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What Effect Will the 2015 Budget Have on Housing?

Introduction

Less than a month after the 2015 Budget a coroner released a report on the tragic 2014 death of Emma-Lita Bourne, who had been living with her family in a state house in Ōtara until unexpected complications of a respiratory infection led to her death in Starship Hospital. For the first time a coroner implicated poor housing as a cause, stating that 'Whether the cold living conditions of the house became a contributing factor to the circumstances of Emma-Lita's death cannot be excluded' (Shortland, 2015, p.9). The house was cold and mouldy and the family had been unable to afford any heating.

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Soon after, the minister of building and housing, Nick Smith, announced that he was introducing minimum standards for all rental housing covered by the Tenancy Tribunal – private, state and community housing, as well as boarding houses, caravan parks and cabins. The aptly named minimum standards included requirements for a smoke detector and insulation to 1978 standards (rather than current levels) and regulatory changes related to the Tenancy Tribunal (Cabinet Social Policy Committee, 2015). These events, which evoked considerable public outrage in the case of the toddler's death and a mixed response in the case of the introduction of minimum standards, provide a lens to focus on housing policies that were, and were not, addressed in the Budget.

Background

In the 2013 census, home ownership, at 64.8% of households, was at the lowest rate since 1951 (61.5%).¹ The government's emphasis in the public debate has been on the supply of land as a panacea for the lack

of affordable housing for home ownership, through the creation of housing accords and special housing areas, and changes to the Resource Management Act (English and Smith, 2013). At the end of the June 2015 quarter, 32.5% of households and around 50% of people were renting (Statistics New Zealand, 2015). In the run-up to the Budget there was considerable media discussion about the lack of affordable housing for those wanting to buy a house, but there was little focus on affordability in the rental market, despite recent Ministry of Business, Innovation and Employment (MBIE) reports showing the cost of renting in Auckland rising 5.8% and in Christchurch 1.9% in real terms (MBIE, 2015). Using a different base, the Trade Me website reported that over the last five years the median weekly rent across New Zealand rose 20%, from \$340

ownership interact with policies about rental housing, including state housing. With the introduction of renewable tenancies in state housing, forcing regular reassessments of tenants' right to stay on, the housing insecurity experienced by people in private rentals, camping grounds and boarding houses has been largely extended to state tenants. Indeed, state housing is now essentially part of an integrated, insecure public/private rental market, despite Housing New Zealand tenants being among the poorest and most socially disadvantaged households in New Zealand (Baker, Zhang and Howden-Chapman, 2013). This is the result of the tightening inclusion criteria for Housing New Zealand tenants over almost a decade, now operationalised by the Ministry of Social Development.

In 2010 the government-appointed

Crown's capital,' Minister English said. 'The traditional model of everything being done by Housing Corp as a monopoly has left us with some good stock, and some very poor stock, and some people living in unacceptable circumstances,' he said. 'We're still the biggest slum landlord in the country by a long-shot.' (Tarrant, 2012)

The conclusion drawn by the government was that rather than investing in Housing New Zealand to enable it to upgrade its housing stock and services, Housing New Zealand needed to be dismembered and a significant proportion of its properties sold, as a way of providing opportunities for community housing providers, which were judged by the government to be more capable and efficient. This policy has been controversial because of the lack of evidence that the proposed changes would be more effective, efficient or compassionate than the existing system.²

The sale of Housing New Zealand properties, even at heavily discounted prices, would, however, support efforts by the government to reduce the fiscal deficit. Social housing is currently valued at \$17 billion on the government's balance sheet and is one of the government's major assets, although that valuation reflects market prices which often take them beyond the reach of low- and middle-income earners, while at the same time likely exceeding the value the houses would fetch if there was an obligation to keep current tenants on.

