

In Confidence

Office of the Associate Minister of Housing

Cabinet Economic Policy Committee

Regulations for managing methamphetamine contamination in rental housing

Proposal

- 1 This paper seeks agreement to proposals for regulations on managing methamphetamine contamination in tenancies covered by the Residential Tenancies Act 1986 (the RTA).

Relation to government priorities

- 2 These proposals support the Government's work to improve New Zealand's rental market. The regulations will resolve the confusion landlords and tenants currently face when they encounter methamphetamine residue and ensure safe, cost-effective, and proportionate approaches are taken in response.

Executive Summary

- 3 Methamphetamine use and manufacture can leave residue in premises. There are currently no legislative rules about acceptable levels of methamphetamine residue in rental accommodation in New Zealand. This is confusing for the sector and has led to disproportionate and costly responses to low levels of methamphetamine residue which evidence shows are unlikely to pose any risk.
- 4 Section 138C of the RTA enables regulations to prescribe rules for managing methamphetamine contamination in rental properties. Accordingly, to provide clarity for the sector and ensure proportionate management of contamination, I propose that:
 - 4.1 rental premises will be considered contaminated under the regulations and require decontamination if detailed tests show levels exceed $15\mu\text{g}/100\text{cm}^2$
 - 4.2 if tests show levels exceed $30\mu\text{g}/100\text{cm}^2$, tenants and landlords can also quickly end the tenancy to avoid exposure or enable decontamination works
 - 4.3 testing and decontamination must follow a scientifically robust processes, incorporating key parts of the New Zealand Standard 8510:2017 *Testing and decontamination of methamphetamine-contaminated properties*
 - 4.4 landlords must deal with abandoned tenant goods in contaminated premises consistent with the existing process for abandoned goods in the RTA, with key adaptations to manage risks from those goods potentially being contaminated.

- 5 s 9(2)(f)(iv)

[REDACTED]

Background

- 6 Use and manufacture of methamphetamine can leave methamphetamine residue in properties. While direct contact and use of methamphetamine is known to cause medical harm, there is no clear evidence demonstrating a causal link between exposure to methamphetamine residue on surfaces and adverse health effects.¹ Low levels of residue are likely to be associated with a very low probability of harm.
- 7 However, the Institute of Environmental Science and Research (ESR) have advised that while we may not currently have evidence of it, we should assume that there is likely to be a level of residue that presents an unacceptable risk of adverse effects. Taking a precautionary approach, it is therefore necessary to define a maximum acceptable level of methamphetamine residue – a level above which action should be taken – and ensure adequate protections are in place to safeguard people exposed to it.
- 8 However, New Zealand has no legislative rules on acceptable levels of methamphetamine residue or rules for managing methamphetamine residue in rental housing. This has led to confusion and low public confidence about the health risks posed by methamphetamine residue and how to manage it. As a result, responses are inconsistent and can impose high costs (relative to risks posed).
- 9 Section 138C of the Residential Tenancies Act 1986 (the RTA) enables regulations to provide rules for managing methamphetamine contamination in rental housing. Regulations can provide clarity on a range of issues landlords and tenants face when they encounter this issue, ensuring responses are proportionate and evidence based.

I propose setting maximum acceptable and maximum inhabitable levels

- 10 Section 138C of the RTA enables regulations to set a maximum acceptable level of methamphetamine residue, establishing the threshold at which a property is deemed contaminated and requires remediation. I propose setting this limit at 15µg/100cm² (micrograms per hundred square centimetres), meaning any properties exceeding this level must be decontaminated until residue levels are at or below this threshold.
- 11 This proposal is consistent with the 2018 recommendation of the former Prime Minister's Chief Science Advisor, Sir Peter Gluckman, as well as more recent advice from ESR in 2020 and 2022, all of which agrees that residue levels below 15µg/100cm² are unlikely to cause any adverse health effects.
- 12 Section 138C of the RTA also enables regulations to set a maximum inhabitable level of methamphetamine residue. If residue exceeds this level, a property is considered uninhabitable, and landlords and tenants have the option of ending the tenancy with 2 days' and 7 days' respective notice. I propose setting this level at 30µg/100cm².
- 13 As there is no evidence of severe health effects associated with exposure to methamphetamine residue on surfaces, ESR has advised that it "does not consider there is sufficient evidence to define a maximum inhabitable level."
- 14 Acknowledging this advice, if we do not set a maximum inhabitable level, we risk creating further confusion and uncertainty about the threshold for habitability and what level of residue is sufficient for tenancy termination. This could result in greater

¹ E.g. skin contact from touching surfaces, or oral ingestion by hand to mouth activities after touching surfaces.

disputes in the Tenancy Tribunal, including additional burden for adjudicators having to operate without clear legislative guidance and a greater risk of appeals from parties.

