



Submission to the Local Government and Environment Select Committee: Residential Tenancies Amendment Bill (No 2)

1. Research for this submission was carried out by Law Reform student volunteers from the Wellington Community Justice Project (**WCJP**), a law student-lead society and registered charity at Victoria University of Wellington.
2. The WCJP aims to improve access to justice in the wider community, and provide volunteers with opportunities to develop their legal skills through volunteer projects. Law Reform is one of four teams within the WCJP with their primary focus on legislative changes and policy developments.
3. The WCJP supports the Residential Tenancies Amendment Bill (No 2) (**the Bill**) to the extent that it fulfils its purpose, namely to provide access to affordable, sustainable and quality housing for tenants and balance the rights and obligations between tenants and landlords. While we support the provisions on methamphetamine contamination and tenant liability for damage, we also have some concerns. More importantly, we believe that the Bill can, and should, seek to improve the balance between tenants and landlords, and to improve the current housing situation in New Zealand.
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I Introduction

[1] The WCJP supports the Bill to the extent that it fulfils its purpose, namely to provide access to affordable, sustainable and quality housing for tenants and balance the rights and obligations between tenants and landlords.¹ While we support the provisions on methamphetamine contamination and tenant liability for damage, we also have some concerns. More importantly, we believe that the Bill can, and should, seek to improve the balance between tenants and landlords, and to improve the current housing situation in New Zealand.

[2] This submission will first discuss the issue of methamphetamine contamination in rental premises. It will then comment on the changes around tenant liability for damage to residential tenancy properties. Finally, the submission will outline several areas in which tenancy laws can be improved to make tenancy a viable mode of housing.

II Methamphetamine contamination

A Overview

[3] The WCJP supports the decision to legislate on the issue of methamphetamine-contaminated rental premises. Such premises can pose health risks to tenants and force landlords to undertake costly renovations on the property.

[4] However, we have concerns regarding certain aspects of the Bill. Our concerns relate to the regulation-making power given to the Governor-General, the issue of low contamination levels, the landlord's ability to terminate the tenancy if contamination is detected, the notice periods, and the intended scope of the Bill.

B Regulation-making power

[5] Clause 37 of the Bill gives the Governor-General regulation-making power. The WCJP is concerned with the lack of information on how these regulations will be made.

[6] A significant problem facing the rental market is the lack of standards and guidelines around methamphetamine testing and what constitutes an unacceptable level of contamination. Creating guidelines is necessary. However, the Bill does not provide

¹ Residential Tenancies Amendment Bill (No 2) 2017 (258-1).

details on the creation of these regulations, only that this power is given to the Governor-General. This is a significant power, as it will determine many practical elements that will affect the Bill's overall operation. More information on how these guidelines will be determined (and therefore how these regulations will be made) should be made available to the public.

C Low levels of contamination

[7] Experts have stated that there is a spectrum of contamination. Lower levels of methamphetamine contamination do not cause much damage to the premises or its inhabitants. The Ministry of Business, Innovation and Employment (**MBIE**) has stated that:²

... if methamphetamine has been smoked occasionally in a property, the contamination level and health risk is equivalent to that from tobacco or cannabis smoking. In this instance, the remediation process can be a simple matter of washing hard surfaces in a systemic manner, and using personal protective equipment.

[8] However, as the Bill currently stands, there is no recognition of this spectrum of contamination and the different appropriate responses.

[9] The WCJP is concerned that low levels of contamination, which are unlikely to pose major risks to a tenant's health, could jeopardize their housing situation. While we recognize that it is undesirable to have contamination of any kind in New Zealand homes, with the current shortage of houses in the rental market, this policy could cause more harm than good.

[10] The Bill should expressly distinguish between properties with differing levels of methamphetamine contamination. This would ensure that contaminated properties are adequately remediated and would avoid undue hardship being placed on either party.

