

Methamphetamine Information Sheet

Version 1: 25 November 2021



It is important that landlords understand the *current situation* regarding methamphetamine and how contamination is viewed by the Tenancy Tribunal. Landlords and Property Managers have found themselves caught between a rock and a hard place whilst waiting on firm guidelines from the Government.

The Residential Tenancies Amendment Act 2019 provided for regulations to be developed that prescribe the acceptable level for methamphetamine and other contaminants present in any part of a rental property, as well as testing and decontamination processes. The Government has advised that there has been a delay in providing these levels and, as of November 2021, these are expected to be provided in the next 6–12 months.

This information sheet is designed to inform and assist landlords in deciding what is best for their property until such time as the levels are determined by Government.

New Zealand Standard vs Gluckman report

Currently there are two methamphetamine levels referenced, the methamphetamine testing and remediation standard NZS 8510 and the Gluckman report.

The methamphetamine testing and remediation standard NZS 8510 is considered best practice at 1.5 µg/100cm² and is the standard which property managers have typically looked to under health and safety guidelines. The Ministry of Health applies the existing New Zealand Standard (NZS 8510) 1.5 µg/100cm², which says that 'high use areas' of meth affected properties should be decontaminated — regardless of whether the property was involved in the production or use of methamphetamine.

In May 2018, a report on the health risks associated with methamphetamine smoking residue on household surfaces was released and is referred to as the Gluckman report. This report was produced by Sir Peter Gluckman, the Prime Minister's Chief Science Advisor, and found that there is currently no evidence that the levels of methamphetamine residue on household surfaces resulting from smoking cause a negative effect on health. The report concludes that levels of methamphetamine below 15 µg/100 cm² are unlikely to negatively affect people and that cleaning properties according to the NZ standard is needed only for former methamphetamine laboratories.

The Gluckman report further recommends that methamphetamine testing should only be triggered where methamphetamine manufacture or very heavy use is suspected.

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Tenancy Tribunal stance

In 2019, a District Court decision ruled that the Gluckman report should be relied upon when methamphetamine contamination cases are brought to the Tenancy Tribunal. This significant decision has binding precedent over similar methamphetamine contamination cases at the Tenancy Tribunal where the levels are below the threshold of 15 micrograms per 100 square centimetres.

As a result, since 2019, when landlords make a claim in the Tenancy Tribunal against a tenant for methamphetamine decontamination, most rulings have applied the levels in the Gluckman Report.

If a property is contaminated no higher than 15 µg/100 cm² but above the New Zealand Standard (NZS 8510) 1.5 µg/100cm², it is **unlikely** that any costs regarding meth decontamination to below 15 µg/100 cm² will be awarded by the Tribunal.

Landlords should consider the NZ Standard, the Gluckman report and recent Tribunal decisions if they take a claim to the Tribunal. Landlords are advised to seek independent legal advice and speak to their insurer and property manager.

Insurance

Landlords should understand what level of methamphetamine contamination their insurer has adopted and review the wording in their own policies because different insurers adopt different levels, sub limits, excesses, and conditions. For example, some policies have methamphetamine contamination as a standard benefit and others have it as an extension that a landlord may choose to add on.

An insurance company may not cover methamphetamine decontamination costs or additional testing costs if a baseline test is not performed before the property is tenanted, or between tenancies.

It is also important to understand what level an insurer adopts with regards to decontamination, regardless of whether a meth claim is upheld at Tribunal or not. Some insurers will decontaminate a property if the level is over 1.5 µg/100cm² and others will only decontaminate if the level is over 15 µg/100cm².

In the case of contamination, a landlord's insurance policy may determine whether a landlord will go ahead with the decontamination process back to the NZS 8510 1.5 µg/100cm² standard or instead choose to adopt the Gluckman level of 15 µg/100 cm².

Compliance with the RTAA

The Residential Tenancies Amendment Act 2019 states that landlords must comply with all requirements in respect of contaminants imposed on the landlord. This includes not knowingly renting a property that is contaminated above the prescribed levels. These levels are not yet known; however, it is possible that Government will adopt the Gluckman report and its recommendations.

If a landlord is testing a rental property for contaminants before and in between tenancies, it is strongly recommended that they have an insurance policy in place and understand what level of methamphetamine contamination their insurer has adopted.

