this option.
63. To help address this, government also proposes strengthening retaliatory notice provisions. This would involve extending the application period from 14 to 28 days, and making it an unlawful act for a landlord to give retaliatory notice, with a maximum penalty of \$2000 (consistent with existing penalties for harassment of a tenant). Establishing that notice is retaliatory can be difficult (because under the RTA landlords are entitled to give 90 days' notice with no reason), but these measures, combined with better information to tenants, may assist tenants to exercise their rights.
64. The RTA currently allows the Chief Executive of MBIE to commence or take over Tenancy Tribunal proceedings on behalf of a tenant or landlord, where this is in the public interest.
65. The current Chief Executive powers have some inherent limitations. These stem from the powers being essentially an 'add-on' to a civil regime, where government sets the

¹⁵ Local availability is determined by the availability of third party funding contributions in different regions.

¹⁶ Voluntary Targeted Rates are offered by 11 councils throughout New Zealand. VTR is essentially a loan from the Council for insulation and some other energy efficiency improvements, which is tagged to the property and repaid through rates payments over time.

rules and enables landlords and tenants to resolve their own disputes, rather than intervening as a regulator.

66. This power has rarely been used to date and relies in practice on the party being willing to provide necessary evidence to MBIE. A party must also be willing to have their name associated with the proceedings and (in most cases) published on the Tenancy Tribunal decisions database. Anecdotal evidence indicates that fear of retribution may dissuade some tenants from pursuing complaints.
67. MBIE intends to work with organisations such as Tenant Protection associations to identify potential cases which could be taken on behalf of tenants in the public interest. To date a Memorandum of Understanding with the Christchurch Tenant Protection Association has not resulted in any tenants willing to have an investigation and potential proceedings undertaken on their behalf.
68. A small minority of landlords seek to take advantage of vulnerable tenants. Ministers have indicated that where severe breaches of the RTA are alleged, and there is a significant risk to tenant health and safety, it is appropriate for Government to take direct action against such landlords in its own right, rather than on behalf of a tenant. This would require legislative change and additional funding for MBIE, as discussed below.
69. An example of the type of case where MBIE might consider taking direct action was reported in February 2015: a Christchurch landlord was housing 20 tenants in huts and caravans on his car wrecking yard, with portaloos, and showers in a converted container.¹⁷ Substandard accommodation is often also associated with RTA breaches in relation to tenant bonds and the right to quiet enjoyment.
70. There is likely to be a public expectation that government will actively enforce smoke alarm and insulation standards. However, the RTA is primarily about contractual relationships between landlords and tenants, with a limited role for government. Moving to a 'regulator' model where government enforces standards of its own volition rather than on behalf of a party would be a significant change (with substantial resourcing implications), which is not proposed.

Legislative changes and capacity required

71. We have identified the legislative changes and additional MBIE capability that would be required for the Chief Executive to effectively intervene in a legally robust manner.
72. Table 3 shows the additional powers needed for the Chief Executive, other legislative amendments/clarifications required, additional compliance tools, and funding implications. In considering necessary changes, we have taken into account:
 - a. The need for any action taken by the Crown against a landlord to be legally robust, particularly as severe breaches may well go to the District Court or higher courts on appeal. (This includes adequate administrative and IT support to manage documents to meet evidential requirements.)
 - b. The need for legislative clarity so that landlords and tenants understand their responsibilities and rights. Clarity would also ensure that Tribunal Adjudicators are able to apply the RTA consistently.
 - c. The increased volume of complaints which MBIE is likely to receive once there is public awareness of the proposal to strengthen government enforcement of the RTA. Some complaints will be clearly under the threshold for MBIE to act (in which case we will provide advice on how the tenant and landlord can resolve this issue), while others will need to be investigated first to determine the facts and severity of the alleged RTA breach.

