22 August 2017

Submission to:

Local Government & Environment Select Committee

Subject:

Residential Tenancies Amendment Bill (No. 2)

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Residential Tenancies Amendment Bill (No. 2) (the Bill). Please contact us if you have any questions, or want any clarification about our submission.

Please note that we wish to appear before the Committee to speak to our submission.

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Residential Tenancies Amendment Bill (No. 2)

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Residential Tenancies Amendment Bill (No. 2) (the Bill).

Executive summary

We believe that the amendments proposed in the Bill are well-intentioned but may result in greater disadvantage to vulnerable tenants. We recommend that more time is taken to do the necessary research and to carry out the appropriate consultation to ensure that the approach to liability for careless damage and to methamphetamine testing in rental properties is well-informed and provides fair and transparent outcomes for tenants and landlords.

In relation to the specific clauses of the Bill:

Tenant liability for damage to rental premises

- We recommend compulsory disclosure of insurance information to tenants.
- We support the general principle that the tenant is not liable for damage, except as specifically provided.
- We recommend that greater clarity is required to distinguish different types of damage, particularly the difference between fair wear and tear, accidental damage, careless damage, negligence, and intentional damage.
- We believe that linking a tenant's liability to "each incident" of damage may lead to increased disputes and unfair outcomes.
- We question the idea that setting the level of liability at four weeks' rent broadly correlates with the tenant's ability to pay, especially recognising that the proposed amendment applies this level in relation to each incident of damage.
- We reject the proposal that the liability of tenants who pay an income-related rent should be based on market rental as against the level of rent actually paid by the tenant.

Unlawful residential premises

- We support the proposed amendments relating to unlawful residential premises to the extent that these provisions ensure tenants have access to the full range of remedies available through the Tenancy Tribunal, and so that the Ministry of Business, Innovation, and Employment is able to take enforcement action against landlords in breach of any of their obligations under the Residential Tenancies Act.

Methamphetamine contamination in rental premises

- We are concerned that the proposed amendments do not provide sufficient clarity to protect vulnerable tenants and that they have been developed without adequate evidence or consultation with affected parties.
- We believe that the methamphetamine testing industry needs to be regulated to ensure that landlords and tenants are not taken advantage of and that meth testing is carried out with some guarantees around the quality and scientific legitimacy of the testing and the efficacy of remediation measures.
- We are concerned that the proposed definition of "methamphetamine-contaminated" creates the potential for unjust outcomes as the potential consequences can be applied irrespective of the level of methamphetamine present (ie, levels indicative of use versus manufacture).
- We recommend that the landlord be required to provide the tenant with a full copy of the methamphetamine test results.
- We are concerned that a tenant can be given 7 days' notice to vacate the tenancy without any regard for fault or for the needs of the tenant in terms of alternative accommodation.

Where possible we have supported our submissions with examples of enquiries received from CAB clients. Identifying details have been removed and some details have been altered to ensure privacy is protected. All the enquiries referred to have been received by the CAB in the last three months between 15 May 2017 and 15 August 2017 (ie, when Osaki is governing the law relating to tenant liability).

Background

CAB position on housing issues

Citizens Advice Bureau New Zealand regards good quality rental housing and security of tenure as cornerstones of a fair and well-balanced rental market. While we acknowledge the intent of this Bill is to address issues relating to the New Zealand rental sector, we are concerned that the proposed amendments set out in the Bill do not deal with the fundamental and concerning issues relating to residential tenancies in New Zealand.

In January 2016 we submitted on the Residential Tenancies Amendment Bill. We supported the measures in the Bill which made the installation of smoke alarms and insulation mandatory and which put in place other provisions discouraging retaliatory terminations and increasing powers of the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) to take action in cases of breaches of the Residential Tenancies Act (RTA). However, we also argued that a warrant of fitness was the best means of enforcing standards around housing so that a genuine improvement in the quality of rental properties in New Zealand could be achieved. We also raised concerns around security of tenure for tenants and asked that consideration be given to amending the RTA to remove the option for a landlord to give 42 days' notice in certain circumstances.