Apart from concern expressed by the children's commissioner's Expert Advisory Group on Solutions to Child Poverty (Expert Advisory Group on Solutions to Child Poverty, 2012), and researchers (Bierre, Howden-Chapman and Early, 2013; Johnson, 2013), both the Productivity Commission (New Zealand Productivity Commission, 2012) and the OECD (OECD, 2015) have been unusually outspoken in their criticism of the government's lack of attention to social housing supply. However, the government's priority has been to free up former Housing New Zealand land for private development, rationalised

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to \$420, considerably above consumer price inflation (Trade Me, 2015).

In contrast to many European countries, where social housing makes up the majority part of the rental sector (Andrews, Sánchez and Johansson, 2011), state-owned housing in New Zealand makes up less than 5% of the housing stock (69,000 houses) and is a shrinking proportion of rental housing: the proportion of households renting with Housing New Zealand has decreased from 14.6% of renting households in 2001 to 12.7% in 2006, and 11.6% in 2013 (Statistics New Zealand, 2013). There are an additional 14,000 council houses and 5,000 community houses (Housing New Zealand, 2013).

There has been little government recognition that policies about home

Housing Shareholders' Advisory Group described Housing New Zealand as a 'near-monopoly provider' and provided a bleak view of the government's future role in state housing (Housing Shareholders' Advisory Group, 2010). Focusing on just one part of the market, those eligible for income-related rents, this narrow reference to Housing New Zealand as a monopoly has continued, with Housing New Zealand reframed not as an organisation providing help but as the problem, despite the government's requirement for it to contribute increasing amounts of tax, dividends and surpluses (New Zealand Government, 2015; Johnson, 2013):

'The government needed to be more creative about how it recycled the

on the basis of sparse evidence that reducing the proportion of social housing in any community and any development benefits either the tenants or the community.

In 2009 the government invested \$52 million in the Tāmaki Transformation Company, which had been set up by the previous government (Heatley, 2009). In 2012 previous assurances to the existing state housing residents that the number of state houses would not be reduced were set aside when the government launched the Tāmaki Redevelopment Company, a public/private partnership in which the government has a majority share (Heatley, 2012). In April 2015 the minister of building and housing announced a \$200 million loan to the company to build around 7,500 new houses in Tāmaki to replace the 2,500 existing properties currently owned by Housing New Zealand (New Zealand Parliament, 2015).

Changes to the Hobsonville Land Company are instructive as to possible further future policy directions of the Tāmaki Redevelopment Company, which could potentially remove the building or retention of any state-owned housing. The Hobsonville Land Company was established by the previous, Labour government with a grant that was designed to encourage mixed development, including rental and state housing, rather than a development that reduced the level of social housing. In 2011 the company had been repurposed under the Housing Act for 'state housing purposes' so that the Crown was not required to offer the land back to its previous owners or their successors under section 40 of the Public Works Act 1981. In 2012 the current government decided to reframe the goal of mixed development at Hobsonville and approved the Hobsonville Divestment Plan. This plan explicitly excluded state housing and effectively replaced the need for subsidies for 'state housing purposes', previously defined in a 2011 Cabinet paper as housing where a household spends no more than 30% of its gross income on housing costs (Cabinet Economic Growth and Infrastructure Committee, 2012). As far as it is possible to tell from redacted official papers, this

was replaced with a more limited and complicated requirement, backed up by a 'positive covenant in sales agreements', that an estimated 500 houses or 15% should be 'affordable' houses (priced from \$200,000 to \$400,000), of which 50% should be within the 'absolute definition of affordable housing' (Department of Building and Housing and MBIE, 2012). No decision was taken about whether these smaller houses should be ring-fenced for those on low incomes, opening the door for windfall profit-making. The main goal was that the Crown achieve a commercial return from the development with less Crown participation.