- 15 In light of these considerations, I am proposing the 30µg/100cm² level on a pragmatic and precautionary basis. This is an uncommonly high level of residue, where there may be a higher risk of manufacturing activity and rapid tenancy termination may be justified by higher risks of adverse health effects (even though there is insufficient evidence to define that risk). Given the uncertainty of the health risks, limiting tenancy termination to cases where levels are high is appropriate when considered against the known risks and costs tenants face when losing a tenancy.
- 16 I also want to be clear that these levels do not comment on the acceptability of methamphetamine or condone it. While 15µg/100cm² would be the threshold for assessing whether a property is contaminated with methamphetamine residue and 30µg/100cm² would be the threshold for terminating a tenancy due to damage from contamination, the law would remain clear that using, possessing, selling, or manufacturing any amount of methamphetamine are offences under the Misuse of Drugs Act 1975. Tests evidencing any increases in methamphetamine residue levels during a tenancy may be sufficient to show that a tenant has breached their obligations under the RTA. A landlord could act on such evidence, including by applying to the Tenancy Tribunal for termination in line with section 56 of the RTA.

Stakeholder views on the proposed levels were divided

- 17 During public consultation, undertaken between November 2022 and March 2023, submitters engaged most with the proposals for the maximum acceptable and maximum inhabitable levels (which my recommendations are consistent with).
- 18 Tenant advocates (s 9(2)(ba)(i)) and organisations representing landlords' and property investors' interests (s 9(2)(ba)(i)) generally supported the maximum acceptable level, while submitters from the methamphetamine testing and decontamination industries and some landlords disagreed, calling for lower levels.
- 19 Submitter views on the maximum inhabitable level were wider ranging. While some submitters supported the level (s 9(2)(ba)(i)) many disagreed (testing and decontamination industry, some landlords and property managers) or withheld a view, as they were unsure or their members had mixed views (s 9(2)(ba)(i)).
- 20 Submitters' views broadly followed their confidence in the underlying science. Those supporting the levels generally felt comfortable that they reflected the evidence base, while those disagreeing believed the levels were too high, citing concerns about risks of adverse health effects and doubts about the scientific basis for proposals.
- 21 I am mindful of these concerns and while I am confident in the scientific advice underpinning my proposed maximum acceptable level, I acknowledge there is uncertainty around the maximum inhabitable level. If regulations proceed, officials will continue to actively monitor the evidence-base, and we will move quickly to adjust regulatory levels if new evidence suggests this is appropriate.

- 22 During public consultation, there was also concern from s 9(2)(ba)(i) that setting the maximum acceptable level at $15\mu\text{g}/100\text{cm}^2$ suggests methamphetamine use is acceptable and would be inconsistent with their tikanga based approaches to housing. In response to these concerns, officials explored enabling some landlords to set a lower maximum acceptable level but found it would exacerbate confusion about what a “safe” level is and could result in greater costs without evidence-based justification.

I propose that regulations prescribe additional responsibilities for landlords

- 23 Currently, it is unclear when landlords should be required to test for methamphetamine residue, what they should do to ensure any risks posed by methamphetamine contamination are effectively managed, and how these issues should be navigated during a tenancy, where tenants continue to live at the premises.
- 24 The RTA enables regulations to prescribe rules clarifying these matters (through sections 138C(3)(c) and 138C(3)(f)). Accordingly, I propose that:
- 24.1 Landlords must engage professional accredited testing services (as defined in regulations) to carry out a detailed assessment of their premises for methamphetamine residue where Police or the relevant council report that methamphetamine manufacture has taken place or is likely to have taken place, or where the results of a permitted screening test show residue levels exceed $15\mu\text{g}/100\text{cm}^2$.
 - 24.2 Where a detailed assessment shows residue levels exceed $15\mu\text{g}/100\text{cm}^2$, landlords must decontaminate the premises in line with the prescribed process.
 - 24.3 Following decontamination, landlords must engage professional accredited testing services to carry out a further round of detailed assessment, to confirm levels no longer exceed $15\mu\text{g}/100\text{cm}^2$.
 - 24.4 Landlords must ensure that, to avoid any conflict of interest, any testing professional used for screening assessment or detailed assessment is independent from any professional contracted to carry out decontamination.
 - 24.5 Where contamination is discovered during an ongoing tenancy, a landlord must fulfil the above obligations as soon as practicable.

