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Healthy Homes Standards Discussion Document

Local Government New Zealand's submission to the Ministry of Business, Innovation and Employment

19 October 2018

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We are. LGNZ.

Local Government New Zealand (LGNZ) is the national organisation of local authorities in New Zealand. All 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This submission was endorsed under delegated authority by Mayor Dave Cull, President, Local Government New Zealand.

Introduction

Thank you for the opportunity to submit on the proposed Healthy Homes Standards Discussion Document. Our understanding is that the Government's aim is to:

- Establish minimum standards for appropriate levels of heating, insulation, ventilation, moisture ingress, draught stopping and drainage (the Standards) to allow New Zealand tenants to live in warm and dry rental homes;
- Address the gap between New Zealand's rental housing stock, which is in consistently worse condition on average than owner-operated homes; and
- Consequently address the needs of identified at-risk groups of tenants including low-income, elderly, disabled persons, children and Māori and Pacific peoples.

LGNZ has interest in providing general overview and comment on the issues outlined above. However, it has limited understanding of the detail of each of the specific options that are proposed for the Standards. Councils that may act as, or work more closely with, landlords will have greater clarity and useful comment on the specific detail of the various options that are proposed. As such, LGNZ intends to leave it to those councils to provide review on the detailed and more technical aspects of the proposed options. LGNZ will not identify a preferred option for each of the Standards, but instead provide general comment on matters it considers relevant to the Standards and the outcomes they seek to achieve.

Impact of changes

Outcomes of the Standards for rental homes

In general, LGNZ supports the key objective of establishing minimum standards to allow New Zealand tenants to live in warm and dry rental homes, and supports the development of specific standards for appropriate levels of heating, insulation, ventilation, moisture ingress, draught stopping and drainage.

New Zealand is significantly behind the rest of the world in terms of the quality of its rental housing stock. As such, LGNZ's view is that any improvements brought about by the Standards will be a step in the right direction. The Standards will provide a solid foundation for improving the quality of New Zealand's rental homes over time.

Costs and benefits of the Standards

While LGNZ's view is that the Standards will ultimately result in benefits for tenants to the extent that they should improve the quality of rental homes, and consequently health and wider social outcomes, the Standards which are adopted must strike the right balance between the benefits and the costs of requiring a landlord to comply with each Standard.

The costs that the Standards impose on landlords need to be reasonable. It is critical that the Standards that are ultimately adopted do not impose unreasonably burdensome costs on landlords, to avoid the risk of those costs being passed onto tenants. For many tenants the passing on of such costs could represent a significant financial burden, particularly those identified as being at-risk, and in circumstances where the rental market is already a competitive and expensive one.

Thought should be given to whether tax incentives could be made available to landlords to ensure that the costs of complying with the Standards do not unreasonably roll over to tenants. Tax incentives could also incentivise earlier compliance with the Standards by landlords.

Landlord response to the Standards – availability of rental housing

LGNZ notes that a house used as a holiday rental (including an Airbnb or holiday home rented on a website like Bookabach) is not covered by the Residential Tenancies Act, and therefore is not covered by a standard tenancy agreement. As such, LGNZ understands that the proposed Standards will not apply to those properties that are rented as holiday homes.

LGNZ is concerned that if the Standards that are imposed are unreasonably onerous, existing landlords may choose to utilise their properties principally as holiday rentals, as opposed to residential rental properties, so as to avoid the need to comply with the Standards. LGNZ recommends the Standards strike the right balance to ensure the availability of residential rental properties does not substantially reduce, impacting an already limited supply of affordable residential rental properties.

LGNZ also notes that if landlords shift their attention from providing a permanent or long-term residential rental property to providing a holiday rental in order to avoid the need to comply with the Standards, this may have implications for whether property owners pay residential or commercial rates.

Landlord and industry capacity to comply with the Standards

Landlords will need time to understand and comply with their new responsibilities. Regard must also be had to the time that industry participants will need to build capacity to help with implementing the Standards. However, LGNZ recognises that this must be balanced against the urgent need that there is to improve the quality of rental housing.

Accessible and understandable Standards

The Standards which are adopted must be easily accessible and understood by both landlords and tenants. Landlords need to know and understand what is required of them, and tenants need to know and understand what they can expect in their rental homes.

For each of the proposed Standards, it does appear that there are a range of pre-existing standards that landlords are required to meet. If any changes are made to those pre-existing standards, it is critical that those changes are clearly articulated and easily understood by both landlords and tenants. Landlords and tenants need to be clear on how the requirements have changed, and what the new Standards require of them.

If the status quo remains for any of the proposed Standards, it is important that the pre-existing requirements are clearly re-articulated to landlords and tenants. This is because the current condition of rental homes suggests that many landlords and tenants do not understand what the existing standards require. There will be a need for further and ongoing education.