In June 2016 we submitted on the Healthy Homes Guarantee Bill. We saw this Bill as an opportunity to further improve living conditions and security of tenure for the growing number of renters in New Zealand. Again, we argued for a comprehensive warrant of fitness regime for rental homes and the establishment of an independent agency to monitor and enforce standards of habitation. We also reiterated our call for the removal of the option for a landlord to give a tenant 42 days' notice.

We feel it is appropriate to take this opportunity to reinforce these same messages again. It is our view that tinkering with aspects of the RTA will not address the much more concerning issues around our housing market and the plight of vulnerable tenants. In particular, we think attention needs to be given to address the concerning situation where many tenants are living in damp, cold, mouldy housing conditions, with little security of tenure, and in a market where landlords have the power to demand high levels of rent for poorly maintained properties.

About Citizens Advice Bureau

The aims of Citizens Advice Bureau (CAB) are:

1. To ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively.
   Me noho mataara kia kaua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei ana ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.

2. To exert a responsible influence on the development of social policies and services, both locally and nationally.
   Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.

From over 80 locations around Aotearoa New Zealand our 2300 trained CAB volunteers assist people by providing a free, impartial and confidential service of information, advice and advocacy. We work to empower individuals to resolve their problems and we use the insights we gain from our work with clients to advocate for socially just policies and services for all New Zealanders.

In the 2016/17 financial year, the CAB assisted with over half a million (525,525) client interactions across the range of issues that affect people in their daily lives, including relationship issues, tenancy rights, employment problems, immigration processes, and problems relating to faulty goods or poor service. Our aim is to help people know their rights and feel empowered to act on them.

Residential tenancy enquiries are among the most common received by CABs. Most of these enquiries are from tenants, but landlords also regularly seek assistance from the CAB. In the past year CABs across New Zealand have responded to 14,878 enquiries from clients addressing a range of issues relating to renting or rental properties.

Tenant liability for damage to rental premises

A hurried process not based on evidence

In October 2016 we were approached by MBIE as part of a rather hurried process of consultation on proposed changes to the Residential Tenancies Act aimed at clarifying liability for damage to rental premises. As per the view we expressed at the time, our initial reaction to the Court of Appeal decision in *Holler v Osaki* [2016] NZCA 130 is that there is no need to rush into legislative change.

The Osaki case clarified the legal position with respect to tenants who are living in an insured property, ie, if damage is caused by carelessness and the damage is covered by the landlord's insurance, the tenant will not be liable for the cost of repairs (unless it was the result of an imprisonable offence). The landlord is responsible for the insurance excess costs and cannot pass these costs on to their tenants. We felt that time should be taken to wait and see what the impact was before reacting.

We note also that the *Regulatory impact statement: Tenant liability for damage to residential tenancy properties* identified:

> *"The analysis has been constrained by the limited time available and information gaps affecting the analysis. It is not possible to determine an average amount of insurance claims by landlords for tenant damage to rental properties made prior to April 2016 (when the Court of Appeal decision was issued which affected tenant liability for damage to rental properties)."*
>
> *"Neither has it been possible to determine how often insurance companies pursue tenants for damage costs paid out to landlords under landlord insurance policies where the damage was caused negligently."*
>
> *"Anecdotal evidence from landlords suggests that they are experiencing increased costs for damages as a result of the consequences of the Court of Appeal decision but it has not been possible to verify this or quantify such increases."*

We see no need for the rushed response when there is a lack of evidence of the need to make a change. We suggest that more time should be taken to assess the issues and base any suggested law changes more clearly on evidence of whether the Court of Appeal's decision has resulted in unjust or unintended consequences.

Questioning the stated impact of Osaki on landlords and tenants

The Explanatory Note to the Bill states that following the Osaki decision:

> *"landlords are bearing most of the costs of careless damage caused by tenants (including insurance excess payments) and there is little financial incentive for tenants to take care of rental premises"*.

Does Osaki mean that landlords are bearing most of the costs of careless damage?

