

New Zealand Drug Foundation submission on the Residential Tenancies Amendment Bill (No 2)

“If the ‘meth contamination’ mess can fairly be described as a moral panic, it has broader implications than most moral panics. Not only is it creating havoc in the property investment market, it is prompting Housing New Zealand to do precisely the wrong thing with vulnerable people.”¹

Thank you for the opportunity to submit on the Residential Tenancies Amendment Bill (No 2). The New Zealand Drug Foundation believes this requires several changes before being passed into law in order to balance the social justice, human rights, health and financial implications on tenants and property owners. The Drug Foundation have previously submitted on the draft Standard *Testing and decontamination of methamphetamine-contaminated properties* and is disappointed that many of the issues raised have not been addressed and are included in the Amendment Bill.

We recommend the development of any legislation related to the implications of drug use takes into account the [National Drug Policy 2015-2020](#) and our newly released [Model drug law to 2020 and beyond](#). The rest of the submission outlines comments on specific clauses of the proposed legislation and encourages consideration of the human rights impact of the proposed changes. The impact of these changes on people’s lives is something that should not be underestimated.

Key concerns

The Drug Foundation maintains it was a mistake to develop a Standard applicable to ‘non-lab’ properties when there is no scientific proof of a clear risk of actual harm to occupants

The Standard and Amendment Bill continue to include properties in which there is no evidence that methamphetamine has been manufactured. Including properties where there has been methamphetamine use but not manufacture (non-labs) will have wide-ranging negative impacts on methamphetamine users and their families, as well as on third parties. We do not believe these are justified by the weight of available scientific evidence. As we outlined in our submission on the draft Standard:

... the health implications of living in a house in which methamphetamine has previously been smoked (but not manufactured) have not yet been properly assessed and are believed by some scientific experts to be very low - probably similar to the health risks of living in a house in which cannabis or tobacco have been previously smoked.

¹ Brown, Russell. (2016) [‘Poor Foundations – testing homes for meth gone awry’](#) in *Matters of Substance*. Vol 27, Issue No. 3. NZ Drug Foundation. p12.

The proposed amendments side-step the protections currently in place for tenants, yet they are not informed by clear science about actual and immediate health risks. The Amendment Bill will have a negative impact on the health and wellbeing of vulnerable people, including children and the elderly.

The Drug Foundation encourages the need for further evidence-based debate on issues relating to methamphetamine houses before implementing the Amendment Bill

Part 2 of the Amendment Bill as it currently stands, particularly the ability to evict people at short notice, does nothing to protect tenants. Rather it will have wide-ranging negative impacts on the human rights of tenants. It will also not address the concerns of property owners, which have been fed by an industry more interested in making money than reducing health risks.

Section 59B of the Amendment Bill is in direct contradiction to the values of the Government's own National Drug Policy which recognises housing among the protective social factors that limit drug harm

The short notice for termination would increase the trauma of being removed from a home for people who are already vulnerable, especially children. The impact of having to vacate a house can cause loss of employment, disruption of schooling for children, separation of family units, loss of important social networks, homelessness and other long term negative impacts on physical and mental health. These effects are likely to be exacerbated for those already struggling with addiction.

The tone of the Amendment Bill is strongly moralistic

The tone of the Amendment Bill implies the current tenant is always at fault. In fact this will often not be the case. If no baseline measurement has been taken before the tenant moves in, a tenant may be held responsible for any 'contamination' caused before the tenant lived at the property, which is manifestly unjust.

Where a baseline measurement has been taken that shows the 'contamination' was caused during the current tenancy, this will sometimes have been caused without the tenant's knowledge or consent in such a way that an eviction would once again be manifestly unjust. For example, the Drug Foundation is aware of an elderly woman who was evicted from her property and left homeless after her grandson smoked methamphetamine in her home without her knowledge.

Where the 'contamination' was caused by the tenant or happened with the consent of the tenant, we believe that it is still not appropriate to take the drastic action set out in the Amendment Bill. People take drugs for a range of reasons. Those struggling with their drug use are often particularly vulnerable and need support and care.

Given that there is currently no science to support the contention that a house is 'contaminated' through methamphetamine use, we can see no possible justification for evicting such a tenant at short notice where traces of methamphetamine are found.

