



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Regulation of Methamphetamine Contamination in Rental Housing

Regulatory Options

A Discussion Paper
November 2022

Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development

Te Tūāpapa Kura Kāinga plays a lead role in helping individuals, family and whānau have healthy, secure and affordable homes that meet their needs.

We want to create thriving communities that connect to the places people live, work, learn and play.

As the Government's lead advisor on housing and urban development, we're working to:

- address homelessness
- increase public and private housing supply
- make existing homes warmer and healthier
- make housing affordable for people to rent and buy, and
- support quality urban development and thriving communities.

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Any questions should be directed to methconsultation@hud.govt.nz

November 2022

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Making a submission

Submissions

Te Tūāpapa Kura Kāinga - The Ministry of Housing and Urban Development (the Ministry) seeks written submissions on the proposals raised in this document by **Friday 10 March 2023**. We have included proposals and questions throughout the document. You may comment on any or all of the proposals and we also welcome any other relevant information, comments, evidence and examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission by:

- filling in the online form at [Regulation of Methamphetamine Contamination in Rental Housing - Te Tūāpapa Kura Kāinga - Citizen Space \(hud.govt.nz\)](#), or
- emailing your submission to methconsultation@hud.govt.nz.

Use of information

Your submission will help the government to develop policy that may be put into regulations. Ministry officials may contact submitters directly if we require clarification of any matters in submissions.

Release of information

We propose publishing our submissions analysis. This will include a summary of submitters' views and may include the names of individuals or organisations that have made submissions.

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including Te Tūāpapa Kura Kāinga. Any personal information you supply to us in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in this discussion paper. Please clearly state in the online submission form and any email or covering letter if you do not wish your name, or any other personal information, included in the summary of submissions.

Submissions may be requested under the Official Information Act 1982. Please set out clearly in the submissions template or in your covering letter or email if you have any objection to the release of the information contained in your submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. We will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.

Further information

If you have any questions or would like more information about the process for making submissions, please email methconsultation@hud.govt.nz.

Table of Contents

Part A: Overview	5
Why do we need regulations?	6
What will the regulations cover?	7
What will the regulations mean for me?	7
What happens if a tenant uses or manufactures, or permits someone else to use or manufacture methamphetamine in a rental property?	8
How will the proposed regulations be implemented, monitored, evaluated, and reviewed? ...	9
Questions on Part A: Overview	10
Part B: Policy Proposals	11
Section 1: Regulated levels of methamphetamine residue	11
1.1 Setting a maximum acceptable level of methamphetamine	11
1.2 Setting a maximum inhabitable level, which can enable termination of tenancies	14
Questions on Section 1: Regulated levels of methamphetamine	16
Section 2: Requirements for Landlords	18
2.1 Requirements to test and decontaminate	18
2.2 Decontamination timeframes for a tenanted property	19
Questions on Section 2: Requirements for landlords	20
Section 3: Testing for methamphetamine contamination	22
3.1 Process for screening assessment and who can undertake this	22
3.2 Process for detailed assessment and who can undertake this	23
3.3 Types of testing – proposed regulatory approach	23
Questions on Section 3: Testing for methamphetamine contamination	25
Section 4: Decontamination process	26
4.1 Prescribing a decontamination process	26
4.2 Will the regulations apply to tenant or landlord goods on the premises?	27
4.3 Future review of standard	27
4.4 Who can do decontamination work?	28
4.5 Whether tenants need to move out during decontamination	28
Questions on Section 4: Decontamination	28
Section 5: Abandoned goods on contaminated premises	30
5.1 What does this cover?	30
5.2 Proposals for abandoned goods from contaminated premises	30
Questions on Section 5: Abandoned goods on contaminated premises	32
Part C: Analysis of Policy Proposals	33
ANNEX A – PROPOSED DECONTAMINATION PROCESS	48

Part A: Overview

This document seeks your input on options for regulating methamphetamine residue in rental accommodation in New Zealand.

This part of the document, **Part A**, sets out the high-level problem definition for why regulations are needed, the proposed scope of the regulations and the objectives we are seeking to achieve, and poses high level questions for submitters about these matters.

Part B of this document contains the detailed policy proposals and poses questions for submitters.

Part C contains our analysis of each of the options considered to develop the proposals.

Background and context

Methamphetamine is classified as a Class A controlled drug under the Misuse of Drugs Act 1975. This means it poses a very high risk of harm. There are significant penalties for people who import, manufacture, distribute and possess it.

Methamphetamine is either imported into New Zealand or manufactured (“cooked”) in makeshift laboratories. These laboratories can be in rented or owned houses, garages, apartments, motel rooms, sheds and motor vehicles.

While direct contact with or inhalation of methamphetamine has been shown to cause medical harm, the health risks arising from ‘third hand’ methamphetamine exposure, for example arising from exposure to residue on surfaces, are not conclusive. In housing, low levels of residue and short durations of exposure present a very low probability of harm. Higher levels of residue have been associated with local effects on the skin, eyes or respiratory tract, or systemic neurological effects such as headaches, fatigue or tiredness, and persistent infections, however all effects appear to be reversible.¹

Methamphetamine contamination is a significant problem for affected rental housing providers and tenants. The decontamination process is disruptive and can lead to tenants being displaced, which reduces security of tenure, and can be particularly hard for tenants who have limited housing options or complex needs. Costs include re-tenanting and re-housing, insurance claims, payment of insurance excesses, moving, bond management, loss of rent, and replacement of contaminated possessions. Unexpected costs which fall on landlords will often be passed on to tenants, for example in the form of increased rent.

New Zealand currently uses two “acceptable” levels for methamphetamine contamination: one in the 2017 New Zealand Standard NZS 8510:2017,² and the other in the report of the former Prime Minister’s Chief Science Advisor, Professor Gluckman, on methamphetamine

¹ See ESR’s 2020 report at <[ESR – Methamphetamine Contamination in Residential Environments: Analysis of Evidence Related to Human Health Effects – December 2020](#)>, pages 30 and 32.

² NZS 8510:2017, Testing and decontamination of methamphetamine-contaminated properties, Standards New Zealand, 2017, at 2.1.2. <[NZS 8510:2017, Standards New Zealand](#)>

contamination, which was produced in May 2018.³ Neither document is referenced in legislation and therefore neither is legally binding.

Having different levels is confusing for the sector and challenging for the Tenancy Tribunal. It also has led to disproportionate and costly responses to low levels of methamphetamine residue in terms of both decontamination costs and rental premises being temporarily unavailable, and a lack of clarity about whether and at what point a tenancy could be terminated because of methamphetamine contamination.

Why do we need regulations?

New Zealand has no legally binding rules specific to the management of methamphetamine residue in rental housing. This has led to inconsistent industry standards, lack of public confidence as to how to manage health risks relating to methamphetamine contamination, and high costs (relative to risk) to resolve methamphetamine contamination. We have considered whether non-regulatory options could address the identified concerns, but have concluded that none will do so.

The Residential Tenancies Act 1986 (the Act) allows regulations to be made regarding management of contaminants, including methamphetamine. The new regulations will apply to all rental and boarding house accommodation which is governed by the Act.

Regulations for managing methamphetamine contamination will provide greater certainty to stakeholders about the levels of methamphetamine residue that may pose a health risk and how that health risk can be managed. This certainty should minimise disruption to tenants and landlords arising from methamphetamine contamination, and increase availability of rental housing which has been affected by methamphetamine.

Relevance of the proposals for Māori

Māori, like all landlords and tenants, are likely to benefit from the greater certainty around management of methamphetamine contamination that these regulations will provide. At the time of the 2018 census, 50% of Māori were living in rented homes for which rent was paid.⁴ As such, on a proportionate basis, Māori are particularly impacted by regulations made under the Act. In a 2021 research report, 4% of landlords were Māori.⁵ In addition, methamphetamine-related concerns have been raised in the Waitangi Tribunal Housing Kaupapa inquiry (Wai 2750), showing that issues relating to methamphetamine and housing are likely to be of interest to Māori.

³ Prime Minister's Chief Science Advisor Professor Sir Peter Gluckman's report, *Methamphetamine contamination in residential properties: Exposures, risk levels, and interpretation of standards*, 29 May 2018, p 8. <[PMCSA Gluckman Report](#)>

⁴ Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, MAIHI Ka Ora; The National Māori Housing Strategy, p 37. <<https://www.hud.govt.nz/documents/new-t17-document-page-5/>>

⁵ Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, Healthy Homes Guarantee Act Monitoring, Kantar public, September 2021, p6. <<https://www.hud.govt.nz/documents/healthy-homes-guarantee-act-monitoring-2021/>>

Objectives

The regulations should achieve the following proposed objectives:

- A. Minimise the health risk from exposure to methamphetamine contamination in rental housing.
- B. Provide certainty to tenants and landlords about their rights and responsibilities around methamphetamine contamination.
- C. Provide clear rules and processes for testing and decontamination for methamphetamine residue.
- D. Support professional conduct and standards in the methamphetamine testing industry.
- E. Prescribe an approach that will manage costs of testing and decontamination for landlords and tenants.

What will the regulations cover?

Section 138C of the Act allows regulations to be made in respect of contaminants, which includes methamphetamine, and sets out what those regulations can include. The matters we are proposing to regulate for which are allowed under this section are:

- A **maximum acceptable level** and a **maximum inhabitable level** of methamphetamine contamination in housing.
- **Requirements for landlords** on when and how to test for methamphetamine contamination.
- What **types of testing** is permitted under the regulations.
- How to **decontaminate** the premises including while the landlord continues to provide the premises to the tenant.
- What to do when **possessions are left behind** in contaminated premises.

This process does not include consultation on any changes to NZS 8510:2017 *Testing and decontamination of methamphetamine-contaminated properties*. Any future revision of NZS 8510:2017, as with any standard, could be commenced by an interested agency or organisation commissioning a development project to revise one or more aspects of the standard. If the proposed regulatory settings set out in this document are confirmed in regulations, it will be strongly advisable for NZS 8510:2017 to be reviewed, and, following final Cabinet decisions on the content of the proposed regulations, the Ministry may choose to instigate such a review. Standards New Zealand would manage the revision in compliance with the provisions of the Standards and Accreditation Act 2015 and according to processes aligned with international practice. The process would include an opportunity for public consultation.

What will the regulations mean for me?

If you are a landlord

The policy proposals in this document would require landlords to:

- Engage professional accredited testing services to test the premises for methamphetamine if either:
 - Police or the relevant Council advises there was, or it is likely that there was, methamphetamine manufacturing on the premises, or

- A tenant or any other person has carried out a screening test for methamphetamine residue in the premises in accordance with the regulations, and this has shown results higher than 15µg/100cm².
- Use prescribed methods and processes when testing for methamphetamine contamination.
- Share the results of testing with any tenant in the property within 7 days of the results being received.
- Arrange decontamination of contaminated premises as soon as practicable using prescribed processes.
- Arrange for professional re-testing of the property.
- Manage any abandoned goods on contaminated premises according to a prescribed process.

If you are a tenant

The policy proposals in this document would mean that:

- If your landlord is advised by the Police or the relevant Council that it was likely that there was methamphetamine manufacturing on the premises, the landlord must engage a professional accredited testing service to test the premises for methamphetamine, and follow appropriate procedures after receiving the results of those tests including sharing them with you.
- At any time, you can choose to conduct specific approved screening tests on your residence, at your cost. If the results for any part of the premises are higher than 15µg/100cm², your landlord must ensure the property is professionally tested, share the results with you, and if the results are still higher than 15µg/100cm², decontaminate the property, and then re-test.
- The landlord must arrange for decontamination of a property which tests over 15µg/100cm² within fixed timeframes and according to prescribed methods.
- You must provide access to the landlord to the premises for testing, decontamination, and re-testing within set timeframes.

If you are a tenant or a landlord of a boarding house

The policy proposals in this document also apply to boarding houses. This would mean that:

- Tenants are entitled to do an approved screening assessment of their room or of the shared facilities at any time, and the landlord must do a detailed assessment of the affected area if the screening assessment results are over 15µg/100cm².
- The landlord must decontaminate affected areas which test over 15µg/100cm² following a detailed assessment.
- The landlord must notify all boarding house tenants of the results of any screening assessment or detailed assessment which is carried out in any of the facilities within 7 days.

What happens if a tenant uses or manufactures, or permits someone else to use or manufacture methamphetamine in a rental property?