I will consider whether landlords have the support needed to meet obligations

- 25 Depending on the level of decontamination required, it may either be practically required or more convenient for tenants to move out during decontamination. However, the RTA does not currently enable this, as there is no termination ground for decontamination works. Where levels exceed the maximum acceptable level ($15\mu\text{g}/100\text{cm}^2$) but do not exceed the maximum inhabitable level ($30\mu\text{g}/100\text{cm}^2$), the RTA expects that tenants may remain in the property while it is decontaminated.
- 26 Some submitters to the public consultation raised concerns about the feasibility of this. Some agencies also raised this concern in feedback on the policy proposals. For example, Kāinga Ora considers a property cannot be decontaminated while the tenant

is in place. Where landlords and tenants cannot agree on arrangements to facilitate decontamination works, disputes could arise requiring Tenancy Tribunal resolution.

- 27 In practice, I expect cases of dispute about decontamination works during tenancies will be uncommon. Methamphetamine contamination is usually discovered between tenancies in the private market. Where it is discovered mid-tenancy, landlords have tools available to help them do decontamination work. For example, under section 48 of the RTA, landlords have an existing right of entry to carry out decontamination work and tenants failing to provide access for this without a reasonable excuse commit an unlawful act. Further, where tenancies are periodic, landlords and tenants have greater flexibility to end the tenancy, if needed.
- 28 Recent Tenancy Tribunal cases also suggest that, where methamphetamine contamination is discovered during a tenancy, there is often evidence of unlawful use of the property, and/or residue levels are very high, exceeding my proposed maximum inhabitable level. In these cases, landlords have other tools to end the tenancy and gain access for decontamination, if required.
- 29 However, if regulations proceed, officials will monitor Tenancy Tribunal cases and sector feedback to assess whether there is need for future legislative change to the RTA to enable tenancy termination for the purposes of undertaking decontamination.

I propose clarifying rules for testing, decontamination and abandoned goods

- 30 In line with the empowering provisions in section 138C of the RTA and to address the uncertainty the sector faces on these issues, I also propose prescribing clear rules for acceptable methods for testing for methamphetamine residue, a flexible and evidence-based decontamination process, and rules for dealing with tenant belongings which have been abandoned in contaminated premises. My proposals are summarised below.

Issue and relevant RTA provision(s)	Proposed regulatory response
Who should be able to test for methamphetamine residue and what types of tests can be used? <i>section 138C(3)(d) of the RTA</i>	<ul style="list-style-type: none"> Anyone can undertake screening assessments as long as they use acceptable testing methods in accordance with the instructions. If a professional is paid to do screening assessments, they must meet requirements in section 7.1 of the New Zealand Standard 8501:2017 <i>Testing and decontamination of methamphetamine-contaminated properties</i> (the Standard) or be accredited. Only qualified professionals can carry out detailed assessments (in line with section 7.2 of the Standard). any discrete/individual sampling plus laboratory testing (including laboratory composite testing) and accredited screening test kits are acceptable methods of testing under the regulations field composite tests and unvalidated testing kits are not acceptable methods of testing under the regulations unless a validated testing kit is being used (in line with the process set out in the Standard), all samples need to be analysed and reported on by accredited laboratories.
Where	Prescribed process incorporating section 4 of the Standard, with

<p>decontamination is required, how should this be done?</p> <p><i>section 138C(3)(e) of the RTA, noting proposals in paragraphs 21 – 25 above</i></p>	<p>adjustments to:</p> <ul style="list-style-type: none"> • reference the 15µg/100cm² maximum acceptable level • provide flexibility for carpets, enabling remediation where possible, rather than disposal in all cases • not include the Standard's recommendations around the decontamination of contents (general tenant and landlord goods are outside the scope of the regulations, except for abandoned tenant goods. Tenants and landlords will be free to choose how their personal goods are managed).
<p>What should be done with abandoned goods on contaminated premises?</p> <p><i>for the purposes of section 62(3A) and empowered by section 138C(3)(g) of the RTA</i></p>	<p>Requirements mirror the existing process in the RTA for non-contaminated premises, with key changes:</p> <ol style="list-style-type: none"> 1. the landlord must deal with abandoned goods as if they are contaminated and make all reasonable efforts to assess the market value of the goods together with the likely cost of testing, decontamination (where possible) storage, transport and sale 2. where any of the goods have a value below the costs set out in (1), or where storage, testing or decontamination is not possible despite all reasonable efforts, the goods can be securely disposed 3. where any of the goods have a value above the costs set out in (1) and storage, testing and decontamination are possible, the landlord must securely store the goods for at least 35 days, and after that, if unclaimed, may decontaminate, re-test, and sell the goods.

