

Regulatory Impact Statement: Family violence withdrawal notice regulations under the Residential Tenancies Act 1986

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions on family violence withdrawal notice regulations under the Residential Tenancies Act 1986
Advising agencies:	Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD)
Proposing Ministers:	Minister of Housing
Date finalised:	11 August 2022
Problem Definition	
<p>The Residential Tenancies Act 1986 (the RTA) was amended in 2020 to enable victims of family violence to withdraw from a tenancy with two days’ notice. The aim of the amendment (s 56B) is to support victims to leave their tenancy quickly and seek safety by removing the barrier of ongoing liability for rent.</p> <p>To provide clarity and to ensure these provisions operate in accordance with Parliament’s intention, regulations need to be made prescribing:</p> <ul style="list-style-type: none">• what qualifies as evidence of family violence• what information must be included in a family violence withdrawal notice• types of permitted disclosure, and• tenancies that are exempt from the rent reduction formula.	
Executive Summary	
<p>The proposal is to make regulations that will facilitate victims of family violence to exit their tenancy with two days’ notice and not be liable for any further rent after the withdrawal date.</p> <p>The RTA provides that a family violence withdrawal notice must include the prescribed information and be accompanied by qualifying evidence of family violence. The regulations will prescribe:</p> <ul style="list-style-type: none">• what information must be included in a family violence withdrawal notice• what qualifies as evidence of family violence• types of permitted disclosure, and• tenancies that are exempt from the rent reduction formula (designed to minimise the financial impact on remaining co-tenants in the tenancy). <p>HUD considers there to be three key criteria when considering options for regulatory settings, with the first being the most significant:</p>	

- Effective – achieving the objective of providing accessible options for victims so that they can exit their tenancy quickly and seek safety, and provide for the ongoing confidentiality of victims
- Reliable – providing assurance that processes are workable, robust and are being followed
- Clear – easy for landlords and tenants to understand their rights and obligations.

Targeted consultation with stakeholders on the design of the regulations was carried out in 2021 with family violence service providers, community organisations and organisations representing tenants and landlords. Stakeholders were generally supportive of the intent of the regulations. The main issue discussed was how best to strike a balance between the need for the process to be accessible to victims but also reliable, given the potential financial implications for landlords and any remaining tenants.

Limitations and Constraints on Analysis

Scope of the regulations

The scope of the regulations is limited by the empowering provisions in the primary legislation. These do not cover other issues which a victim of family violence may encounter in exiting a tenancy, including finding alternative accommodation, the return of personal property or a bond, or liability for damage to a property, (although the victim will not be liable for any damages that occur after the termination date stipulated on the withdrawal notice).

Nor are options to minimise the financial impact on landlords and any remaining co-tenants covered by the regulations. These were considered in earlier Regulatory Impact Analysis, undertaken to support the amendments to the RTA¹, but ruled out following agency consultation on the basis that it would be difficult to uphold a distinction between perpetrator and non-perpetrator co-tenants, that the cost of administering what would be a small fund to compensate landlords for rent lost would be relatively large and would risk Tenancy Services being drawn into litigation by landlords.

Previous decisions by Cabinet

The analysis is limited by decisions made by Cabinet² prior to consultation, including the stipulation that some supporting documentation is required to demonstrate the need for a withdrawal notice. This means that self-reporting alone is insufficient and has therefore not been considered as an option in this analysis.

That self-reporting should be sufficient was raised with HUD during consultation. The requirement that an applicant provide qualifying evidence to a landlord to demonstrate the genuine nature of their need will act as a barrier for some people experiencing family violence, particularly given the substantial level of underreporting of family and sexual violence in New Zealand (the New Zealand Crime and Victims survey estimates that 32% of offences by family members are reported to police). The requirement will also add to the time that will elapse between an individual seeking to leave a tenancy and having their tenancy officially terminate, thereby potentially increasing the risk to individuals remaining in an unsafe living environment.

The requirement for supporting documentation aligns with approaches taken in New South Wales, Australia, and Alberta, Canada. Both jurisdictions have changed tenancy laws to enable victims of family violence to be removed from a tenancy with limited break lease fees or liability for further payments. The approach being proposed here – to accept a broad

¹ <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-residential-tenancies-amendment-bill-supplementary-order-paper>

² GOV-20-MIN-0028 (2 July 2020)

range of evidence sources including a victim's statutory declaration – may partially mitigate the risks noted above.

Limitations of available data

While family violence is recognised as a significant problem in New Zealand, there are gaps in baseline data. These are both quantitative (e.g. there are variable estimates of the prevalence of family violence and no robust estimate of the number of victims who rent) and qualitative (e.g. how to measure safe outcomes).

