



## Residential Tenancies Amendment Bill Social Services Committee

### The Salvation Army New Zealand Fiji and Tonga Territory Submission

#### BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power<sup>1</sup>.
3. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.
4. This submission has been approved by Commissioner Robert Donaldson, Territorial Commander of The Salvation Army's New Zealand, Fiji and Tonga Territory.

#### THE SALVATION ARMY PERSPECTIVE

#### INTRODUCTION

5. The Salvation Army welcomes the recognition that **legislated minimum housing standards** are necessary. This is an important first step towards raising rental housing quality. We therefore support aspects of this Bill in principle.
6. However, The Salvation Army believes that the proposed amendments to the Residential Tenancies Act 1986 (RTA) do not go far enough to provide tenants with secure, safe and healthy housing. In addition to our comments on specific proposed amendments, we recommend the following:

---

<sup>1</sup> <http://www.salvationarmy.org.nz/our-community/mission/>

- 1) **A substantive review of our current outdated New Zealand tenancy law.**
- 2) **The rebalancing of power imbalances between vulnerable tenants and landlords, including:**
  - i. **More secure forms of tenure, such as a presumption that tenancies are almost always for extended fixed terms;**
  - ii. **Publicly funded tenant advocacy services funded from the interest on tenants' bond money, such as the model used in Australia;**
  - iii. **More stringent penalties for breaches;**
  - iv. **More systematic enforcement and adequate resources for enforcement;**
  - v. **Mandatory statutory reporting requirements on the Chief Executive.**
- 3) **An evidence based, comprehensive approach to minimum housing standards, beyond the narrow categories of smoke alarms and insulation. The current outdated and proposed standards ignore the evidence of extensive research about the required tools for better housing quality and the enormous benefits of investing in such tools.**

## **GENERAL COMMENTS**

### ***A substantive review of New Zealand tenancy law***

7. More and more New Zealanders are obliged to rent as a consequent of inadequate home ownership support policies. At the end of the June 2015 quarter, around 50% of people in New Zealand were renting, making up 32.5% of households.<sup>2</sup> In Auckland, 58 percent of low-income households are living in rental properties.<sup>3</sup> The Salvation Army believes that it is vital to see rental housing, and in particular the tenure and the quality of housing it provides, as a critical, rather than residual, part of housing policy.
8. New Zealanders should expect to have mature and stable rental housing markets where tenants enjoy many of the same rights to secure decent quality housing as owner-occupiers. Legislation to support such rights will require landlords to become more professional in the way they approach residential property investment. The Salvation Army believes that the current RTA and these amendments will **not** provide New Zealand with sufficiently modern tenancy laws which equally secure the rights of tenants and investors.
9. These amendments should be seen as an opportunity to carry out a substantive review of tenancy law. The Salvation Army believes that such a review should be rights based, and specifically refers to the basic right and expectation that all New Zealanders are adequately housed in accommodation which is safe, secure and healthy.

---

<sup>2</sup> Statistics New Zealand 2015.

<sup>3</sup> 2013 Census of Population and Dwellings.

## ***Rebalancing of the tenancy power relationship***

10. Those living in unsafe and unhealthy rental properties are often our most vulnerable members of society. The private tenancy market is a place where inequalities of power, income and wealth have direct impacts on vulnerable people. Tenants are frequently unaware of their rights, or not skilled or confident enough to feel able to make use of the options for resolving disputes that mediation or the Tenancy Tribunal offer. Tenants can be vulnerable in a variety of ways, including living on insecure, unreliable incomes, not speaking English as a first language, experiencing mental health issues or a disability, or having poor literacy. Such tenants require proactive support to claim their rights under this Bill and existing legislation. Community law centres work hard to support the tenants that are able to seek their support, but more proactive and effective government intervention is required to ensure a fairer balance of rights between tenants and landlords.
11. Whilst The Salvation Army acknowledges that elements of this Bill attempt to provide further power to MBIE to act on behalf of vulnerable tenants, we believe that there needs to be significantly more action to address this imbalance. For example The Salvation Army believes that it is significant that figures from the Tenancy Tribunal show the **vast majority of cases before the tribunal are brought by landlords**. Of the 19,095 applications made in 2015, 16,808 were from landlords (88%).<sup>4</sup> The Salvation Army is concerned what this says about the current power dynamics in the tenancy relationship and the ability of tenants to meaningfully access a justice service that is funded by interest on **tenant** bond money.
12. The Salvation Army recommends the following:
- a. More secure forms of tenure, such as a presumption that tenancies are almost always for extended fixed terms.
  - b. Publicly funded tenant advocacy services funded from the interest on tenants' bond money. In New South Wales in Australia, the Tenants Advice and Advocacy Service provides free, independent information, advice and advocacy to tenants of private rental housing, social housing tenants, boarders and lodgers, and residential park residents. The services are funded under the NSW Fair Trading Tenants Advice and Advocacy Program, which uses monies from the Rental Bond Board Interest Account and the Property Services Statutory Interest Account.
  - c. More systematic enforcement and adequate resources for enforcement. Whilst this Bill creates more opportunities for MBIE to act on behalf of vulnerable tenants against exploitative landlords, this cannot be realised in practice if there are not sufficient resources for enforcing compliance. Existing legislation gives MBIE the power to take over tenancy disputes and investigate landlords, but this power has been used only twice in the last 20 years.<sup>5</sup>