On the issue of landlords bearing most of the costs of careless damage, we are not convinced that this is the case. As above, the evidence has not been provided to establish that this is in fact an issue. Enquiries to CABs relating to damage to rental properties show landlords pursuing tenants for repair costs for all manner of damage; in many cases this being in the context of denying the return of bond money at the conclusion of the tenancy.

The issue of landlords bearing costs seems to relate primarily to the challenges landlords can sometimes face in pursuing tenants for additional costs, over and above the bond money, not issues of landlords being liable for costs that they would previously have been recovering from tenants. It may be that in some circumstances landlords are carrying more of the costs related to careless damage, but this is not an issue we are commonly seeing at the CAB.

On the flip-side, our enquiries do show us that tenants are regularly seeking assistance from the CAB because they are living in sub-standard conditions and are finding it difficult to assert their rights. Tenants who do ask their landlord to carry out work to repair or maintain the premises are coming to us because of a lack of responsiveness, and in some cases because of retaliatory measures from landlords.

Client has a problem with her landlord who wants to take repair costs out of her bond. The client advised the landlord some time ago about maintenance that was needed on the property, but the landlord didn't do anything. Now that the client is leaving the tenancy the landlord wants to take the cost of this maintenance work out of the client's bond.

Client is leaving his rental property and the landlord is withholding bond on the grounds that there is damage. This includes a cracked window pane and loose tiles on the outside path. The client had previously contacted the landlord about the window as it was broken by the landlord's builder – the landlord had done nothing about this. The client also felt that the loose tiles were fair wear and tear. He wanted to know what his rights were.

Client is a landlord and wants to know who is liable for the cost of changing the curtains in his rental property. The tenant changed the curtains that were mouldy. The tenant asked the client to reimburse her or else she was happy to take the curtains with her when she leaves. Client wants to know whether he has the right to ask the tenant for compensation for the original curtains on the basis that it was her carelessness that caused them to be mouldy.

Client has been renting the same property for 11 years. When she moved in the house was filthy and there was lots of damage to walls and surfaces. She is concerned because the property manager has started blaming her for the state the house is in.

Client's landlord is holding him responsible for damage to a wall caused by a handrail coming off (came off while client was holding it as walking down the stairs). Client believes he should not have to pay as he believes the handrail was improperly installed and was an accident waiting to happen.

Client has moved out of a rental property and has been asked to pay for damage to the property. The client is adamant that the damage was in the house when she moved in and that it had never been mentioned during property inspections. She has asked for copies of the inspections but the landlord has refused. She wonders what she can do.

Does Osaki discourage tenants from caring for their home?

The proposed amendments are also stated as being about creating an incentive for tenants to take care of the property they are renting; the idea being that a lack of liability for careless damage means the tenant has little reason to look after the premises. Again, we are not clear that there is any evidence to indicate that the issue of liability correlates with the way in which tenants care for their homes.

The very fact that the property is their home is a key reason for tenants to take due care of it – they have to live in it after all. Also, there are other factors which may impact on the care of the property by the tenant and other parties, these including the standard of the housing provided in the first place and the landlord's responsiveness (or lack thereof) to carrying out maintenance and repair issues raised by the tenant.

If the property is leaking, cold, and damp, if the walls and ceilings are covered in black mould; then the addition of a scrape in the paintwork on a cupboard, a pen mark on the wall or a small stain on the carpet, may seem fairly minor by comparison. This is especially the case when we are talking about tenants who are renting long term and where minor damage is arguably part of the fair wear and tear of a property in its normal use over time.

Cost efficient insurance arrangements

The Property Law Act provisions (in particular the "exoneration provisions") which were applied in the Osaki decision have previously been applied in a commercial leasing context where risk is allocated in such a way that enables cost efficient insurance arrangements which will reduce disputes and litigation – a single insurance policy effectively protecting both landlord and tenant from specified risks. Why not apply the same approach to residential tenancies?

While holding landlord insurance is not a legal requirement under the RTA, it is likely that most landlords do hold insurance given it is a condition of obtaining a mortgage and given many property managers will only manage a property that is covered by an insurance policy.

