



Residential Tenancies Amendment Bill (No. 2) Local Government and Environment 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 power¹.
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 Andrew Westrupp, Territorial Commander of The Salvation Army's New Zealand, Fiji and Tonga Territory.

THE SALVATION ARMY PERSPECTIVE

INTRODUCTION

5. The Salvation Army **supports this Bill in principle**. We have provided comments on the three main elements of this Bill with regards to the amendments on: **tenant liability for damage to rental premises; tenancies over rental premises that are unlawful for residential use; and methamphetamine contamination in rental premises**.
6. However, The Salvation Army believes that the proposed amendments to the Residential Tenancies Act 1986 (RTA) do not go far enough to provide New Zealanders with secure, safe and healthy housing. **Given that more and more New Zealanders rely on renting, we have noted our concerns at the limited choice that vulnerable tenants face, which cannot be**

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

solved by tweaking rental legislation. Our clients who are renting accommodation that is by nature unlawful and unsuitable for themselves or their families, such as garages and unsafe boarding houses, do not have choice, or alternatives. They only do so because it is the only place they can access, or afford.

7. The Salvation Army further recommends the following in relation to the RTA:
 - 1) **A substantive review of our current outdated New Zealand tenancy law.**
 - 2) **A review of the Tenancy Tribunal's ability to be fit for purpose, given that 90% of applications in the 2015/16 year were by landlords;**
 - 3) **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 while maintaining the provision for both parties to opt out and set the term of their choice. This is in the interests of landlords, tenants and the wider community.**
 - ii. **Improved publicly funded tenant advocacy services funded from the unclaimed bond money;**
 - iii. **Tougher sanctions and more stringent penalties for any party who is deemed to have acted unlawfully in terms of the RTA;**
 - iv. **More systematic enforcement and adequate resources for enforcement;**
 - v. **Mandatory statutory reporting requirements on the Chief Executive.**

GENERAL COMMENTS

A substantive review of New Zealand tenancy law

8. More and more New Zealanders are renting. At the end of the June 2015 quarter, around 50% of people in New Zealand were renting, making up 32.5% of households.² In Auckland, 58 percent of low-income households are living in rental properties.³ Low income tenants, particularly those who are working, are bearing the brunt of high rents, high demand, and low quality rental stock.
9. 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. 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 landlords.
10. 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. **These amendments should be seen as a timely opportunity to carry out a substantive review of tenancy law.** The Salvation Army believes that such a review should be rights

² Statistics New Zealand 2015.

³ 2013 Census of Population and Dwellings.

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.

11. ***The Salvation Army recommends that a substantive review of the Residential Tenancies Act 1986 takes place within the next two years.***

Tenancy Tribunal: Fit for purpose?

12. The amendments in the Bill ensure that the Tribunal has full jurisdiction for premises occupied or intended to be occupied for residential purposes, regardless of whether the occupation would be unlawful.
13. The Salvation Army believes this is an important amendment to ensure there is not a loophole in the law that reduces the scope of the RTA and the Tenancy Tribunal.
14. However, the Salvation Army notes that statistics obtained under an OIA request from MBIE state that **in the year 2015/16, 90% of applications in in the Tenancy Tribunal were by landlords, and 73% of those applications were landlord's seeking termination of tenancy.**⁴
15. The Salvation Army is concerned at what these startling statistics say about power dynamics in the tenancy relationship, knowledge of rights and responsibilities, and the ability of tenants, especially vulnerable tenants in unsafe and unlawful accommodation to meaningfully access a justice service that is funded by interest on **tenant** bond money.
16. This raises serious questions about the ability of the Tribunal to be aware of and take appropriate action in the issues that are being sought to be addressed by these amendments. It also raises significant questions as to the Tenancy Tribunal's ability to serve its original purpose.
17. ***The Salvation Army recommends that the Tenancy Tribunal undergoes a full review to ascertain how best to rebalance power imbalances in the Tenancy relationship and ensure that it is fit for purpose;***

Rebalancing of the tenancy power relationship

18. Those living in unsafe, unhealthy and unlawful 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

⁴ Tenancy Tribunal applications years ending 30 June 2012- June 2016 (Obtained under Official Information Act 1982 Request to the Ministry of Business, Innovation and Employment).