The 2015 Budget and housing

Despite previous announcements concerning the supply of housing, largely but not exclusively focused on Auckland, housing policy formed a small, but

One of the announcements in the Budget that was largely welcomed was the strengthened rules on property investment and the introduction of what is essentially a capital gains tax to ensure that 'people buying and selling properties for profit – including foreigners – are paying their fair share of tax' (O'Sullivan, 2013). It was announced that buyers will be required to provide an IRD number when buying a property which is not to be their own home, and if they sell a residential property other than their own home within two years of purchase they will have to pay 'income' tax (in effect, a tax on gains). These tax changes will be implemented on 1 October 2015.

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important, part of the Budget policy initiatives announced by the minister of finance, Bill English, on 21 May 2015 (English, 2015). The Auckland focus continued with the Budget announcement that the government was setting aside a \$52 million capital contingency to facilitate housing development on Crown-owned land in Auckland, although the conditions and recipients of this development remain unclear. Despite criticism that the residential rebuild in Canterbury had been left to developers who had no financial interest in building homes for low-income families (Howden-Chapman et al., 2014), there was no specific budget allocation for residential housing in Christchurch equivalent to the Tāmaki Redevelopment Company or the Hobsonville Land Company projects.

announcement was also widely welcomed; however, the changes will not take effect until July 2016. Subsequently released Cabinet papers included references to Treasury briefing papers which argued that the increase should be paid through the accommodation supplement (available for private rental and mortgage payments, but not social housing), rather than through benefits. It may be that Treasury's preference arose from a concern about rising housing costs. However, the government decided to give untargeted benefit increases (Cabinet Social Policy Committee, 2015).

The minister reiterated previous announcements that the government was selling some Housing New Zealand properties for 'use as ongoing social housing run by community housing

providers'. He largely avoided discussing the reduction of Housing New Zealand's role to that of a property asset manager and stated that the government was committed to 'providing more social housing places, more diverse ownership of social housing, and helping tenants' transition to housing independence when they are able to'. To support this transition, the Budget included a modest '\$35 million of operating funding over four years and \$29 million reprioritised from other areas'. Additionally, the Māori Housing Strategy, which 'aims to improve housing for Māori families and grow the Māori housing sector', was also allocated operating funding of \$35 million.

Post-Budget housing announcements

In Parliament on 17 June, three weeks after the Budget, the prime minister summarised

or cost' (Smith, 2015). He proposed a number of amendments to the Residential Tenancies Act 1986: a new requirement for smoke alarms in all residential properties; new requirements for ceiling and underfloor insulation (where possible) to be phased in between 2016 and 2019, with accompanying disclosure requirements for landlords; changes to enable faster resolution of tenancy abandonment cases; and changes intended to strengthen the enforcement power of the act.

The amendments relating to Residential Tenancies Act enforcement seek to address the fact that tenants can be discouraged from asserting their rights to adequate housing by fear of endangering their tenancy. Under the new law tenants will have four weeks to apply to the tribunal on the grounds of retaliatory

breaches of the act. Section 109 of the Residential Tenancies Act currently states that if a landlord has committed an unlawful act, such as rented out a house which is below a reasonable standard, and if it is in the public interest to restrain the landlord from renting the property out in the same condition, the tribunal can make an order to prevent that. A recent extensive review of rental laws, *Paper Walls*, suggested that MBIE could have used its existing powers under section 124 to take over the direct monitoring of remediation, as, by the remediation stage, a tenant 'who has worked through the Tribunal process for damages, a work order, and even exemplary damages, may have been drained enough without taking on showing the need for an order that they are unlikely to benefit from themselves' (Rogers, 2013, p.28). However, the Cabinet paper states that MBIE has used this power to take over or commence proceedings on behalf of a landlord or tenant, only twice in the last 20 years, and that 'anecdotal evidence indicates that fear of retribution may dissuade some tenants from pursuing complaints'. The Residential Tenancies Act amendments encourage MBIE to exercise these powers by granting the right to investigate and take action directly against landlords, without requiring the cooperation of a tenant, 'where severe breaches are alleged, and there is a significant risk to tenant health and safety' (Cabinet Social Policy Committee, 2015, p.11). It will be important to monitor the extent to which MBIE uses these powers to investigate severely substandard housing.