Where a landlord's property is insured, it is reasonable to assume that it is the rent paid by the tenant that is covering the cost of the insurance. It is similarly reasonable to assume that the excess on the landlord's insurance policy is the loss they have agreed to bear in order to lower the cost of their insurance premium. On this basis, careless or accidental damage by tenants should be covered by their landlord's insurance, without the need to get insurance to cover the same risks.

While some tenants may have insurance cover for contents and public liability, many do not. Cost and circumstances can be a factor for tenants in not getting insurance, eg, the cost of insurance relative to the value of the property owned by the tenant, a lack of disposable income to afford insurance, and the challenges in getting collective insurance cover in rentals properties shared by multiple parties. It is inefficent and unnecessary to create a situation where both parties need to insured for the same risks.

Specific clauses

In addition to our general concerns about the rushed approached to introducing this legislative change we also make the following specific recommendations in relation to clauses of the Bill that cover tenant liability for damage to rental premises:

Clause 6

We recommend compulsory disclosure of insurance information to tenants.

This clause proposes an amendment to section 45 (landlord's responsibilities) to add provisions requiring a landlord to provide relevant insurance-related information to a tenant on the tenant's request.

We recommend that disclosing insurance information to the tenant should be a compulsory requirement, not contingent on the tenant requesting it. If the rationale is that it is important for the tenant to be aware of the insurance cover the landlord has in place, and of the insurance excess, because of the impact on their potential liability, then it seems a common sense step to require disclosure of this information to the tenant without creating the barrier of requiring them to ask for it.

Clause 7

Proposed section 49A:
We support the general principle that the tenant is not liable for damage, except as specifically provided.

We support the inclusion of this clearly stated general principle in the proposed section 49A that the tenant is not liable for damage except as specifically provided. We also support the specific statement that a tenant is not, in any case, liable for fair wear and tear.

Proposed section 49B(2):
We recommend that greater clarity is required to distinguish different types of damage, particularly the difference between fair wear and tear, accidental damage, careless damage, negligence, and intentional damage.

This section refers to the tenant's liability for careless acts or omissions. We are concerned that the meaning of a "careless act or omission" is unclear. Enquiries to CABs show us that landlords are regularly pursuing tenants for damage to premises when the damage is arguably the result of fair wear and tear, or is accidental but not careless. We believe the lack of clarity about what is "careless" damage will result in disputes and litigation, and the potential for unjust outcomes.

The Tenancy Services website states that "Fair wear and tear refers to the gradual deterioration of things that are used regularly in a property when people live in it.
A tenant is not responsible for normal fair wear and tear to the property or any chattels provided by the landlord when they use them normally."[1]

When it comes to fair wear and tear, the reality is that normal use can have a range of impacts on a property when we take into account the tenants themselves (number of tenants, household make-up, children, etc) and the length of time the tenants occupy a property. The lack of clarity about what is fair wear and tear versus other types of damage (on a continuum from accidental, to careless, to negligent, to intentional) means that tenants can be in a difficult position when their landlord seeks compensation for 'repairs' to the property.

- Is the presence of mould careless damage by the tenant, or is it about issues with the property itself and the landlord's failure to address fundamental issues around insulation and ventilation?
- Is some paint coming off with the removal of a 'command hook' careless, or is it accidental given all care may have been taken to avoid this outcome?
- Is having some marks on the paintwork and stains on the carpet careless, or after 5 years in a property is it just the result of normal use?

Client wants to give notice to his tenants because he has other plans for his property. He wants to know about taking the costs of repairing damage out of the bond, specifically the removal of mould.

Client's tenancy has ended. Landlord has raised issue of damage from tenant's removal of a 'command hook'. Landlord is refusing to pay back any of the bond ($300) and wants an additional $50 to cover the costs of redecorating the wall (quoted at $350).

[1] https://www.tenancy.govt.nz/maintenance-and-inspections/repairs-and-damages/#id_386380-fair-wear-and-tear

Client has moved out of a rental house after 5 years. The house is old. The client's children have left little holes in the walls and a few stains in the carpet. The landlord is saying the repairs will cost $2000-$3000, which is double the amount of the bond money. She thinks this is excessive for the nature of the damage and given the length of time they have been in the property and wonders what her rights are.