¹⁷ <http://www.stuff.co.nz/national/65660403/Illegal-hovel-could-face-closure>

- d. The need to ensure the Crown can access appropriate expertise, for example to undertake physical inspections where required, potentially through outsourcing to authorised persons (such as council environment health officers).
73. We are not seeking a power of entry to a property without tenant consent. We considered options in this area (for example entry with a warrant¹⁸), and concluded that:
- The Bill of Rights Act threshold for reasonable search and seizure is high in relation to a private dwelling, particularly when alleged breaches relate to the behaviour of the landlord and not of the tenant occupant
 - Introducing powers of entry would not be compatible with the RTA as a primarily civil regime.

The new provisions rely on a tenant giving consent for an authorised officer to enter the property where necessary to investigate allegations of severe RTA breaches. In some cases, the tenant may deny consent, for example, if there are occupants of the property who are breaching immigration requirements. Where a tenant denies consent, government will be unable to take any action under the RTA.

Table 3: Additional powers needed to strengthen Government enforcement of severe alleged breaches of the RTA

<p>Additional powers needed for MBIE Chief Executive</p> <p>(RTA amendments needed)</p>	<ul style="list-style-type: none"> • Gather evidence (e.g. photos, mould samples). • Compel evidence to be provided. • Require documents and information. • Share information with central government and councils. • Ability for CE to summon witnesses • Ability to warrant/designate investigators.
<p>Other legislative clarifications needed</p>	<ul style="list-style-type: none"> • Define ‘public interest’ • Clarify ability to take a single case in relation to multiple tenancies with the same landlord • Ensure that the landlord (e.g. property manager) cannot avoid obligations by saying that the owner won’t agree to pay for repairs. • Require landlords to keep records of maintenance and inspections. • MBIE liability.
<p>Additional tools improve compliance</p> <p>(RTA amendments needed)</p>	
<p>Estimated additional MBIE capability and funding required</p>	<p>Estimated \$2.5m per year from 2016/17 (includes 6 additional investigative/compliance FTEs based in Wellington, legal costs, administrative costs, IT support)</p>

¹⁸ We also considered whether MBIE could make use of existing powers under the Health Act, but while this Act allows entry to a property, it does not allow evidence to be gathered once inside the property, so would not be practical for RTA purposes.

Option 2: Provision for more information and education of landlords to encourage take-up

74. An alternative to regulation is for MBIE to use its existing Advice, Information and Education (AIE) channels to encourage landlords to ensure their properties have ceiling and underfloor insulation.
75. MBIE would refresh its current AIE programme, which contains information on insulation, and use existing landlord and tenant fora to specifically encourage landlords to provide ceiling and underfloor insulation. Tenant forums would promote awareness amongst tenants who are looking for a new rental property, to ask whether or not it is insulated. Both tenants and landlords could be directed to the Energy Efficiency and Conservation Authority (EECA)'s website for more detailed information and to find out about eligibility for Warm Up New Zealand subsidies.
76. MBIE's advisory staff regularly conduct seminars in the main centres for interested landlords and tenants on a range of tenancy issues. Feedback from MBIE front-line staff is that only the engaged landlords and tenants participate. They note it is harder to reach landlords and tenants who do not wish to engage. Unfortunately, this group includes more vulnerable tenants, who would most benefit from insulation of their home.

Option 3: Government to extend current EECA subsidy beyond June 2016

77. This option could be combined with regulation.
78. Budget 2013 allocated \$100 million of funding through *Warm Up New Zealand: Healthy Homes*, administered by EECA. The programme targets low-income households (rental and owner occupied) for home insulation, particularly households occupied by children and/or the elderly. The benefits of the programme are warmer, drier homes for New Zealanders. As well as energy efficiency gains, insulating homes reduces health risks caused by cold, damp housing such as respiratory illnesses.
79. *Warm Up New Zealand: Healthy Homes* is currently funded until June 2016, but due to the variations in third-party funding, it is not available in all regions of New Zealand. Under this option Government would extend funding for the existing subsidy beyond 30 June 2016.
80. An independent evaluation of the *Warm Up New Zealand: Heat Smart* programme (run from 2009-2013) by Motu showed the greatest benefits from insulation are for people on low-incomes, who are at higher risk of health issues. The evaluation found that the avoided health costs to the Government from insulating a house average \$802 a year for Community Services Card (CSC) holders compared to \$636 a year for non-CSC holders.
81. The most recent EECA report on uptake to 28 February 2015 shows that the combined total number of houses insulated under *Warm Up New Zealand: Healthy Homes* and the completed *Warm Up New Zealand: Heat Smart* programme is over 275,000, of which over 133,000 are occupied by low-income households.
82. EECA advise that the *Warm Up New Zealand: Healthy Homes* programme has now insulated over 11,000 low income rental properties and over 23,000 low income owner-occupied properties. Over 44,000 rental properties have been insulated under the *Warm Up New Zealand* programmes combined.
83. Officials estimate that approximately 180,000 private sector residential rentals would require upgrades to ceiling and/or underfloor insulation to meet the proposed standards. (This excludes properties which are not practical to insulate, for example, due to limited space under the floor).