D Termination of tenancies

[11] The landlord's ability to terminate a tenancy under cl 30 of the Bill could cause unwarranted hardship for tenants. Current testing methods cannot determine when a

² Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protection of tenants and landlords from the effects of methamphetamine contamination* (10 November 2016) at [11].

property was contaminated, or who was responsible for it.³ Therefore, tenants could risk their leases being terminated due to contamination they did not contribute to.

[12] Furthermore, the short period of notice for terminating a lease is concerning. The WCJP believes that providing tenants with seven days' notice is too short. With the current lack of rental properties on the market, giving tenants only this limited window of time to secure new accommodation would likely place undue hardship on them and their families. This period of notice should be extended.

E The intended scope of the Bill

[13] The WCJP believes that there could be clarification on the intended scope of the Bill, namely who is likely to be affected. MBIE's Regulatory Impact Statement states that "[i]n 2014, Housing New Zealand reported that 101 state houses had been contaminated with methamphetamine out of 196 that were tested."⁴ The report further states that there has been a "significant increase in Tenancy Tribunal decisions involving methamphetamine contamination" and that half involved Housing New Zealand.⁵

[14] The above extracts suggest that the issue of methamphetamine contaminated rental properties occurs predominately in state housing. If the Bill will predominantly affect residents in state housing rather than private tenancy agreements between citizens, then this should be clearly stated to avoid confusion.

III Tenant liability for damage to residential tenancy properties

A Introduction

[15] The amendments on tenant liability for damage are a response to a perceived change under the Court of Appeal's decision in *Holler v Osaki*.⁶ The current status quo remains largely unchanged. A significant proportion of the amendment is a simple reiteration of the Property Law Act 2007.

B Costs to tenants

³ Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protection of tenants and landlords from the effects of methamphetamine contamination* (10 November 2016) at [15].

⁴ At [6].

⁵ At [8].

⁶ *Holler v Osaki* [2016] NZCA 130, [2016] 2 NZLR 811.

[16] An issue arises under s 49B(1)(c) – where insurance policies are violated, will there be a ceiling to the liability a tenant faces? It is unclear, but on face value it appears that a tenant could be pursued to indemnify the landlord, or by an insurance company having indemnified the landlord.

[17] The tenant becoming liable for the cost of insurance excess following carelessness or negligence to the value of up to four weeks rent is consistent with the objectives of the amendments. However, it is worth addressing the harm this may cause to tenants who have already suffered loss, or those who lack the financial means to pay.⁷ Although MBIE say there is a “broad correlation” between the penalty and ability to pay, this is unfounded.⁸

[18] The prospective costs are as follows:⁹

- a. for 25% of renters, payment would be no more than \$1996.
- b. for 50% of renters, payment would be between \$1116 and \$1996.
- c. for 25% of renters, payment would be below \$1116.

[19] MBIE also acknowledge the possibility that insurers may increase premiums in response to this Bill. This may seem like an unacceptable outcome. However, this response can be balanced against the desire to enable cost efficient insurance arrangements that protect both landlords and tenants.¹⁰

C Amendments to s 45 landlord’s responsibilities – insurance information

[20] The proposed s 45(2B) requires the landlord to provide the tenant with information about whether the premises are insured or not and any relevant details of the policy regarding tenant liability. Landlords may provide this at any time, and are compelled to do so within two weeks of receiving a request from a tenant.

⁷ MBIE’s Regulatory Impact Statement acknowledges tacitly that there is a correlation between renting and having a low income. See Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Tenant liability for damage to residential tenancy properties* (10 November 2016) at 5.

⁸ At 4.

⁹ At 12.

¹⁰ At 8.

