

Regulatory Impact Statement

Social Housing Reform Programme

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (the Ministry). It provides an analysis of high level policy and implementation options to progress key aspects of the broad programme of Social Housing Reform sought by Government. The analysis is based on information and advice collected from a number of sources including the Housing Shareholders Advisory Group (HSAG), the External Consultants Group, data from Housing New Zealand Corporation (HNZC), and informal consultation with selected stakeholder groups.

Parameters for Development of Options

In April 2010, the HSAG report found that the current delivery model for social housing was not sustainable, and identified a number of challenges that must be met if all New Zealanders were to access affordable, sound quality housing that provides secure tenure appropriate to their needs. The report's findings and recommendations to address the increasing social and fiscal pressures on social housing were underpinned by a review of comparable international systems and a detailed analysis of the New Zealand social housing market.

In October 2010, Cabinet agreed to a direction of change that closely reflected the HSAG vision. This centred on shifting the current model of dominant reliance on HNZC for Social Housing provision to a more diverse market of providers. This RIS does not revisit this decision. Subsequent decisions by Cabinet or by Joint Social Housing Ministers (the Ministers of Finance, Social Development and Housing) to progress aspects of the reform programme also variously provide parameters around the range or nature of options that can be considered by officials.

Limitations on the Analysis Undertaken

Because the reforms are at an early stage, most of the decisions being sought from Cabinet at this time are to ensure that an appropriate legislative framework is in place to allow for a range of powers and functions to support a multiple provider market. Without decisions on the specific components of the final framework, the analysis that can be undertaken by officials is constrained. Joint Social Housing Ministers have asked officials to report back to them:

- * with detailed analysis of options and their implications.

* Withheld S (9) (2) (f) (iv)

Limits on Consultation

The Ministry has undertaken consultation with government agencies and targeted informal engagement with Community Housing¹ representatives on extending the Income Related Rent Subsidy (IRRS) to Community Housing providers. However,

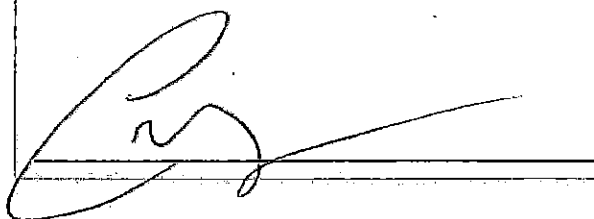
¹ A *Community Housing* provider is a non-government business with a core activity of providing social and/or affordable rental housing. Typically these providers will target specific client groups and areas of housing need. Core functions include tenancy, property and asset management. The Government may, through changes in policy settings and by Order-in-Council, widen or narrow provider eligibility at its discretion.

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given the Budget sensitivity of the options outlined in this paper, non-government stakeholders have not been consulted on the options.

The policy options in this paper will not impair private property rights, market competition, or the incentives on businesses to innovate and invest. The options do not override fundamental common law principles.

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Status quo and problem definition

