

House of Representatives

Supplementary Order Paper

Tuesday, 14 November 2017

Healthy Homes Guarantee Bill (No 2)

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper (the **SOP**) proposes amendments to the Healthy Homes Guarantee Bill (No 2) (the **Bill**), which contains amendments to the Residential Tenancies Act 1986 (the **principal Act**). The amendments proposed by the SOP include policy clarifications, amendments to take account of the Residential Tenancies Amendment Act 2016 (which superseded some of the original drafting of the Bill), amendments dealing with monitoring and assessment of compliance, and minor and technical changes.

The SOP proposes amendments to *clause 2*, which is the commencement clause. These amendments provide for most of the Bill to come into force on 1 July 2019. The transitional provisions for the Bill (*see note on the Schedule* below, amendments to Schedule 1AA of the principal Act), and some technical amendments proposed in *new clause 8(2) and (3)*, will come into force on the day after the date of Royal assent.

The SOP proposes amendments to *clause 4*, which amends section 13A of the principal Act (contents of tenancy agreement). The proposed amendments clarify a landlord's obligations to provide the tenant with statements that the landlord will comply with the healthy homes standards (*see note on amendments to clause 6* below). The landlord will be required to provide a statement when the tenancy agreement is first signed and whenever the tenancy agreement is varied or renewed in accordance with section 13B of the principal Act. The landlord will commit an unlawful act if the landlord fails to provide the statement or if the statement includes anything that the landlord knows to be false or misleading.

The SOP proposes amendments to *clause 5*, which amends section 45 of the principal Act (landlord's responsibilities). The proposed amendments are in consequence of the proposed amendments to *clause 6* and will require landlords to comply with the healthy homes standards (*see note on amendments to clause 6* below). A failure by a landlord to comply with the healthy homes standards will be an unlawful act.

The SOP proposes amendments to *clause 6*, which currently inserts *new section 132A* into the principal Act. *New section 132A* would impose a function on the Ministry of Business, Innovation, and Employment (**MBIE**) to prepare and publish minimum standards for heating and insulation for residential premises. The proposed amendments to *clause 6* include amendments that would do the following:

- convert MBIE's function into a power of the Governor-General to make regulations that provide for standards (the **healthy homes standards**) with which landlords must comply:
- provide for the new power to replace the current power of the Governor-General in section 138B of the principal Act to impose requirements on landlords in respect of insulation, which was inserted by the Residential Tenancies Amendment Act 2016. Requirements in respect of insulation will now be covered by the healthy homes standards:

- clarify that the healthy homes standards may include standards about the indoor temperatures, and other outcomes (for example, levels of moisture and humidity), that must be capable of being achieved in premises:
- permit regulations made under the new power to include exceptions to the healthy homes standards, to prescribe information that must be included in landlords' statements about compliance with the healthy homes standards (*see* note on amendments to *clause 4* above), and to prescribe records and other documents that landlords must retain in relation to their compliance with the healthy homes standards.

Clause 7 amends Schedule 1A of the principal Act (maximum amounts awardable by the Tenancy Tribunal for unlawful acts). The SOP proposes replacing *clause 7(1)* in consequence of the amendments proposed to *clause 4*. The amendments proposed to *clause 7(2)* would increase, from \$3,000 to \$4,000, the maximum amount that may be awarded for unlawful acts under section 45(1A) of the principal Act, including a failure by a landlord to comply with the healthy homes standards. This maximum amount was increased, from \$3,000 to \$4,000, by the Residential Tenancies Amendment Act 2016 and it is not the intention of the Bill to reverse that increase.

The SOP proposes a number of related and consequential amendments to the principal Act that are set out in *the Schedule* (introduced by *new clause 8(1)*). The amendments include the following:

- an amendment to section 66I of the principal Act to extend the healthy homes standards to boarding house tenancies (and a consequential amendment to Schedule 1A of the principal Act):
- amendments to sections 2(1), 48(2), 66S(1), and 78(2AA) of the principal Act to reflect the proposed replacement of the current power under section 138B of the principal Act to impose requirements in respect of insulation with the new power to provide for the healthy homes standards (*see* note on amendments to *clause 6* above):
- an amendment to section 123(1) of the principal Act to give the chief executive of MBIE the function of monitoring and assessing compliance by landlords with the healthy homes standards. This new function is supplemented with the insertion of *new section 123CA* into the principal Act (and related amendments to section 123E of the principal Act). This would give the chief executive of MBIE the power to arrange programmes of inspections of premises for the purpose of monitoring and assessing compliance with the healthy homes standards:
- an amendment to section 123A(1) of the principal Act to require landlords to retain prescribed records and other documents relating to their compliance with the healthy homes standards:
- amendments to Schedule 1AA of the principal Act, which contains transitional provisions. The transitional provisions proposed for the Bill include the following:

- a provision clarifying that the amendments made by the Bill apply to tenancies whether commencing before, on, or after the date on which the amendments come into force:
- provisions clarifying that the amendments made by the Bill relating to statements to be provided by landlords (*see* note on amendments to *clause 4* above) apply to a tenancy agreement made before 1 July 2019 only if the tenancy agreement is varied or renewed on or after that date:
- provisions that permit regulations to provide for the obligation of landlords to comply with the healthy homes standards to be introduced in phases. The regulations made for the purpose of phasing in the obligation will cover tenancies that commence before 1 July 2024. The phasing-in of the obligation must be completed by that date:
- provisions that permit regulations providing for the healthy homes standards to be made in advance of 1 July 2019 (to come into force on that date):
- provisions that give landlords rights of access to premises before 1 July 2019 for the purpose of preparing to comply with the healthy homes standards:
- provisions that clarify that landlords will continue to have rights of access to premises prior to 1 July 2019 in relation to the insulation requirements contained in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016:
- other provisions relating to the insulation requirements contained in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. It is currently envisaged that, on 1 July 2019, requirements relating to insulation will be incorporated into the healthy homes standards and that the insulation requirements contained in the 2016 regulations will be revoked.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2017&no=1&>

The Honourable Phil Twyford, in Committee, to propose the amendments shown in the following document.

Hon Phil Twyford

Healthy Homes Guarantee Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Healthy Homes Guarantee Act **(No 2) 2015**.

2 Commencement

- (1) ~~**Section 5** comes~~ The following provisions come into force on the ~~date that is 5~~
~~years~~ day after the date on which this Act receives the Royal assent.:

- (a) ~~sections 3 and 8(1) and the Schedule~~, but in relation only to the item in ~~the Schedule~~ relating to Schedule 1AA of the principal Act;
 - (b) ~~section 8(2) and (3)~~.
- (2) The rest of this Act comes into force ~~on 1 July 2019~~ ~~12 months after the date on which it receives the Royal assent~~.

3 Principal Act

This **Act** amends the Residential Tenancies Act 1986 (the **principal Act**).

4 Section 13A amended (Contents of tenancy agreement)

- (1) Repeal section 13A(1A)(c).
- (2) After section 13A(1C), insert:
 - (1CA) ~~The landlord must also include in the tenancy agreement a statement, made and signed by the landlord,—~~
 - (a) ~~that, on and after the commencement of the tenancy, the landlord will comply with the healthy homes standards as required by **section 45(1)(bb) or 66I(1)(bb)** (as the case may be); and~~
 - (b) ~~including the information (if any) prescribed by regulations under **section 138B(5)**.~~
 - (1CB) ~~If there is a written variation or renewal of the tenancy agreement in accordance with section 13B(1), the landlord must include in the written variation or renewal a statement, made and signed by the landlord,—~~
 - (a) ~~that, on and after the time when the variation or renewal takes effect, the landlord will comply with the healthy homes standards as required by **section 45(1)(bb) or 66I(1)(bb)** (as the case may be); and~~
 - (b) ~~including the information (if any) prescribed by regulations under **section 138B(5)**.~~
 - (1A) ~~Every tenancy agreement must also include a statement that the premises meet, at a minimum, the standards published on the department’s website under **section 132A**.~~
 - (1B) ~~**Subsection (1A)** applies to the following tenancy agreements:~~
 - (a) ~~an agreement made 7 days after the department publishes the standards on its website;~~
 - (b) ~~an agreement in existence on the day that is 5 years after the date on which the department publishes the standards on the website;~~
 - (c) ~~an agreement made after the day that is 5 years after the date on which the department publishes the standards on the website.~~
 - (1C) ~~Failure by the landlord to comply with **subsection (1A)**, or a breach of the guarantee in it, is declared to be an unlawful act.~~
- (3) In section 13A(1D), after “subsection (1A)”, insert “or **(1CA)**”.