- [21] Subsection (2C) requires that landlords update tenants of any changes regarding the information relating to subsection (2B), and subsection (2D) makes failure to comply with subsections (2B) and (2C) unlawful.
- [22] Placing the onus on tenants to enquire about insurance information does not recognise the power imbalance between the parties. Tenants are not necessarily well informed about tenancy matters, nor can it be taken for granted that tenants will be proactive enough to inform themselves.
- [23] Given the importance of the proposed s 45(2B)(b), this burden should be on the landlord. This could be achieved via disclosure at the start of a tenancy, or by amending tenancy agreements to include information about the insurance situation. This would better address the power imbalance, and would also aid in preventing tenants who are unaware of this obligation from being penalised later.
- [24] We recommend that the onus of disclosure should be on the landlord rather than on the tenant in amendment 2B. Amendments 2C and 2D are acceptable and do not give rise to concerns.

D Amendments around responsibility for damage

- [25] Section 49B(1)(a) and (b) is a reiteration of liability under the existing Residential Tenancies Act 1986 and the Property Law Act. This liability is not affected by the decision in *Holler v Osaki* which protects tenants when damage is caused carelessly or negligently. If the purpose is to clarify that law, then this section is agreeable.
- [26] It is worth clarifying under s 49B(1)(c) whether the money recoverable is limited to four weeks rent as consistent with the rest of s 49B, or if it is unlimited as the language suggests. Furthermore, there are policy considerations surrounding expectations of a minimum standard of insurance landlords must have, and whether insurance companies will attempt to indemnify themselves against tenants unfairly.
- [27] Section 49B(4) provides that tenants may carry out works to make good the destruction or damage covered by s 49B(2) and (3). This is acceptable provided there is both a clear

metric of worth, and the works are carried out in accordance with other statutory frameworks such as:

- a. the Health and Safety at Work Act 2015 in order to prevent undue injury.
- b. the regulations on building, plumbing, and electricity, so as to prevent do-it-yourself (DIY) of a nature that is already regulated.

[28] Destruction or damage which the landlord becomes aware of after s 49B(6) comes into force is presumed to have occurred after the provision comes into force unless the tenant proves otherwise. This presumption is problematic in that it places the burden of proof on tenants rather than landlords. Landlords stand to benefit from this provision. A greater balance of the interests of both parties ought to be considered in placing the burden to prove whether the damage occurred under the new Act. Achieving a better balance of interests would be more consistent with the presumption against retroactive legislation penalising parties unduly, and with the burden of proof.

[29] Section 49C makes it clear that the amendment is designed to benefit the landlord rather than insurers. This amendment is acceptable, as it effectively reiterates some of the judgment in *Holler v Osaki* by preventing subrogation by the insurer.

[30] Section 49D deals with the interaction between unlawful acts and liability and prevents extortionate behaviour by landlords. However, it is confusing in that it reads as if it covers the entirety of s 49B. That section has its own inherent confusion where there is an apparent delineation between s 49B(1) where cost liability apparently has no ceiling, and s 49B(2) and (3) where cost liability is capped at four weeks rent. This reiterates the need to clarify the cost liability ceiling under s 49B(1).

[31] In addition, it is worth examining further penalising predatory behaviour of this manner to protect tenants. The Departmental Disclosure Statement sets the penalty at \$500 which is very little for such wrongful behaviour.¹¹

¹¹ Ministry of Business, Innovation and Employment *Departmental Disclosure Statement: Residential Tenancies Amendment Bill (No 2)* (9 May 2017) at 9.

E Summary of recommendations regarding tenant liability

[32] First, in s 45(2B), the onus should be on landlords to inform tenants about their prospective liability under a tenancy. Secondly, whether there is a cap to cost liability under s 49B(1)(c) should be clarified. Thirdly, to prevent extortion or unfair bargains being struck, the Bill should clarify a metric of worth for work done in s 49B(4). Furthermore, any work done should be consistent with regulatory bodies and other statutory frameworks. Fourthly, the presumption under s 49(6) that damage occurred after the Act came into force should be examined. Lastly, predatory conduct sanctioned under s 49D should be penalised to a greater extent than a \$500 fine.