The financial implications of the Amendment Bill must not be underestimated

The costs of moving residence (unnecessarily) and possibly having possessions destroyed is likely to run in to the tens of thousands in many cases, especially for families who are not well-off or under-insured. This figure could be even higher if the landlord passes any remediation costs onto the tenant and the resulting debt would leave a family with financial difficulties for many years.

The costs for landlords of testing and remediating non-lab properties would be considerable and the financial implications of the Amendment Bill have the potential to put many social and community housing associations out of business.

Summary of Drug Foundation recommendations

- ▾ The Standard and Amendment Bill should **not** be applied where there is no evidence methamphetamine has been manufactured i.e. non-lab homes.
- ▾ Further scientific research should be undertaken that focuses on identifying the actual health risks of exposure to methamphetamine in non-lab houses before confirming regulations with a set maximum acceptable level of methamphetamine.
- ▾ If there must be methamphetamine testing under **section 48** (clause 27) it must only take place if it meets one of the following requirements:
 - beginning of a tenancy to set a baseline result which is shared with tenants; or
 - at the request of a tenant; to set a baseline result; or
 - where there is reasonable cause to believe there is methamphetamine manufacture (not just use) following a property inspection.
- ▾ Change **section 59B** to remove the right to give notice to the tenant if traces of methamphetamine are found. This means removing all references to notice of termination from this section.
- ▾ If the landlord wishes to remediate the property, the tenant should have the right to request:
 - that remediation does not take place until after the end of the lease or
 - (if the tenant agrees that remediation takes place sooner) that the tenant has first right of refusal to rent the property following remediation.
- ▾ If right to terminate the lease is retained in the Amendment Bill, the period of notice needs to be extended to **at least** 30 days. There must also be specific reference in that section to the Right of Appeal where the tenant disagrees with the termination notice.
- ▾ Update **section 66UA** to ensure boarding house landlords do not unnecessarily evict tenants at short notice, particularly where they are living in non-contaminated rooms.

Specific concerns aligned to the sections of the Amendment Bill

Human rights and natural justice concerns about the short notice period for termination

The changes outlined in section *59B Termination in case of methamphetamine contamination* are those of greatest concern to the Drug Foundation due to the human rights implications. The Foundation notes that this section is added alongside the current section *59A Termination where breach renders premises uninhabitable*, which implies that any methamphetamine contamination above $1.5\mu\text{g}/100\text{cm}^2$ renders a property “uninhabitable”, despite the lack of scientific evidence to prove that this is the case (see comments above).

Without the requirement for a baseline test it is not possible to prove that the tenant was responsible for the contamination

59B(a) provides that if the tenant is not responsible for the methamphetamine contamination, the rent abates. However, the Amendment fails to set out a requirement for baseline testing of all tenanted properties. Without this it would not be possible to prove that the tenant was responsible for the contamination. This section should be explicit in setting out the requirement for a baseline

test before fault for the contamination can be assigned. Any baseline testing should be undertaken prior to a new tenancy unless requested by the tenant (see recommendation).

Any failure to set a baseline measurement and then to hold the tenant accountable for traces of methamphetamine found in the property goes against the principles of natural justice. The Drug Foundation is aware of many cases where tenants have been evicted from properties and charged for remediation where it is by no means clear that they in fact caused the ‘contamination’, or even that it was caused during their tenancy.

The notice period of 7 days is too short and not based on any evidence that this is required to protect either the tenant’s health or the interests of the landlord

Section 59B (b) provides that the landlord may give notice of termination, the period of notice to be not less than 7 days; and (c) the tenant may give notice of termination, the period of notice to be not less than 2 days.

The Drug Foundation is hugely concerned that it should be thought proper to evict a tenant with only 7 days’ notice. There is no evidence of an immediate health risk from being in a house where methamphetamine has been used but not manufactured. Further, in most cases there will be no evidence that the tenant was themselves at fault.

We believe the negative human rights implications of enacting this amendment far outweigh any possible ‘message’ that may be sent to tenants about the importance of not smoking methamphetamine in rental properties. We are particularly concerned about the implications for families, especially those with young children, of having to leave a property at such short notice. As mentioned above, the impact of having to vacate a house can cause loss of employment, disruption of schooling, separation of family units, loss of important social networks, homelessness and other long term negative impacts on physical and mental health.

These impacts must be weighed carefully against the knowledge that the science about the harm caused by methamphetamine traces is in its infancy. To our knowledge, the science cannot point to any health harms caused to any actual person who has lived in a property in which methamphetamine has previously been smoked.

