

Regulatory Impact Statement

Legislation to support the Social Housing Reform Programme

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Social Development (MSD), in consultation with the Ministry of Business, Innovation and Employment (MBIE). If legislative change to the Housing Restructuring and Tenancy Matters Act (HRTMA) is agreed to, MBIE will issue drafting instructions to the Parliamentary Counsel Office.

This Regulatory Impact Statement provides an analysis of options to provide MSD with greater flexibility in its purchasing role for social housing. The analysis compares the constraints of the current legislative framework in the HRTMA (which obliges MSD to reimburse social housing providers the difference between market rent and income-related rents for properties let to tenants for social housing purposes (the income related rent subsidy)) to the benefits of a framework which provides a delegated mechanism (being a Ministerial direction) by which MSD can be authorised to negotiate and enter into a wider range of contracting arrangements with social housing providers.

MSD’s external expert group (the Housing Assistance Reform Feedback Group) is supportive of the proposed changes. Under MSD’s preferred option for legislative change, housing providers would not be compelled to enter into contracts that MSD is authorised by Ministerial direction to negotiate with them. That is, community housing providers will have the freedom to scrutinise and agree commercial terms with MSD. We consider such flexibility to be essential for MSD to be able to explore innovative approaches to social housing provision with community housing providers, take steps to stimulate the supply of social housing places and meet broader goals to have an additional 3000 IRRS places in the next three years. HNZC has also been consulted on these proposals. HNZC is aware that the HRTMA already contains the statutory power in section 7 to require HNZC to enter into contracts for provision of housing and related services. HNZC has reservations about how this section 7 power might be exercised in the future, but is otherwise supportive of MSD having the ability to enter into a wider range of contracting arrangements with social housing providers.

The content of the first Ministerial direction/s has not been determined yet. Possible new contract designs have been identified as part of the work on the Auckland Registrations of Interest process and the transactions process. These new designs might involve longer contracts, more flexible pricing and different distributions of risk (eg with the Crown guaranteeing to provide a tenant and take the vacancy risk). The implications of the MSD’s preferred legislative option are dependent on, as yet unspecified and unquantified changes, that Ministerial directions might make to the current income related rent subsidy. This Regulatory Impact Statement recommends that proposals on the content of the initial Ministerial direction be considered by Cabinet. In accordance with standard practice regarding Ministerial directions, the content of subsequent Ministerial directions may not be considered by Cabinet.

Anna Butler, General Manager Housing, Income Support and Employment

Signature: _____

Date: _____

Executive summary

- 1 The Social Housing Reform Programme (SHRP) intends to improve the lives of vulnerable New Zealanders by getting them into housing which meets their needs for the duration of that need. Reform under the SHRP to date has included:
 - a. transferring the needs assessment for social housing and related functions to MSD, establishing an independent needs assessor and purchasing role
 - b. extending the income related rent subsidy (IRRS) so it is available for new tenants referred to community housing providers (CHPs).
- 2 The next steps for the SHRP include growing community housing providers through the Ministry of Social Development's (MSD's) purchasing activities and transfers of Housing New Zealand Corporation's assets. Legislative change through a Government Bill is required to support and enable these activities. This Regulatory Impact Statement focuses on the legislative change needed to the Housing Restructuring and Tenancy Matters Act (HRTMA) to support MSD's role as purchaser of social housing places.
- 3 MSD uses IRRS funding to purchase IRRS places from HNZC and CHPs. The HRTMA specifies that social housing tenants pay income related rent (IRR). The difference between IRR and the market rent for the property let to the tenant is the income related rent subsidy (IRRS) paid to the provider by MSD for that tenant. The HRTMA provides no other mechanism by which MSD can purchase housing places and services from HNZC and CHPs. For example, MSD cannot calculate the subsidy in a different way by paying more or less than the difference between market rent and the income related rent.
- 4 In December 2014, Cabinet agreed in principle to introduce more flexible social housing purchasing approaches by amending the HRTMA to enable alternatives to the way the income related rent subsidy is paid.
- 5 This Regulatory Impact Statement provides an analysis of options to provide MSD with greater flexibility in its purchasing role for social housing. The analysis compares the constraints of the current HRTMA framework to the benefits of a framework which includes delegated Ministerial direction powers.
- 6 MSD's preferred option is to amend the IRRS provisions in the HRTMA so that the current IRRS reimbursement setting applies unless contracts are concluded in accordance with guidelines set by Ministerial direction. The implications of the MSD's preferred legislative option are dependent on, as yet unspecified and unquantified changes, that Ministerial directions might make to the current income related rent subsidy. Advice concerning the impacts of a particular contractual approach will need to be provided to Ministers if and when the Ministerial direction power is sought to be used. This Regulatory Impact Statement includes examples of the situations that might arise but until there is an opportunity to test specific contracting situations with the social housing market during the Auckland Registration of Interests process and the transactions process what contractual terms the Ministerial directions might need to address will not be known.