---

<sup>4</sup> Rob Stock "NZ's Tenancy Tribunal a 'toothless kitten' - researcher Philippa Howden-Chapman" (8 December 2015 <[www.stuff.co.nz](http://www.stuff.co.nz)>

<sup>5</sup> Office of the Minister for Building and Housing "Insulation, smoke alarms and other residential tenancy improvements" (Cabinet Social Policy Committee, 2015) at 11.

- d. Tougher sanctions and more stringent penalties for any party who is deemed to have acted unlawfully in terms of the principal act.
- a. Greater transparency around how the principal act is administered by the Crown agency responsible. This could include mandatory statutory requirements on the Chief Executive, such as a reporting and monitoring function on matters relating to residential tenancies. Similar duties have been made mandatory on the Chief Executive under the Corrections Act 2004 and the Children, Young Persons and Their Families Act 1989.

### ***More comprehensive minimum housing standards***

- 13. The Salvation Army welcomes the recognition that **legislated minimum housing standards** are necessary. We currently legislate stringently for health and safety in other areas of everyday living for New Zealanders such as ensuring cars have seatbelts. You cannot buy, sell or drive a car if it is not safe. Such reasoning should be applied to housing; landlords should not be able to rent out houses they are not safe, warm and dry.
- 14. The Salvation Army recommends that the Bill should aim for optimal health and wellbeing impacts as the benchmark for setting such standards. Regulations should also impose requirements on landlords in relation to additional “warrant of fitness” housing standards, such as dampness, adequate ventilation and reduction of safety hazards in the home.
- 15. The Minister of Housing’s rationale for declining to legislate a warrant of fitness for rental properties was that “taking into account the HNZC trial results and the results of cost benefit analysis,” he “did not believe there is a compelling rationale for requiring all residential rental properties to comply with a broad ‘warrant of fitness’”.<sup>6</sup>
- 16. The Salvation Army wishes to draw attention to the compelling cost benefit analysis commissioned by MBIE, which estimated that the total economic net benefits of introducing a comprehensive warrant of fitness would be \$334 million.<sup>7</sup> The warrant of fitness used by the authors included **other elements in addition to insulation and fire alarms**, such as safety benefits from mandatory reduction of hazards in the home (hot water within a safe temperature range, improving rotten bathroom floors).
- 17. These safety benefits made up just under half (46%) of the total benefits, as a result of the repairs and maintenance work to comply with the minimum standard. Such elements appear to have not been included in the proposed amendments. This suggests that the changes that have been announced are insufficient and inconsistent with the advice the Government has received.

---

<sup>6</sup> Office of the Minister for Building and Housing “Insulation, smoke alarms and other residential tenancy improvements” (Cabinet Social Policy Committee, 2015) at [5].

<sup>7</sup> Gary Blick and Preston Davies *Cost benefit analysis for a minimum standard for rental housing* (Sapere Research Group, November 2014) at 24.

18. The Salvation Army acknowledges the risk of removing rental properties from the market when costs to landlords are increased. However, the cost benefit analysis estimated the cost to landlords for repairs that would allow properties to meet the standard for a warrant of fitness at an average of \$1,811 per dwelling. The benefit to cost ratio was estimated at **1.51**. In other words, the economic benefits to society from the introduction of the minimum standard for the relevant private rental stock exceed the costs to society by 50% over a twenty-year period.<sup>8</sup>
19. Given the obvious financial benefits, and the importance that every New Zealander has a dry, safe, warm home, this is not necessarily an unreasonable cost for landlords to bear, and would reflect a mature and professional expectation of property investors.

## **SPECIFIC RESPONSES TO AMENDMENT**

### **Clause 6 Section 13A amended (Contents of tenancy agreement)**

20. The Salvation Army supports this amendment in principle. However we believe it is inconsequential if tenants have little or no power in the tenancy relationship, as indicated at paragraph [11]. This “market forces” approach relies on disclosure about insulation standards compliance in tenancy agreements and complaints by tenants for remedying non-compliance. Authors of the MBIE cost benefit analysis stated that they believe that under this approach “the compliance story would essentially remain unchanged,” due to the lack of “market power” they heard in relation to rental tenants.<sup>9</sup>
21. The cost benefit analysis also found that it can be expected that only about two thirds of landlords will comply under such an approach, compared to 90% for a full warrant of fitness approach, such as that used for motor vehicles.<sup>10</sup>
- 22. *The Salvation Army recommends that the compliance model be strengthened to an equivalent of the vehicle warrant of fitness approach.***

### **Clause 13- Section 45 amended (Landlord’s responsibilities)**

23. The Salvation Army supports this amendment in principle, but reiterates the position that confining a landlord’s responsibilities to smoke alarms and insulation is insufficient.
- 24. *The Salvation Army recommends that the Bill and associated regulations aim for optimal health and wellbeing benefits as the benchmark for setting standards and responsibilities on landlords, and include more comprehensive warrant of fitness standards.***

---

<sup>8</sup> Gary Blick and Preston Davies *Cost benefit analysis for a minimum standard for rental housing* (Sapere Research Group, November 2014) at 24.