HUD has not carried out formal cost-benefit analysis for any of the options included in this Regulatory Impact Statement. Analysis was undertaken previously regarding the costs and benefits of introducing the family violence withdrawal provisions in the RTA³. It would be difficult, if not impossible, to obtain meaningful data on costs and benefits for the options presented for enacting the regulations which underpin these provisions. Instead, qualitative judgements of the options considered here have been used to determine the recommended options, informed by consultation with stakeholders and agencies.

Limitations on consultation and testing

During May and June 2021, HUD consulted with tenant organisations, landlord organisations, family violence organisations, and other related community organisations on a draft proposal for the regulations.

Engagement with Māori family violence and other community organisations was limited; many stakeholders who were invited to participate in the consultation were unable to engage because of competing commitments. The disruptions caused by heightened COVID-19 alert levels and the additional demands this created for many service providers also contributed.

HUD acknowledges that more engagement from these groups would have been preferable. However, we consider that this would likely have reinforced the issues raised by other tenant advocacy groups and service providers, which were consistent, and therefore would be unlikely to have fundamentally altered the proposals as set out here. Further consultation would also further delay the regulations from coming into force.

During consultation, stakeholders proposed additional persons who should be able to provide evidence of family violence. Consequently, officials have been undertaking further consultation with the relevant representative bodies to ensure that they consent to being included, and this has included more Māori and Pasifika-focused organisations, for example the Māori Wardens Entity Group and Whanau Ora commissioning agencies. The proposed list for inclusion in the regulations is a consequence of this process. We acknowledge that it is not exhaustive and may be expanded in future, as has been the practice in the New South Wales model.

³ <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-residential-tenancies-amendment-bill-supplementary-order-paper>

Responsible Manager(s) (completed by relevant manager)

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Policy and Legislation Design

Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development



11 August 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
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Panel Assessment & Comment:	The panel reviewing this Regulatory Impact Statement considers that it meets the quality assurance criteria.
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Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Family violence is a significant social issue in New Zealand and requires a whole-of-government response. It has a devastating impact on families and communities, with over half a million New Zealanders directly affected by family violence every year. Some groups are disproportionately affected, including women, disabled people, older people, and Māori, Pasifika and ethnic populations.
2. Between 2009 and 2017, 230 people were killed as a result of family violence, with intimate partner violence making up almost half of these cases.⁴ Police data shows that family violence investigations are increasing, with police investigating approximately 165,000 incidents in 2020 (up from 132,000 incidents in 2018).⁵
3. The government has made addressing family violence and sexual violence a priority through the creation of the Ministerial portfolio for the Prevention of Family and Sexual Violence. In December 2021, the government launched Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence. The Strategy sets out a framework to drive government action and increase accountability.
4. Victims face many challenges in leaving a violent situation. Where victims are tenants, their tenancy agreement (in particular, the obligation to pay rent) can act as a barrier to them leaving situations of family violence. For periodic tenancies, a tenant can end a tenancy at any time by giving at least 28 days' notice. Fixed-term tenancies can only be ended early by the tenant by application to the Tenancy Tribunal on the ground of hardship, or with the agreement of the landlord and any co-tenants. The options do not provide reliable or timely options for victims to withdraw from their tenancy to leave an unsafe living situation.
5. The RTA was amended in 2020 to include provisions to enable tenants to withdraw from a tenancy following family violence that occurred during the tenancy (s 56B). To provide clarity and ensure that section 56B operates according to Parliament's intention, regulations must be made under s 138F.
6. The RTA amendments also apply the below requirements to Tenancy Tribunal proceedings that involve a family violence withdrawal notice:
 - the application would be heard in private (unlike other applications which are conducted in public by default)
 - name suppression and suppression of any identifying particulars would automatically apply to all parties to the proceedings, and
 - the Tribunal must permit any party who applies to give their evidence remotely to do so if the necessary facilities are available

⁴ Family Violence Death Review Committee Sixth Report: Men who use violence, 2021: <https://www.hqsc.govt.nz/resources/resource-library/family-violence-death-review-committee-sixth-report-men-who-use-violence-te-purongo-tuaono-nga-tane-ka-whakamahi-i-te-whakarekereke/>

⁵ Daily Occurrences of Crime and Family Violence Investigations, NZ Police, 2021: <https://www.police.govt.nz/about-us/statistics-and-publications/data-and-statistics/daily-occurrences-crime>

What is the policy problem or opportunity?