Introduction: the Social Housing Reform Programme

Status quo and problem definition

- 7 The Social Housing Reform Programme (SHRP) intends to improve the lives of vulnerable New Zealanders by getting them into housing which meets their needs for the duration of that need.
- 8 The SHRP is designed to address the challenges facing New Zealand's social housing programme. At present about 3650 people have been assessed as having high needs and are waiting to be assigned to social housing and an additional 1300 Housing New Zealand Corporation (HNZC) tenants have applied for a transfer to housing that better meets their needs. Around one third of HNZC properties are in the wrong place or in the wrong size to meet this need. For example, one bedroom accommodation makes up 25 percent of demand but only 9 percent of HNZC supply.
- 9 Tenants' needs are complex. Around a third of HNZC households are one parent families with children, and around 20 percent are over 65 years of age. In order to be eligible for social housing, tenants must have a case for assistance in addition to a low income. Community housing providers, in addition to HNZC, can offer new and innovative ways of working with these tenants and responding to their complex needs.
- 10 In December 2014, Cabinet agreed a set of objectives for the SHRP. They are to:
 - a. ensure that people who need housing support can access it and receive social services that meet their needs;
 - b. ensure that social housing is of the right size and configuration, and in the right areas, for those households which need it;
 - c. help social housing tenants to independence, as appropriate;
 - d. encourage and develop a more diverse ownership of social housing, with more innovation and responsiveness to tenants and communities; and
 - e. help increase the supply of affordable housing, especially in Auckland.
- 11 A wide range of activities are underway to respond to the challenges outlined above, and meet the objectives for the SHRP. These involve a number of Government agencies and include:
 - a. establishing the Ministry of Social Development (MSD) as the single purchaser of social housing places independent of any housing provider, so that access to social housing is no longer determined by who owns the house;
 - b. growing Community Housing Providers (CHPs) through MSD's contracting and transfers of Housing New Zealand Corporation (HNZC) stock;
 - c. an expanded role for CHPs because they are able to respond to the particular needs of tenants;
 - d. making the Income Related Rent Subsidy (IRRS) available to non-government CHPs to help those providers to grow;
 - e. the introduction of tenancy reviews to ensure that assistance is provided to those who need it for the duration of their need;
 - f. an ongoing programme of sales, reinvestment, and redevelopment by HNZC as part of its business as usual asset management; and

- g. housing more families by making better use of HNZC land, by opening it up for redevelopment.
- 12 Legislative change is required to support and enable these activities. A bill is proposed which will:
- a. provide the MSD with greater flexibility in its purchasing role for social housing;
 - b. transfer HNZC's policy function to the Ministry of Business, Innovation and Employment (MBIE); and
- 13 This Regulatory Impact Analysis outlines the case for the changes referred to in item 12a, with reference to the agreed objectives and activities that make up the SHRP. For clarity, the analysis does not revisit the Cabinet decisions outlined above, rather it focuses on the need for legislation to enable the activities listed in paragraph 11.

Providing MSD with greater flexibility in the use of the Income Related Rent Subsidy (IRRS) for purchasing social housing places