IV Tenancy – affordable, sustainable and quality housing?

A Introduction

[33] At present, 33 per cent of New Zealanders rent and 63.2 per cent are homeowners.¹² This unprecedentedly high proportion of renters is set to rise further, following trends from the United States of America which indicate that millennials are less likely to own their own home.¹³ This increase in tenancy is largely due to the rising house prices making home-ownership unattainable for many.

[34] According to the Human Rights Commission, adequate housing is a human right recognised in multiple international treaties and is defined by accessibility (among other things).¹⁴

[35] In order to ensure that New Zealanders continue to have safe, quality and affordable residences consistent with international treaties, we must make a reasonable alternative to home-ownership. Tenancy must be made more accessible and stable for tenants as their rights to adequate housing are at stake.

[36] In this part, we outline several areas in which tenancy laws could be improved to make tenancy a viable mode of housing. These include rent, security of tenure and housing standards. We also make some practical suggestions for incorporating positive change

¹² Corazon Miller “Home ownership rates lowest in 66 years according to Statistics NZ” (10 January 2017) New Zealand Herald <www.nzherald.co.nz>.

¹³ Andrea J Boyack “Equitably housing (almost) half a nation of renters” (2017) 65(1) Buff L Rev 109 at 115.

¹⁴ Human Rights Commission *The human right to adequate housing in New Zealand* (Brochure).

in the current Bill by drawing from policy and laws of countries in which rental is a prevalent form of housing.

B Rent

1 New Zealand's current rent rate situation

[37] The Human Rights Commission has stated that a key aspect of adequate housing is affordability, meaning that housing costs should not be at a level which compromises a person's ability to meet other basic needs.¹⁵

[38] Statistics show that a third of New Zealand households spend more than 30 per cent of their disposable income on housing costs. This proportion is even more extreme for the least well off who, on average, spend over 50 per cent of their income on housing.¹⁶

[39] Initial rent can be freely agreed on between landlords and tenants. Rent cannot be increased within six months of either the start of the tenancy or the last rent increase. In a fixed term tenancy it can only be increased if the contract stipulates. To increase rent a landlord must give the tenant notice of at least 60 days, which must be served in writing. New Zealand law does not regulate the amount of rent increases but does stipulate the process by which it must take place and what avenues are open to tenants who object to the increase. Tenants who oppose a rent increase can apply to the Tenancy Tribunal (**the Tribunal**) for an order that it be reduced, but only if they can prove that their rent is substantially higher than the rent for similar tenancies.¹⁷

[40] Despite these options open to tenants wanting to challenge rent raises, realistically they have little choice but to accede. The Tribunal is often viewed as a last resort as it usually heralds the end of the tenancy relationship. The claims process can be difficult, and evidence and remedies limited.¹⁸

¹⁵ Human Rights Commission, above n 14, at 2.

¹⁶ New Zealand Herald "Household Incomes Report reveals high cost of housing and low incomes" (25 July 2017) <www.nzherald.co.nz>.

¹⁷ Tenancy Services "Increasing rent" <www.tenancy.govt.nz/rent-bond-and-bills/rent/increasing-rent/>.

¹⁸ Rob Stock "NZ's Tenancy Tribunal a 'toothless kitten' - researcher Philippa Howden-Chapman" (8 December 2015) Stuff <www.stuff.co.nz>.

[41] Renters have found direct negotiations with their landlords to be a better method of opposing rent raises than going to the Tribunal. But with many properties being run by property managers who get a cut of the rent paid, direct negotiations with a landlord can be difficult.¹⁹

[42] In the current market where tenants are willing to pay almost anything for a place to live, landlords have a large amount of power. Prices keep hiking as increases set the rates for surrounding tenancies. Landlords have the upper hand in negotiations. This all feeds into a cycle which keeps supply behind demand and contributes to ever escalating rental prices.²⁰

[43] New Zealand's current housing market suggests that relying on market forces to self-regulate is insufficient. In the absence of central regulation, prices will keep increasing.