Consistent standards across New Zealand

While LGNZ recognises that there may be some merit in adopting different Standards to apply to rental homes in different parts of the country, or rental homes of a certain age, type of construction or that meet pre-existing standards, LGNZ's view is that the Standards adopted must be consistent across the whole country.

LGNZ is concerned that if the Standards are underpinned by a range of variables, and inconsistent across the country, there will be confusion on the part of both landlords and tenants. This will lead to difficulties in ensuring landlord compliance with the Standards, and the ability of tenants to monitor and understand compliance with the Standards by their landlord. LGNZ is also concerned that inconsistent Standards could result in inconsistent outcomes. Consistent nationwide Standards are needed due to the variability of rental quality standards around the country; quality needs addressing nationwide.

Interrelated Standards to achieve consistent outcomes

When determining the content of each of the Standards, it will be important to bear in mind the interrelatedness of all five Standards. It is critical that the Standard adopted for each of the five areas set out in the Discussion does not "cancel another Standard out". For example, any Standard that relates to insulation should not be inconsistent with the Standard that is adopted for heating. Care must be taken to ensure that one Standard does not preclude the achievement of another.

Date for compliance with the Standards and enforcement

Specific comments on the date for compliance with the Standards and implementation of the Standards are made later in this submission.

Proposed Standards

LGNZ's general comments on each of the proposed Standards are set out below. All of the general comments made earlier in the Impact of changes section of this submission are also applicable.

Heating standards

LGNZ supports the requirement that rental homes meet certain standards with respect to heating, and the intended outcome that tenants live in warm, well-heated homes. LGNZ is concerned at the significant number of New Zealand tenants living in cold, under-heated rental homes, particularly during the winter months. The impacts of cold homes on health and other social outcomes are of concern to LGNZ.

Although LGNZ does not have any specific view on the suitability or otherwise of each of the possible options that have been proposed for the heating standard, LGNZ notes that:

- Given the concerning number of New Zealand tenants living in cold homes, there appears to be an urgent need to take steps to ensure that rental homes are warm and dry. To the extent that landlords can fully achieve warm and dry homes, this will likely lead to better health and other social outcomes for New Zealand tenants;
- A landlord must at the very minimum be required to provide at least some form of heating device in a rental property, whether that device is fixed or not. Not all tenants will necessarily acquire heating devices if responsibility for that is left to them;
- Given existing requirements on landlords to provide heating, a number of homes may already be sufficiently warm and dry. Equally, some homes may only require a minimal level of upgrade to achieve a higher level of heat and dryness. Consequently, the costs to landlords of imposing higher standards for heating may not be significant;
- Preference should be given to heating options that will reduce energy costs for tenants. Tenants will likely be less inclined to properly utilise heating that is energy-inefficient and costly. The Government should give thought to whether subsidies, grants or other assistance (in addition to the Government's Winter Energy Payment) could be made available to tenants to support usage;
- Preference should be given to heating options that are energy-efficient due to the consequent benefits for New Zealand's carbon emissions; and
- Safety must be a paramount factor in determining whether a heating device is adequate. Heating devices that are unsafe should not be permitted by the Standards.

Insulation standards

LGNZ supports the requirement that rental homes meet certain standards with respect to insulation. It supports the intended outcome that tenants live in homes which retain heat and are therefore less likely to be cold, damp and mouldy. The impacts of cold, damp and mouldy homes on tenants' health and well-being is a concern to LGNZ.

Although LGNZ does not have any specific view on the suitability or otherwise of each of the possible options that have been proposed for the insulation Standard, LGNZ notes that:

- Despite existing insulation standards, many rental homes still do not have adequate insulation to retain heat;
- Practical considerations will be relevant to determining the appropriate option for this Standard. The ease with which insulation can be retrofitted into pre-existing properties, and access issues making it challenging or impractical to insulate, are relevant factors; and
- The Discussion Document does note that modelling has demonstrated that each of the proposed insulation options set out would yield positive net benefits that principally accrue to tenants through reductions in ill health and a reduction in costs from lower energy bills.

Ventilation standards

LGNZ supports the requirement that rental homes meet certain standards with respect to ventilation, and the intended outcome that tenants live in homes that are less likely to be damp and mouldy. The health impacts of damp and mouldy homes on tenants are of concern to LGNZ.

Although LGNZ does not have a specific view on the suitability or otherwise of each of the possible options that have been proposed for the ventilation standard, LGNZ notes that:

- Provision of ventilation via opening windows may be counter to the objective of achieving certain levels of heating in rental homes, particularly during colder months;
- That should be balanced against the additional energy costs tenants may incur if the Standards require mechanical ventilation. Tenants may choose not to use mechanical ventilation if there are significant costs attached to its use; and
- LGNZ agrees with the Discussion Document's practical acknowledgement that it is appropriate that in some cases there are exceptions to requirements to provide openable windows in certain types of home.