The proposed amendment is also in direct contradiction to the National Drug Policy, which recognises housing among the protective social factors associated with reducing drug harm. As Dr Lucy Telfar Barnard of the Department of Public Health at Otago University School of Medicine explains²:

... the health and wellbeing risks of eviction from affordable housing are likely to be greater than the risks of living in a dwelling with residue from meth use. If it arose during the current occupancy, the best response is intervention to reduce the risks of drug-related harm, which is best delivered with a foundation of affordable housing. Eviction will magnify rather than reduce those risks.

Serious implications of landlord right of entry for methamphetamine testing

The proposed **section 48** sets out the landlord’s right of entry for methamphetamine testing purposes. Yet we note that the clause does not outline any requirements for instigating the test. The Drug Foundation challenges the appropriateness of these tests being undertaken mid-tenancy. As it currently stands, the Amendment Bill automatically puts the tenant on the back foot,

² Brown, Russell. (2016) [‘Poor Foundations – testing homes for meth gone awry’](#) in *Matters of Substance*. Vol 27, Issue No. 3. NZ Drug Foundation. p12.

particularly where there is no baseline result. This will inevitably lead to some tenants being unfairly targeted by their landlords.

By way of example, the Drug Foundation was recently contacted by the family of a woman whose abusive ex-partner had reported her to the landlord and requested a methamphetamine test of the property where she was living. He told her he had previously smoked at the property and a test would likely result in her being evicted. The landlord was about to carry out a test and she feared losing the house where she lived with her children.

As shown by this real-life story, if there are no protections in place for the tenant regarding mid-tenancy testing, then a methamphetamine test can be used to threaten already vulnerable people.

This example is by no means unusual. The Drug Foundation believes that to threaten eviction where methamphetamine traces are found in a property is untenable from a human rights point of view, regardless of the 'fault' of the tenant.

No scientific proof of actual health risks of living in non-lab properties

The definition of **methamphetamine 'contamination'** relies on regulations prescribing a maximum level of methamphetamine above which premises will be held to be methamphetamine contaminated for the purposes of the principal Act. We note the Standards Committee has set the maximum acceptable level of methamphetamine in an affected property at 1.5µg/100cm² after decontamination. This is despite there being no scientific consensus about the safe level of exposure to methamphetamine.³

The Ministry of Business, Innovation and Employment (MBIE) regulatory impact statement (RIS) states: "if methamphetamine has been smoked occasionally in a property, the contamination level and health risk is equivalent to that from tobacco or cannabis smoking."⁴ Yet, this fact has been ignored in the RIS conclusions, the Standard, and the Amendment Bill.

Furthermore, Dr Barnard explains: "Throwing people out on the streets is not only a terrible thing to do, it also stands in clear contradiction to New Zealand's National Drug Policy."

Greater risks for tenants living in boarding houses

Boarding houses are often used by the most vulnerable people in society, and the implications of eviction at short notice are likely to be even greater. Despite this the new amendments place these vulnerable people at significant risk of being evicted at short notice and having their lives further destabilised. This would disrupt the few social and economic supports that these people have in place as there would not be sufficient time for them to find somewhere else safe to live. If these people are struggling with their drug use this will place them at further risk and this is in direct contradiction to the values of the National Drug Policy.

Furthermore, **section 66UA** as it currently stands could see a tenant in a non-contaminated room being evicted at short notice despite there being no possible risk to their health. This clause could be used by landlords to clear the property of tenants for other reasons. We can see no justification for allowing this subsection to remain in the Amendment Bill.

³ Kim, Dr Nick D. (2016). *Background notes relating to the nature and health significance and persistence of trace of methamphetamine on indoor surfaces*. Massey University. (unpublished). p24.

⁴ Ministry of Business Innovation and Employment, (2016). *Regulatory impact statement Protection of tenants and landlords from the effects of methamphetamine contamination*, paragraph 11.

Closing comments

This submission has sought to bring the human rights impacts to the forefront of consideration of the proposed changes to the Residential Tenancies Act as it relates to methamphetamine traces found in rental properties. We implore you to better balance the social justice, human rights, health and financial implications on tenants and property owners and to undertake further research into the health risks of non-lab houses BEFORE changes are entrenched in New Zealand law.