2 *Regulations on rent in overseas jurisdictions*

[44] Several countries in Europe have some of the lowest home ownership rates in the world. This is largely due to successful tenant protection policies. Among these countries are Germany, Switzerland and to a lesser extent France.²¹

[45] In Germany, rent is heavily regulated, with increases being capped at 20 per cent over three years. Landlords are required to state detailed reasons for any rent increase. Such reasons must include an expert opinion and three sample rents charged for comparable properties. Alternatively, they must show that the increase is in line with "qualified rent tables" produced by the local authorities.²²

[46] Swiss law allows for initial rent to be freely agreed between landlord and tenant. However, the initial rent can be challenged by the tenant within 30 days of taking possession if it is significantly higher than the previous rent for the same property, or if the tenant felt compelled to enter the lease agreement by one of several specified

¹⁹ Rob Stock "Fighting your landlord's plans to raise the rent" (2 March 2016) Stuff <www.stuff.co.nz>.

²⁰ Isaac Davison "'Excessive' rent rises have tenants fuming" (15 March 2012) New Zealand Herald <www.nzherald.co.nz>.

²¹ Trading Economics "Home Ownership Rate" <<https://tradingeconomics.com/country-list/home-ownership-rate>>.

²² Global Property Guide "Germany is depressingly pro-tenant" (25 May 2006) <www.globalpropertyguide.com>.

reasons. Judges will only intervene and revise the rent in extreme cases where the rent can be labelled as abusive. Tenants have the further opportunity to challenge the rent as unfair during the term of the lease. They may do this if their landlord derives an excessive income or clearly excessive income from the leased property. Rental income is considered excessive once the net return exceeds half of a per cent of the interest rate on the first mortgage. Thus, tenants may request reductions on rent based on interest rates. Income is clearly excessive if it exceeds the benchmark income rate of standard rents for similar properties. Nonetheless, landlords can increase the rent at any time but must keep in mind that raising the rent significantly above the old rent runs the risk of being considered abusive.²³

- [47] In France, initial rent is freely agreed on. Subsequently, rent can only be revised once a year and only if allowed by the contract. Increases cannot exceed the four-quarterly average of the Construction Costs Index, which measures changes in the costs of construction of new buildings.²⁴ Landlords may increase the rent at the end of a lease but must give nine examples with extensive details, demonstrating that the old rent is manifestly beneath the current standard for the same area and comparable residences. Any increases above 10 per cent of the old rent must be spread over six years, and if no agreement can be reached on the rent increase then the landlord must go to the Department of Conciliation Commission and, failing that, to court.²⁵

C Security of tenure

1 New Zealand's current position on security of tenure

- [48] Security of tenure is also stated as a significant aspect of adequate housing by the Human Rights Commission.²⁶ It has been shown to have both physical and psychological benefits. People value the sense of being in control of whether they stay in a place or not. This is especially the case for people with a low income, who do not often have control over many other areas of their lives.²⁷ Furthermore, the negative

²³ Global Property Guide “Swiss law is pro-tenant” (10 June 2015) <www.globalpropertyguide.com>.

²⁴ National Institute of Statistics and Economic Studies *Construction Costs Index (CCI)* (30 June 2017). See <<https://www.insee.fr/en/metadonnees/source/s1122>>.

²⁵ Global Property Guide “Tenant protection laws are onerous in France” (25 May 2006) <www.globalpropertyguide.com>.

²⁶ Human Rights Commission, above n 14, at 2.