1. The provision of social housing is dominated by the 69,000 state houses provided by Housing New Zealand Corporation (HNZC).
2. A range of problems exist with the current market for social housing in New Zealand including:
 - state housing is not well matched to need;
 - there is a lack of alternatives to state housing that offer security of tenure and affordability;
 - government financial assistance for housing is inequitable;
 - increasing demand is likely to create fiscal pressures in the future that maybe difficult to manage under the current state provider model.
3. The scale of some of these problems is illustrated in the following:
 - 9,720 properties (14% of the state housing portfolio) were either vacant (2,760 or 4.1%), under-utilised (4,108 or 6.1%), or overcrowded (2,852 or 4.2%) by two or more bedrooms as at 30 June 2012;
 - 4,717 tenants (7.4% of tenants) were paying market rent as at 28 February 2013;
 - Despite the number of vacant properties and market renters there were still 3,109 priority A and B applicants on the HNZC waiting list (February 2013).
4. This situation is symptomatic of many factors including:
 - the long run nature of housing and the subsequent inability to easily move the location or change the configuration of state housing stock to meet changes in the location or type of need for state houses;
 - historic constraints such as an expectation that a state house was for life, rather than only for the period of need, have made it difficult for HNZC to react to demographic trends and changing needs; and
 - uncertainty over the funding necessary to maintain social housing.
5. In response to these problems on 29 October 2012 Cabinet agreed (CAB Min (12) 38/3) to a future vision for the social housing market which would see a number of outcomes:
 - a shifted emphasis from a model whereby the Government provides social housing primarily through ownership, to one where it purchases services and enables greater consumer choice and diversity through a contestable funding pool;
 - a larger percentage of social housing delivered by non-government providers;
 - a less dominant role for HNZC, one where non-government social housing providers enter the market, and/or existing providers expand their operations, and HNZC makes more efficient use of capital;
 - a level playing field between HNZC and non-government providers, with:

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- needs assessment and allocation (to providers) functions handled by an independent agency (or agencies), and providing a more integrated approach to a household's need. This is viewed as a critical early step for the reforms to succeed;
- financial assistance (to tenants and providers) neutral towards provider ownership;
- provider eligibility for financial assistance subject to compliance with regulatory standards (e.g. quality and financial viability);
- provider compliance with regulatory standards that are enforced by an agency that is independent of any social housing provider; and
- the Government having greater visibility of the true cost of the provision of social housing, giving the ability to make informed decisions about the quantum of, and eligibility for, housing assistance.

Objectives of this phase of reform

6. Social Housing Reform aims to facilitate and support a more diverse range of providers of Social Housing, while increasing the efficiency, and effectiveness of HNZC. This reform process will occur in phases.
7. The key objectives for this phase of reform are to:
 - increase the equity, efficiency and fairness in the usage of state housing by improving the targeting of assistance.
 - support the development of a multiple provider market by:
 - ensuring a provider-neutral legislative framework;
 - extending equivalent financial support to approved Community Housing providers; and
 - give non-government Social Housing providers confidence about the independence of needs assessment and tenant allocation functions to promote their participation in the market.
8. These improvements are currently constrained by the regulatory and delivery settings which are geared towards a single state housing provider. At present HNZC is subject to different regulatory controls than are Community Housing providers and it receives more generous financial support from the Crown.
9. This phase of the reform seeks three changes to enable legislative and funding changes (to allow transfer of needs assessment and extension of the Income Related Rent Subsidy [IRRS], enabling a multi provider environment) that will place non-government providers on more of an equal footing with HNZC.
10. The current initiatives also propose a change to improve equity by extending the existing Reviewable Tenancies policy to current HNZC tenants.
11. This phase of the reform is constrained in two ways. While the reform establishes legislative authority for opening up social housing to non-government providers, the exact regulatory parameters will be determined following further work. Secondly, the mechanisms for developing a market (consideration of financial and other mechanisms to attract and grow social housing providers) are still being established.

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Regulatory Impact analysis

Issue 1: Establishing a legislative framework and regulatory controls for other providers of housing to high need tenants

Problem identification and current situation

12. Cabinet has decided to open up the social housing market to non-government providers.
13. The Government wants to set standards and expectations for providers of social housing who will be in receipt of government funding. These expectations must be clearly articulated and managed. Providers of social housing are expected to offer a different quality of service than that provided by a private landlord (for example, accommodating people who face multiple barriers to securing tenancies, providing supportive tenant management and being cognisant of affordability and tenant needs).
14. In a multiple provider market, tenants will want to be assured that they have secure tenure and will receive similar treatment to that received by HNZC tenants, otherwise they have few incentives to use other providers.
15. A successful multiple provider market that delivers to the broader social housing objectives will require the Crown's expectations to be clearly articulated and managed. This means that non-government providers must be subject to similar regulatory controls as HNZC.
16. A regulatory framework is needed to approve, monitor performance, and enforce the provision of social housing by non-government providers.
17. Although there are multiple options for creating an appropriate regulatory framework for social housing providers, all or most of these options would require legislative change to allow government regulation of non-government social housing.