Status quo

- 14 Reform under the Social Housing Reform Programme to date has included:
 - a. transferring the needs assessment for social housing and related functions to MSD, establishing an independent needs assessor and a purchasing role
 - b. extending the IRRS so it is available for new tenants referred to CHPs.
- 15 MSD and HNZN successfully completed the transfer in April 2014 and MSD is now the single purchaser of IRRS places for people with serious housing needs.
- 16 These reforms are a critical part of a transition from a model with a government monopoly that focused on owning and providing *state houses* to a mixed model of social housing providers that now focuses on providing *social housing places* with a growing role for CHPs.
- 17 As purchaser, MSD effectively sets the conditions for how the social housing market operates. A key indicator of success is the quality of the match between demand for and supply of social housing places:
 - a. for individuals: people are matched to places that meet their needs;
 - b. across New Zealand: places are available where and of the type needed.
- 18 The IRRS is a key policy lever for MSD in its role as purchaser of these social housing places. This funding enables MSD to purchase IRSS places from HNZN and CHPs.
- 19 The Housing Restructuring and Tenancy Matters Act 1992 (HRTMA) specifies that social housing tenants pay an income related rent (IRR).¹ The difference between IRR and the market rent² for the property let to the tenant is the IRRS paid to the provider by MSD for that tenant.³ That is, IRRS equals market rent less IRR that the tenant pays.
- 20 MSD's existing contracts for purchasing social housing places with CHPs and HNZN feature:
 - a. 90 day termination rights for either party;
 - b. No obligations on the provider to provide any properties for tenancy, and no obligations on MSD to provide tenancies, the machinery of the contract applies once a tenant is offered by MSD and is placed by the provider (ie on a "spot" basis); and
 - c. MSD paying the legislatively-defined IRRS (market rent less IRR) while that tenant remains placed, and eligible for social housing.

¹ The tenant's rent payment starts at 25 per cent of the household's assessable income and increases at 50 cents in the dollar for any additional income above a given income threshold.

² The market rent is defined as the rent for the time being determined by HNZN or the registered community housing provider or Tenancy Tribunal (under the Residential Tenancies Act 1986) as the market rent for that housing.

³ Section 85 of the HRTMA sets out the IRRS reimbursement model for HNZN and section 98 sets out the IRRS reimbursement model for CHPs.

Problem Definition

- 21 The way that social housing is purchased and contracted strongly influences incentives on providers to enter the social housing market, to develop properties and to offer places to MSD's clients.
- 22 MSD's social housing purchaser role is constrained in the short-term. Its ability to make substantive changes to the mix of tenancies that it purchases is limited by current policy settings, including the IRRS settings in the HRTMA and by the limited supply of social and affordable housing in some areas.
- 23 The HRTMA provides no other mechanism by which MSD can purchase housing places and services from HNZA and CHPs. For example, MSD cannot calculate the subsidy in a different way, by paying more or less than the difference between market rent and the income related rent.
- 24 This means that MSD is not able to negotiate prices with providers to cover situations such as:
 - a. tenants' need resulting in higher or lower tenancy management costs;
 - b. payment for vacant properties to guarantee a provider's income stream;
 - c. offers for long term, fixed price tenancies at prices that diverge from market rent but benefit the Crown, the provider and the tenant (e.g. long-term contracts which reduce uncertainty for all parties);
 - d. a lower payment for places where there is little on-going demand; and
 - e. generally, contracting in ways that respond to market signals and allow for the development of a responsive and efficient social housing market.
- 25 In December 2014, Cabinet agreed a direction for reform of the social housing sector which creates a fair, effective and efficient social housing market. The agreed direction includes growing CHPs through MSD's purchasing activities and transfers of HNZA's assets (Cab Min (14) 39/22 refers).
- 26 To be able to perform its new social housing purchasing role effectively in this new social housing market and drive changes in the social housing market, MSD needs:
 - a. access to a wider range of purchasing options than is currently possible under the HRTMA so as to be able to tailor its contracts:
 - i. to meet demand for social housing;
 - ii. to encourage a more diverse range of providers to enter the social housing market and to enable providers to play a full part in increasing and improving social housing.

Previous Cabinet consideration

- 27 In December 2014, Cabinet agreed in principle that the HRTMA be amended to enable more flexible social housing purchasing approaches by:
 - a. repealing the obligation on the social housing agency [MSD] to reimburse social housing providers the difference between market rent and income related rent; and
 - b. empowering the parties to enter into agreements that are based on:
 - i. payment of the difference between market rent and income related rent as consideration for the provision of social housing services [as is the case now]; and/or
 - ii. different kinds of contracting arrangements that fit within guidelines set by Ministerial Direction (CAB Min (14) 39/23 refers).

- 28 This *in principle* decision was subject to a March 2015 report back to Cabinet seeking final agreement to these proposed amendments, including the type of purchasing agreements that might be authorised by Ministerial Direction.
- 29 This Regulatory Impact Statement forms part of that March 2015 report back and has been prepared in support of the proposals seeking final agreement to amend the HRTMA (as outlined in the accompanying Cabinet paper for legislation to enable the Social Housing Reform Programme).