Implementation

31 Subject to Cabinet's agreement to the proposals outlined in this paper:

31.1 s 9(2)(f)(iv)

31.2 Officials will commission Standards New Zealand to instigate a review of the Standard. This will ensure consistency with the final regulations and prevent any further confusion from the sector about which processes to follow.

Cost-of-living Implications

32 As methamphetamine contamination is a relatively uncommon issue, I do not expect that these proposals will have significant cost-of-living implications. However, where contamination is discovered, the proposed regulations are likely to deliver savings for landlords and tenants, by ensuring action is only required where there is risk- and evidence- based justification to do so.

Financial Implications

33 There are no direct financial implications from the proposals in this paper.

Legislative Implications

34 The proposals in this paper require regulations to be given effect. Such regulations are provided for by existing empowering provisions in the RTA (section 138C).

Impact Analysis

Regulatory Impact Statement

35 The Cabinet Office circular CO (24) 7 Impact Analysis Requirements apply to the proposals in this paper. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) has prepared a Regulatory Impact Statement (RIS) assessing the impacts of the proposed regulations (see **Appendix One**). The Ministry's quality assurance panel has reviewed the RIS and determined the information and analysis meets the Quality Assurance criteria.

Climate Implications of Policy Assessment

36 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Population Implications

37 My proposed regulatory regime will resolve inconsistent practice in the sector, providing certainty about what levels of methamphetamine residue should be acted on and what actions are appropriate. Greater certainty and predictability will benefit all landlords and tenants while also reducing pressure on the Tenancy Tribunal.

38 The evidence-based approach I am proposing will also mean that the disruption and costs which can be associated with decontamination works are minimised and only imposed where there is an evidence-based justification for action. At the margins, this will help to ensure rental housing supply is not unnecessarily disrupted.

39 Māori are particularly impacted by legislative changes affecting the rental sector, with around half of Māori households living in rented accommodation. I therefore expect the regulations to deliver benefits for Māori in line with the tenant benefits outlined above (certainty and predictability, health protection, minimised cost and disruption).

Human Rights

40 There are no human rights implications arising from the proposals in this paper.

Use of external Resources

41 No external resources were used directly in the preparation of this paper.

Consultation

- 42 The following have been consulted on this paper: Department of the Prime Minister and Cabinet, Prime Minister's Chief Science Advisor, Treasury, Ministry of Health, Health New Zealand, Ministry of Business, Innovation & Employment, Standards New Zealand, Ministry of Justice, New Zealand Police, Te Puni Kōkiri, Ministry of Social Development, Department of Internal Affairs, Ministry for Regulation, Parliamentary Counsel Office, Kāinga Ora, Real Estate Authority, Tenancy Tribunal.

Communications

- 43 I propose to publicise decisions in this paper through a Ministerial press release.

Proactive Release

- 44 I propose proactively releasing this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, with any appropriate redactions.

Recommendations

The Associate Minister of Housing recommends that the Committee:

- 1 note that there are currently no legislatively binding rules about the management of methamphetamine contamination in rental housing, which has led to confusion and disproportionate and costly responses to low levels of methamphetamine residue which evidence shows are unlikely to pose any risk;
- 2 note that section 138C of the Residential Tenancies Act 1986 enables regulations to prescribe rules for managing methamphetamine contamination in rental housing, including maximum acceptable and inhabitable levels of methamphetamine, landlord requirements, and management processes for decontamination and abandoned goods;

Regulated levels of methamphetamine residue

- 3 agree that the maximum acceptable level of methamphetamine residue is $15\mu\text{g}/100\text{cm}^2$ and that premises testing above this level should be cleaned to $15\mu\text{g}/100\text{cm}^2$ or less;
- 4 note that the Institute of Environmental Science and Research (ESR) has advised there is insufficient evidence to define a maximum inhabitable level of methamphetamine;
- 5 note that not setting a maximum inhabitable level will create further uncertainty for the sector, leaving the Tenancy Tribunal to determine what the threshold for habitability in respect of methamphetamine residue should be;
- 6 agree that the maximum inhabitable level of methamphetamine residue is $30\mu\text{g}/100\text{cm}^2$, which will mean that, in addition to the requirement to decontaminate the premises, tenancies can be terminated if professional tests show levels exceed this;