<sup>9</sup> Gary Blick and Preston Davies *Cost benefit analysis for a minimum standard for rental housing* (Sapere Research Group, November 2014) at 29.

<sup>10</sup> Gary Blick and Preston Davies *Cost benefit analysis for a minimum standard for rental housing* (Sapere Research Group, November 2014) at 30.

**Clause 15 Section 54 amended (Tribunal may declare retaliatory notice of no effect)**

25. The Salvation Army supports this amendment.

**26. *However The Salvation Army further recommends that this section include a higher specific penalty for landlords who carry out unlawful retaliatory action to increase deterrence.***

**Clauses 16, 21, 24 and 25 - Abandonment of premises**

27. The Salvation Army supports these amendment in principle, however wishes to emphasise the importance of all efforts being made to ensure that the tenant has indeed abandoned the premises, and that the opportunity to declare abandonment without a hearing is not abused by landlords.

**28. *The Salvation Army recommends that the Tribunal does not rely only on information given by the Landlord on the contact details of tenant. This should include an amendment to section 86(2A)(b) that the tenant's contact details as set down in the tenancy agreement should be used to determine whether the application is contested, rather than the tenant contact details provided by the landlord.***

**Clause 19, 23, 27 and 28 –Tenancy Mediators**

29. The Salvation Army **opposes** these amendments. This proposal purports to allow what should be an independent mediation service being provided by a corporate organisation in the form of a body corp.

**Clause 26 Section 91B replaced (Hearing may proceed even if party not served)**

30. The Salvation Army **opposes this amendment in part**, in cases where decisions of additional claims or exemplary damages made against the tenant are at stake. In effect such a practice is a tenant being tried in absentia and it should be avoided.

**Clause 32 - Powers of Chief Executive**

**31. Publication of comments about landlords:** It is understood that the rationale behind this amendment is to ensure that the public are informed of potential bad practices of particular landlords. Whilst this rationale appears pragmatic at first instance, The Salvation Army wishes to question the natural justice process around this provision and what this process will look like in relation to privacy rights and other considerations.

**32. Powers of Chief Executive:** Currently under section 123 of the RTA, the Chief Executive's powers and functions are discretionary, and the Chief Executive is not obliged to perform or exercise any of these functions or powers. Given that the **quality and nature of housing** is dramatically affecting the lives and well-being of New Zealanders, The Salvation Army believes that certain functions should be mandatory under the Act. Similar mandatory

functions are already present in the Corrections Act 2004 and the Children, Young Persons and Their Families Act 1989.

**33. *The Salvation Army recommends that section 123 of the RTA is reviewed and includes mandatory statutory requirements on the Chief Executive, such as a reporting and monitoring function on matters relating to residential tenancies.***

#### **Clause 34 - Chief executive may take proceedings as if tenant**

**34.** The Salvation Army supports this amendment in principle. However without a commitment to resourcing further enforcement activity the increased powers granted to officials in this Bill are unlikely to be effective in increasing compliance by landlords. Existing legislation gives the authorities power to take over tenancy disputes and investigate landlords, but this power has been used only twice in the last 20 years.<sup>11</sup>

**35. *The Salvation Army recommends that MBIE is adequately and proactively resourced to give effect to these new powers and that the number of proceeding taken on behalf of tenants be included in the Chief Executives broader reporting obligations.***

#### **Clauses 37 and 38 – Regulations imposing requirements on landlords in respect of smoke alarms and insulation**

**36.** The benefits of insulation and fire alarms in housing are not in question and it is an important milestone in housing legislation. However The Salvation Army reiterates that these new standards do not go far enough and are insufficient.

**37. *The Salvation Army recommends that the Regulations also impose requirements on landlords in relation to additional warrant of fitness housing standards, such as reductions of hazards in the home and adequate ventilation. The Bill should aim for optimal health and wellbeing impacts as the benchmark for setting such standards.***

#### **CONCLUSION**

**38.** The Salvation Army believes that it is essential that every New Zealander has a secure, safe and warm place to call home. We are passionately committed to our communities, and are increasingly concerned that many of those whom we work with do not have access to this fundamental human right. Whilst we welcome some of the changes proposed, we urge the select committee to see this process as an opportunity to fully review the state of rental housing in New Zealand, a market in which more and more of our most vulnerable are forced to rely on.

---

<sup>11</sup> Office of the Minister for Building and Housing “Insulation, smoke alarms and other residential tenancy improvements” (Cabinet Social Policy Committee, 2015) at 11.