(4) After section 13A(1D), insert:

(1DA) The requirement that the landlord's statement under **subsection (1CB)** be signed by the landlord is in addition to the requirement under section 13B(1) that the landlord sign the variation or renewal.

(5) Replace section 13A(1E) with:

(1E) The landlord's statement under subsection (1A), **(1CA), or (1CB)** does not affect the landlord's duties in respect of insulation or the healthy homes standards under section 45(1) or 66I(1) or otherwise.

(6) In section 13A(1F)(a) and (b), after "subsection (1A)", insert "**, (1CA), or (1CB)**".

5 Section 45 amended (Landlord's responsibilities)

(1) After ~~Replace section 45(1)(ea)(bb), insert: with:~~

~~(ebb) comply with the healthy homes standards of heating and insulation under **section 132A**; and~~

(2) Replace section 45(1A) with:

(1A) Failure by the landlord to comply with any of **paragraphs (a) to (cb) of subsection (1)** is declared to be an unlawful act.

(2) Repeal section 45(1)(bc), (1B), and (1C).

6 ~~New section 132A and cross-heading inserted~~ **Section 138B replaced (Regulations in respect of insulation)**

~~After Replace section 132, insert: 138B with:~~

Ensuring Healthy Homes

132A Function of Ensuring Healthy Homes

~~The department has the function of preparing and publishing minimum standards of heating and insulation for residential premises, in accordance with the following:~~

~~(a) the standards must describe what constitutes adequate—~~

- ~~(i) methods of heating; and~~
- ~~(ii) methods of insulation; and~~
- ~~(iii) indoor temperatures; and~~
- ~~(iv) ventilation; and~~
- ~~(v) draught stopping; and~~
- ~~(vi) drainage; and~~

~~(b) the standards must describe what constitutes acceptable methods of measuring the adequacy of the matters referred to in **paragraph (a)**; and~~

- (e) ~~the standards must specify the conditions under which a property may be exempted if it is not possible to modify it to meet the requirements; and~~
- (d) ~~the standards must be published on the department's website as soon as is practicable and no later than 6 months after the commencement of this section.~~

138B Healthy homes standards

- (1) The Governor-General may, by Order in Council, make regulations that provide for, in accordance with this section, standards (the **healthy homes standards**) with which landlords must comply for the purposes of **section 45(1)(bb) or 66(1)(bb)**.
- (2) The healthy homes standards may include any of the following:
 - (a) standards about the indoor temperatures that must be capable of being achieved in the premises:
 - (b) standards about other outcomes (for example, levels of moisture or humidity) that must be capable of being achieved in the premises and that may be affected by any of the things referred to in **paragraph (c)(i) to (vii)**:
 - (c) standards imposing requirements in relation to any of the following:
 - (i) heating:
 - (ii) insulation:
 - (iii) ventilation:
 - (iv) moisture ingress:
 - (v) draught stopping:
 - (vi) drainage:
 - (vii) any material or other thing relating to a thing referred to in **sub-paragraphs (i) to (vi)**.
- (3) The requirements that may be imposed by standards under **subsection (2)(c)** include the following (for example):
 - (a) requirements that things be installed or provided at the premises:
 - (b) requirements about the inspection, maintenance, or replacement of things that are installed or provided at the premises:
 - (c) requirements about the quantities, locations, condition, types, or technical specifications of things that are installed or provided at the premises and requirements about methods of installing or providing things at the premises.
- (4) Regulations under **subsection (1)** may—
 - (a) specify methods for determining whether standards have been complied with (including any assumptions that may be made for the purpose):

- (b) include exceptions to standards.
- (5) The Governor-General may, by Order in Council, make regulations—
- (a) prescribing information relating to the healthy homes standards that must be included in a landlord’s statement for the purposes of **section 13A(1CA)(b) or (1CB)(b)**:
- (b) prescribing the records or other documents that must be retained by a landlord for the purposes of **section 123A(1)(ca)** (which may include records or other documents relating to work or other things done before the commencement of the tenancy).
- (6) Regulations under this section may—
- (a) make different provisions for different descriptions of landlords, premises, areas in New Zealand, or other circumstances:
- (b) make provisions applying to all landlords or provisions that apply only to particular descriptions of landlords, premises, areas in New Zealand, or other circumstances.
- (7) In this section, **premises**, in relation to a tenancy that is not a boarding house tenancy, includes facilities.