84. Where landlords have not chosen to take advantage of the subsidy to date, it is uncertain whether extending its availability would increase uptake. Anecdotal evidence indicates that some landlords prefer to avoid any form of contact with government, and some are concerned that increasing the value of their property by insulating would result in increased local government rates.¹⁹
85. In addition, EECA and other research has found that non-financial barriers to retrofitting insulation are significant: low awareness of benefits of insulation among tenants and landlords, a tight rental market limiting tenant choices, landlords placing higher priority on property conditions which are readily visible, and incentives which are not aligned. (Most of the benefits of insulation accrue to tenants and costs are not necessarily recouped on resale).
86. In 2012, 43% of landlords with properties identified as having little or no insulation said they were unwilling to insulate their rental property, but only 17% gave cost as a significant barrier.²⁰ Other reasons for being unwilling to insulate were given as follows:

"My property is warm and dry enough anyway"	49%
"My tenants use other means to keep the house warm and dry"	20%
"My tenants haven't complained"	19%

87. Some tenants have difficulty engaging with government, for example because of limited English language ability, or are concerned that having the property insulated would increase rents. To be effective, any extension to government subsidies would need to address these issues.

Option 4: make retrofitting insulation tax-deductible

88. Landlords can deduct most maintenance on residential rental properties (including topping up insulation) and offset costs against income for tax purposes. This is not possible for retrofitted insulation where no insulation was present previously, because this is classed as capital expenditure.
89. The New Zealand Property Investors Federation (NZPIF) has repeatedly called for retrofitted insulation costs (both materials and labour) to be made deductible as an expense (i.e. fully deductible in the year the cost is incurred) in the same way as rates, insurance and maintenance. (NZPIF also advocates tax deductibility for installation of energy efficient heat sources). A tax concession for retrofitted insulation would require legislative change.
90. There is clear evidence that children from low-income families gain the greatest health benefits from insulation. Take-up of a tax concession for insulation is likely to be limited, and not well targeted to landlords with low-income tenants.
91. Limited take-up is likely because many New Zealand landlords are temporary landlords for relatively short periods, only own one rental property, and do not operate as a

¹⁹ <http://www.radionz.co.nz/audio/search?utf8=%E2%9C%93&q=insulation>

²⁰ EECA consumer research.

business. They are therefore less likely to be aware of or take advantage of tax incentives. In addition, tax incentives do not contribute to the biggest motivator for most landlords which is capital gain.²¹