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 intervention is required to ensure a fairer balance of rights between tenants and landlords.

19. 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, while maintaining the provision for both parties to opt out and set the term of their choice. **This is in the interests of landlords, tenants and the wider community.** Landlords get committed tenants who are invested in the property and looking after it as their home. Tenants get a sense of stability and can put down roots in their local community, which contributes to wider social cohesion and stable communities.
- b. **Publicly funded tenant advocacy services funded from the unclaimed bond money.** The Salvation Army notes that Under the Residential Tenancies Act 1986, all money paid into the Residential Tenancies Trust Account as bond money belongs to the Crown and must be paid into a Crown Bank Account if the money is not claimed within 6 years of the end of the tenancy to which the bond relates.⁵ This could provide an opportunity to direct such funds into improving advocacy services and addressing power imbalances.

Systematic enforcement and adequate resources for enforcement

20. The amendments will enable the Ministry of Business, Innovation, and Employment to take enforcement action against landlords in breach of any of their obligations under the RTA, particularly with regard to their jurisdiction over unlawful residential premises.
21. Whilst this Bill means that compliance and enforcement action can improve and has a wider scope, The Salvation Army submits this cannot be realised in practice if there are not sufficient resources for enforcing compliance. Existing provisions in the RTA prior to the 2016 amendments gave MBIE the power to take over tenancy disputes and investigate landlords when it is in the public interest, but a Cabinet paper noted in 2015 that **this power had been used only twice in the last 20 years.**⁶
22. Whilst the establishment of the Compliance and Investigations team under MBIE is a significant improvement, The Salvation Army submits that further work is needed, particularly given that the lack of affordable housing has created a vacuum in which exploitation and unethical landlords can thrive.

23. ***The Salvation Army therefore recommends the following:***

⁵ Residential Tenancies Act 1986, s 127(7A)(a).

⁶ Office of the Minister for Building and Housing “Insulation, smoke alarms and other residential tenancy improvements” (Cabinet Social Policy Committee, 2015) at 11.

- a. **Improved resources for investigation and compliance by MBIE (potentially using funds obtained by the Crown from unclaimed bond money);**
- b. **Tougher sanctions and more stringent penalties for any party who is deemed to have acted unlawfully in terms of the RTA;**
- a. **Mandatory statutory requirements on the Chief Executive, such as a reporting and monitoring function on matters relating to residential tenancies, including the number of proceedings taken on behalf of tenants to be included in the Chief Executives broader reporting obligations. 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.**

Impact on housing for vulnerable tenants

24. As the Regulatory Impact Statement notes, It is difficult to assess how or whether the preferred proposal will have an impact on the supply of rental housing:⁷

The proposals may result in a slight reduction in the availability of rental properties, as landlords become aware of the new provisions and penalties for entering tenancies over unlawful rental premises. Were this to occur, there could be a disproportionate impact on vulnerable tenants, who are likely to be more inclined to enter into tenancies where the premises are unlawful, due to limited choice. However, we consider the benefits of the proposal outweigh the costs, because of the importance of ensuring landlords provide rental properties which are fit for purpose. In addition, it is important that landlords do not evade their obligations under the Residential Tenancies Act and that all tenants are afforded all their rights and protections in the Residential Tenancy Act.