138C Powers to make regulations under sections 138A and 138B not limited by other enactments

To avoid doubt, nothing in the Building Act 2004, or in any other enactment relating to buildings, health, or safety, limits the provision that may be made by regulations under section 138A or **138B**.

7 Schedule 1A amended

- (1) In Schedule 1A, following the item relating to section 12, insert:
- | | | |
|-----|---|-------|
| 13A | (Failure to comply with Healthy Homes Guarantee) | 3,000 |
|-----|---|-------|
- (1) In Schedule 1A, item relating to section 13A(1F), replace “13A(1A),” with “13A(1A), **(1CA), or (1CB)**.”.
- (2) In Schedule 1A, replace the item relating to section 45(1A) with:
- | | | |
|--------|---|----------------|
| 45(1A) | (Landlord’s failure to meet obligations in respect of cleanliness, maintenance, smoke alarms, the healthy homes standards, or buildings, health, and safety requirements, or standards of heating and insulation) | 3,000
4,000 |
|--------|---|----------------|

8 Related and consequential amendments

- (1) Amend the principal Act as set out in **the Schedule**.
- (2) **Subsection (3)** amends the Residential Tenancies Amendment Act 2016.
- (3) Repeal sections 2(3) and (4), 4(2), 6(4), 14(2), (3), and (5), 18(2), and 44(2).

Schedule

Related and consequential amendments to principal Act

s 8

Section 2

In section 2(1), insert in its appropriate alphabetical order:

healthy homes standards means the standards provided for in regulations under **section 138B(1)**

In section 2(1), repeal the definitions of **income-related rent tenancy** and **New Zealand Standard**.

In section 2(1), definition of **work order**, replace paragraph (b) with:

- (b) includes (without limiting paragraph (a)) an order by the Tribunal requiring—
- (i) a party to carry out any work, or to attend to any matters, as specified in the order for the purpose of complying with any requirement in respect of smoke alarms imposed on the party by regulations made under section 138A; or
 - (ii) the landlord to carry out any work, or to attend to any matters, as specified in the order for the purpose of complying with the healthy homes standards

Section 48

Replace section 48(2)(ca) with:

- (ca) for the purpose of complying, or preparing to comply, with any requirements in respect of smoke alarms imposed, or prospectively imposed, on landlords by regulations made under section 138A, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry; or
- (cb) for the purpose of complying, or preparing to comply, with the healthy homes standards (including any prospective requirements of those standards), at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry; or

Section 66I

Replace section 66I(1)(bb) with:

- (bb) comply with the healthy homes standards; and

Section 66S

Replace section 66S(1)(ca) with:

Section 66S—*continued*

- (ca) without limiting paragraph (c), to comply, or to prepare to comply, with any requirements in respect of smoke alarms imposed, or prospectively imposed, on landlords by regulations made under section 138A:
- (cb) without limiting paragraph (c), to comply, or to prepare to comply, with the healthy homes standards (including any prospective requirements of those standards):

Section 78

Replace section 78(2AA)(b) with:

- (b) a failure to comply with the healthy homes standards:

Section 123

After section 123(1)(c), insert:

- (ca) the monitoring and assessment of compliance by landlords with the healthy homes standards:

Section 123A

After section 123A(1)(c), insert:

- (ca) the records or other documents that relate to the landlord's compliance with the healthy homes standards and that are prescribed by regulations under **section 138B(5)**:

New section 123CA

After section 123C, insert:

123CA Programmes of inspections to monitor and assess compliance with healthy homes standards

The chief executive may, for the purposes of the chief executive's function under **section 123(1)(ca)**, prepare and implement programmes for inspecting premises (including fixtures, fittings, and chattels in them) or facilities.