Regardless of whether a landlord has been testing in between tenancies, if a landlord suspects that there has been the manufacture of methamphetamine or heavy use in the premises, the landlord should not provide the premises to a new tenant until the premises has been tested, and the appropriate remedial work undertaken. However, there is protection from liability for landlords under the Act if a landlord does not know that the property is contaminated.

Baseline test and further testing

If a landlord decides to have a property tested for methamphetamine, they should get a test before a tenant moves in to demonstrate that the property is not contaminated at the commencement of the tenancy. This is referred to as a baseline test.

Without a baseline test at the beginning of a tenancy, it can be very difficult to prove that the current tenant is responsible for the contamination at the Tenancy Tribunal, and a landlord may not be covered by insurance.

Typically testing is then only performed after the tenancy ends, and before another tenant moves in, unless meth use or manufacture during the tenancy is suspected.

Disclosure obligations

The Residential Tenancies Amendment Act 2019 states that if a landlord tests for contaminants during a tenancy, then they must advise the tenant of the results within 7 days of receiving them.

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Therefore, it is strongly recommended that if a landlord has a property tested for methamphetamine and the result is above the (NZS 8510) 1.5 µg/100cm², but below the Gluckman report standard of 15 µg/100cm², that the landlord discloses to the tenant the result before the tenancy commences. Depending on the level on the composite test, it may be advisable to get a detailed report of all samples taken to establish where the contamination is present so that full disclosure is provided to the ingoing tenant. This also assists in baseline testing if further contamination occurs.

If the results are over 15 µg/100cm² in any area of the premises, then remedial work is required before the tenancy commences.

Recovering decontamination costs

It is an unlawful act for a tenant to use or permit the premises to be used for an unlawful purpose. Smoking and/or the manufacture of methamphetamine is unlawful and can attract exemplary damages, payable to the landlord, of up to \$1,800.00.

If there are areas of the premises that are over 15 µg/100cm², then the Tribunal is likely to award decontamination costs against the tenant. It is unlikely that the Tribunal will award costs if the level of contamination is less than 15 µg/100cm².

If a composite test comes back at close to or over 15 µg/100cm², and you have a baseline test of under (NZS 8510) 1.5 µg/100cm², then any additional testing costs may be recoverable from the tenant, as further testing is required to establish what levels of meth are in the different areas of the premises and to establish if decontamination is required. Additionally, the Tribunal in the past have awarded costs for detailed (room by room) testing, so long as at the end of tenancy the test yielded a positive result, and at the beginning of the tenancy, the test did not. The Tribunal have reasoned that detailed testing was necessitated by an initial positive test at the end of the tenancy, clearly because of the Tenant's residence at the premises.

If the composite test comes back over (NZS 8510) 1.5 µg/100cm², but still low, additional testing costs may not be recoverable from your tenant as it may be evident from the composite test that no area will be over the Gluckman level of 15 µg/100cm².

Consult with your testing provider to establish what the likelihood is of any area being over 15 µg/100cm² when a composite test showing any level of contamination is provided.

Landlords should check their insurance policy to establish what additional testing costs the insurer may cover.

Further notes on baseline and detailed testing

A baseline composite test is performed whereby multiple individual samples from different areas of the premises are taken to determine if there is meth present or absent. The laboratory takes an extraction from each sample and combines them into one, which then provides a composite result. The composite test costs less than the detailed test, that is only performed if there is meth detected.

If meth is detected and the composite result is under 15 µg/100 cm², then a landlord would need to discuss the result with the testing company and insurer to understand whether detailed testing and decontamination is required, and if the costs to remediate and additional testing would be covered by the insurer.

If the composite result is over 15 µg/100 cm², then detailed testing must be performed on each sample to establish where the contaminated areas are, and the levels in each area to understand what, if any, remedial work is required.

This Information Sheet is for general informational purposes only as there is no 'one size fits all' solution to dealing with properties that are, or may be, contaminated with methamphetamine. Every situation is different and must be assessed on its unique facts. Independent legal advice is recommended, and landlords should discuss matters with their insurance company as soon as they become aware that a property is, or may be, contaminated with methamphetamine.