Using, possessing, selling and manufacturing methamphetamine are offences under the Misuse of Drugs Act 1975. Tenants who possess, smoke, sell or manufacture

methamphetamine in a rental property, or who permit someone else to do those things, are using the property or permitting it to be used for an unlawful purpose. This is a breach of the Residential Tenancies Act 1986. The Tenancy Tribunal may order tenants who have used a rental property for an unlawful purpose to pay a penalty of up to \$1,800.

The Residential Tenancies Act also enables one party to make an application to the Tribunal seeking an order for termination of a tenancy on the basis that the other party has committed a breach of the tenancy agreement or of the Act.⁶ In order to terminate the tenancy, the Act requires that the Tenancy Tribunal consider “that the breach is of such a nature or such an extent that it would be inequitable to refuse to make an order terminating the tenancy.” If the proposals are adopted into regulations, we consider that a landlord may still use the termination provision available under section 56, but equally it may be difficult for them to meet the required threshold for the Tribunal to terminate the Tenancy. The provision allowing termination for using the premises for an unlawful purpose will continue to exist alongside the regulations allowing termination where the property is contaminated beyond the maximum inhabitable level.

The Residential Tenancies Act sets out the rules for determining when a tenant is liable for damage to the premises, which includes damage caused by methamphetamine use or manufacture.⁷ The Act also sets out who bears the onus of proof. Generally speaking, the landlord must prove the damage occurred during the tenancy. To avoid liability, the tenant must then prove they did not carelessly or intentionally cause or permit the damage.⁸ The Act caps the tenant’s liability for careless damage.

How will the proposed regulations be implemented, monitored, evaluated, and reviewed?

To support implementation, once the regulations are final, the Ministry will work with the Ministry of Business, Innovation and Employment (MBIE) Tenancy Services team to prepare guidance and other information for landlords, tenants and other stakeholders about their rights and obligations under the regulations. Parties will also be able to call the Tenancy Service Centre to seek advice. In addition, MBIE’s Tenancy and Compliance Investigations Team may respond to complaints of systemic issues where landlords are not fulfilling their obligations under the regulations.

The Ministry and MBIE are the regulatory stewards for the residential tenancy system and will monitor the implementation of the proposed regulations. As part of this work, Ministry policy officials are in regular contact with MBIE’s Tenancy Services team, which holds compliance, enforcement, information and education, and mediation functions for the Residential Tenancies Act, and with Justice Services within the Ministry of Justice, which administers the Tenancy Tribunal. The Ministry also monitors Tenancy Tribunal decisions which may deal with matters related to the proposed regulations.

Finally, as noted above, following final Cabinet decisions on the content of the proposed regulations, the Ministry may choose to instigate a review of the relevant NZ Standard.

⁶ Residential Tenancies Act 1986 s 56.

⁷ Residential Tenancies Act 1986, ss 49A-49B.

⁸ *One Team Rentals Limited v Jolly, Sacha Maree* [2021] NZTT Manukau, 4281668 at [15].

Limitations and constraints

These regulatory proposals are made in the context of the empowering law – that is, they need to fall within the scope of s 138C of the Residential Tenancies Act 1986. As such, any potential options which would not align with that section have not been considered.

This discussion document is written with the express purpose of seeking public feedback on the proposals and the underlying analysis which these have been based on, and so the current information may not always be complete. Input received during public consultation will ensure that the final proposals are as well informed as possible.

Finally, there are some areas covered in these proposals where specific scientific information does not exist, for example in relation to goods found in contaminated premises. In these areas, we have aimed to make proportionate regulatory proposals, while acknowledging the scientific uncertainty.

What is the timeframe for making the regulations?

Date	Milestone
22 November 2022	Discussion paper released for consultation
10 March 2023	Submission period ends
March - December 2023	Analysis of submissions, Cabinet decisions and drafting of regulations
First half of 2024	Anticipated time regulations may come into force

Questions on Part A: Overview

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

1.	Do you agree with how the problem is described, and that regulations are needed to address the concerns which are outlined in this section relating to methamphetamine residue in rental housing? Why/ why not? In your view, what are the problems which currently exist with not having regulations covering these issues?
2.	Do you agree with the proposed objectives for the regulations? See page 7. Why / why not? Are there any objectives you would add or change?
3.	Do you agree with what the regulations are proposed to cover? Why/ why not? Are there any topics within the scope of section 138C of the Act that you would add or remove from the scope of the regulations?
4.	In what way are Māori likely to be impacted by these proposals?
5.	Do you have anything to add relating to the context in which the regulations will be made or the impact on key stakeholders?
6.	Are there any aspects of the proposals which you have comments about in relation to specific situations or types of tenancies, for example boarding house tenancies?
7.	Do you agree with the proposed implementation and monitoring arrangements? If not, how should the proposed regulations be implemented and monitored?

Part B: Policy Proposals

This Part covers five key aspects of the policy proposals, as follows:

Section 1: Regulated levels of methamphetamine residue

Section 2: Requirements for landlords

Section 3: Testing

Section 4: Decontamination

Section 5: Abandoned goods on contaminated premises

Section 1: Regulated levels of methamphetamine residue

Maximum acceptable level and maximum inhabitable level

The Act allows regulations to be made setting a **maximum acceptable level**, or ways of calculating a maximum acceptable level, of a contaminant (in this case, methamphetamine residue) in rental housing. When methamphetamine residue is found in premises at levels over the maximum acceptable level, the premises are considered contaminated, and decontamination is required.

The Act also allows the regulations to set a **maximum inhabitable level** of methamphetamine. When methamphetamine residue is found in premises at levels over the maximum inhabitable level, in addition to the requirement to decontaminate, a tenant who has not caused the contamination or a landlord in certain circumstances can **end a tenancy** on a minimum of 2 or 7 days' notice, respectively.

We propose that the regulations should set both a maximum acceptable level and a maximum inhabitable level of methamphetamine.

1.1 Setting a maximum acceptable level of methamphetamine

As noted above, a maximum acceptable level of methamphetamine residue is used to determine if a property is "contaminated".⁹ If methamphetamine residue is present **above** the maximum acceptable level, the property is contaminated. If methamphetamine residue is present **below** the maximum acceptable level, the property is not contaminated.

To inform our analysis about what a maximum acceptable level of methamphetamine should be, in 2020 we sought advice from the Institute of Environmental Science and Research (ESR). It was contracted to review recent scientific evidence including the science underlying the methamphetamine concentration values set out in the Standard, NZS 8510:2017.¹⁰

⁹ Residential Tenancies Act 1986, s 2, Interpretation, defines contaminated as follows: "contaminated, in relation to premises, means that a contaminant is present in any part of the premises at a level above any relevant prescribed maximum acceptable level"

¹⁰ As part of its review, ESR considered a number of reports by Dr Jackie Wright of Flinders University, amongst many other sources.

ESR's report is available here: [ESR – Methamphetamine Contamination in Residential Environments: Analysis of Evidence Related to Human Health Effects – December 2020.](#)

ESR advised that a maximum mean surface contamination concentration below $15\mu\text{g}/100\text{cm}^2$ will be associated with a very low probability of harm. They advised that mean surface contamination concentrations exceeding $15\mu\text{g}/100\text{cm}^2$ should be viewed as potentially harmful.

$15\mu\text{g}/100\text{cm}^2$ is the same level as that previously recommended by the former Prime Minister's Chief Science Advisor, Professor Gluckman, whose 2018 report stated that exposure to methamphetamine levels below $15\mu\text{g}/100\text{cm}^2$ would be unlikely to give rise to any adverse effects. That report also noted that the $15\mu\text{g}/100\text{cm}^2$ level incorporated a 30-fold safety buffer on a conservative estimate of risk.

The advice from ESR and Professor Gluckman on the maximum acceptable level of methamphetamine contamination contrasts with that contained in a 2017 NZ Standard (NZS 8510:2017) which defines the maximum acceptable level of methamphetamine residue in an affected property at $1.5\mu\text{g}/100\text{cm}^2$ after decontamination. The NZS 8510:2017 level of $1.5\mu\text{g}/100\text{cm}^2$ has been used by many landlords, insurers and decontamination agencies for the purposes of determining whether decontamination is needed.

Remediation level for contaminated properties

In 2022, ESR looked into what level a contaminated property should be remediated back to. ESR has advised that $15\mu\text{g}/100\text{cm}^2$ is an appropriate target level for remediation to achieve. They noted that further remediation of a property remediated to a methamphetamine surface concentration of less than $15\mu\text{g}/100\text{cm}^2$ is highly unlikely to result in additional health benefits for residents. It would also result in additional costs for the property owner and additional inconvenience for the residents. The 2022 report covering this is available here: [ESR – Methamphetamine Contamination in Residential Environments: Limits for Contamination – July 2022.](#)

Professor Gluckman's report concluded that remediation to the NZS 8510:2017 standard of $1.5\mu\text{g}/100\text{cm}^2$ is appropriate only for identified former methamphetamine laboratories and properties where excessive use, as indicated by high levels of methamphetamine contamination, has been determined.

Since Professor Gluckman's report was published, the Tenancy Tribunal has dealt with numerous cases where the level of contamination has been in question when determining if damage to the premises occurred, and, in some cases, where landlords have sought to terminate tenancies because of methamphetamine contamination. In recent cases where the residue levels are found to be less than $15\mu\text{g}/100\text{cm}^2$, the Tenancy Tribunal has generally denied the claim, preferring the recommended level for contamination in Professor Gluckman's report over that contained in the NZ Standard.¹¹ The practical effect of this is that landlords have been unsuccessful in claiming compensation for the costs of testing and cleaning when testing showed methamphetamine residues below $15\mu\text{g}/100\text{cm}^2$ before cleaning. The District Court has stated that Professor Gluckman's report "represents the

¹¹ See for example *NONE vs NONE* [2022] at [33] ([4301662](#)), and *BARFOOT & THOMPSON LTD vs Escarp, Alfredo and other parties* [2022] at [22] ([4311067](#)).

current scientific knowledge on the risk to human health from methamphetamine contamination in dwellings.”¹² In one case, where methamphetamine was found at levels over 15µg/100 cm² and the landlord proved that the contamination was caused by the tenant, termination was permitted on the basis that the premises were uninhabitable.¹³

Dealing with high levels of contamination as a result of methamphetamine manufacturing

We have considered whether any different provisions should be applied to premises used for methamphetamine manufacture. Studies have shown manufacture of methamphetamine provides much higher levels of residue compared with smoking.

For the reasons set out below we consider that, with one exception, the proposals will apply equally to all premises covered by the Act, whether or not they have been used for methamphetamine manufacture.

It is currently not possible to determine definitively whether or not a property has been used for the manufacture of methamphetamine based solely on the results of surface sampling. Determining whether there was manufacturing on the premises is best left for Police with input from ESR.

If an active methamphetamine laboratory is suspected, landlords or tenants should call Police immediately. They will examine the premises alongside ESR scientists, and will prepare a report determining the likelihood of methamphetamine manufacture having been carried out on the premises. Police will notify the property owner and the relevant Council if a laboratory is considered likely. If the premises are used as rental accommodation, we propose that the regulations require that once notified that the premises are likely to have been used as a methamphetamine laboratory, the landlord must ensure that detailed assessment is carried out by professional accredited testers.

While methamphetamine manufacturing techniques sometimes use precursors and materials which contain or produce highly toxic substances such as lead and mercury as a by-product, ESR advises that the current manufacturing techniques in New Zealand do not use or produce such contaminants. ESR has, however, observed that other chemicals may be present when premises have been used for methamphetamine manufacture, but at much lower concentrations than the methamphetamine.

Note that the proposed regulations only apply to the contaminant, methamphetamine. When landlords have been notified that their premises are likely to have been used for methamphetamine manufacture, their obligations in respect of any non-methamphetamine contamination which may have arisen would be found in s 45(1)(a) of the RTA: that is, they must provide the premises in a reasonable state of cleanliness.

Proposal – maximum acceptable level of methamphetamine

We propose that the maximum acceptable level of methamphetamine residue be set at **15µg/100cm²**. This means that the level at which methamphetamine residue would become

¹² *Full Circle Real Estate Ltd v Piper* [2019] NZDC 4947, at [36].