Client wanted some information as she is anticipating a dispute with her landlord. The client has been renting the same place for the last 3 years. Her landlord has started doing quarterly inspections; he says this is because of insurance requirements. With the last inspection the landlord noted damage which the client had thought was wear and tear.

Client has just vacated a tenancy after being there for 8 years. He spent several days cleaning, and has replaced cushion covers and repaired hinges on a loose cupboard door. The couch has a sun fade mark on it and there is a mark on the carpet, which has been cleaned and is barely visible. The landlord is asking for $1000 payment to address damage by the tenant. The client has sent messages to the landlord saying he doesn't think this is fair but the landlord is not responding. He wonders what he can do.

Proposed section 49B(3):
We believe that the linking a tenant's liability to "each incident" of damage may lead to increased disputes and unfair outcomes.

This section links the tenant's liability to "each incident" of damage or destruction. We are concerned that there is lack of clarity about what constitutes an incident. Does an incident mean each pin hole in a wall, each mark on the paintwork, each small mark on the carpet, and how does this relate to the cost of repair?

While the insurance industry may apply a strict interpretation in determining each incident of damage,[2] this may not always be the case. In Complaint No: 117009_20103 the Insurance and Financial Services Ombudsman notes that where damage has been caused by an unknown number of events (in this case there were holes in wall linings in the master bedroom and hall, a hole broken in the shower liner and a broken section of windowsill in the master bedroom) it is common for insurers to take a "pragmatic approach and apply a single excess for each room, rather than for each damage event". In this case, even when grouped, the cost of repairs was less than the excess and the claim was declined.

We believe that linking the liability of the tenants to each incident of damage may lead to increased disputes and is unlikely to support a pragmatic and commonsense approach to the repair of damage.

Proposed section 49B(3):

[2] http://www.stuff.co.nz/business/84888956/Insurance-policyholders-sickened-by-unfair-excesses-on-claims.
[3] http://ifso.nz/assets/Uploads/117009-2010.pdf.

We question the idea that setting the level of liability at four weeks' rent broadly correlates with the tenant's ability to pay, especially recognising that the proposed amendment applies this level in relation to each incident of damage.

We reject the proposal that the liability of tenants who pay an income-related rent should be based on market rental as against the level of rent actually paid by the tenant.

Under the proposed section 49B(3) the tenant's liability is limited to the rent payable for a period of 4 weeks. This has been set on the basis that "there is a broad correlation between a tenant's maximum level of liability - four weeks' rent and their ability to pay"[4]. While we acknowldege that this threshold aligns with the maximum amount of bond a landlord can ask for, we are not clear that there is any evidence that this amount correlates with the tenant's ability to pay, especially as it relates to each incident of damage.

Further, in section 49B(3)(a)(i) and 49B(3)(b)(i) it is proposed that for a tenant who pays an income-related rent, the limit of the tenant's liability is set at 4 weeks' of the market rent for the premises. We think it is inappropriate to link the liability of a social housing tenant to market rent. To the extent that the level is being set with some correlation with the tenant's ability to pay, this argument is totally undermined when a higher standard is applied to low income tenants.

Unlawful residential premises

We support the proposed amendments relating to unlawful residential premises to the extent that these provisions ensure tenants have access to the full range of remedies available through the Tenancy Tribunal, and so that MBIE is able to take enforcement action against landlords in breach of any of their obligations under the RTA.

Methamphetamine contamination in rental premises

We recognise that methamphetamine contamination of residential properties is serious and that having clarity around testing and decontamination processes is important. (We would like to see similar legislative responsiveness to deal with the health impacts to tenants caused by contamination with black mould.) We are concerned however that the proposed amendments do not provide sufficient clarity to protect vulnerable tenants and that they have been developed without adequate evidence or consultation with affected parties.