25. The Salvation Army agrees that ensuring that landlords provide rental properties which are fit for purpose and that tenants are afforded all their rights and protections is essential. However this analysis also raises the wider issue of the **limited choice** that vulnerable tenants face, **which cannot be solved by tweaking rental legislation**. Tenants who are renting accommodation that is by nature unlawful, such as garages and unsafe boarding houses are only doing so because it is the only rental they can access or afford.
26. The Salvation Army is consistently dealing with concerning cases of clients who are renting dangerous and unsanitary accommodation, including garages and boarding houses. However our clients and our staff often struggle to know whether raising concerns will produce a fruitful outcome, given the fear that any action can result in termination of the tenancy and consequent homelessness. Some staff have also noted that the fear for families can also be related to wider implications, including CYFs finding out that their children are living in such accommodation and concerns that their children will be taken from them because of this.

⁷ <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-unlawful-residential-premises.pdf> at 2.

Many tenants are not even aware of their rights to take a case to the Tenancy Tribunal, particularly if there are experiencing poverty and high levels of stress.

27. As the RIS notes, it is difficult to quantify how many tenants may be living in residential premises which could be considered unlawful, but the number is likely to be high because of the number of situations to which the decision could apply, including illegally converted garages, unconsented dwellings and commercial properties. It notes that “The issue could be more prevalent in Auckland where pressure for rental housing is higher than in other areas.”⁸
28. **The Salvation Army submits that the concern raised in the RIS of a possible “disproportionate impact on vulnerable tenants” from this legislation would have not been such a risk if a sufficient safety net and supply of affordable housing was in existence.**
29. Our recent report, *Taking Stock: The demand for social housing in New Zealand* highlights the shortages in social housing in different areas around New Zealand. Its proposal to build an additional 2000 State and social housing units each year should be seen as the bare minimum necessary to ensure that New Zealand’s homelessness problems do not worsen.⁹ We also remain concerned at the number of our clients who continue to access our services who are working, unable to access social housing, and are consistently unable to afford or access private rentals that they can call a home.

SPECIFIC RESPONSES TO AMENDMENT

Part 1 Amendments relating to tenant liability and premises unlawful for residential use

30. **Clause 4 Section 2 amended (Interpretation)**

- c. The Salvation Army supports inserting of clause 4(2) with new definition of residential premises.
- d. The Salvation Army also supports the meaning of **unlawful residential premises** given to it by **section 78A(2)**.
- e. However the Salvation Army would also like to reiterate its concerns that whilst this section means that unlawful residential premises are now within the scope of the law and the reach of the Tenancy Tribunal, the existence of such premises requires a broader response such as those recommended above, especially if such cases do not make it to the Tenancy Tribunal. This is not unlikely, given that 90% of applications to the Tenancy Tribunal in the 2015/16 year were from landlords.¹⁰

31. **Clause 6 Section 45 amended (Landlord’s responsibilities)**

- f. The Salvation Army supports this amendment, however we believe it could be improved to make it more effective.

⁸ <http://www.mbie.govt.nz/publications-research/publications/housing-and-property/ris-unlawful-residential-premises.pdf> at 4.

⁹ <http://www.salvationarmy.org.nz/research-media/social-policy-and-parliamentary-unit/latest-report/TakingStock2017>

¹⁰ Tenancy Tribunal applications years ending 30 June 2012- June 2016 (Obtained under Official Information Act 1982 Request to the Ministry of Business, Innovation and Employment).