Objectives

- 30 As noted previously, the objectives of the Social Housing Reform Programme include:
- a. ensuring that social housing is of the right size and configuration, and in the right areas for those households which need it; and
 - b. encouraging and developing a more diverse ownership of social housing, with more innovation and responsiveness to tenants and communities.
- 31 Contracting arrangements (how social housing places are purchased by MSD) is a key lever available to MSD to influence change in the social housing market and meet these objectives. The way that social housing is purchased and contracted strongly influences incentives on providers (e.g. to enter the market, to develop properties, and to offer places to MSD's clients).
- 32 The objective for this phase of the reform is to improve MSD's ability to negotiate with social housing providers on purchasing arrangements.
- 33 We anticipate that allowing MSD to enter into new contracting arrangements will contribute to these outcomes:
- a. MSD to commit to purchasing social housing places from providers into the future (long-term contracts);
 - b. social housing providers to re-develop properties to promote better social housing outcomes for New Zealanders;
 - c. MSD to provide for sufficient on-going supply of social housing into the future in identified areas (including the goal of having an additional 3000 IRRS places in the next three years); and
 - d. the parties to enter into agreements that, generally, promote efficient and innovative outcomes that are likely to improve housing for New Zealanders who require affordable or social housing and reflect Government policy settings in relation to those outcomes.

Options and impact analysis

- 34 We have considered three options:
- a. Option 1: Status quo. That is, continue the current setting in the HRTMA on payment of IRRS to social housing providers where the amount paid by MSD can only equal market rent less than IRR that the tenant pays;
 - b. Option 2: remove the IRRS payment from the HRTMA altogether. That is, make payment of the IRRS a matter of government agency discretion rather than a matter that is dealt with legislation; and
 - c. Option 3: retain the mechanics of the IRRS payment in the HRTMA but allow for alternatives in the way IRRS is paid to be set by Ministerial direction. Under this option, the current IRRS reimbursement setting applies (MSD reimburses social housing providers the difference between market rent and income related rent) unless contracts are concluded in accordance with guidelines set by Ministerial direction.

Option 1: continue the current legislative settings on payment of IRRS

Impact analysis: option 1

Impact on tenants

- 35 There is no immediate impact on tenants as a result of selecting option one. However, in the long-term, maintaining the status quo under option one would negatively impact on MSD's ability to meet the objectives of the SHRP as it would not be able to operate as a true purchaser when negotiating with providers.

Impact on CHPs

- 36 Under option 1 there would be continued certainty to CHPs on how IRRS is to be paid. However, indications from the Auckland Registrations of Interest process is that community housing providers are interested in exploring longer term contracts that are priced in a different way to the current reimbursement setting. Selecting option one would preclude this.

Impact on HNZC

- 37 There would be no immediate impact on HNZC as a result of selecting option one. The IRRS payment in a key income stream for HNZC if option one is selected this income stream remains unchanged. However, in the long-term we consider HNZC may wish to be able to enter into other sorts of contracting arrangements with MSD to assist its asset management strategy. Selecting option one would preclude this.

Impact on MSD

- 38 Selecting option 1 would mean that MSD is constrained in its ability to:
- a. negotiate with social housing providers as part of the Auckland Registrations of Interest process and as part of the transactions process;
 - b. explore innovative approaches to social housing provision; and
 - c. take steps to stimulate the supply of social housing places and meet broader goals to have an additional 3000 IRRS places in the next three years.

Option 2: remove all legislative settings on payment of IRRS

Impact analysis: option 2

Impact on tenants

- 39 Selecting option 2 would create uncertainties for tenants. Option 2 would give MSD considerable flexibility in its ability to negotiate and conclude purchasing contracts with social housing providers, the uncertain environment this would create could incentive providers to run all their tenancies on short time-frames.

Impact on CHPs

- 40 Selecting option 2 would create considerable uncertainties for CHPs in what is still an embryonic social housing market. Anecdotal evidence strongly suggests that providers prefer certainty (at least in the short to medium term) regarding the nature of the IRRS payment model so as to be able to manage their business efficiently.

Impact on HNZC

- 41 Selecting option 2 would create considerable uncertainty for HCNZ. The IRRS payment from MSD is a key income stream for HNZC. HNZC needs short to medium certainty regarding this payment to manage its business efficiently.