92. NZPIF represents a minority of the private rental sector, with members who tend to take a more business-like approach and own multiple properties. A tax rebate is mostly attractive to this subset of landlords who perceive that insulation provides a business gain (through higher rents or lower tenant turnover).
93. Under the previous Warm Up New Zealand insulation programme (*Warm Up New Zealand: Heat Smart*), landlords were only eligible for a 60% subsidy. NZPIF claimed that a significant proportion of landlords preferred to install insulation themselves, or use a non-EECA approved tradesperson, because it was cheaper. However, under the current three-year Warm Up New Zealand programme (*Warm Up New Zealand: Healthy Homes*), landlords with low-income tenants can get a subsidy of between 80 to 100%, depending on region.²²
94. In addition, EECA and other research has found that non-financial barriers to retrofitting insulation are significant (as described under option 4). A tax concession is therefore likely to have limited effect for low-income tenant households.
95. Specific tax concessions are generally inconsistent with New Zealand's broad base, low rate tax structure. The primary function of the tax system is to raise revenue to finance government expenditure in a fair and efficient way, rather than encourage particular types of economic activity. Specific concessions also add to the complexity of the tax system, resulting in increased compliance and administration costs.
96. In order to be effective and reduce fire and electrocution risks, insulation needs to be installed correctly, with no gaps, and not cover downlights. Warm Up New Zealand: Healthy Homes includes a rigorous vetting programme of installers.²³ The building envelope also needs to be intact, so that insulation remains dry, and electrical wiring must be in good condition. EECA refuse a small proportion of Warm Up New Zealand applications each year on the grounds that the overall property condition is so poor that insulation would have no benefits and/or installation would be dangerous for the installer.

Assessment of options against criteria, relative to status quo:

97. The table below sets out each of the options against four criteria:
 1. Likely effectiveness in achieving objective, and flow-on consequences
 2. Overall costs and benefits to society over 20 years (8% discount rate)
 3. Administration costs to landlords and tenants (time and money costs)
 4. Operational impact for government.

²¹ National Landlord Survey Preliminary Analysis of Data, Kay Saville Smith et al, 2004

²² Third party funding to top up the subsidy varies by region.

²³ Lack of attention to this detail was a major cause of failures in Australia's insulation retrofit programme resulting in a number of house fires and four deaths among contractors.

Table 3: Options assessment: making residential rental properties drier and easier to heat

Criteria	Status Quo	Option 1: regulation under RTA	Option 2: encourage voluntary take-up	Option 3: extend Government subsidy for low-income tenants	Option 4: tax deductibility for insulation
1. Likely effectiveness in achieving objective, and flow-on consequences	Low	<p>Medium-high in the medium term (depending on compliance).</p> <p>Small potential rent increases where properties require insulation upgrades. Some landlords may choose to increase rent beyond the level of costs incurred.</p> <p>Ability of MBIE to take enforcement proceedings in cases of alleged severe breaches where there is serious risk to tenant health and safety.</p>	<p>Low. While installing insulation reduces long-term maintenance costs for a rental property, take-up by landlords of subsidies has been relatively low.</p>	<p>Medium: under current design, dependent on third party willingness to part-fund. Landlords who have not yet taken up the subsidy may be unlikely to do so even if extended (unless required by regulation).</p> <p>Some landlords may choose to increase rent beyond actual costs incurred.</p>	<p>Low: take-up is likely to be limited to the small proportion of professional landlords, and not well targeted to low income households with children.</p> <p>Most landlords are temporary landlords for relatively short periods, only own one rental property, and do not operate as a business. They are less likely to be aware of or take advantage of tax incentives. In addition, tax incentives do not contribute to the biggest motivator for most landlords, which is capital gain.</p>
2. Overall costs and benefits to society over 20 years (8% discount rate)	Not applicable	<p>High (if high compliance). Estimated health benefits (plus limited energy savings) of \$2.10 for every \$1.00 of costs.</p>	Not assessed, but likely to have low costs and low benefits	<p>High (if high take-up). Estimated health benefits (plus limited energy savings) of \$2.90 for every \$1.00 of costs.</p>	Not assessed, but likely to have relatively high costs (depending on the design) for relatively low benefits. Concessions add to the complexity of the tax system, resulting in increased compliance and administration costs.
3. Administration costs to landlords and tenants (time and money costs)	No administration costs	<p>From July 2019: Low. One-off requirement for landlord to assess the need for insulation upgrades and organise upgrades. Insulation has a life expectancy of 20 years plus.</p>	Low: Same as Status quo	<p>Medium: Landlords need to apply for the subsidy. Tenants need to prove eligibility.</p>	<p>Medium: landlords would need to keep records and account for insulation when preparing a tax return.</p>
4. Operational impact for government	<p>MBIE currently:</p> <ul style="list-style-type: none"> Delivers advice, information and education (AIE) to tenants and landlords, some of which relates to housing condition; Administers the Tenancy Tribunal (shared responsibility with Ministry of Justice). 	<p>Medium: Cost for MBIE in provision of additional information and advice, potential for increased number of Tenancy Tribunal applications.</p> <p>Cost for MBIE in provision of new enforcement provisions.</p>	<p>Low</p> <p>Additional AIE may be required to educate landlords and tenants. EECA already provides comprehensive online information.</p>	<p>Medium: Administration costs for EECA of approximately \$2.5m annually</p>	<p>High. Legislative change required. Operational costs for Inland Revenue.</p>