Landlords' responsibilities for managing methamphetamine residue

- 7 agree that landlords will be required to engage accredited testing professionals to carry out detailed assessment for methamphetamine contamination when either:
 - 7.1 Police or the relevant council advises there was, or it is likely that there was, methamphetamine manufacturing on the premises, or

- 7.2 A tenant, landlord or any other person has carried out a permitted screening assessment for methamphetamine residue in the premises in accordance with the regulations, and this has shown results exceeding $15\mu\text{g}/100\text{cm}^2$;
- 8 agree that, where premises show levels of methamphetamine residue exceed $15\mu\text{g}/100\text{cm}^2$ following a detailed assessment, landlords are required to:
 - 8.1 ensure premises are decontaminated in line with the prescribed process
 - 8.2 ensure another detailed assessment is carried out after decontamination, confirming levels do not exceed $15\mu\text{g}/100\text{cm}^2$
 - 8.3 ensure that, to avoid any conflict of interest, any testing professional used for screening or detailed assessment is independent from any professional contracted to carry out decontamination;
- 9 agree that, where premises continue to be provided to the tenant, landlords must fulfil these obligations (7 and 8 above) as soon as practicably;
- 10 note that the Residential Tenancies Act 1986 does not currently enable a landlord to require a tenant to move out for decontamination works, but officials will consider whether a new termination ground is needed for this purpose as part of post-implementation monitoring;

Testing requirements

- 11 agree that anyone can carry out screening assessments for methamphetamine residue as long as they use acceptable testing methods in accordance with test instructions, however if a professional is paid to do screening assessment, they must meet appropriate requirements;
- 12 agree that only qualified professionals can carry out detailed assessment for methamphetamine residue;
- 13 agree that in terms of permitted types of testing:
 - 13.1 any discrete/individual sampling plus laboratory testing (including laboratory composite testing) and accredited screening test kits are acceptable methods of testing for methamphetamine under the regulations
 - 13.2 field composite tests and unvalidated testing kits are not acceptable methods of testing for methamphetamine under the regulations
 - 13.3 unless a validated testing kit is being used, all samples need to be analysed and reported on by accredited laboratories;

Decontamination process

- 14 note that a landlord cannot begin a new tenancy for a premises that they know is contaminated, and that if a tenancy had already begun before the contamination was discovered, the landlord may continue to rent the premises to the tenant only if the premises are being decontaminated as per the prescribed process;

- 15 agree that the prescribed decontamination process is largely as set out in section 4 of the New Zealand Standard 8501:2017 *Testing and decontamination of methamphetamine-contaminated properties* (the Standard), with minor adjustments;
- 16 agree that a landlord can appoint anyone to carry out decontamination works, or can undertake the work themselves;

Rules for managing abandoned goods on contaminated premises

- 17 agree that the requirements for dealing with abandoned goods in contaminated premises (premises testing above $15\mu\text{g}/100\text{cm}^2$) are similar to the existing process in the Residential Tenancies Act 1986 which applies to abandoned goods in non-contaminated premises, with the key distinctions being that:
- 17.1 the landlord must deal with the abandoned goods as if they are contaminated
- 17.2 the landlord must make all reasonable efforts to assess the market value of the goods together with the likely cost of testing, decontamination (where possible) storage, transport and sale
- 17.3 where any of the goods have a value below the costs set out in (17.2), or where the goods are unable to be stored, tested or decontaminated, the landlord may securely dispose of the goods, and
- 17.4 where any of the goods have a value above the costs set out in (17.2) and storage, testing and decontamination are possible, the landlord must securely store the goods for at least 35 days, and after that, if unclaimed, may decontaminate, re-test, and sell the goods;

Next steps

- 18 note that the Associate Minister of Housing intends to issue a press release and inform key stakeholders about the regulations at an appropriate time;
- 19 invite the Associate Minister of Housing to issue instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper;
- 20 authorise the Associate Minister of Housing to make final decisions on minor and technical changes not inconsistent with the policy intent of the proposals in this paper;
- 21 s 9(2)(f)(iv) [REDACTED]
- 22 note that officials will commission Standards New Zealand to instigate a review of the Standard, to ensure consistency with the final regulations.

Authorised for lodgement

Hon Tama Potaka

Associate Minister of Housing