Impact on MSD

- 42 Selecting option 2 would give MSD considerable flexibility in its ability to negotiate with providers but would make it difficult for MSD to forecast and manage social housing places within the IRRS cap.

Option 3: Retain the mechanics of the IRRS payment in the HRTMA but allow for Ministerial directions to be issued under the HRTMA which set guidelines for alternative contracting arrangements (*preferred approach*)

Further explanation of the Ministerial direction mechanism

- 43 We consider that attempting to enshrine all the specific changes that might be needed in the HRTMA to enable MSD to negotiate with providers would defeat the need for more flexible contracting responses to changing circumstances in social housing and frustrate the objectives of the SHRP.
- 44 We have selected the ministerial direction power as the preferred mechanism for allowing MSD to have more flexible contracting responses to changing circumstances in social housing because the HRTMA already allows joint Ministers to issue Ministerial directions to MSD in other situations. Section 102 provides that joint Ministers⁴ can issue directions on the terms and conditions on which the IRRS is made available to community housing providers, the eligibility criteria for social housing and reviewing eligibility for social housing.
- 45 Under option 3, the Minister responsible for MSD as the social housing agency (currently the Minister for Social Housing) in consultation with joint Ministers may also issue guidelines for the purposes of authorising MSD to enter into contracting agreements with social housing providers for the provision of social housing and related services.
- 36 Most of the current Ministerial direction powers in the HRTMA are subject to a consultation requirement. Relevant Ministers must consult with the social housing agency, the regulatory authority and any social housing provider that, in the Minister's opinion, will be materially affected by the direction. Given the commercially sensitive nature of the Ministerial direction powers being considered here, we do not consider a separate consultation requirement to be necessary. The negotiation of the contracts themselves will involve close consultation with providers.
- 46 If Ministerial directions are issued they will be gazetted and presented in the House.

Impact analysis: option three

Impact on tenants

- 47 There would be no negative impact on tenants as a result of selecting option 3. The Auckland Registration of Interest process is intended to increase the number of IRRS places in Auckland and the Crown will ensure that transaction processes are designed to minimise impact on current tenants as far as possible. In the medium term we would expect selecting option 3 to benefit tenants if, as anticipated, alternative contracting arrangements with providers involve the redevelopment of housing stock and the purchase of housing related services to cover situations of tenants' need.
- 48 The focus of option 3 is on the IRRS reimbursement mechanism and what social housing services can be purchased within the IRRS appropriation. The amount tenants pay would be unaffected by the option 3 as there will be no change to the way IRR is calculated. IRR would be reviewed and updated as currently prescribed in the HRTMA.

⁴ Defined as the Minister of Finance, the Minister of Housing and the Minister for Social Development, and if applicable any other Minister responsible for the social housing agency (MSD).

- 49 There is also no change proposed to how market rent is calculated under the HRTMA. Market rent for the particular property that the tenant rents would continue to be the maximum payment by the tenant for the property. This approach could create a slight anomaly in situations where:
- a. the average rate that MSD has negotiated with the provider (e.g. under a bulk purchase contract) ends up being lower than the market rent; and
 - b. the payments that the tenant make get closer to the market rent.
- 50 There is a possible financial incentive for the provider to retain the tenant in this situation. However, there are reviewable tenancy and Housing Support Package products in place to support tenants to transition to independence.

Impact on CHPs

- 51 Selecting option 3 would have a positive impact on CHPs. Indications from the Auckland Registrations of Interest process is that CHPs are interested in exploring longer term contracts that are priced in a different way. Selecting option 3 would enable MSD to explore these and other possible contractual arrangements with providers as part of a transparent commercial transactions process.
- 52 Creating flexibility in the amount paid for IRRS places could result in providers seeking justification for prices paid. To aid in transparency, it is important that any proposed Ministerial Direction/s (or other legislative amendment) take account of a framework setting out the parameters within which prices can be negotiated. This framework could also clarify the rationale for varying payments, which services are paid for within IRRS, and those that require additional funding. There would be a clear separation made between property management services and additional client based services.
- 53 Providers may be concerned that any divergence from the market rent benchmark will reduce their income stream and so choose not to contract on different terms with MSD. This risk could be mitigated by longer term contracting arrangements that give providers greater certainty of income in the long term. There will also be opportunities for providers to increase their income stream by providing additional services to clients