Consultation

98. Officials have undertaken high-level consultation on implementing a ‘Warrant of Fitness’ or similar with the New Zealand Property Investors Federation (NZPIF) and the Auckland and Christchurch Tenant Protection Associations (TPA). No consultation has occurred on the more specific smoke alarm and insulation proposals in this paper.
99. However, NZPIF has advised that it supports requiring smoke alarms in all residential rentals, and also supports a focus on insulation (and heating) rather than broader minimum standards. NZPIF also considers that more landlords should be encouraged to provide insulation (and heating), through financial incentives including greater tax deductibility.
100. The TPA supported having a broad set of minimum requirements on landlords, and also considered that there was a need for additional enforcement powers. Both Auckland and Christchurch TPA groups provided MBIE with proposed minimum requirements.
101. A wide range of other parties have an interest in rental housing quality, including property managers, territorial authorities, health experts and researchers. These parties will have opportunities for input during the Select Committee process and during consultation on regulations.

Implementation plan

102. Regulation options would be given effect through changes to the RTA that would enable smoke alarms and insulation for rental housing to be prescribed by Order in Council. Public consultation would be undertaken on proposed new regulations once Select Committee had reported back on a Residential Tenancies Amendment Bill.
103. MBIE would provide information to landlords and tenants about the new requirements, to inform them about meeting their obligations, and respond to queries.

Risks

104. The table below shows risks to implementation and planned mitigations.

Risk	Mitigation
Changes to legislation and regulations cause additional confusion for landlords and tenants	A comprehensive communications plan, including advice, information and education, will be developed to ensure all affected parties understand the changes.
Non-compliance with new standards	Minimise compliance costs by allowing landlords to self-assess compliance with standards. Ensure landlords and tenants are clear about legal requirements through the communications plan.
There may be a need for additional MBIE and Tenancy Tribunal resources to manage any increase in tribunal applications.	MBIE and the Ministry of Justice will consider operational improvements which could allow additional cases to be absorbed within existing resources, and may seek additional funding if needed.
Tenants are reluctant to take cases to the Tenancy Tribunal for fear of eviction	MBIE is proposing to strengthen the Chief Executive powers in the RTA to take a small number of cases to the Tenancy Tribunal of severe, widespread or persistent breaches in relation to tenant health

	& safety. MBIE intends working with organisations such as Tenant Protection Associations to identify potential cases to take on behalf of tenants.
--	--

Interaction with other Regulations

105. Landlords will still be required to comply with the existing requirements contained in the Housing Improvement Regulations 1947, for example in relation to sanitation and cooking facilities. Provisions in other Acts which can apply to residential tenancies (such as the Building Act and Fire Service Act) will continue to apply unchanged.

Monitoring, evaluation and review

106. A monitoring plan will be developed once regulations have been agreed. This plan will leverage off other existing monitoring activity such as MBIE's tenant and landlord engagement strategies.

107. Other avenues for monitoring the effectiveness of the proposals include monitoring the number of contact centre calls and Tribunal applications relevant to housing condition, and seeking feedback from stakeholder groups such as tenancy advocates and landlord representatives.

108. To ensure that the regime is operating as intended and balances costs and benefits appropriately, the Ministry of Business, Innovation and Employment would monitor the impact of smoke alarm and insulation requirements, and review the impact 24 months after insulation regulations come into full effect in 2019.