¹³ *Bhana v Pitman* [2020] NZTT Rotorua 4259157 at [7]-[11] ([4259157](#)).

contamination, and be covered by the regulations, is any level which **exceeds 15µg/100cm²**. We also propose that if there is a requirement to decontaminate premises because they exceed this level, the decontamination obligation will be satisfied if, after decontamination, the tested levels are **15µg/100cm² or less**. Please refer to Issues 1 and 2 in **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

1.2 Setting a maximum inhabitable level, which can enable termination of tenancies

Section 138C(3)(b) of the Act allows regulations to be made setting a **maximum inhabitable level** of methamphetamine. In general terms, section 59B of the Act enables a tenant or a landlord in certain circumstances to terminate a tenancy on a minimum of 2 or 7 days' notice respectively, if testing establishes that methamphetamine residue is present at a level above the maximum inhabitable level.¹⁴ In addition, if the tenant is not in breach, the rent reduces or is no longer incurred (abates) at that point.

In its 2020 report, ESR, when advising on the issue of a **maximum acceptable level**, stated:

*“While the study of Wright et al. (2020) did not identify a clear biological gradient for adverse effects associated with methamphetamine exposure, principles of toxicology require such a gradient. A biological gradient means that with increasing exposure, either the probability and/or the severity of adverse health effects will increase. **This further suggests that there will be a level of methamphetamine contamination that results in unacceptable risks of adverse effects and some mechanism is required to protect residents of methamphetamine-contaminated premises from unacceptable levels of risk.**”* (Emphasis added)

However, when asked about the setting of a **maximum inhabitable level**, ESR advised that it *“does not consider that there is sufficient evidence to define a maximum inhabitable level for methamphetamine. No evidence is available of severe health effects associated with third-hand methamphetamine exposure.”*

If a maximum inhabitable level is not set, section 59B of the Act will not be able to be used to terminate a tenancy on the basis of high levels of methamphetamine residue.

In spite of the lack of evidence, we have considered whether a high level of methamphetamine contamination should be set as a maximum inhabitable level, for example 30µg/100cm². Setting a level such as 30µg/100cm² would be a precautionary step. It would enable termination of tenancies which test over that level where there *may* be risks of adverse health effects, even though there is insufficient science to precisely define that risk. It would align with the intention of Parliament that parties could quickly terminate a tenancy if

¹⁴ Residential Tenancies Act 1986, s 59B(6)-(7).

premises were significantly contaminated with methamphetamine.¹⁵ Further, it would provide certainty about what level of contamination would trigger the ability to terminate.

The ability for a landlord, in some circumstances, to terminate a tenancy which tests over 30µg/100cm² could impact adversely on tenants who have limited housing options or complex needs. However, this is an improvement on the status quo where some landlords have considered that tested levels of over 15µg/100cm² make premises 'uninhabitable' in terms of s59(1) or s59A(1) of the Act, which the Tenancy Tribunal has supported.¹⁶ In addition, this proposal aims to strike a practical balance between the interests of the parties in this situation.

What does the data show about different levels?

We have two main sources of data about the prevalence of different levels of methamphetamine residue which has been found in rental premises, both relating to Housing New Zealand properties:

- A 2018 report from ESR, *Methamphetamine Contamination*¹⁷
- A 2018 Housing New Zealand (HNZ) report: *Methamphetamine Contamination: Housing New Zealand's response*.¹⁸

The ESR report compiled data from methamphetamine tests done on HNZ properties between July 2014 and October 2017. It found that out of 13,000 wipes from 1,142 properties which had shown any level of methamphetamine contamination over this period, only a very low proportion (0.9%) of the wipes tested higher than 30µg/100cm². ESR has subsequently confirmed to us that the 0.9% of wipes related to 51 properties, or **4.5%** of the positive properties. Conversely, the HNZ report showed that of 2,483 properties which tested over 0.5µg/100cm² between 2013 and 2018, 9% of those properties had results over 30µg/100cm². Note that the number of properties over that time which tested positive but at levels lower than 0.5µg/100cm² has not been able to be confirmed, so the total proportion of positive properties in that sample which tested over 30µg/100cm² would be significantly **lower than 9%** of properties which tested positive for any level of methamphetamine.

This data gives us some indication of how often the option to terminate a tenancy under section 59B of the Act might arise under our current proposals. However, insights are limited because both these reports are a few years old, and they only relate to Housing New Zealand properties. We welcome other data about the prevalence of different levels of methamphetamine residue in rental premises to get a more complete sense of the likely impact of this proposal.

¹⁵ (24 July 2019) NZPD Third reading speech ([Residential Tenancies Amendment Bill — Third Reading, Kris Faafoi](#)).

¹⁶ See above n13.

¹⁷ Russell M, McKinnel M, Ivory B. Methamphetamine contamination. Forensic internal report 2018/02. Auckland: Institute of Environmental Science and Research (ESR); 2018.

¹⁸ Housing New Zealand, Methamphetamine Contamination: Housing New Zealand's Response, September 2018, page 53. <<https://kaingaora.govt.nz, HNZ 2018 Methamphetamine Contamination Report>>

Impact on Tenancy Tribunal if no maximum inhabitable level set

If a maximum inhabitable level was not set, the law will be difficult for the Tribunal to interpret. Specifically, if a landlord or tenant terminated a tenancy based on high levels of methamphetamine, and this was challenged at the Tribunal, the Tribunal would need to draw a line about what level of methamphetamine would make premises uninhabitable, also taking into account the lack of scientific evidence. Any level the Tribunal chose would be likely to be tested on appeal in the courts, creating significant ongoing uncertainty.

Proposal – maximum inhabitable level of methamphetamine

We propose that the maximum inhabitable level of methamphetamine residue be set at **30µg/100cm²**. This means that:

- a tenant who can't be shown to have caused the contamination, or
- a landlord who was unaware of any contamination when the tenant moved in,

can terminate a tenancy on a minimum of 2 or 7 days' notice respectively, if permitted testing establishes that methamphetamine residue is present at a level above that level. Please refer to Issue 3 in **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

Questions on Section 1: Regulated levels of methamphetamine

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

Maximum acceptable level of methamphetamine

We are proposing that the maximum acceptable level of methamphetamine residue be set at 15µg/100 cm², meaning that the level at which methamphetamine would become contamination and be covered by the regulations would be any tested level over 15µg/100cm². We also propose that an obligation to decontaminate premises will be satisfied if, after decontamination, the tested levels are 15µg/100cm² or less.

8.	Do you agree that the maximum acceptable level of methamphetamine residue should be 15µg/100cm ² ? Why/ why not?
9.	Do you agree that premises tested following decontamination must have a methamphetamine residue level at or below 15µg/100cm ² (remediation level) to no longer be considered contaminated? Why/ Why not? Can you give us an indication of costs incurred and other impacts if the remediation level was 1.5µg/100cm ² ?
10.	Do you think we considered the right options in coming to the proposed option? See Issues 1 and 2 in Part C. If not, what other options do you think should have been considered?
11.	Do you have any other comments about the proposal to set a maximum acceptable level of methamphetamine residue at 15µg/100cm ² ?

Maximum inhabitable level of methamphetamine

We are proposing that the maximum inhabitable level of methamphetamine residue be set at $30\mu\text{g}/100\text{cm}^2$, which means that a tenant or a landlord in certain circumstances can terminate a tenancy on a minimum of 2 or 7 days' notice, if permitted testing establishes that methamphetamine residue is present above that level. In addition, if the tenant is not in breach, the Act provides that the rent abates at that point.

12.	Do you agree that the maximum inhabitable level of methamphetamine residue should be $30\mu\text{g}/100\text{cm}^2$? Why/ why not?
13.	Do you think we considered the right options in coming to the proposed option for the maximum inhabitable level? See issue 3 in Part C. If not, what other options do you think should have been considered?
14.	Do you think a different level would be more suitable as a maximum inhabitable level? If yes, what level would you propose, and why?
15.	Do you think there will be any unintended consequences of setting the maximum inhabitable level of methamphetamine residue at $30\mu\text{g}/100\text{cm}^2$, for example on different stakeholders? Please explain.
16.	Do you have any comments about how rent abatement may impact on the parties, following permitted detailed testing showing that the level is over $30\mu\text{g}/100\text{cm}^2$, and on the basis that the tenant did not cause the contamination?
17.	Can you provide any data or other evidence about the likely prevalence of residential tenancies testing above $30\mu\text{g}/100\text{cm}^2$?
18.	Do you have any other comments about the proposal to set a maximum inhabitable level of methamphetamine residue at $30\mu\text{g}/100\text{cm}^2$?

Section 2: Requirements for landlords

2.1 Requirements to test and decontaminate

Section 138C(3)(c) of the Act allows regulations to be made imposing requirements on landlords in respect of contaminants. There are three key areas where we propose requirements, and, in addition, propose some timeframe parameters for the work to take place.

(1) First requirement: we propose that a landlord must engage an accredited professional testing contractor¹⁹ to carry out detailed sampling and analysis of premises for methamphetamine if either:

- Police or the relevant Council advises there was, or it is likely that there was, methamphetamine manufacturing on the premises, or
- a tenant or any other person (including the landlord themselves) has carried out a permitted screening test (screening sampling) for methamphetamine residue in the premises in accordance with the regulations, and this has shown results higher than 15µg/100cm².

Note that landlords will not be required under the regulations to test for methamphetamine between tenancies (known as 'baseline testing'). Except in the two situations outlined above, landlords will not be required to test for methamphetamine, but they may choose to do so, for example if this was required under their insurance policy.

(2) Second requirement: If the results of the detailed sampling and analysis show that any part of the premises has methamphetamine contamination over 15µg/100cm² the landlord must ensure the premises are decontaminated in accordance with the prescribed process²⁰ (covered in **section 4**) until the premises test under or at 15µg/100cm². The landlord can carry out this process themselves or appoint anyone to carry out the decontamination on their behalf.

(3) Third requirement: Landlords will be required to arrange professional re-testing of the premises for methamphetamine following decontamination,²¹ to ensure they are now at or below 15µg/100cm². To avoid a conflict of interest the landlord must ensure that the tester and the decontaminator are separate entities.

Please refer to **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

¹⁹ A person who is considered competent and is authorised to take samples for detailed assessments and post-decontamination reports on behalf of an AS/NZS ISO/IEC 17020 inspection body or NZS ISO/IEC 17025:2018 accredited laboratory.

²⁰ Note that the core decontamination obligation is found in s 45(1AAB) of the Residential Tenancies Act 1986, but repeated here for completeness.

²¹ Qualified as set out above at n19.

2.2 Decontamination timeframes for a tenanted property

The Act allows regulations to be made setting additional rules about how decontamination of premises is to be carried out while the landlord continues to provide the premises to the tenant, for example, setting time periods within which processes or parts of processes must be begun or completed.²² Landlords must take steps to minimise the disruption to tenants of decontamination processes and get through the decontamination process as quickly as possible, recognising that some of the processes are outside the direct control of landlords. For example, the availability of decontamination service providers, and the nature and extent of the contamination will impact on timeframes. Other processes, such as providing test results to tenants are more straightforward and so specific timeframes can be required.

If the property is not tenanted, the landlord may undertake the testing and decontamination actions set out in section 2.1 at any time before a tenant moves in. If the property is tenanted, we propose that the landlord must undertake these actions in accordance with the timeframes set out in the table below. Please refer to **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

Table 1 – Proposed and existing methamphetamine-related timeframes for a tenanted property

Action	Description	Timeframe
Notify tenant of intention to enter premises for testing or taking samples	Existing (no changes proposed) – Section 48(2)(ba) of the Act enables the landlord to enter the premises for the purpose of testing for the presence of contaminants or taking samples for such testing (except where the testing or sample taking is part of a prescribed decontamination process) at any time between 8am and 7pm of any day, after giving to the tenant notice of the intended entry and the reason for it (including stating the contaminants to be tested for).	At least 48 hours but no more than 14 days before intended entry
Provide test results to tenant	Existing (no changes proposed) - Section 48(3B) of the Act requires landlords to advise tenants of the results of any testing for contamination within 7 days of receiving the test results.	7 calendar days
Engage accredited tester	Proposed – If screening assessment returns results above 15µg/100cm ² , or if Police or the relevant Council notifies the landlord there was, or it is likely that there was, methamphetamine manufacturing on the premises, the landlord must engage an accredited tester to undertake detailed assessment to determine the nature and extent of the contamination.	Proposed: As soon as practicable after receiving positive screening test results or Police/ Council notification

²² Residential Tenancies Act, s 138C(3)(f).