Impact on HCNZ

- 54 Selecting option 3 would not automatically impact HNZC. Option 3 contemplates that the current requirement for MSD to reimburse social housing providers the difference between income related rent and market rent will remain in place unless contracts are concluded in accordance with guidelines set by Ministerial direction.
- 55 If option 3 is agreed to, we anticipate that the first Ministerial direction/s would contain guidelines to enable long-term contracts with CHPs as part of the Auckland ROI process and the transactions process (for further discussion in implementation section). However, we consider that the flexibility and innovation the proposed legislative amendments will promote should also be available to HNZC.
- 56 HNZC will continue to be the major provider of social housing into the foreseeable future and will be a key player in the government achieving its social housing policy objectives. We consider that enabling MSD to have the flexibility to enter into alternative contracting arrangements with HNZC in the future will support HNZC's Asset Management Strategy.

Impact on MSD

- 57 Selecting option 3 would provide MSD with the ability to:
- a. negotiate with social housing providers as part of the Auckland Registrations of Interest process and as part of the transactions process
 - b. explore innovative approaches to social housing provision; and

- c. take steps to stimulate the supply of social housing places and meet broader goals to have an additional 3000 IRRS places in the next three years.

58 A change in the scope of the IRRS appropriation will be required if option 3 is selected. The current scope of the IRRS appropriation is at the individual tenancy level: “This appropriation is limited to the part purchase of social housing tenancies for individuals who have both been allocated a social house and had their income-related rent calculated by the social housing agency.” For example, there is a risk that this would not cover payments made by MSD under long-term contracts with social housing providers where the timeframe for that contract may differ from the timeframe for the individual tenancy.

Consultation

- 59 The Ministry of Business, Innovation and Employment has been closely involved in the preparation of the proposals. The Treasury, Inland Revenue, the Department of Internal Affairs and the State Service Commission have also been consulted during the development of the proposals. The proposals reflect the feedback received. The Department of Prime Minister and Cabinet has been informed.
- 60 HNZA has been consulted on the proposals. HNZA’s board has concerns about the breadth of the binding power proposed for the Bill overall. HNZA is aware that the HRTMA already contains the statutory power in section 7 to require HNZA to enter into contracts for provision of housing and related services and is aware that under our preferred option 3 this power is to be retained. HNZA has reservations about how this section 7 power might be exercised in the future, but is otherwise supportive of MSD having the ability to enter into a wider range of contracting arrangements with providers.
- 61 MSD’s external sector group (the Housing Assistance Reform Feedback Group) has also been consulted on the proposals and is supportive of them.

Conclusions and recommendations

- 62 MSD is now the single purchaser of IRRS places for people with serious housing needs. IRRS is prescribed in the HRTMA with the obligation that social housing providers (HNZA and CHPs) are reimbursed by MSD the difference between market and income related rents.
- 63 This legislative prescription constrains MSD’s ability to negotiate with social housing providers, in particular what can be purchased and for what price. Our preferred option is option 3: to amend the IRRS provisions in the HRTMA so that the current IRRS reimbursement setting⁵ applies unless contracts are concluded in accordance with guidelines set by Ministerial Direction.
- 64 The Ministerial direction mechanism could be used as required to permit a greater degree of flexibility in contracting (e.g. facilitate more negotiation around the price paid for IRRS places and the type of contracts including long term, fixed price arrangements) and so allow for the development of a responsive and efficient social housing market.

⁵ Being the obligation on the social housing agency to reimburse providers the difference between the market rent and income-related rents for properties let to tenants for social housing purposes.

Implementation plan

- 65 If agreed to, our preferred option (option 3) is needed to enable MSD to enter into a wider range of contracts with providers (than is currently possible) as part of the Auckland Registration of Interest process and as part the transaction process to commence in June 2015. Once approved, we recommend that it be put into force at the earliest opportunity.
- 66 If our preferred option (option 3) is approved, MSD, in consultation with MBIE, will provide a further briefing (in June 2015) to the Minister Responsible for Housing New Zealand Corporation and the Minister for Social Housing on the proposals for an initial Ministerial direction. The proposed scope of this direction will be informed by the results of the Auckland Registration of Interest process and MSD's *Purchasing Intentions for social housing (IRSS) places: information release*. This briefing will recommend that proposals on the content of the initial Ministerial direction be considered by Cabinet. We note that, in accordance with standard practice regarding Ministerial directions, the content of subsequent Ministerial directions may not be considered by Cabinet.