Objectives of regulation

18. The objectives of regulation are to:
 - provide a legal framework that enables neutrality between State and non-government social housing providers;
 - provide certainty to tenants that they will receive at least the same service level as that provided by HNZC;
 - provide confidence to community groups and potential investors about the direction of change and that mechanisms will be in place for them to participate in the delivery of social housing;
 - provide certainty to the Crown that its broad social housing objectives are able to be met.

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Options analysis

19. It is proposed that the Housing Corporation Act 1974 and the Housing Restructuring and Tenancy Matters Act 1992 be amended to enable the processes described below. In addition, the Social Security Act 1964 may need to be amended. The new processes are as follows:
- a process for approving entities (other than HNZC) as approved Community Housing providers;
 - the setting of performance standards for social housing;
 - detaching assessment for social housing eligibility, IRR administration and associated functions from HNZC;
 - extending availability of the IRRS for high needs tenants to approved Community Housing providers; and
20. Once this legislation has been progressed, analysis of multiple options that could meet the objectives will be undertaken.

Impact Assessment

21. Once the enabling legislation is in place, impact assessment will be undertaken as part of the regulation-making process.
22. Establishment of the legislative and regulatory framework will facilitate the development of a multiple provider market, with a range of benefits and costs for tenants and prospective tenants, providers, investors and the Government. It is a key step in progressing the overarching objectives of the Social Housing Reform Programme.

Regulatory impact analysis

Issue 2: Providing for neutrality of financial assistance (through extending the IRRS to approved providers)

Problem identification and current situation

23. Equality of access to government funding is an essential component of a successful multiple provider market.
24. Currently only HNZC is eligible to access and receive an IRRS for high need (A and B category) tenants. This is typically more generous than the Accommodation Supplement (which is paid to some tenants in private market rental housing and some home owners).
25. A number of associated functions must also be in place to support equality of access to the IRR in a multiple provide market environment. These potentially include:
- a needs assessment function performed by an agency independent of all providers (likely to be Ministry of Social Development),
 - an allocation function that is independent of all providers;
 - a regulator function that determines provider eligibility and/or assesses provider compliance with quality and other standards required for receipt of government subsidies; and

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- powers of information gathering by the Crown agency assigned to perform needs assessment and associated functions.
26. Although there are multiple options for extending financial assistance to non-government social housing providers, all or most of these options would require legislative change both for the actual payment of financial assistance, and to establish the regulatory frameworks to ensure that payments are managed and accounted for appropriately.
27. Legislative change is also considered necessary to allow the appropriate Crown agency to collect and assess information required to assess IRR levels.

Objectives of extending availability of the IRRS

28. The objectives of extending the availability of the IRRS to approved providers of Community Housing are to:
- provide an affordable rent for the tenant;
 - improve security of tenure for the duration of need, in an appropriate property, relative to the private market;
 - improve provider financial viability by ensuring that the provider receives a market rent (in total) for the tenancy; and
 - enhance market participation, supporting growth and diversity in the sector.

Options analysis

29. There are a number of scenarios for the extension of the IRRS to approved providers. Roll-out could include continuation of the current entitlement basis, or capping the number of tenancies to which the IRRS may be applied.
30. Given the importance of the subsidy to non-government providers in particular, the status quo (see paragraph 24) was not considered to be an option.
31. The Housing Corporation Act 1974 and the Housing Restructuring and Tenancy Matters Act 1992 will need to be amended to enable the following things:
- payment of IRRS to non-government providers;
 - extending powers of investigation to allow the verification of tenants circumstances and eligibility for IRR; and
 - powers to mount actions and recover debts.
32. The options for roll-out have not been fully scoped. In coming months, analysis of options will be undertaken to identify the best mechanism/s to extend financial assistance to approved Community Housing providers, in a manner that is consistent with achievement of Reform objectives. Full options analysis, including identification of costs and benefits, will be provided to Joint Social Housing Ministers at the time decisions are sought.