Decontaminate	Proposed - Where detailed assessment shows levels greater than 15µg/100cm ² , the landlord must ensure decontamination has been completed in accordance with the prescribed process.	Proposed: As soon as practicable after receiving detailed assessment results
Re-test	Proposed – If detailed assessment results are greater than 15µg/100cm ² the landlord must engage an accredited tester to re-test the premises following decontamination to determine if decontamination has been successful.	Proposed: As soon as practicable after decontamination has been completed
Provide re-test results to tenant	Existing – Section 48(3B) of the Act requires landlords to advise tenants of the results of any testing for contamination within 7 days of receiving the test results.	Existing: 7 calendar days

When considering the options, we balanced the desire for certainty in terms of timeframes against the reality, for a landlord, of needing to find potentially scarce contractors to carry out testing and decontamination work. On balance, we think that the proposed setting of ‘as soon as reasonably practicable’ will provide the necessary indication of urgency, but also allow flexibility if contractors take more than a few days to arrange.

Note that these proposals will not create new obligations for tenants. Tenants will be able to do an approved screening test if they choose to, and the landlord must act on results over 15µg/100cm². If the proposals are adopted, tenants will have much greater certainty about when methamphetamine residue will constitute contamination, and what needs to happen if their premises are contaminated.

Questions on Section 2: Requirements for landlords

These questions can be used to guide your feedback. You can also give us feedback on any other topics within this paper.

General question about requirements for landlords

19. Do you think the right options were considered when reaching the proposals on requirements for landlords? See issues 4 and 5 in Part C. If not, what other options do you think should have been considered, and why?

Acting on advice about manufacture

Section 2.1(1) proposes that if Police or the relevant Council advises the landlord that there was, or it is likely that there was, methamphetamine manufacturing on the premises,

the landlord must engage the services of an accredited professional testing contractor to undertake detailed sampling.

20.	Do you agree that landlords should be required to professionally test for methamphetamine contamination in this situation? Why/why not?
21.	Do you think there should be other situations where a landlord is required to test under the regulations? Please specify.

Acting on positive test results

Section 2.1(1) proposes that landlords be required to act on positive screening test results (i.e. above 15µg/100 cm²) and engage the services of an accredited professional testing contractor to undertake detailed sampling. This would be required regardless of who conducted the screening test, provided the test was undertaken in accordance with the regulations.

22.	Do you agree that landlords should be required to professionally test for methamphetamine contamination in this situation? Why/why not?
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Requirement to re-test

Section 2.1(3) proposes that landlords will be required to arrange professional re-testing of the premises for methamphetamine following decontamination, to ensure they are now at or below 15µg/100cm². To avoid a conflict of interest the landlord must ensure that the tester and the decontaminator are independent entities.

23.	Do you agree that landlords should be required to arrange professional re-testing in this situation? Why/why not?
24.	Can you identify any concerns with the requirement to ensure that the tester and decontaminator are independent entities?

Timeframes

The table in section 2.2 proposes timeframes that landlords would be required to comply with if methamphetamine contamination is found in their property. We note that most processes are outside of the landlord's direct control.

25.	Do you agree with the proposed timeframes? Why/Why not? What alternative timeframes would you suggest? Do you have evidence about how long it currently takes to arrange a methamphetamine test or decontamination?
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Section 3: Testing for methamphetamine contamination

The Act allows regulations to be made prescribing **methods for testing** for methamphetamine, including **who** can test, and **how** samples should be taken, analysed and interpreted.

Stages of assessment and testing

There are two stages of assessment for possible methamphetamine contamination of a property: **screening assessment** and **detailed assessment**. Note that our proposals in relation to these aspects are underpinned by current accepted scientific practice, so the options we considered we constrained. Please refer to Issue 6 in **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

3.1 Process for screening assessment and who can undertake this

The purpose of screening assessment is to identify the presence or absence of methamphetamine contamination using validated screening tests. The results of screening assessment will determine if detailed assessment is required. We propose that screening assessment under the regulations must be done in accordance with Section 3 of NZS 8510:2017.

We propose that the regulations should enable anyone (including landlords, tenants, and other laypersons, as well as professionals) to undertake screening assessments for methamphetamine, as long as they comply with the following requirements:

- use screening technology/ test kits that are approved and validated under the regulations, or use accredited laboratory sampling equipment and analysis, and
- follow all the instructions for the screening test chosen, including selecting appropriate representative sample sites and recording the process correctly, and
- take appropriate health and safety precautions.

We discounted the option of requiring professionals to undertake screening assessments, because this would impose significant costs on tenants and landlords without sufficient justification. However, we propose that screening samplers who are engaged to perform screening assessments in a professional capacity will be required to meet either the competency requirements set out in section 7.1 of NZS 8150:2017 if the relevant NZQA standard is available for completion, or in the absence of this, be an accredited sampler.²³

Note that no approved and validated test kits or validated screening technology currently exist in New Zealand. However, we are proposing that the regulations provide for them because such kits are likely to be approved in the future, once a clear threshold level has been set.

²³ Qualified as set out above at n19.

3.2 Process for detailed assessment and who can undertake this

The purpose of detailed assessment is to determine the extent of any methamphetamine contamination on the premises. We propose that detailed assessment under the regulations must be done in accordance with Section 3 of NZS 8510:2017, but this should be undertaken with reference to the maximum acceptable level of methamphetamine prescribed in the regulations, rather than that set out in section 2.1 of NZS 8510:2017.

As covered in section 2 of this document, we propose that the landlord must ensure detailed assessment is carried out in two situations:

- if Police, following investigation of the premises, report to the landlord that the premises had been used or were likely to have been used for the manufacture of methamphetamine (or if this is confirmed by the relevant Council); or
- if screening sampling results show a positive result for methamphetamine contamination above the proposed maximum acceptable level ($15\mu\text{g}/100\text{cm}^2$).

We propose that detailed assessment must be undertaken by qualified professionals. Specifically, the people doing the detailed sampling work must meet the competency requirements set out in section 7.2 of NZS 8510:2017, which includes being employed by, or authorised to work on behalf of, an AS/NZS ISO/IEC 17020 accredited inspection body or an NZS ISO/IEC 17025 accredited laboratory. They must be independent of all other parties involved in the potential contamination and decontamination.

The samples obtained from detailed assessment must be analysed at accredited laboratories, specifically:

- **New Zealand:** those laboratories accredited under the scope of NZS ISO/IEC 17025 (*General Requirements for the Competence of Testing and Calibration Laboratories*), for NIOSH methods 9106, 9109 or 9111²⁴
- **Overseas:** laboratories which have been accredited by any regional body within the International Laboratory Accreditation Cooperation (ILAC) group.²⁵

3.3 Types of testing – proposed regulatory approach

Permitted types of tests

We propose that permitted ways to sample and test for methamphetamine under the regulations should be:

- laboratory composite testing

²⁴ The National Institute for Occupational Safety and Health (NIOSH) is a United States federal agency which is part of the Centre for Disease Control and Prevention (CDC). The NIOSH methods listed here are widely accepted scientific methods of sampling for methamphetamine contamination.

²⁵ ILAC is the international organisation for accreditation bodies operating in accordance with ISO/IEC 17011 (Requirements for Accreditation Bodies) and involved in the accreditation of conformity assessment bodies including calibration laboratories and testing laboratories (using ISO/IEC 17025), among others.

- individual sample testing, or
- testing kits which have been validated by an NZS ISO/IEC 17025 laboratory.

Laboratory composite testing involves taking swabs from appropriate surfaces in a house, which are sent to a laboratory for analysis. The laboratory extracts the swabs and some extract from each swab is combined for analysis. If the result is negative (no methamphetamine detected) or below the prescribed contamination level of $15\mu\text{g}/100\text{ cm}^2$, no further action is required. If the result is greater than $15\mu\text{g}/100\text{ cm}^2$, the individual samples can be tested to determine the actual level of methamphetamine present in each swab. These tests are NIOSH compliant.

Individual sampling involves taking swabs from appropriate surfaces in a house, which are sent to a laboratory for analysis. The laboratory extracts the swabs and analyses the extract from each swab separately, providing an individual result for each swab.

Testing kits which have been validated by an NZS ISO/IEC 17025 laboratory can be used to screen for methamphetamine on-site (as opposed to having to send samples away to a laboratory). These kits may also be called infield test kits. There are currently no validated devices of this type in New Zealand. If validated field test kits become available in the future and were calibrated to indicate levels above $15\mu\text{g}/100\text{ cm}^2$, these would be considered acceptable under the regulations.

Tests which will not be permitted

We propose that neither **unvalidated testing kits** nor **field composite tests** should be permitted ways to sample and test for methamphetamine under the regulations.

Unvalidated testing kits are not permitted because there is no guarantee that they will work as specified. For example, ESR advises that they may be sensitive to other compounds, and overly susceptible to poor sampling techniques and variation in surface types. They also may give an unacceptable proportion of false positive and/or false negative results, and not be NIOSH compliant.

Field composite tests including 'multi-wipe field composite' and 'single-wipe field composite' are tests where swabs are taken from surfaces and combined before being sent to the laboratory for analysis. These are not permitted because individual swabs are not retained, so it is not possible to get individual sample results if the laboratory testing shows contamination. With single-wipe field composite tests, ESR advises that contamination levels from different sites are added together which means the total can breach the contamination threshold even when no individual reading would have done so. If methamphetamine is detected from field composite tests, re-sampling of all surfaces will be required to determine the levels and extent of methamphetamine contamination.

Questions on Section 3: Testing for methamphetamine

These questions can be used to guide your feedback. You can also give us feedback on any other topics within this paper.

Screening assessment and detailed assessment

Section 3 proposes that the regulations recognise two categories of testing: screening assessment, and detailed assessment.

26.	Do you agree that anyone should be able to undertake screening assessment as long as they use approved tests, follow all the instructions, and take appropriate health and safety precautions? Why/why not?
27.	Do you agree that detailed assessment should only be able to be undertaken by qualified professionals? Why/why not?
28.	Do you have any other feedback about the proposals relating to screening assessments and detailed assessments?

Permitted types of tests and analysis

Section 3.3 proposes that any of discrete/individual sampling plus laboratory testing, discrete/individual sampling plus laboratory composite testing, and accredited screening test kits are acceptable methods of testing for methamphetamine under the regulations. Unless an accredited screening test kit is being used, all samples need to be analysed and reported on by accredited laboratories.

29.	Do you agree that these tests should be acceptable for the purposes of the regulations? Why/why not? Do you consider that any other types of tests should be acceptable under the regulations? Please explain.
30.	Do you agree that unless an accredited screening test kit is being used, all samples need to be analysed and reported on by accredited laboratories? Why/why not?

Tests which are not permitted

Section 3.3 proposes that field composite tests and unvalidated testing kits are not acceptable methods of testing for methamphetamine under the regulations

31.	Do you agree that these tests should not be acceptable for the purposes of the regulations? Why/why not?
32.	Do you have any other comments on the proposed acceptable or not acceptable types of tests for the purposes of the regulations?
33.	Do you have any other feedback about the proposals relating to screening assessments and detailed assessments?

Section 4: Decontamination processes

4.1 Prescribing a decontamination process

When professional detailed tests have confirmed that premises are contaminated with methamphetamine, the Act:

- prohibits landlords from providing the premises to a tenant if the premises have not been decontaminated in accordance with **a relevant prescribed decontamination process**, or
- if the premises have already been provided to the tenant, allows the landlord to continue to provide the premises as long as they are being decontaminated in accordance with **a relevant prescribed decontamination process** and any prescribed rules.²⁶

Accordingly, the regulations need to prescribe such a process.

From our discussions with the science experts in this field (ESR), there is no single guaranteed method of decontaminating all parts of a residence which may be contaminated. Successful techniques will differ, depending on:

- the type of room/s which were contaminated – decontaminating a bathroom which has lots of hard surfaces will need different techniques from, for example, decontaminating a bedroom or a garage
- how high the contamination level was
- what materials are present in the rooms, e.g. carpets, varnished wood, laminate, stainless steel etc.
- heating/ ventilation/ plumbing differences in different rooms/areas.

Also, often a process may have to be repeated multiple times to reduce the contamination to the desired level. Because of these variables, providing certainty on a detailed process which will achieve decontamination in every situation is not possible.