The government has chosen to introduce the standards regarding insulation and smoke alarms in preference to implementing a rental housing warrant of fitness, which would ensure all houses passed comprehensive minimum health and safety standards. Five councils and the New Zealand Green Building Council stated publicly in 2013 that they were working with the University of Otago, Wellington to pre-test a rental warrant of fitness for all types and tenures of rental housing (acknowledged in the Cabinet paper), which had been developed and piloted by He Kainga Oranga, the Housing and Health Research Programme for over

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a number of current government housing policies: the Homestart package; ongoing developing of land at Weymouth through the social housing fund; 240,000 homes insulated and in some cases heated under the Warm Up New Zealand: Heat Smart programme; and a further 46,000 houses insulated under the Warm Up New Zealand: Healthy Homes extension (Key, 2015).

In July the minister for building and housing, Nick Smith, responded to the public concern surrounding the Emma-Lita case and rental housing standards in general by announcing the details of the minimum standards he had prefigured (Cabinet Social Policy Committee, 2015). He stated: 'This pragmatic package of tenancy law changes will make homes warmer, drier and safer for hundreds of thousands of New Zealand families without imposing excessive bureaucracy

notice rather than the two weeks they presently have, and landlords who give retaliatory notices will be subject to an increased maximum penalty of \$2,000 (Cabinet Social Policy Committee, 2015, p.3). However, as Auckland Deputy Mayor Penny Hulse pointed out, 'The new standards rely on tenants making a complaint about the state of their rental accommodation'. This means that the risk remains that tenants will choose not to complain about poor housing, particularly, as Hulse also noted, in places where there is a shortage of rental housing. 'We believe the Government has a clear role in ensuring rental properties meet the standard, rather than the onus being on tenants' (Auckland Council, 2015).

Another policy change which seeks to give teeth to the Residential Tenancies Act grants MBIE more power to investigate

a decade (Gillespie-Bennett et al., 2013). However, MBIE commissioned a parallel study of state housing. The results of the councils' and University of Otago's pre-test were made public in 2014 and showed that the rental warrant of fitness was considered fair and acceptable by 85% of the landlords in the study. Although most rental properties failed, relatively small amounts of money were required to bring most of the surveyed properties to the minimal standard (Bennett et al., 2014). The results of the MBIE study were released in July, and are comparable: while only 4% of the 400 properties were fully compliant (despite the minister's predictions that 'almost all HNZ properties are expected to pass the minimum standard': Smith, 2013), it was judged that an additional 48% could be remediated to meet the comprehensive standards within two days (Bosch, 2014).

The minimum standards and enforcement regime proposed in the Residential Tenancies Act amendments are not evidence-informed. The regulatory impact analysis for these minimum standards, as Treasury observed, did not meet the quality assurance criteria: it lacked analysis and there had been inadequate consultation (Cabinet Social Policy Committee, 2015). There are no plausible reasons given by the minister as to why the insulation required under his proposed private rental regulations has reverted to the initial 1978 requirements for existing housing, now almost 40 years old. The thickness of insulation required in 1978 was just over half the standard of the Energy Efficiency and Conservation Authority's Warm Up New Zealand programme (70mm versus 120 mm), and was superseded for improved energy efficiency and because procurement policies are now geared to the higher-standard materials. By contrast, after 2011 Housing New Zealand remediated all properties built before 2000 to current EECA standards where practicable (Housing New Zealand, 2013). While requiring landlords to insulate their properties is a step forward, holding them to lower standards is a retrograde step. It appears to be a continuation of the government's practice to act incrementally, when slightly more costly actions would

have far-reaching positive consequences for energy efficiency, health and CO2 emissions in the future (Boardman, 2012; World Health Organization, 2011).