²⁷ Suzanne Fitzpatrick and Hal Pawson “Ending Security of Tenure for Social Renters: Transitioning to ‘Ambulance Service’ Social Housing?” (2014) 29 *Housing Studies* 597.

impacts that instability in housing has on psychological health, community connections, schooling and finances are huge for families. Children, in particular, will suffer from the social dislocation caused by frequent relocating.²⁸ These poor social outcomes will equate to increased economic costs for the government and the social services that it funds.²⁹

[49] In New Zealand, the benefits of security of tenure and the negative impacts of instability in housing have been recognised to a certain extent, as seen by the procedures and requirements that must be followed to terminate a tenancy.³⁰

[50] There are two types of tenure in New Zealand: fixed term or periodic, with periodic tenancy being the most common form. Fixed term tenancies last a set amount of time and cannot be terminated short of that time unless by agreement. Periodic tenancies have no fixed date for the end of the tenancy, thus allowing both tenant and landlord to end the tenancy at any time by complying with the termination requirements. In most cases this will involve the landlord giving 90 days written notice. This period is reduced to 42 days if the termination is due to the property being sold, the landlord and their family occupying the property or a further specified purpose.³¹

[51] Traditionally, New Zealanders have achieved security of tenure through home ownership. But with increasing property prices they have had to look to ways of achieving security of tenure in rental homes. However, not much governmental aid in terms of policy and legislation is provided in achieving this, as notice periods are short at 90 days with no justification necessary.³²

2 *Security of tenure in other jurisdictions*

[52] In Germany, the usual type of tenancy contracts are unlimited period contracts. Eviction can only be effected with three to nine months' notice accompanied by a

²⁸ Human Rights Commission *Human Rights in New Zealand 2010* (2010) at 218.

²⁹ Ministry of Business, Innovation & Employment *Exploring Security of Tenure Through Co-Design* at 4.

³⁰ Residential Tenancies Act 1986, ss 50–66.

³¹ Global Property Guide “Tenant protection laws are neutral in New Zealand”

<www.globalpropertyguide.com>.

³² Rebecca Macfie “Tenants in our own land” (16 July 2015) Noted <www.noted.co.nz>.

statement of valid reasons for the notice. Tenants may object to notice being given if it would mean undue hardship for them and their family.³³

[53] The two main types of lease in Switzerland are leases for a limited duration and for an indefinite duration. The limited duration lease is much like our fixed term lease, and expires at end of the contracted period. Termination of an indefinite duration lease requires observation of various prescribed notice periods and termination dates, depending on the type of residence in the lease. However, termination of either limited or indefinite leases requires that the landlord or tenant justify the cancellation by citing one of the reasons specified by law, most of which concern some form of breach by the other party. In cases where the landlord terminates, the tenant can request an extension of the lease for hardship reasons and this is quite commonly granted.³⁴

[54] French law specifies a minimum duration of lease, which is automatically renewed at the end unless notice is given. Eviction or reoccupation at the end of the contract is only possible with valid reasons. For example, the tenant's safety is at stake, or if the tenant has breached the contract by failing to pay rent or by abusing their rights.³⁵

[55] Ireland has been said to be similar to New Zealand in terms of their housing system. As Ireland have managed to shift their policy to incorporate better security of tenure, they are a good example for New Zealand to look to.³⁶ In Ireland, leases typically run for four years. The landlord may terminate during the first six months of a lease without needing to specify reasons. Once the lease has lasted past that time, the landlord can only terminate if the tenant breaches their obligations, the landlord needs the dwelling for their own or their family's occupation, or the landlord intends to refurbish or change the use of the dwelling. At the end of the four years, the tenancy is automatically renewed and the cycle begins again unless otherwise terminated during the beginning six months of the four year cycle.³⁷

³³ Global Property Guide, above n 22.

³⁴ Global Property Guide, above n 23.

³⁵ Global Property Guide, above n 25.

³⁶ Mark Bennett "Security of Tenure for Generation Rent: Irish and Scottish Approaches" (2016) 47(3) VUWLR 363 at 366.

³⁷ Global Property Guide "Tenant protection laws are significant but not onerous" (6 June 2006) <www.globalpropertyguide.com>.