We are concerned that the Bill sets a single standard for "methamphetamine contamination" which establishes the basis for remediation action and termination of tenancy. We believe that the potential harm caused by the presence of relatively low levels of methamphetamine

[4] Ministry of Business Innvoation and Employment *Regulatory impact statement - Tenant liability for damage to residential tenancy properties* November 2016, p 4.

is not being appropriately balanced against the significant potential harm caused by short notice evictions of tenants and the disposal of tenants' personal possessions.

In many of the cases we see, a positive P test comes as a complete surprise to the tenant and can cause considerable stress and anxiety. Tenants can suddenly be confronted with a claim for costs from the landlord for decontamination and lost rent, with the termination of tenancy at short notice (7-day notice), and with the potential long-term impact of being labelled a "meth user". Tenants can also experience significant distress because of the lack of clarity about how their personal possessions will be dealt with, ie, whether they will be disposed of, who decides, and whether there is any compensation available for replacement. Tenants whose belongings are deemed to be contaminated need guidance and information on what to do with them.

We believe that the methamphetamine testing industry needs to be regulated. The industry is booming in an environment of fear and misinformation. Regulation is needed to ensure that landlords and tenants are not taken advantage of and that meth testing is carried out with some guarantees around the quality and scientific legitimacy of the testing and the efficacy of remediation measures.

Some of our client enquiries highlight the level of anxiety experienced by tenants who are uncertain about the testing process and the possible consequences.

Client rents a property and has been advised by the landlord's property manager that they are coming to test the house for methamphetamine. She is worried as she is not sure whether her flatmates or previous tenants may have smoked P in the house. She wants to know how sensitive the testing is.

Client is concerned because the property she rents is going to be tested for meth. As far as she knows the property has never been tested before. She has been a tenant for 3 years and has never done drugs. She is worried though about what the consequences of the test could be.

In some situations the client is clearly surprised and distressed by the news that the house is contaminated with methamphetamine as they are adamant that the drug has never been used in the property during their tenancy.

Client has a dispute with his landlord over the return of bond money after the tenancy ended. The landlord claims the house is contaminated with methamphetamine. The client is clear that meth has never been used in the house during his tenancy.

Client has been contacted by her previous landlord saying that the property has had a positive result from meth testing. The landlord is seeking money to cover the costs of decontaminating the property. She has no idea what's going on and wonders what she can do.

Tenants can be asked to pay large sums to cover the costs of testing and decontamination as well as lost income or lost value to the property. This is regardless of any proof of fault.

Client has been in property for over a year but now the landlord is selling. The landlord has had an inspection of the property done and says meth was detected. A meth test had been carried out at the beginning of the tenancy and it had been clear. The landlord is demanding that the client pays $11,000 in compensation.

Client has recently moved out of her rental property after living there for almost 18 months. The property had been tested for methamphetamine before she first moved in and was clear. It was tested again at the end of the tenancy. The latest test came back positive. The landlord has demanded that she pay $11,500 for the decontamination costs or if she doesn't he will take her to the Tenancy Tribunal and will claim $75,000 for lost income because of the impact of the value of the property now that it has tested positive for drugs. She is adamant that meth has never been used in the house. She thinks the second hand lounge suite she bought could be the problem as this is where there was the highest reading. She wants to know what her rights are.

In other situations the impact on the client is significant even though it is possible that fault, in terms of methamphetamine use, lies elsewhere.

Client signed the lease for the flat where her daughter lived. When the daughter moved out of the flat the landlord had it tested for P and there was a positive result. The landlord has withheld the bond and the client (mother) has been branded as a P user. She wants to know what she can do.

Client has received a notice from Housing NZ that she and her family are suspended from Housing NZ after being in their home for over 20 years. This is because methamphetamine has been found in parts of the house. Client was adamant that she has never had any involvement with the drug but is aware that her ex-partner and his mates may have been users. She doesn't know what to do.

Client is living in a Housing NZ house. It was recently meth tested and the result came back positive. The previous tenants were evicted after a police drugs raid. The client has been in the house for about a year and doesn't use drugs. What are his rights?