Moreover, the cost-benefit analysis of the Warm Up New Zealand programme included heating, and it demonstrated the high benefit/cost ratio of the whole package (Grimes et al., 2011). This has been neglected by the minister, who stated that heating is already required in the Residential Tenancies Act. This Act does not in fact refer to heating, but incorporates the Housing Improvement Regulations 1947, which require a fireplace or an approved form of heating in the lounge. It has been widely interpreted that an approved form of heating could include an electric socket, though a 2011 District Court case found this to be

these lives are valued less than those of people who die in house fires. The cost-benefit judgement of installing the smoke detectors appears to be based on assumptions about efficacy and compliance. By contrast, the basic rental warrant of fitness proposed and tested by He Kainga Oranga includes the key, critical items that have been shown to warrant social investment, with randomised control trials clearly demonstrating reductions in the burden of disease and injury (Howden-Chapman et al., 2007; Howden-Chapman et al., 2008; Keall et al., 2015).

Discussion

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inadequate and ordered compensation to a tenant where the landlord had failed to provide some form of inexpensive heater to meet the regulations.³ Heating costs for tenants are likely to remain high without requirements for an efficient and cost-effective heating source and insulation levels that meet the Building Code and are known to improve the thermal efficiency of a home.

Given that there is an excess winter mortality of 1,600 people in New Zealand aged over 65 each winter (Davie et al., 2007), and that these people are more likely to be low-income people living in rental properties (Hales et al., 2012), it is of concern that the government is sanctioning lower standards for the most vulnerable groups (Howden-Chapman et al., 2012). Given these housing-related winter deaths, which do not occur in colder climates (Healy, 2003), it appears

high-end affordable housing, and making feeble attempts to stem speculation by minimally taxing capital gains. On the demand side, the Budget contained little to bolster poor tenants' ability to pay, although the benefit increases (around 8% on the base rate) will help some. Despite the government's proclaimed social investment approach, it remains unclear from the 2015 Budget and the housing policies that (loosely) accompanied it whether the government is prepared to invest in refurbishing and funding new social housing or rental housing to acceptable modern standards. While the minister of building and housing has been quick to establish regulation and funding for resolving whether a rental property has been abandoned by tenants so that it can be re-let more quickly, there has been no attempt by the government to try innovative policies, such as the proposed

New York tax surcharges to discourage non-resident property speculation and stem the rise in vacant properties, which is not being adequately monitored in New Zealand (Adler, 2014).

There has been little recognition that policies on home ownership interact with policies on public and private rental housing. The government clearly recognises that housing is an important part of the economy, but the minister of finance's Budget and the minister of building and housing's announcements that followed it are only small steps

in addressing the housing needs of vulnerable New Zealanders, particularly those dependent on rental housing. The quality of New Zealand's rental housing in particular is poor and the modest measures announced in and around the Budget, while offering some help in limited areas, are unlikely to make a significant difference.

- 1 <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/century-censuses-dwellings/ownership.aspx#>.
- 2 There is no country in the world where social housing is provided without a subsidy. The subsidy the government is offering has to date failed to attract community providers to purchase state housing in bulk. Providers, such as

the Salvation Army, have little experience of building or maintaining housing at anywhere near the scale of housing being provided by central and some local governments, and declined the open invitation to buy at a substantial bulk discount. Indeed, in the 1990s, when the government last sold swathes of state housing, organisations that purchased state houses, even at a major capital discount (60%) on their current QV value, found the financial returns unpromising, even though they were still operating in the private rental market, although in the lowest quartile of market rent. The housing sold to these organisations was older, often requiring major upgrades, meaning 'the economics of managing a portfolio of houses is clearly a challenge even for well-established community organisations'. 'With all costs taken into account, and leaving aside the non-cash valuations of the balance sheet, there has been little or no net cash return for Turst House from housing' (Norman and Teahan, 2015, p.57).

- 3 *Complete Property Management Limited v White DC* Christchurch CIV-201 0-009-3562, 3 February 2011.

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