Our approach for this aspect of the regulations is to propose a process which is sufficiently clear, but also allows some flexibility. This means it can apply in the different situations in which decontamination will be needed, and, within some parameters, can enable novel approaches to decontamination processes if these are shown to be effective. As noted earlier, we propose that the regulations also provide certainty about the outcome we are seeking from decontamination, in the form of an independent professional test result below 15µg/100cm².

Accordingly, for the requirement for a 'relevant prescribed decontamination process', we propose that we incorporate the relevant parts of section 4 of NZS 8510:2017,²⁷ with some amendments. Specifically, we propose that the regulations could incorporate:

- **4.1: Objective of decontamination**, but we would note that the relevant limit is the one prescribed by regulation, not the standard
- **4.2: Hazards and Contaminants**, which covers required safety precautions

²⁶ Residential Tenancies Act 1986, s 45(1AA)(b) and (1AAB).

²⁷ NZS 8510:2017, section 4, p 21.

- **4.3: Decontamination process**, which covers all key steps in a robust decontamination process. For the purposes of the regulatory proposals, we propose this section all be incorporated with the deletion of the rules about carpets under ‘m’ in 4.3.2, and the deletion of part 4.3.4: Decontamination of contents, because both the latter sections are inconsistent with our proposed maximum acceptable level settings.

We have set out the full text of our proposed decontamination process at **Annex A**. Please refer to Issue 7 in **Part C** for more information about options we considered when developing this proposal.

4.2 Will the regulations apply to tenant or landlord goods on the premises?

The treatment of general tenant or landlord goods is outside the scope of the regulations. However, property which is provided by the landlord as an integral part of the premises such as curtains, carpet, light fittings, ventilation systems, heat pumps and any other installed heaters is within scope. Abandoned goods from contaminated premises (i.e. goods which are left behind at the conclusion of a tenancy) are covered in section 5, below.

In terms of property which is provided as part of the premises, we propose that the regulations require that carpets and curtains found in contaminated parts of the premises are high efficiency particulate air (HEPA) filter-vacuumed and steam cleaned. Light fittings and installed heaters should be cleaned as thoroughly as possible, taking into account the approach contained within the standard where relevant. Ventilation systems and heat pumps should be cleaned in accordance with the standard’s requirements in 4.3.5.

While other general tenant or landlord goods found within contaminated parts of the premises at the time decontamination is required are outside the scope of the proposals, the decontaminator may wish to deal with these as if they are contaminated. We intend to commission guidance from ESR to give clarity about how to do this. The owner of these goods will be able to choose whether and how they are cleaned, and pay the costs of this. Such costs may be able to be recouped through the Tenancy Tribunal from a party who is liable for the contamination, but this will depend on the facts of the case.

These proposals have been developed with the context that there is little scientific evidence about:

- whether cross contamination of methamphetamine residue occurs between contaminated premises and the goods that are placed inside them, or vice versa, and if so to what extent
- how to test goods without damaging or destroying them
- how to effectively clean different types of goods.

We are interested to hear thoughts about whether these proposals are a proportionate way for the regulations to address the issue of potential methamphetamine contamination on goods found in contaminated premises, given the limitations on the scope of the regulations in this area.

4.3 Future review of standard

Over time, assuming that the proposed maximum acceptable level of methamphetamine becomes legally enforceable, we expect that the standard NZS 8510:2017 will be revised, and it is likely that the decontamination process in the standard will be part of that revision. If that occurs, at that point the regulations may be amended to refer entirely to the new standard provisions for an appropriate decontamination process.

4.4 Who can do decontamination work

Unlike with methamphetamine screening and testing, there is no independent regulator, industry body, or required qualification which enables someone to perform decontamination work. While section 7.4 of NZS 8510:2017 lists ways to demonstrate competence to perform methamphetamine decontamination, these are not independently assessed or verified. While a regulator or industry body could be established for this purpose, this would be expensive, and the cost would not be justified in light of other ways to ensure that decontamination work met required standards.

Accordingly, we propose that the regulations enable the landlord to appoint any person to carry out decontamination work, including themselves. Please see Issue 8 in **Part C** for other options we considered in developing this proposal. Ordinary health and safety obligations would apply to the person carrying out the decontamination work, and health and safety precautions are also specifically required under section 4.2 of the standard, which is proposed to be part of the prescribed decontamination process (see section 4.1 above).

We expect that landlords would select decontamination workers with some care. Professional post-decontamination testing showing levels below $15\mu\text{g}/100\text{ cm}^2$ will be required before decontamination can be completed, and so a poor quality job would lead to extra costs and time arising from work needing to be repeated.

4.5 Whether tenants need to move out during decontamination

Depending on the level of remediation required, it may either be practically required, or more convenient for decontamination contractors, if the tenants move out of the premises during the decontamination. However, the Act does not currently enable this: in fact, the relevant provisions of the Act anticipate that tenants will be able to remain in the premises during the work.²⁸

We welcome feedback about any practical impacts of decontaminating premises while the tenants are still living there. Given that the current proposal is that contaminated properties need to be remediated to **$15\mu\text{g}/100\text{ cm}^2$** or lower rather than to **$1.5\mu\text{g}/100\text{ cm}^2$** , we anticipate that decontamination process will be able to be less invasive than it previously has been. We also understand that, where needed, this issue is currently worked through informally (i.e. there are situations where tenants and landlords come to an agreement about the tenants moving out temporarily) so it's possible that this informal approach could continue to work adequately.

²⁸ Residential Tenancies Act 1986, s 45(1AAB)(b).

Questions on Section 4: Decontamination

These questions can be used to guide your feedback. You can also give us feedback on any other topics within this paper.

Decontamination process

Section 4.1 and Annex A set out the proposed decontamination process which must be followed under the Regulations.

34.	Do you agree with the proposed decontamination process? Why/why not? Do you think there were any other options which should have been considered when developing the proposed decontamination process? (See issue 7 in Part C).
35.	Would you suggest any changes or additions to the proposed decontamination process?
36.	Do you think the proposed decontamination process allows for new decontamination methods as long as they're effective?

How the regulations will apply to property which is part of the premises

Section 4.2 sets out that the regulations will apply to property which is provided by the landlord as part of the premises such as curtains, carpet, light fittings, ventilation systems, heat pumps and any other installed heaters, and sets out decontamination processes for these items. Section 4.2 also sets out that general tenant goods (except for abandoned goods) and other landlord goods will not be covered by the regulations because they are out of scope.

37.	Do you agree with the proposals relating to property which is part of the premises? Why/ why not?
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Who can do decontamination work

Section 4.4 sets out that the landlord can appoint any person to carry out decontamination work, or can do it themselves.

38.	Do you agree that any person can carry out decontamination work? Why/why not?
39.	Do you think the right options were considered when reaching this proposal? (See Issue 8 in Part C). If not, what other options do you think should have been considered?

Tenants remaining in premises during decontamination work

Section 4.5 sets out that the Act does not enable a landlord to require a tenant to move out during decontamination work.

40.	Do you think it is workable for a tenant to remain living in the premises during decontamination work? Why/why not? Do you think that the proposed maximum acceptable level and remediation level of 15µg/100cm ² (compared with 1.5µg/100cm ² which was often required in the past) will make a difference as to whether tenants can remain?
41.	How have you managed this situation in the past when decontamination work was required? Did the tenants remain in the premises while decontamination work was carried out, or was a formal or informal agreement reached for them to move out?

Section 5: Abandoned goods on contaminated premises

5.1 What does this cover?

The Act states that if a tenant leaves goods behind at a contaminated property, the landlord must follow the processes set out in regulations for abandoned goods on contaminated premises, instead of following the existing legislative process for abandoned goods.²⁹ The regulation making power is provided for in section 138C(3)(g) of the Residential Tenancies Act 1986.

Regulations on how to manage abandoned goods on contaminated premises will reduce the potential health risks associated with methamphetamine contamination on such goods.

The proposals set out below aim to strike a pragmatic balance between ensuring that potentially valuable tenant goods are not disposed of too quickly, but also being fair to landlords in terms of the extra efforts which would be required when dealing with contaminated goods. We welcome feedback on these proposals to ensure we take account of their likely practical impact. Please refer to **Part C** for more detail about the other options we have considered and evaluated in reaching these proposals.

5.2 Proposals for abandoned goods from contaminated premises

As is the case for abandoned goods left in any other premises, the Act requires that the landlord may first dispose of any perishable abandoned goods in a contaminated property, and then must make all reasonable efforts to contact the tenant to arrange a period within which to collect the goods. Only if the tenant is uncontactable or fails to collect the goods within the agreed time would the following proposals apply.

- The landlord must deal with the abandoned goods as if they are contaminated. (Note that we intend to commission ESR guidance to provide guidelines about ways to safely deal with and store contaminated goods as is required by these proposals).
- The landlord may choose whether to:
 - secure the goods in safe storage and apply to the Tenancy Tribunal for an order setting out what to do with the goods, or
 - follow the provisions set out below.
- The landlord must ensure that personal documents belonging to the tenant are stored securely. This could either be in secure storage which the landlord provides, or taken to the nearest Police station.
- For goods which are not personal documents, the landlord should make all reasonable efforts to assess the market value of those goods, together with the

²⁹ See Residential Tenancies Act 1986 s 62(3A). The existing process for abandoned goods is set out in sections 62-62F of the Residential Tenancies Act 1986.

likely cost of testing, decontamination (where this is possible), storage, transport, and sale.

- If the assessment indicates that any of the goods have a value **below** the total cost of testing, decontamination (where this is possible), storage, transport, and sale, the landlord may securely dispose of the goods on the basis that they may be contaminated.
- If the assessment indicates that any of the goods have a value **above** the total cost of testing, decontamination (where this is possible), storage, transport, and sale, the landlord must secure those goods in safe storage for not less than 35 days from the date on which the landlord first took possession of those goods.
- If, after the period of 35 days, the goods or any personal documents belonging to the tenant remain unclaimed, the landlord must—
 - continue to secure those goods and personal documents in safe storage to await any claims by the tenant; or
 - take any personal documents belonging to the tenant to the nearest Police station and obtain a receipt for them from a Police employee; and decontaminate, re-test and, if the goods are no longer contaminated, sell the other goods by public auction or by private contract at a reasonable market price.
- If, before the landlord disposes of the goods, the tenant claims the goods and/or any personal documents belonging to the tenant, the landlord may require the tenant to pay the landlord's actual and reasonable costs arising out of the storage of the goods/documents. The landlord must release to the tenant any goods and personal documents claimed by the tenant, subject to payment of any costs. The tenant must give the landlord a receipt for any goods and personal documents released to the tenant.

If the landlord has sold the goods in accordance with these proposals, the landlord may apply to the Tenancy Tribunal for an order specifying the amount (if any) owing to the landlord out of the proceeds of sale.

As noted above, these proposals are also made in the context that there is little scientific evidence about how to test goods without damaging or destroying them, and how to effectively clean different types of goods.

We also considered the option of enabling a landlord to dispose of all abandoned goods from contaminated premises after the tenant was either uncontactable or did not collect the goods within the agreed period (see Issue 9 in Part C). However, we concluded that this was not preferred. This option does not seem fair to tenants who have potentially left premises in complex circumstances and may not have anticipated the complete loss of their personal possessions. Also, it seems different from the provisions of the Act which apply to abandoned goods from all other premises, without sufficient justification.

Questions on Section 5: Abandoned goods on contaminated premises

These questions can be used to guide your feedback. You can also give us feedback on any other topics within this paper.

Abandoned goods

We are proposing that the requirements for abandoned goods on contaminated premises are similar to the existing process in the Residential Tenancies Act 1986 for abandoned goods, with some additional requirements.

42.	Do you agree with the proposed requirements on landlords for managing abandoned goods on contaminated premises? Why/why not?
43.	Do you think that landlords should be able to dispose of goods abandoned on contaminated premises without testing them for contamination and without storing them? Why/why not?
44.	Do you have any other comments or alternative suggestions or options to consider in relation to the abandoned goods proposals?

Part C: Analysis of Policy Proposals

Please note that the options analysis in this part has been carried out on an **interim basis**, before the proposals have been publicly consulted on. Feedback received during the consultation will inform this analysis, and the conclusions may change. We welcome feedback on any of the options, the analysis and the conclusions so that the final preferred options are as well-informed as possible. Note also that because this consultation is dealing with proposed regulations, apart from the status quo, non-regulatory issues and options have been excluded.