Section 123E

After section 123E(2), insert:

- (2A) The chief executive may, for the purpose of implementing a programme of inspections prepared under **section 123CA**, apply to the Tribunal for an order authorising an inspection under section 123D.
- (2B) The Tribunal may make an order authorising the inspection if it is satisfied that the chief executive has reasonable grounds for believing that the order is reasonably necessary for the purpose of implementing the programme.

In section 123E(3), after “authorisation”, insert “under subsection (2) or **(2B)**”.

Schedule 1AA

In Schedule 1AA, after clause 10, insert:

Part 2**Provisions relating to Healthy Homes Guarantee Act (No 2) 2015****11 Interpretation**

In this Part, **HHG Act** means the Healthy Homes Guarantee Act **(No 2) 2015**.

12 Application of HHG Act*General*

- (1) An amendment made by the HHG Act applies to a tenancy whether the tenancy commences before, on, or after the date on which the amendment comes into force.

Landlords' statements

- (2) **Subclauses (3) and (4)** apply to a tenancy agreement that is made before 1 July 2019.
- (3) **Section 13A(1CA)**, as inserted by **section 4(2)** of the HHG Act, does not apply to the tenancy agreement.
- (4) **Section 13A(1CB)**, as inserted by **section 4(2)** of the HHG Act, applies to the tenancy agreement only if the written variation or renewal is signed by the landlord on or after 1 July 2019.

Application of sections 45(1)(bb) and 66I(1)(bb) (compliance with healthy homes standards)

- (5) If a tenancy commences before 1 July 2019, **section 45(1)(bb) or 66I(1)(bb)**, as replaced by **section 5(1) or 8(1)** of the HHG Act, applies to the landlord only at and after the prescribed time (which may be the beginning of 1 July 2019 but must be no later than the beginning of 1 July 2024).
- (6) If a tenancy commences on or after 1 July 2019 but before 1 July 2024, **section 45(1)(bb) or 66I(1)(bb)**, as replaced by **section 5(1) or 8(1)** of the HHG Act, applies to the landlord only at and after the prescribed time (which may be the commencement of the tenancy but must be no later than the beginning of 1 July 2024).
- (7) In **subclauses (5) and (6)**, **prescribed** means prescribed by, or determined in accordance with, regulations under **subsection (1) of section 138B**, as replaced by **section 6** of the HHG Act, and regulations under that subsection may include provision as contemplated by this subclause accordingly.
- (8) Without limiting **subsection (6) of section 138B**, as replaced by **section 6** of the HHG Act, different times may be prescribed in relation to different standards included in the healthy homes standards.

Schedule 1AA—continued

Other provisions

- (9) The following apply before 1 July 2019 as if they were in force:
- (a) the definition of healthy homes standards in section 2(1), as inserted by **section 8(1)** of the HHG Act:
 - (b) **sections 48(2)(cb) and 66S(1)(cb)**, as inserted by **section 8(1)** of the HHG Act:
 - (c) the powers to make regulations (including to amend and revoke regulations made) under **section 138B**, as replaced by **section 6** of the HHG Act.
- (10) Sections 48(2)(ca) and 66S(1)(ca), as in force on the date this subclause comes into force, apply before 1 July 2019 in relation to insulation disregarding the HHG Act.

13 Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016

- (1) Regulations under **subsection (1) of section 138B**, as replaced by **section 6** of the HHG Act, may—
- (a) revoke the 2016 insulation regulations at the beginning of 1 July 2019;
or
 - (b) provide for the 2016 insulation regulations to continue in force on and after 1 July 2019, and (as applicable) to come into force on or after that date, as if they had been made under **subsection (1) of section 138B**, as replaced by **section 6** of the HHG Act.
- (2) If provision is made under **subclause (1)(b)**, the 2016 insulation regulations—
- (a) are, accordingly, standards included in the healthy homes standards; and
 - (b) may be amended or revoked accordingly by regulations under **subsection (1) of section 138B**, as replaced by **section 6** of the HHG Act.
- (3) In this clause, **2016 insulation regulations** means the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 to the extent that those regulations are regulations under section 138B disregarding the HHG Act.

Schedule 1A

In Schedule 1A, item relating to section 66I(4), replace “insulation, or building, or health” with “the healthy homes standards, or buildings, health.”.