What situations might Ministerial directions cover?

- 67 If our preferred option (option 3) is agreed to, it would be possible for Ministers to issue directions that enable MSD to enter into contracts with providers that have pricing arrangements that are calculated in a different way to the current IRRS. A particular Ministerial direction could relate to potential contracts between MSD and:
- CHPS only,
 - HNZC only,
 - HNZC and CHPs; or
 - be transaction specific (just apply to transaction x, in region y).
- 68 Possible new contract designs have been identified as part of work on the Auckland Registrations of Interest (ROI) process and the HNZC transactions process. These new designs might involve longer contracts, more flexible pricing, and different distributions of risk (e.g. with the Crown guaranteeing to provide a tenant/take the vacancy risk).
- 69 Examples of the types of purchasing options MSD wishes to explore include:
- agreements to pay IRRS for a property even when there is no tenant paying IRR (e.g. vacant properties)
 - long-term, fixed price purchasing of services and places (where necessary, unrelated to specific dwellings or tenants)
 - payment of IRRS so that the provider receives a total rent above or below market rent.
- 70 Some possible contracting scenarios might be:
- In areas of high and stable demand for social housing: long-term, fixed price tenancies where MSD takes the vacancy risk could reduce uncertainties for social housing providers and enable them to have easier access to financing. Such contracts could also reduce uncertainty for MSD and mean that MSD is less exposed to volatility in market rent.
 - In areas of low and declining demand for social housing: shorter-term contracts at a lower price.
- 71 What kinds of contracting arrangements are appropriate in what situations would not be pre-determined. The social housing market is still very much a developing market and MSD is learning about the types of arrangements providers want and what will best support overall SHRP objectives. The Auckland Registrations of Interest process is an

example of this approach and, if legislative amendments are agreed to, will provide an opportunity for MSD to test different contracting arrangements with the sector. The procurement process for the transfer of HNZC stock to CHPs will present further opportunities. MSD is developing a framework to guide contractual decision-making.

- 72 We anticipate that the first Ministerial Direction/s will contain guidelines to enable long-term contracts with CHPs as part of the Auckland Registration of Interest process and the transactions process.
- 73 Examples of the situations that contracting guidelines issued under Ministerial direction could cover include:
- a. enabling MSD to pay (as an alternative to the reimbursement model for the income related rent subsidy) more or less than the difference between market rent and the income related rent and make payment on vacant properties
 - b. referring to the key market terms that can be negotiated with social housing providers (for example, the timeframes for the duration of the contract, vacancy risk, or housing related services purchased to cover situations of tenants' need resulting in higher or lower tenancy management costs).

If implemented, further analysis of the implications of any proposed Ministerial direction will be required

- 74 The content of the first Ministerial direction/s have not been determined yet. Therefore, the implications of MSD's preferred legislative option are dependent on, as yet unspecified and unquantified changes, that Ministerial directions might make to the current income related rent subsidy. Advice concerning the impacts of a particular contractual approach will need to be provided to joint Ministers if and when the Ministerial direction power is sought to be used.
- 75 Until there is an opportunity to test specific contracting situations with the social housing market during the Auckland Registration of Interests process and the transactions process what contractual terms the Ministerial directions might need to address will not be known.

Change to IRRS appropriation

- 76 If legislative change is approved, a change in the scope of the IRRS appropriation will be sought as part of the 2015-16 budget process to accommodate the increased flexibility in contracting arrangements being contemplated. Any changes to the scope of the appropriation or the nature of what/how MSD contracts could have implications for the scale or timing of IRRS expenditure and the volume and timing of tenancies that are supported. MSD can incorporate the impact of any contracting changes into the IRRS tenancy forecasts produced for each Baseline Update.

Monitoring, evaluation and review

- 77 A comprehensive monitoring and evaluation framework has been developed for the SHRP. If implemented, the proposals in this RIS will be evaluated as part of the wider SHRP evaluation. The SHRP evaluation includes monitoring of a range of indicators including: the number of people in high housing need; the number of new social houses by region in high priority areas; the number of community housing providers receiving IRRS; and the number of people that receive MSD housing support products and services. Results for each of these indicators are expected to change over time for several reasons, one being the increased flexibility for MSD in contracting social housing services. Data for the first monitoring report is currently being collected from the SHRP agencies. This data will be compared to the baseline data reported in 2014.