Objectives for Methamphetamine Regulations

Each policy proposal should meet **some or all** of our objectives. Our proposed objectives are to:

- A.** Minimise the health risk from exposure to methamphetamine contamination in rental housing.
- B.** Provide certainty to tenants and landlords about their rights and responsibilities around methamphetamine contamination.
- C.** Provide clear rules and processes for testing and decontamination for methamphetamine residue.
- D.** Support professional conduct and standards in the methamphetamine testing industry.
- E.** Prescribe an approach that will manage costs of testing and decontamination for landlords and tenants.

Core Expectations of Regulatory Systems

When evaluating the policy options, we have also considered core expectations of regulatory systems, including whether the option:

- A.** Achieves the objectives in a least cost way.
- B.** Is flexible, for example enables parties to adopt innovative approaches to meeting regulatory obligations.
- C.** Produces predictable and consistent outcomes for regulated parties.
- D.** Is proportionate, fair and equitable for regulated parties.
- E.** Conforms to established legal principles and supports compliance with Treaty of Waitangi obligations.

The preferred option within each proposal is indicated.

Issues considered in this part

Issue 1: Maximum acceptable level of methamphetamine residue	Page 34
Issue 2: Setting a level for contaminated properties to be remediated to	Page 36
Issue 3: Maximum inhabitable level of methamphetamine residue	Page 37
Issue 4: When should landlords be required to test for methamphetamine contamination?	Page 39
Issue 5: Testing and decontamination timeframes when tenants are living in premises	Page 41
Issue 6: Who should be able to undertake testing (screening assessment and detailed assessment) for methamphetamine contamination, and what types of tests can be used	Page 42
Issue 7: Decontamination process	Page 44
Issue 8: Who should be able to do decontamination work	Page 45
Issue 9: Requirements for managing abandoned goods on contaminated premises	Page 46

Issue 1: Maximum acceptable level of methamphetamine residue (see Part B section 1.1)

Problem definition: There is currently no legally binding rule which sets an acceptable level of methamphetamine residue in rental accommodation, which is confusing for the sector and challenging for the Tenancy Tribunal, and has led to disproportionate responses to low levels of methamphetamine residue.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
Option 1: Do not set a maximum acceptable level (status quo)	This option does not comply with any of the objectives.	This option does not comply with any of the core expectations.
Option 2: Set a series of ranges which would comprise the 'maximum acceptable level' with escalating requirements based on the level of residue	This option would support objectives A and D, and C does not apply. It would partially support objective B, but the series of ranges could be confusing. It would potentially increase the costs of testing and decontamination compared with the status quo without a clear risk-based justification for this, and so would not meet objective E.	This option may comply with expectations B and E. However, it would not achieve the objectives in a least-cost way, would not produce predictable and consistent outcomes, and is not proportionate because it would increase costs compared with the status quo, without a clear risk-based justification for this, and so does not meet expectations A and C and D. Consultation with government agencies also suggested this option would be quite confusing.

<p>Option 3: Prescribe a single maximum acceptable level of 1.5µg/100cm²</p>	<p>This option would support objectives A, B, and D, and C does not apply. However, it would increase the costs of decontamination compared with the status quo without a clear risk-based justification, and so would not meet objective E.</p>	<p>This option may comply with expectations C and E. However, this option would be high cost and would not be a proportionate response to the identified problem, and so does not comply with expectations A, B and D.</p>
<p>Option 4: Prescribe a single maximum acceptable level of 15µg/100cm² (preferred option)</p>	<p>This option would support objectives A, B, C, and E, and D does not apply.</p> <p>This option minimises the health risk in line with scientific advice, and it provides certainty to tenants and landlords about their rights and responsibilities around what levels of methamphetamine residue will require remediation. This approach will manage the costs for tenants and landlords, by setting a level that is not too low or onerous.</p>	<p>This option would meet core expectations A, B, C, D and E.</p> <p>This option achieves the objectives in a least cost way, based on scientific advice. While it is a single set level, it would still enable flexibility in how parties meet that level (expectation B). This option will be predictable and consistent, as tenants and landlords will know what the maximum acceptable level is. This option is also fair and proportionate to the regulated parties, when considering the associated level of risk.</p>

Issue 2: Setting a level for contaminated properties to be remediated to (Part B section 1.1)

<p>Problem Definition: It is currently unclear what should be the target remediation level to confirm that decontamination has been successful. There are currently two different remediation levels being used which causes confusion and disproportionate costs.</p>		
<p>Option and description</p>	<p>Compliance with objectives</p>	<p>Compliance with core expectations of regulatory systems</p>
<p>Option 1: Do not prescribe a remediation level in legislation or regulation (status quo)</p>	<p>This option would partially meet objectives A and E, on the basis that parties are likely to assume that 15µg/100cm² is an appropriate remediation level. However, the lack of certainty around this means that this option would not meet objectives B, C and D.</p>	<p>This option would continue confusion, and so would not meet any of the core expectations.</p>
<p>Option 2: One clean-up level of 1.5µg/100 cm² for all properties testing 15µg/100cm² and above</p>	<p>This option meets the objectives: A, B, C, D, as it is simple to understand.</p> <p>However, it does not meet objective E because tenants and landlords will face unnecessary costs and disruption in many instances where decontaminating to a low level is not justified by its health risk.</p>	<p>This approach would meet expectation C. It does not meet the requirements in a least cost way (expectation A), due to the unjustified requirement to decontaminate premises down to 1.5µg/100cm². It reduces any capacity for flexibility and innovation (expectation B) and is not proportionate or fair, so does not meet expectation D. It does not meet expectation E.</p>
<p>Option 3: One clean-up level: 15 µg/100 cm² (preferred option)</p>	<p>Meets the objectives A, B, C, D, E.</p> <p>It keeps the health risk to a minimum, but provides certainty to landlords and tenants, and provides clear rules.</p> <p>It supports professional conduct in the methamphetamine testing industry, and manages the costs of testing and decontamination.</p>	<p>This option meets all of the expectations.</p> <p>This is the least cost option, as 15µg/100cm² is a much easier level to remediate, and it is flexible in that it is largely up to decontaminators to decide how to effectively remediate down to this level. It will provide predictable and consistent outcomes, and is proportionate and fair for the regulated parties, as it will not cost more than the risk level justifies.</p>

Issue 3: Maximum inhabitable level of methamphetamine residue (see Part B section 1.2)

<p>Problem Definition: Parliament has decided that at a certain level of methamphetamine contamination the option to terminate the tenancy should be available in addition to the requirement for the premises to be decontaminated. The problem is to establish at what level of contamination this right of termination should arise.</p>		
<p>Option and description</p>	<p>Compliance with objectives</p>	<p>Compliance with core expectations of regulatory systems</p>
<p>Option 1: Set a high level of 30µg/100cm² as a maximum inhabitable level (MIL), so s 59B termination rights are available if premises test above this level. (Preferred option)</p>	<p>This option broadly supports objectives A, B and E, and C and D do not apply.</p> <p>A MIL of 30µg/100cm² would help minimise the health risk (from a precautionary perspective) because it would enable tenants or landlords as applicable to quickly terminate a tenancy which had very high levels of contamination. It would provide much greater certainty for landlords and tenants than no level, by enabling the use of clear statutory power.</p> <p>If a MIL is not set, the Tribunal and Courts would have to make context-specific decisions about when rental premises are uninhabitable due to methamphetamine contamination, which would not provide certainty to landlords or tenants. Setting a MIL may slightly reduce decontamination costs because if one party terminates, premises will be empty and therefore easier/cheaper to decontaminate.</p>	<p>This option supports expectations B, C, D and E.</p> <p>If premises test over 30µg/100cm², having an additional remedy (the ability to quickly terminate) would increase flexibility for permitted parties, rather than the main remedy for high levels of methamphetamine residue being decontamination. Setting a MIL would produce much more predictable and consistent outcomes when there was very high levels of contamination compared with not setting a level. On the basis that some level of precaution is appropriate given the lack of scientific evidence, this option could strike a proportionate approach which is fair and equitable for regulated parties, compared with no level being set making it unclear if a termination right was available for high levels of methamphetamine. This option would largely conform to established legal principles and Treaty obligations.</p> <p>In terms of expectation A, it is hard to assess how this option could impact on overall costs, because this will differ depending on whose perspective you consider and the context of the contamination.</p>
<p>Option 2: Set the max inhabitable level at the same level as the maximum acceptable level (proposed to be 15 µg/</p>	<p>This option would support objectives A, B and E, and C and D do not apply.</p> <p>This option would minimise the health risk because it is a very risk-averse position. It would provide certainty in terms of what rights tenants and landlords have, but could</p>	<p>This option supports expectation B, however would not support expectations A, C, D and E.</p> <p>This option would increase flexibility to some extent, because in some cases tenants or landlords could decide whether to terminate the tenancy instead of only having decontamination as an option.</p>

<p>100cm²) which means that s 59B termination rights are available if premises test above this level as well as other decontamination obligations.</p>	<p>risk confusion in terms of the natural meaning of the terms, because it would call into question whether a property is truly 'uninhabitable' over 15µg/100cm². This option may mean decontamination costs are slightly reduced because one party may terminate and so premises can be empty which would make decontamination work easier, but this is not conclusive.</p>	<p>However, this option would not be the least-cost way to achieve the objectives, because any level over 15µg/100cm² would enable termination (which is likely to be costly for the landlord), when science suggests that decontamination is appropriate to manage the risks in most situations. This option would reduce predictability because when premises tested over 15µg/100cm², one or both parties would have a choice about whether to terminate first, or decontaminate without termination. This option does not seem proportionate, fair or equitable (expectation D) in light of the scientific advice, and in particular it would, in some situations, enable landlords to easily terminate tenancies for tenants who have limited housing options or complex needs, and could, more broadly, reduce security of tenure for tenants. Finally, it could cause unforeseen consequences in terms of statutory interpretation to set these two levels at the same point, given the Act anticipates different consequences at the two different levels.</p>
<p>Option 3: Do not set a maximum inhabitable level (status quo)</p>	<p>This option would not support objectives A, B and E, and C and D do not apply.</p> <p>The option does not minimise the health risk, because tenants may be required to stay in highly contaminated premises until decontamination can be organised, rather than being able to quickly terminate. This option reduces certainty in terms of the level, if any, which would justify termination.</p> <p>Costs of decontamination of highly contaminated premises may be higher if there is no ability to terminate the tenancy and so have the premises vacant while decontamination is carried out.</p>	<p>This option does not support any core expectations.</p> <p>It does not achieve the objectives in a least-cost way. The lack of clarity about whether either party can terminate could incur costs, for example from seeking a Tribunal ruling over a termination decision, or costs to a tenant's health from staying in a highly contaminated premise. This option would create less flexibility than that anticipated by the primary legislation, because the only clear solution, even in cases of very high levels of contamination, is decontamination. This option would not be predictable in terms of whether a high level makes a property uninhabitable or not, and the main remedy of decontamination does not seem proportionate for very high levels of contamination. Finally, because setting a MIL is anticipated in the legislation, it would be an unexpected step for the Government to choose not to do so.</p>

Issue 4: When should landlords be required to test for methamphetamine contamination? (Part B section 2.1)

Problem Definition: There is little certainty about when a landlord should legally be required to test for methamphetamine contamination in rental premises.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
Option 1: Landlords are not required to test for methamphetamine contamination in rental premises. Landlords are required to provide premises in a reasonable state of cleanliness (status quo)	This option does not meet any of the objectives A-E.	This option does not meet any of the core expectations. It would not enable the regulations to function in the way that Parliament intended.
Option 2: ‘Baseline’ testing - landlords are required to do an approved screening test at the beginning and end of every tenancy	This option would support objectives A, B and C, and D. However, it would significantly increase costs of testing and so would not support objective E.	This approach would impose costs without sufficient justification. As such, it does not achieve the objectives in the least cost manner (A) and would create a perception that methamphetamine contamination is a more significant issue than it is. It does not meet expectations B, D or E. It would create predictable and consistent outcomes, so would meet expectation C.
Option 3. Periodic testing: testing is required for all rental premises at prescribed intervals – for example, every three years	This approach would not satisfy objectives A, B or E, because it would be high cost and inflexible, and may cause confusion when tenants move. It would support objectives C and D.	This approach would be high cost without sufficient justification, although it would likely be less costly than Option 2. Even so, it still would not achieve the objectives in the least cost manner (A). It does not meet expectations B, D or E. It would create predictable and consistent outcomes, so would meet expectation C.
Option 4: Mandatory testing (detailed assessment) in two circumstances	Meets the following objectives: B, C, D, E, for the following reasons	This option meets all core expectations. This achieves the least cost option as it only requires testing when there is evidence to show