Landlords also face potential consequences as a result of the lack of clarity around methamphetamine testing and decontamination requirements.

Client has purchased a house that was tested for methamphetamine and came back with traces in the drains only. These have been cleared. At some stage in the future he would like to rent the property out and he wants to know whether he has to tell prospective tenants about the meth testing results.

Client has recently purchased a house for rental and when she had it tested for P it showed a contamination of 0.1. She wants to know whether she has to declare this to prospective tenants and whether she has to pay to get it cleaned up.

Client has a rental property and has been advised by his property manager to have his property checked for methamphetamine. He doesn't think this is necessary as he has had stable tenants for many years. He wants to know whether he has to get the property tested.

Specific clauses

In relation to clauses of the Bill that cover methamphetamine contamination in rental premises we make the following specific recommendations:

Clause 25 – Definition of "methamphetamine-contaminated"

Proposed amendment to section 2 – definition of "methamphetamine-contaminated":
We are concerned that the proposed definition of "methamphetamine-contaminated" creates the potential for unjust outcomes as the consequences can be applied irrespective of the level of methamphetamine present (ie, levels indicative of use versus manufacture).

We are concerned that the definition of premises as "methamphetamine-contaminated" sets a single level, above which premises will be deemed contaminated. This means that there is no distinction between a property that may return a test result consistent with methamphetamine use (someone smoking P at a party) versus methamphetamine manufacture (a full blown P lab). The language of contamination is strong and once tainted with it, the impacts on all parties are considerable. It may mean that a landlord feels obliged to undertake a full decontamination process and that the tenancy is terminated at short notice leaving a tenant homeless and without their possessions.

As indicated by the Drug Foundation in their submission on the draft standards *'NZS 8510:2017 Testing and decontamination of methamphetamine-contaminated properties'*,[5] the health implications of living in a house in which methamphetamine has previously been smoked have not been properly assessed. While it is undeniable that methamphetamine can be harmful to those who use it and potentially to others (especially children) who live with them, leaving a family homeless may have greater negative health impacts. We note that the Drug Foundation recommended that the testing standards should be restricted to properties in which methamphetamine has been manufactured, rather than used.

Clauses 27, 33 and 34 – Access to test results

Proposed insertion of sections 48(3B), 66J(3A) and 66S(5) re notifying the tenant of methamphetamine test results

[5] 20170220-NZ-Drug-Foundation-submission-on-draft-standard-P-8510-methamphetamine-properties.

We recommend that the landlord be required to provide the tenant with a full copy of the methamphetamine test results.

These proposed sections require that where tests have been carried out to determine the presence of methamphetamine, the landlord must notify the tenant of the results of testing within 7 days of receiving the results. We believe that the landlord should provide the tenant with a full copy of the test results, not just notify the tenant of the results. This is to ensure full transparency about the outcome of the testing. The same should apply whether in relation to a residential tenancy or a boarding house. This is particularly important given the high stakes for the tenant in terms of having their tenancy terminated and so they can decide whether to challenge the results.

Clauses 30 and 35 - Termination in cases of methamphetamine contamination

Proposed new sections 59B and 66UA:

We are concerned that a tenant can be given 7 days' notice to vacate the tenancy without any regard for fault or for the needs of the tenant in terms of alternative accommodation.

Consistent with our views relating to the definition of "methamphetamine contamination", we are concerned that the potential termination of a tenancy with only 7 days' notice may cause significant hardship to tenants where the contamination level may be on the lower end of the standard and may be marginal in terms of any proven health risk. The eviction of the tenant can occur even when there is no fault on the part of the tenant.

We believe it is important that the standards, and the consequent actions contained in legislation, allow for a variety of responses that are evidence-based and reflect the continuum of health risks and the range of the potential impacts that the various actions can have on the parties. This could include that if the presence of methaphetamine is at a low level and there is no proof of fault on behalf of the tenant, then there should be an option of a clean-up process with a right to return to the tenancy (and possibly compensation to cover alternative accommodation in the meantime).

Thank you for the opportunity to make this submission. Please feel welcome to contact us if you have any questions about our submission.