D Housing standards

1 New Zealand's current housing standards

[56] If we are to plan for a future that has more renters, it is important that people are able to rent quality homes. However, Statistics New Zealand indicates that nine per cent of households have a significant problem with heating, and seven per cent have a problem with dampness and mould.³⁸ Eleven per cent of homes that are rented have a “major problem with dampness or mould.”³⁹ This might be correlated with poorer health for renters: 17 per cent of them rate their health as “fair or poor,” compared to 13 per cent who live in their own home.⁴⁰

[57] Dampness and mould in homes is associated with coughing, wheezing, upper respiratory tract symptoms, asthma development, dyspnea, respiratory infections, bronchitis, allergic rhinitis and eczema.⁴¹ A New Zealand study shows that colder homes are associated with higher rheumatic fever rates.⁴² These conditions weaken a person’s immune system and can be costly to deal with. It is hard to imagine the public health ramifications of these diseases in terms of productivity at work. A study from the United States estimated that at least 21 per cent of asthma rates in the United States are attributable to unhealthy housing, resulting in a cost of USD 3.5 billion.⁴³

[58] The New Zealand Building Code provides the minimum legal standards for the design and construction of houses. However, the code relevant to energy and housing has not changed since 1978, apart from some minor alterations.⁴⁴ The standards in the Building Code lag behind most other OECD countries’ standards – with double glazing becoming mandatory only in 2008, meaning many rental homes do not have double glazing.⁴⁵ The requirements on landlords for rental properties are that they must have

³⁸ Brian Fallow “Chilly homes are a crying shame” (4th August 2017) New Zealand Herald <www.nzherald.co.nz>.

³⁹ Fallow, above n 38.

⁴⁰ Fallow, above n 38.

⁴¹ Mark J Mendell and others “Respiratory and allergic health effects of dampness, mold, and dampness-related agents: a review of the epidemiologic evidence” (2011) 119(6) *Environmental Health Perspectives* 748.

⁴² Jane R Oliver and others “Acute rheumatic fever and exposure to poor housing conditions in New Zealand: A descriptive study” (2017) 53(4) *Journal of Paediatrics and Child Health* 358.

⁴³ Mendell and others, above n 41.

⁴⁴ Hugh Byrd “The Case for Policy Changes in New Zealand Housing Standards Due to Cooling and Climate Change” (2012) 14(4) *Journal of Environmental Policy and Planning* 360 at 360.

⁴⁵ Byrd, above n 44.

smoke alarms, and under-floor and ceiling insulation.⁴⁶ This is not always enough to stop mould and dampness, especially during cold winters.

[59] The government has shown a willingness to take a strong stance when it comes to ensuring healthy homes, as seen by the Bill increasing the power tenants and landlords have when a home is shown to be methamphetamine contaminated. The WCJP believes that the government could go further to ensure healthy homes for New Zealanders, as more New Zealanders are affected by mould and dampness than methamphetamine contamination.

2 *Ensuring healthy homes in overseas jurisdictions*

[60] The standard in most European countries, and especially Germany, is to have central heating, a kitchen and a bathroom in the apartment.⁴⁷ Sweden, which has the lowest prevalence of mould and dampness, imposes the following minimum requirements for a rental unit: continuous heating, availability of hot and cold water, food preparation facilities, and laundry facilities.⁴⁸ The continuous heating clause gives the tenant the ability to ensure that indoor temperatures can be maintained at a minimum of 18 degrees Celsius in the room, and 16 degrees Celsius on the floor. In Germany and Italy, a heating system must be installed so that houses reach 18–20 degrees Celsius indoors.⁴⁹ Maintenance of central heating systems is required in Italy, Germany, England and Lithuania.⁵⁰ In England, such maintenance is required annually for rented properties. Italy, England and Germany also have rules on ventilation in heated rooms.⁵¹ Proper ventilation is necessary to limit mould growth. Dampness is more likely to occur in houses that are overcrowded and lack appropriate heating, ventilation and insulation.⁵²

⁴⁶ Ministry of Business, Innovation and Enterprise “Residential Tenancies Regulations for insulation and smoke alarms” (28 February 2017) <<http://www.mbie.govt.nz/info-services/housing-property/tenancy/residential-tenancies-regulations-insulation-smoke-alarms>>.