<p>(a) When the landlord is informed about methamphetamine manufacture by Police or a Council, or</p> <p>(b) When a tenant or any other person (including the landlord) has carried out a permitted screening test for methamphetamine residue, which has shown results higher than 15µg/100cm²</p> <p>The landlord is permitted to do a screening assessment at any time following appropriate notice to the tenant. (Preferred option)</p>	<ul style="list-style-type: none"> • it is the only option that requires action based on evidence • the response is proportionate to risk, and enables any party to take action if they are concerned about methamphetamine contamination (through doing a screening assessment), without imposing unjustified requirements • it is the most cost-effective option. <p>Does not meet objective A, because there may be situations where methamphetamine contamination is present over 15µg/100cm² and no one knows about this for some time because no testing is done.</p> <p>Also, it may be difficult to establish who caused any contamination.</p>	<p>it is necessary: any other tests are done by choice of tenants or landlords.</p> <p>It allows for flexibility in terms of when other tests are performed, outside of the required scenarios.</p> <p>This option provides consistency and is proportionate and consistent with legal principles as it is evidence based, rather than arbitrary.</p>
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Issue 5: Testing and decontamination timeframes when tenants are living in premises (Part B section 2.2)

Problem Definition: Without set timeframes for the proposed testing and decontamination requirements to be met, tenants could be required to live in contaminated rental premises for extended amounts of time.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
Option 1: No timeframe specified in regulations (status quo)	<p>Does not comply with any objectives.</p> <p>A lack of timeframe could cause longer exposure to methamphetamine contamination than necessary, less certainty for tenants about all stages of the testing and decontamination process.</p>	<p>Does not meet expectations A, C, D, and E. Does enable a high level of flexibility but at the cost of certainty around when the testing and decontamination process will progress.</p>
Option 2. The landlord must ensure testing and decontamination actions are done 'as soon as practicable'. (Preferred option)	<p>This option partially meets all of the objectives A-D, and meets objective E</p> <p>It would protect tenants who are currently living in a contaminated property, by requiring landlords to test and decontaminate with a degree of urgency, but because of the need to rely on external providers for detailed assessment and (often) for decontamination work, does not provide specific deadlines.</p>	<p>This option meets expectations A, B, D and E, because it creates a degree of urgency for the landlord to ensure the tasks get done, but also allows for factors outside the landlord's control.</p> <p>It only partially meets expectation C because the timing will not always be predictable or consistent.</p>
Option 3: Prescribe fixed amounts of time, for testing and decontamination to take place, such as 15 working days.	<p>This option may meet objectives A, B, C, and D but only if the landlord is able to arrange for the required testing and decontamination within the timeframes, which may not always be possible due to needing external experts who may not be immediately available.</p> <p>The option would not meet objective E because contractors may expect a premium for being available at short notice, and there could be bidding wars if there is high demand for the services in a particular area.</p>	<p>This option would not meet expectation A because costs are likely to increase if there is limited availability of testers or decontaminators at a given time.</p> <p>It would not meet B or D because the rigid timeframe could make things difficult, and it may be disproportionately challenging for the landlord to comply with. It would not meet E, because the landlord could be penalised for circumstances beyond their control.</p> <p>Assuming the timeframes could be met, this option would produce predictable outcomes (C).</p>

Issue 6: Who should be able to undertake testing (screening assessment and detailed assessment) for methamphetamine contamination, and what types of tests can be used (Part B, section 3.1, 3.2 and 3.3)

Problem Definition: The regulations need to specify who is permitted to undertake testing (screening assessment and detailed assessment) of rental premises under the proposed methamphetamine regulations, and what types of tests can be used.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
<p>Option 1: Status quo</p> <p>There are no requirements about who can conduct these assessments, however laboratories are likely to require qualified people to do detailed assessments. Any tests are acceptable, including unvalidated testing kits and field composite tests.</p>	<p>This option meets objective E because the use of unqualified testing staff and a wide range of acceptable tests should mean that testing would be relatively cheap.</p> <p>Does not meet the following objectives: A, B, C, D, for the following reasons</p> <ul style="list-style-type: none"> • there is potential for inconsistent and inaccurate testing practice which would mean there is uncertainty about the true amount of methamphetamine contamination present • there would be limited evidential value of test results if insufficient samples are taken, locations are poorly chosen, or other processes are not followed or documented accurately • this may encourage use of less reliable or unvalidated tests as these require less initial investment • there is potential for conflict of interest issues if detailed samplers are related to the landlord, or to decontamination contractors • unvalidated testing kits have no guarantee that they will work as specified, so the results may be unreliable • field composite tests add contamination levels together from different sample sites so can give misleadingly high results. 	<p>Does not comply with expectations A, C, D and E. Creates more flexibility in terms of meeting regulatory requirements, but risks outweigh any benefits from this.</p>
<p>Option 2: Testing by accredited persons (all situations)</p>	<p>Meets the following objectives: A, B, C, D.</p> <ul style="list-style-type: none"> • This option would provide the greatest consistency and reliability, and so would minimise the risks 	<p>This does not meet expectations A, B, or D. This could increase costs by requiring testing at all stages to be</p>

<p>All testing for methamphetamine contamination (screening assessment and detailed assessment) can only be undertaken by accredited testers using verified tests.</p>	<p>from unknown exposure to methamphetamine contamination.</p> <ul style="list-style-type: none"> • Landlords would have recourse against testers if testing was not undertaken properly. • Minimises potential for errors in choosing sample sites and taking samples. <p>Does not meet the following objectives: E.</p> <ul style="list-style-type: none"> • Most costly and time-consuming option for landlords. • Disincentivises landlords or tenants to screen for methamphetamine contamination due to increased time and cost. • Burden on landlord to ensure testers are accredited. 	<p>performed by accredited professionals, who will charge more. This option is less flexible, and doesn't allow for innovation. The option meets expectation C because it would provide predictable and consistent outcomes, as all testing would be performed to a higher standard, however at the screening sampling stage, the cost is disproportionate.</p>
<p>Option 3: Anyone can perform screening assessments as long as they use approved kits or accredited lab processes in accordance with the instructions but detailed assessments must be done by qualified professionals.</p> <p>Acceptable tests will be laboratory composite tests, individual sample tests, and testing kits which have been validated by an NZS ISO/IEC 17025 laboratory. (Preferred option)</p>	<p>This option meets all of the objectives. It provides a framework which will ensure reliable results, but manages to the costs of testing to some extent by enabling anyone to carry out screening assessment.</p>	<p>This option meets all of the core expectations.</p> <p>It enables some flexibility, with the possibility that easy to use sampling assessment test kits can be developed and validated, making it easier to non-professionals to perform screening samples themselves.</p>

Issue 7: Decontamination process (Part B, section 4.1)

Problem Definition: The regulations need to prescribe a decontamination process which a landlord must ensure is followed. The problem to solve is how prescriptive this process needs to be to enable effective decontamination but also allow for innovation.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
Option 1: Status quo. Decontamination process recommended (but not required) in NZS 8510:2017.	This option does not meet any of the objectives A, B and C because it is not legally required to be followed. It is also designed to meet the 1.5µg/100cm ² level which is too low for the purposes of the proposed regulations, so would not support objective E. D does not apply.	This option does not meet expectations A, C, D, or E. It would meet expectation B because it would enable a very flexible approach to decontamination.
Option 2: Process prescribed in regulations by incorporating significant parts of section 4 of NZS 8510:2017, with minor adjustments to reflect the higher maximum acceptable level in the regulations. (Preferred option)	<p>This option meets objectives A, B, C and E, and D is not applicable.</p> <p>It provides certainty to landlords and tenants as to how the decontamination process will be carried out, and is designed to achieve a remediation level of 15µg/100cm² so it would be less costly than following the current standard process.</p>	This option meets expectations A, C, D and E. We welcome feedback through the consultation process about whether it is sufficiently flexible (expectation B). Over time, as new effective approaches to methamphetamine decontamination are developed, the regulations could potentially be adjusted to enable more flexibility in the decontamination process.

Issue 8: Who should be able to do decontamination work (Part B, section 4.3)

Problem Definition: The regulatory framework needs to be clear about who is permitted to carry out decontamination work under the proposed methamphetamine regulations.		
Option and description	Compliance with objectives	Compliance with core expectations of regulatory systems
<p>Option 1: no restrictions on who can perform decontamination (close to status quo).</p> <p>The only requirements are to follow the prescribed decontamination process, and a post-decontamination detailed assessment test to show that residue levels are below the required remediation level (15 µg/100cm²).</p> <p>General health and safety obligations would apply. This option is similar to the status quo, except the proposed regulations will prescribe a decontamination process and the requirement for a post decontamination professional test. (Preferred option)</p>	<p>This option meets objectives A, B, C, and E, and D is not applicable.</p> <p>While an unqualified or inexperienced person may not be as skilled at decontamination work as someone who is qualified or experienced, the fact that the decontamination process is prescribed and a post-decontamination test is required means that risks of poor outcomes from this option are low.</p> <p>This option will enable landlords to look widely for a decontaminator rather than being required to use a small range of contractors</p>	<p>This option meets all of the core expectations.</p> <p>It will help ensure that decontamination costs are manageable, and is fair to the regulated parties.</p>
<p>Option 2: Qualified professionals who satisfy section 7.4 of NZS 8510: 2017 must undertake all decontamination work under the regulations. An independent regulator would be established to verify whether individuals or businesses met section 7.4.</p>	<p>This option would meet objectives A, B and C, and D does not apply. However, it would be likely to increase the costs associated with decontamination because the requirement for a decontaminator to be verified would add cost, which would be passed on to landlords.</p>	<p>This option would be expensive. Setting up an independent regulator would be costly, and such cost would be hard to justify in light of the overall scale of the issue and the other proposals. Other aspects of the proposals can ensure a high quality of decontamination work (for example the requirement for a professional post-decontamination test). Accordingly, the option does not meet expectation A. It is also inflexible and disproportionate, and so does not meet expectations B and D. It meets expectations C and E.</p>

Issue 9: Requirements for managing abandoned goods on contaminated premises (Part B, section 5.2)

<p>Problem Definition: The regulations require rules to be prescribed to manage goods which are abandoned on contaminated rental premises. The problem is how to ensure the provisions strike an appropriate balance between being workable and fair for a landlord and fair to the owner of the goods.</p>		
<p>Option and description</p>	<p>Compliance with objectives</p>	<p>Compliance with core expectations of regulatory systems</p>
<p>Option 1: Status quo Goods are managed in accordance with the existing framework for abandoned goods, which is covered in sections 62A-62D of the Residential Tenancies Act 1986</p>	<p>This option meets objectives B, C and E, and D does not apply. However, it does not meet objective A, because it does not address the potential health risks from goods that may be contaminated.</p>	<p>This option does not meet expectation A, D or E because it does not achieve the objective relating to minimising health risk, and is not a proportionate response. It partially meets expectations B and C.</p>
<p>Option 2: landlords must treat abandoned goods as though they are contaminated.³⁰ Personal documents must be stored or handed into the local Police station. The value of other goods must be assessed and compared to the costs of testing, decontamination (where possible), and storage. If the value is higher than these costs, the landlord must store them for 35 days. If the value is lower, they may dispose of them. If the tenant claims the goods, the landlord may recover their costs. (Preferred option)</p>	<p>This option meets objectives A, B, C and E, and D does not apply.</p> <p>This option strikes a balance between requiring landlords to hold onto goods that tenants may have left behind due to difficult circumstances, but also allowing landlords to reasonably manage their costs, and dispose of the goods if they are of low value.</p>	<p>This option meets all the expectations.</p> <p>While the costs of storing potentially contaminated goods could fall on landlords, this is a proportionate response to the situation where someone’s potentially valuable property has been left behind.</p> <p>This option produces outcomes for landlords and tenants which are largely consistent with those already in the Act for abandoned goods, based on the value of the abandoned goods, taking account of the potential contamination.</p>

³⁰ Note, ESR guidance will be provided to help landlords know what to do in terms of this obligation.