Moisture ingress and drainage standards

LGNZ supports the requirement that rental homes meet certain standards with respect to moisture ingress and drainage, and the intended outcome that moisture does not enter into rental homes, causing them to be damp and mouldy. LGNZ is concerned at the significant number of rental homes that have visible mould, despite existing moisture ingress and drainage standards.

LGNZ does not have a specific view on the suitability or otherwise of each of the possible options that have been proposed for the moisture ingress and drainage standard.

Draught stopping standards

In general, LGNZ supports the requirement that rental homes meet certain standards with respect to draught stopping, and the intended outcome that rental homes are warm and dry. Despite existing standards, it is clear that many rental homes are draughty. LGNZ does not have a specific view on the suitability or otherwise of each of the possible options that have been proposed for the draught stopping standard.

Date to comply with the standards

LGNZ has no particular view on the specific date by which landlords must comply with the Standards, but provides the following comments:

- The need for rental homes to be made warmer and drier as soon as possible must be balanced with the reasonable need of landlords to have time to fully comply with the Standards, particularly if landlords may be constrained by the supply of necessary resources and/or capacity of industry to enable compliance;
- If the option adopted for each or any Standard is to continue with the status quo (ie pre-existing standards) it may be that earlier compliance with the new Standards is appropriate, given that many homes should already comply with those pre-existing standards;

- Requiring compliance with the Standards only at the start of a new or renewed tenancy will not necessarily yield quick benefits to tenants in long-term fixed-term tenancies;
- Notwithstanding that different dates for compliance may be suitable for different Standards, depending on the requirements they impose, one fixed date for compliance with the Standards would provide clarity and certainty. This will assist landlords and industry with planning, and provide tenants with clarity on when they can enforce their rights; and
- LGNZ does not support different compliance dates for different parts of the country. This will lead to unnecessary confusion for both tenants and landlords, and difficulties in regulating compliance. Such an approach would also be inconsistent with LGNZ's view that the content of the Standards themselves needs to be consistent across the country.

Implementation of the standards

Enforcing the standards

LGNZ agrees that compliance with the Standards can, and should be, proactively encouraged through education and incentives. As noted earlier in this submission, LGNZ's view is that tax incentives may incentivise early compliance with the Standards.

LGNZ agrees that landlords should be required to state on tenancy agreements whether and how the Standards have been complied with. This would not be dissimilar to existing requirements on landlords, for example, to include information in a tenancy agreement about the insulation provided in a rental home. Given those existing requirements, it would not be unreasonable or unnecessarily burdensome to expect a landlord to specify whether and how the Standards have been complied on a tenancy agreement.

Requiring records to be kept within a tenancy agreement will ensure that tenants can easily identify whether records have been kept, and have easy access to them. Records kept in any other format may be difficult for tenants to access.

The contents of records to be kept by landlords (including on tenancy agreements) must be clearly prescribed and easily understood by both landlords and tenants. This will ensure landlords fulfil their obligations and tenants are able to easily identify where requirements have not been met.

LGNZ's view is that tenants' ability to enforce the Standards, by either approaching their landlords or the Tenancy Tribunal, is important. Tenants will only be able to take steps to try and enforce the Standards if they properly understand what the requirements imposed by the Standards are. Any information included on a tenancy agreement (or in other records) about compliance with the Standards must be easily understood by tenants, including those groups of tenants identified as at-risk. This is important for ensuring that they are in a position to raise concerns with lack of compliance by their landlord with either the landlord or the Tenancy Tribunal.

Online tool to assist landlords comply with the standards

LGNZ supports the development of any tools to assist landlords to comply with the Standards. Landlords will benefit from clear guidance on what is required to bring a rental home up to standard.

It is equally critical that these tools assist tenants. These tools should be accessible to and easily understood by tenants, so that they are able to ascertain whether the home they rent meets the required Standards. This will ensure that tenants are able to flag any compliance issues with their landlord and/or the Tenancy Tribunal with relative ease.

Conclusion

LGNZ supports the Government's overall intention of improving the quality of rental homes. Given the current poor quality of rental homes in New Zealand relative to the rest of the world, LGNZ considers that any improvements to existing standards will provide a solid foundation for improving the overall quality of rental housing stocks.

LGNZ is confident that improvements to the quality of rental housing in New Zealand will have positive benefits for health and wider social outcomes, particularly for those groups of tenants that have been identified as at-risk.

However, to ensure that improvements to the quality of rental homes, and wider health and social outcomes, are in fact achieved, it is critical that both landlords and tenants understand what the Standards require. This will ensure that landlords know what is expected of them, and tenants are in a position to identify where Standards have not been complied with, or fully complied with.