⁴⁷ Informationsdienst Soziale Indikatoren “Housing in Germany: Expensive, Comfortable and Usually Rented” (2014) 4 Selected English Articles 1 at 1.

⁴⁸ Jeroen Douwes “Building dampness and its effect on indoor exposure to biological and non-biological pollutants” in *World Health Organisation Guidelines for Indoor Air Quality* (2009) at 7.

⁴⁹ World Health Organisation “Housing and health regulations in Europe” (2006) European Centre for Environment and Health Bonn Office at 27.

⁵⁰ World Health Organisation, above n 49, at 50.

⁵¹ World Health Organisation, above n 49, at 50.

⁵² Douwes, above n 48, at 8.

E What can be further improved by the Bill

1 Rent

[61] It is apparent that overseas jurisdictions have one particular feature in common: rents, while often freely agreed to initially, are regulated in terms of subsequent increases, which are either capped over a percentage over a time period (as in Germany and France) or capped on some other basis such as mortgage rates (as in Switzerland). Germany and France also regulate increases by requiring that they not exceed a certain standard set by local authorities. Furthermore, increases need to be accompanied by justifications from the landlord, such as giving examples of rates charged for similar properties. New Zealand stands in contrast to these countries, because to challenge a rent increase the onus is on the tenant to show that the increase is unreasonable rather than on the landlord to show that it is reasonable.

[62] To protect tenants from arbitrary rent increases, rents should be regulated either in the form of a cap or by requiring landlords to cite valid reasons for the increase. Alternatively, rent increases could be managed centrally by publishing an index of reasonable rents for a given area, which should not be exceeded.

2 Security of tenure

[63] Germany, Switzerland and France all have some form of indefinite or unlimited lease which automatically renews unless terminated with one of the reasons specified by law. In addition, France and Ireland have minimum durations for leases. In Germany and Switzerland, provision is often made for victims of hardship who can request an extension on that basis.

[64] The Bill could adopt some of these changes in the form of minimum durations of leases and a specified list of reasons that a party seeking termination must claim from. An automatically renewing lease and provisions for hardship would also help with ensuring security of tenure, especially for those who need it most.

3 Housing standards

[65] The WCJP recommends that this Bill also looks at ensuring that landlords provide healthier housing for tenants. As a third of New Zealanders are tenants, it is worthwhile

to ensure that New Zealanders are living in healthy homes.⁵³ Healthy homes will assist in New Zealanders' contribution to the global economy and marketplace – healthy people can do more, and better work. To alleviate the costs to the public health system for mould related illnesses, we recommend better housing standards. For example, double glazed windows, insulation in walls, and annual checks to ensure that houses are not affected by dampness or mould. Furthermore, it may be necessary to give the Tribunal the power to order independent property inspections to regulate standards of housing.⁵⁴

F Conclusion on the tenancy situation in New Zealand

[66] Ultimately, the main problems with the current tenancy situation in New Zealand are the lack of autonomous control for the renter in terms of the standard of housing they live in, the duration of their tenure and the financial cost to them. Without restrictions and standards imposed by the government it can be difficult to anticipate action, or lack thereof, on the part of the landlord and thus future planning is made significantly more difficult.

V Concluding remarks

[67] We hope that the Committee give our recommendations due consideration as many New Zealanders rent. We should constantly strive to improve our tenancy laws so that they give tenants adequate protection, and also promote safe and healthy homes.

⁵³ Miller, above n 12.

⁵⁴ Stock, above n 18.