<p>Option 3: Landlords must store any goods abandoned on contaminated premises for 7 days. If they are not claimed within that time, landlords may dispose of the goods as if they were contaminated.</p>	<p>This option meets objectives A, B, C, and D does not apply. It does not meet objective E because it would enable potentially valuable tenant property to be disposed of after 7 days.</p> <p>While this approach reduces any health risk posed by goods abandoned on contaminated premises, and is administratively simple for landlords, but does not take into account the possible value of tenant goods. This option would be disproportionate to risk and out of step with the existing framework for abandoned goods.</p>	<p>This option partially meetings expectations A, B and C, however it does not meet expectations D or E because it is unduly weighted in favour of the landlord rather than the tenant, and would not conform to principles of natural justice.</p>
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ANNEX A – PROPOSED DECONTAMINATION PROCESS

(see Part B section 4.1)

1. Objective of Decontamination

The objective of decontamination is to reduce the methamphetamine contamination levels in a property so that they do not exceed 15µg/100cm².

2. Hazards and contaminants

Adequate safety precautions shall be taken by everyone who enters a contaminated property before decontamination is completed. For further information on general safety measures which should be taken, refer to WorkSafe guidelines.³¹

All persons who enter a former clandestine lab or a property suspected or known to be contaminated with methamphetamine shall be familiar with health and safety guidance, and shall wear appropriate personal protective equipment (PPE), based on site-specific conditions, to minimise exposure to methamphetamine and other harmful chemicals. PPE should include protective clothing, gloves, eye protection, and respiratory protection.

All persons undertaking decontamination activities shall assess whether additional hazards exist in the property.

NOTE – Additional hazards include asbestos and lead that can be present, particularly in older properties. In properties that are suspected of being used as a clandestine lab, additional hazards could include heavy metals, organic solvents, and other chemicals. Decontamination contractors should consult with appropriate professionals and relevant councils who can determine the risks and advise property owners or managers and contractors on how to deal with additional hazards.

3. Decontamination process

3.1 Decontamination process steps

Steps in the decontamination process typically include but are not limited to:

- (a) Developing a scope of work based on the detailed assessment report;
- (b) Ventilate all areas, where practicable;
- (c) Decontaminate or remove contents;
- (d) Check ventilation systems and heat pumps;
- (e) Vacuum interior surfaces using a high-efficiency particulate air (HEPA) filter vacuum, as required;
- (f) Clean all interior surfaces using a three-stage process (see 3.6.3);
- (g) Flush plumbing traps;

³¹ WorkSafe: [Risk management | WorkSafe](#), and also, more generally, [A - Z topics and industry | WorkSafe](#)

- (h) Encapsulate structural surfaces after first attempting to decontaminate such surfaces;
- (i) Dispose of waste at a contaminated waste disposal site; and
- (j) Prepare a decontamination report on completion of the process.

3.2 Develop a scope of work based on the detailed assessment report

The scope of work shall reference the test results and other information obtained during the detailed assessment, describe health and safety measures to be taken, and describe the decontamination methods that are proposed.

The description of the cleaning methods shall, where relevant, include:

- (a) Area(s) to be decontaminated;
- (b) Target cleaning level;
- (c) A list of the items to be removed from the property;
- (d) Items to be cleaned on-site and off-site;
- (e) Location, layout, and procedures for on-site decontamination;
- (f) A list of the surfaces to be cleaned on-site;
- (g) Cleaning materials and procedures;
- (h) Validation documentation for cleaning products to be used;
- (i) Areas to be encapsulated after cleaning, and the methods and materials of encapsulation;
- (j) Methods of ventilation, and steps to secure the property and protect against adverse weather conditions during ventilation;
- (k) Methods to be used to prevent off-site contamination; and
- (l) Methods of disposal of contaminated material.

Where the nature of the surfaces of key structural components cannot be adequately decontaminated, removed or replaced, and despite repeated decontamination attempts they fail to test at or under $15\mu\text{g}/100\text{cm}^2$, such surfaces shall be encapsulated. The methods and materials of encapsulation of such structural components shall be detailed on any clearance report.

3.3 Ventilate all areas

The property shall be thoroughly ventilated before, during, and after decontamination activities, where practicable. Open all doors and windows and use fans, blowers, or a negative air machine equipped with a HEPA filter. Any heating, ventilation, and air-conditioning (HVAC) system, if fitted for ventilation, shall not be used, as doing so could spread contamination to previously uncontaminated or decontaminated areas of the property. Take precautions to avoid discharging exhaust air to air intakes of adjacent structures.

After the initial airing, ventilation shall continue throughout the decontamination activity. The property shall be protected from adverse weather effects during decontamination.

Recommended ventilation steps include:

- (a) Pre-decontamination ventilation: The property shall be ventilated prior to commencement of decontamination activities. Ventilation shall be performed for a minimum of 24 hours and preferably 48 hours prior to undertaking further decontamination activities;
- (b) Continued ventilation: Ventilation shall be continued throughout the decontamination process. To protect testing or decontamination operators and to limit cross-contamination, leave windows open or install a negative air unit with a HEPA filtration system during decontamination. A negative air unit equipped with a HEPA filtration system will limit or prevent the transfer of airborne contamination from contaminated areas to clean areas; and
- (c) Post-decontamination ventilation: The property shall be ventilated for a minimum of 2 days after decontamination is completed. After cleaning and ventilating the property, recheck for new staining and odour (the presence of which would indicate that additional cleaning is necessary).

NOTE – When ventilating a property, especially over extended periods, it is advisable to consider measures to secure the property and protect it from the effects of adverse weather conditions.

3.4 Check ventilation systems and heat pumps

Some forced-air system ducts cannot be decontaminated because of the nature of the material they are lined with, such as fibreglass. In addition, flexible ducting often contains a porous inner surface, which in most cases means that decontamination is not feasible. For this reason the ducting should be discarded and replaced after the forced-air system has been decontaminated.

NOTE – Adequate cleaning of forced-air systems can require specialist training and tools.

Where dwellings have heat pumps, the decontamination of these appliances shall be assessed on a case-by-case basis with a focus on their proximity to contaminated areas.

In respect of any goods including heat pumps supplied under a contract, it is the owner's responsibility for the correct operation and regular maintenance of the equipment listed on a warranty. Before any decontamination is carried out on a heat pump appliance, the owner should consult the manufacturer about any proposed decontamination.

Where the risk of contamination from a heat pump is low and removal of the entire unit is not cost-effective, replacing the indoor unit may be considered.

NOTE – The advice of the heat pump manufacturer or installer should be obtained on whether the unit can be decontaminated or should be replaced.

3.5 Vacuum interior surfaces using a high-efficiency particulate air (HEPA) filter vacuum

After removing contaminated materials to be permanently discarded, thoroughly vacuum all surfaces with a vacuum equipped with a HEPA filter. Vacuuming with a HEPA filter

effectively removes particulate contamination as well as dust and cobwebs that may interfere with washing. HEPA vacuuming alone is not sufficient to decontaminate most surfaces.

NOTE – Household vacuums are not recommended since they lack adequate filtration and can further spread contaminants.

After HEPA-filter vacuuming, carpets and curtains in contaminated parts of the property must be steam cleaned.

3.6 Clean all interior surfaces

3.6.1 Decontamination or removal of building materials

Depending on the level of contamination, the decontamination contractor shall consult with the property owner or agent and decide whether decontamination or removal of building materials is required. This decision will be based on a number of considerations, including cost and whether it is cheaper to remove rather than decontaminate the material, and whether the surface is a critical part of the structure that cannot be removed.

NOTE – It is important that appropriate professional advice is obtained on whether it is safe to remove any material that is likely to be a critical part of the property's structure and may require a building consent.

3.6.2 Cleaning products

Cleaning products shall:

- (a) Be safe to use;
- (b) Be used in accordance with manufacturers' specifications and instructions;
- (c) Be effective for removing methamphetamine to 15µg/100cm² or less;
- (d) Have no long-term adverse effects;
- (e) Not contain ammonia or strong oxidising agents that may give rise to any harmful reaction products or reversion to methamphetamine.

3.6.3 Cleaning process

If a surface is to be cleaned, the entire surface, and not just spots, shall be covered by the cleaning step(s). The typical procedure is to start with the ceiling, then from the top to the bottom of the walls and finally the floor. Follow the wash with a thorough rinse using clean water and clean rags. Change the wash solution, the rinse solution and rags frequently. Allow the surfaces to thoroughly dry and then repeat the wash and rinse steps at least two additional times.

3.6.4 Disposal of contaminated water

Wash and rinse water typically shall be disposed of via the property's drainage system, provided that it is connected to a public sewer. The concentration of cleaning solutions can affect the functioning of an on-site wastewater system (septic tank). If the property is not served by public sewerage, the wash and rinse water shall be collected for proper off-site disposal. Another option is to arrange for a sewage pumping operator to empty the septic

tank before decontamination begins to provide storage capacity in the tank for wash and rinse water, and then empty the tank again before the liquid reaches the effluent outlet on the tank.

3.7 Flush plumbing traps

Fixtures shall be cleaned using the procedures outlined in 3.6.3. When staining is noted around plumbing fixtures or if a strong chemical odour is emitted by the plumbing system, the drain system shall be flushed using a generous amount of water. The entire plumbing system shall be flushed at the same time.

Different steps may be required for the plumbing system of a property served by an on-site sewage disposal system than for one served by a public sewerage system as outlined in 3.6.4. Plumbing systems shall be checked to ensure that there are no illegal discharges of sewage to the ground, to surface water, or to storm-water systems.

In instances where the property is served by an on-site sewage disposal system or an illegal discharge system is encountered, the appropriate authorities (district or city council) shall be contacted for instructions prior to flushing traps or disposing of any liquid into the drainage system.

Additionally, if the wash and rinse water from the decontamination process is disposed of via the property's drainage system, flushing the system should be delayed until that part of the decontamination is completed.

3.8 Encapsulate structural surfaces

Encapsulation after decontamination is only recommended for structural elements, such as supporting columns that are not safe to remove from the property or asset. Encapsulation shall only be attempted after post-decontamination testing shows that cleaning or coating removal attempts have been effectively exhausted, and levels of contamination cannot be significantly reduced by further cleaning.

Encapsulation of surfaces with primers, paint, and other sealants provides additional protection against the migration of contaminants to the surface of the material.

Oil-based or epoxy coatings, or other materials that have demonstrated ability to act as an effective barrier against the solvent effect of methamphetamine, shall be used to encapsulate surfaces. A minimum of two coats is necessary.

Surfaces shall be primed with a high quality, oil-based primer that will be durable over time and meets the recommendations of the finish-coat manufacturer. The manufacturer's recommendations for application methods, thickness, and drying or curing time between coats shall be followed. Complete coverage of the surface is important and may require multiple applications of finish.

Spray application can provide more thorough coverage than hand-rolling and is therefore recommended in many decontamination guidelines, particularly for textured plaster and plasterboard surfaces that could be damaged by hand rolling.

NOTE – Encapsulation is not a substitute for decontamination.

3.9 Dispose of waste

The following shall be performed when disposing of waste:

- (a) Waste bins shall be lined and covered with a minimum of 200 micron polythene before removal of waste;
- (b) All materials removed from a meth-contaminated site shall be treated in accordance with the appropriate local authority requirements as contaminated waste;
- (c) Evidence of appropriate waste disposal shall be obtained from the waste remover and submitted to the decontamination contractor;
- (d) The evidence shall be made available to the property owner or manager as part of the clearance report and certificate.

NOTE – Where appropriate, a ‘crush and bury’ certificate should be obtained from the waste disposal operator to certify that the contaminated material has been properly disposed of.

3.10 Prepare a decontamination report on completion of the process

After decontamination has been completed, the following items shall be included in a post-decontamination report on the property:

- (a) The physical address of the property and a description of the layout of the property;
- (b) A summary of the scope of works, including any known information about chemicals that were present and removed from the site both before and during the decontamination process;
- (c) Variations from the original scope of work and decontamination recommendations, such as the removal of other contaminants (for example, asbestos) discovered during decontamination;
- (d) The names and qualifications of the decontamination contractors and technicians;
- (e) Confirmation that the decontamination was completed, including a description (with photographs) of the areas that were decontaminated and the methods used;
- (f) The waste management procedures, including handling and final disposal of waste;
- (g) Details of the location and extent of any encapsulated elements of the property, including the nature of the encapsulation and a warning that future disturbance of these areas could result in exposure to methamphetamine contamination.