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Impact Assessment

33. Extension of the IRRS to approved providers will not impose additional compliance requirements of social housing tenants, who are already required to provide this information to HNZC.
34. Extension of the IRRS will impose additional compliance costs on Community Housing providers who choose to participate in the multiple provider market as they will need to demonstrate that they meet government regulatory requirements for accessing the IRRS. These costs will be identified and scoped at the time that regulatory requirements for social housing providers receiving IRRS subsidies are determined.
35. Officials will report to Joint Social Housing Ministers ^{*} on options for a staged roll-out of the IRRS, its end state and fiscal and Budget implication ^{*}
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36. Once the enabling legislation is in place, detailed impact assessment will be undertaken as part of the regulation-making process.
37. However, as providing equality of access to government funding will facilitate the development of a multiple provider market, there may be a range of benefits and costs for tenants and prospective tenants, providers, investors and the Government. It is likely to contribute significantly to the overarching objectives of the Social Housing Reform Programme.

Regulatory impact analysis Issue 3: Extending the Reviewable Tenancy policy

Problem identification and current situation

38. HNZC tenants tend to be reluctant to move from state housing to the private sector, including in situations where properties do not completely suit their needs or there are other candidates with greater needs.
39. Current policy does not generally provide a mechanism to encourage people to shift between state houses based on their specific needs or to transition to private housing providers. This contributes to the mismatch of state housing to tenants.
40. For example, a large number of tenants are paying market rent for their houses – suggesting they do not require financial assistance to meet their housing costs. In 2009, 2,711 properties had under-used bedrooms, suggesting that the tenants could be satisfied in a smaller dwelling. Conversely, in 2009, overcrowding was a problem in 4 percent of HNZC properties. This suggests that a number of tenants should be encouraged to move to a larger dwelling.
41. Cabinet agreed to a framework to consider and implement reviewable tenancies in 2011. It subsequently agreed that reviewable tenancies be introduced for new HNZC tenants who became tenants after 1 July 2011, with tenants eligible to be reviewed at least every three years or earlier if their circumstances change.
42. In addition to limiting its effectiveness, the introduction of reviewable tenancies only for those who entered HNZC tenancies on or after 1 July 2011 creates a dual system where those with similar financial and housing need are treated differently.

Objectives of expanding reviewable tenancies

43. The objectives of expanding reviewable tenancies are to:

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- increase the number of high priority applicants the Corporation can house;
- shift tenants' expectations from a state house for life to duration of need;
- reduce the number of tenants under-occupying state housing whose need could be met by a smaller state house; and
- reduce the number of tenants occupying state housing who could access suitable alternatives.

Options analysis

44. Two options were identified in considering extension of reviewable tenancies:
- Option 1: Status Quo. Currently only HNZN tenants who became tenants on or after 1 July 2011 have reviewable tenancies.
 - Option 2: Extension of policy. Extend reviewable tenancies to cover all HNZN tenants under the framework agreed by 2011 by Cabinet.
45. As the framework for establishing reviewable tenancies is already established, and given the reviewable tenancies policy has been partially implemented, no other policy options have been considered for tenants who entered HNZN before 1 July 2011.