- g. This provision stipulates that *“The landlord may at any time, and must within 14 days of receiving a request from the tenant, provide to the tenant under a tenancy agreement the following information about insurance of the premises”*.
 - h. The Salvation Army submits that it would be more helpful for any insurance information **to be included in a tenancy agreement when it is first signed**, as is the case now with insulation and smoke alarm requirements. This would ensure that the tenant is fully aware of any liabilities and responsibilities in relation to an insurance policy from the beginning, rather than relying on a voluntarily disclosure by the landlord or request for information from the tenant.
32. **Clause 7 New sections 49A to 49E and cross-heading inserted (Responsibility for damage)**
- i. **New section 49B:**
 - i. The tenant's liability is limited in section 49B(3) to 'each incident'. The Salvation Army would like clarification on the implications if there is multiple damage. For example, if there a hole in wall in kitchen, a piece of carpet is burnt, and a window is smashed. They happen at different times and possibly are not part of the same event/situation.
 - ii. Is the tenant liable for each of these incidents that occur at different times? If they are, are they liable to pay *multiple* 4 weeks rent liability limits or applicable insurance excess? Or does a tenant just pay once for all of these 'separate incidents'?
 - iii. The Salvation Army would also like further clarification on the payment required by the tenant under section 49B(3).
 - iv. Is there a defined time frame this tenant liability has to be paid back? The Salvation Army submits there could be a provision included to ensure that this payment requirement is not unreasonable and does not cause hardship for tenants or their family.
 - j. **New sections 49C, 49D and 49E:** The Salvation Army supports these new sections.
33. **Clause 11 New section 56A inserted (Termination where premises are unlawful residential premises)**
- a. The Salvation Army supports this clause but reiterates its concerns relating to the lack of meaningful alternatives for vulnerable tenants in unlawful residential premises if such an order is made.
34. **Clause 18 New section 78A inserted (Orders of Tribunal relating to unlawful residential premises)**
- b. Section 78A(4)(ii) – The Salvation Army suggests that if the Tribunal has ruled some place as an unlawful residential premises, under this specific section it would be appropriate to have a subsection that more explicitly states that an order of **punitive damages** can be awarded where appropriate. This order should deter the specific landlord and others from housing people in unlawful residential premises, and **signifies clearly in the legislation that such activity is not acceptable.**

Part 2 Amendments relating to methamphetamine

35. **Clause 26: Section 45 amended (Landlord’s responsibilities), Clause 32: Section 66(H)(2)**

- k. The Salvation Army supports these new sections which prevent a landlord from renting out premises or a boarding house room if they are aware that tests have found methamphetamine contamination. The Salvation Army also supports new section 45(1AB) which declares contravention of the above as an **unlawful act**.
- l. The Salvation Army submits however that there the practical implications of this issue also need to be considered further. For example, knowledge of methamphetamine contamination relies on landlords **choosing** to pay for tests between tenancies, and properly carrying out decontamination procedures, which are expensive. This may hinder adequate and regular testing.
- m. The Salvation Army is also concerned that there are not adequate options for tenants who suspect that their property is (from a previous tenant) contaminated with methamphetamine, particularly given that it can be a serious health hazard for tenants and their families.
- n. The Salvation Army recommends that a provision is inserted that allows a tenant to request methamphetamine testing from a landlord if there are serious concerns of such contamination.
- o. The Salvation Army further recommends that **section 2(1) (Interpretation)** of the RTA is amended to include the definition of “work order” as including an order by the Tribunal requiring a party to carry out methamphetamine testing and consequent decontamination if levels are above a maximum acceptable level.

36. **Clause 30: New section 59B inserted (Termination in cases of methamphetamine contamination).**

- p. The Salvation Army supports this provision, but notes that there is no distinction in this provision between notice of termination for a tenant who is *not responsible* for methamphetamine contamination, and tenant who is responsible.
- q. Under section **59B(b)** a minimum notice provision of seven days is a comparably short notice period, especially if a tenant cannot find alternative accommodation. The Salvation Army suggests there could be a distinction made between tenants who are and not responsible for contamination, and more flexibility around notice period required for the latter.
- r. The Salvation Army further suggests that in the case of tests proving methamphetamine contamination under this section, there is a duty for the landlord to advise Police of such contamination.

37. **Clause 37: New section 138C inserted (Regulations in respect of methamphetamine)**

- s. The Salvation Army submits that it is essential that the regulations made in relation to maximum acceptable levels of methamphetamine for premises and standards of testing are informed and developed after an **adequate and robust public and stakeholder engagement process to ensure that an appropriate and reasonable threshold is set**.

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 basic 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.