Impact Assessment

46. As at 31 January 2013, HNZN had 63,867 total tenancies of which 54,520 were identified as having been entered into prior to 1 July 2011. About 80 percent of these are likely to qualify for desktop review.²
47. Where tenants are assessed as not requiring a state house, customised support for each household will be provided through individualised Household Action Plans and product assistance. This assistance will identify housing options for each household and facilitate a transition to suitable alternative accommodation.
48. There will be strong social benefits as a result of the proposal. The exit of less needy tenants will mean that government is better able to accommodate some of the over 3,000 people with classified as high need (A and B categories) on the HNZN waiting list.
49. Implementing this policy will have operational implications and costs for HNZN which will undertake desktop reviews to assess current status and need. HNZN estimates that it will incur additional costs from IT system updates, staff training and communications.
50. It is likely that the IRRS, the Accommodation Supplement and the Temporary Additional Support will be impacted collectively by the flow of non-eligible tenants out of state housing and into the private rental sector, and the flow of high needs people moving from the private rental market into the state houses previously occupied. It is anticipated that this flow will result in a net increase in the IRR Subsidy as new state house tenants are assumed to have lower incomes than those exiting state housing.

Conclusion

² Tenants will be excluded from a full needs assessment if the desktop review reveals they cannot sustain a move or a private tenancy, e.g. those with disabilities, physically unable to move, or with clear financial needs. This group is estimated at about 20 percent of tenants.

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51. It is proposed that reviewable tenancies be extended to all HNZN tenants. The implementation of reviewable tenancies for those in state houses will improve efficiency and effectiveness of state house provision, increasing the number of houses available to people most in need.

Consultation

52. The Ministry leads a cross-agency working group involving the Ministry of Social Development, the Treasury and HNZN. It has worked in close consultation with these agencies to develop the proposals outlined in this paper.
53. The following agencies have been consulted in the development of this Cabinet paper: Te Puni Kōkiri, Department of Internal Affairs, Ministry of Health, Ministry of Women's Affairs, Ministry of Pacific Island Affairs, Ministry of Justice, State Services Commission and the Office of the Privacy Commissioner. The Department of Prime Minister and Cabinet has been informed.
54. During the initial phase of policy development the Ministry consulted with the four independent members of a Ministerial Advisory Panel, establishment of which was approved by Cabinet in May 2011 (CAB Min (11) 24/16 refers). There was also initial consultation on elements of the proposal to extend the IRRS with a small number of Community Housing provider representatives. The Budget Sensitive nature of the proposals has precluded further consultation with external stakeholders at this stage. The Cabinet paper proposes that further work be undertaken on the policy details and operational implications. Officials will report back to Joint Social Housing Ministers in August 2013. Stakeholder engagement will be part of this work.

Implementation

55. A Social Housing Reform Bill is necessary to establish the high level framework for a future social housing market that meets government's objectives. The Bill will make the necessary changes to the Housing Corporation Act 1984, the Housing Restructuring and Tenancy Matters Act 1992 and any other relevant Acts.
56. Provision for legislative change to extend reviewable tenancies to clients whose tenancies with HNZN commenced before 1 July 2011 will be through the changes (currently under way) to the Housing Restructuring and Tenancy Matters Act 1992 that are necessary to implement reviewable tenancies for tenants on or after 1 July 2011.
57. The legislation change will also enable the future development of regulations to facilitate a multiple provider market, including developing a process to approve providers, setting performance standards, ensuring providers have certain powers to gather information and discriminate, establishing offences and penalties, and establishing a dispute resolution process. However, the actual development of regulations is outside the scope of the Cabinet paper.
58. Officials will work together to consider the operational aspects of the transfer of assessment and associated functions. This will include identifying how implementation of the transfer can be managed in relation to the timetable for implementing the welfare reform changes. Officials will report back to Joint Social Housing Ministers * The housing needs assessment function is expected to shift from HNZN to MSD on 14 April 2014.

* Withheld S (9) (2) (f) (iv)

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Monitoring, evaluation and review

59. The detail of monitoring, evaluation and review will be established once Cabinet has taken decisions on the final shape of the regulatory framework.
60. A framework for monitoring implementation of the programme is being developed by the Ministry of Business, Innovation and Employment. The framework will consider ways to monitor and evaluate key groups including Māori, Pacific peoples, sole parent families and people with disabilities.