7. The RTA has been amended to enable tenants to withdraw from a tenancy with two day's notice following family violence. To provide clarity and to ensure these provisions operate in accordance with Parliament's intention, regulations need to be made prescribing:
 - what information must be included in a family violence withdrawal notice
 - what qualifies as evidence of family violence
 - types of permitted disclosure, and
 - tenancies that are exempt from the rent reduction formula

What objectives are sought in relation to the policy problem?

8. The primary objective of the regulations is to support victims of family violence to leave their tenancy quickly and seek safety by removing the barrier of ongoing liability for rent.
9. Secondary objectives are to:
 - provide for the ongoing privacy of the victim, and
 - ensure that the process is flexible and accessible so that victims can easily use the regulations.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options?

10. HUD considers there to be three criteria when considering options for regulatory settings for family violence withdrawal notices, to meet the objectives as set out above:
 - Effectiveness – the regulations should achieve the objectives for victims
 - Reliability – the regulations should provide assurance that the processes are workable, robust and are being followed (particularly important for landlords and any remaining tenants)
 - Clarity – landlords and tenants should be able to easily understand their rights and obligations.
11. The first of these, effectiveness, is considered the most significant and is weighted as such in the assessment of options included in this analysis.

What scope will options be considered within?

12. The scope of the regulations is limited by the empowering provisions in the RTA. The RTA enables regulations to be made prescribing all or any of the matters listed below, which for the purposes of analysis are grouped into four areas:
 - a) Information to be included in the withdrawal notice
 - b) Evidence of family violence, including:
 - i. persons, or classes of persons, whose declarations are qualifying evidence that the tenant has been a victim of family violence while a tenant of the premises;
 - ii. types of qualifying evidence that the tenant has been a victim of family violence while a tenant of the premises;
 - c) Types of permitted disclosure, or circumstances in which disclosure of the withdrawal notice is permitted

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- d) Tenancies that are exempt from the rent reduction formula, including:
- i. Public and Community Housing Management Act 1992 (PACHMA) tenancies, or classes of PACHMA tenancies, in relation to which rent is not to be reduced following the withdrawal of the victim-tenant;
 - ii. other tenancies, or other classes of tenancies, in relation to which rent is not to be reduced following the withdrawal of the victim-tenant;
 - iii. landlords, or classes of landlords, in relation to whose tenancies rent is not to be reduced following the withdrawal of the victim-tenant.

What options are being considered?

(A) Information to be included in the withdrawal notice

Option A1 – withdrawal notice must include name, premises and date (recommended option)

Description of Option A1

13. Regulations prescribe that the withdrawal notice must include the following information:
- a) the name of the tenant
 - b) the premises to which the notice relates, and
 - c) the date that the withdrawal will take effect.

Analysis of Option A1

14. The above information provides clarity to the landlord about the tenancy to which the notice relates and when the tenant will no longer be liable for rent. This option is effective in meeting the objectives of the policy as the information requirements are accessible to victims and victims have the flexibility to serve the notice electronically, which might be safer for them.

Option A2 – withdrawal notice must include name, premises, date and signature

Description of Option A2

15. Regulations prescribe that the withdrawal notice must include the following information:
- a) the name of the tenant
 - b) the premises to which the notice relates
 - c) the date that the withdrawal will take effect, and
 - d) **the signature of the tenant**

Analysis of Option A2

16. Requiring a signature would help to verify that the withdrawal notice has come from the victim, making the notice more reliable. This approach would be in line with the RTA s51(3)(d) which requires that every notice to terminate a tenancy be signed by the party giving the notice.
17. Conversely, requiring a signature may act as a barrier for some tenants and undermine the accessibility of using a withdrawal notice, particularly for those who want to serve a digital withdrawal notice rather than a hard copy. Limited digital literacy skills may make providing an electronic signature difficult, with the alternative process of printing the withdrawal notice, signing it, and then scanning it requiring access to technology which might not be available. During consultation, multiple tenant advocacy groups and other community organisations recommended not requiring a signature on this basis.

Comparison of the options

	Option A1 – name, premises and date	Option A2 – name, premises, date and <u>signature</u>
Effective	++ Information requirements are accessible to victims and enable victims to easily provide information electronically, rather than a hard copy.	+ Information requirements are somewhat accessible to victims, however, requiring a signature may act as a barrier for victims who wish to serve a withdrawal notice electronically.
Reliable	+ Information requirements provide assurance to landlords.	++ Information requirements provide greater assurance to landlords. Inclusion of a signature helps to verify that the withdrawal notice has come from the victim.
Clear	+ No impact on clarity.	+ No impact on clarity.
Overall assessment	+	+

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

18. Both options score highly in the criteria and can be considered effective, reliable and clear. HUD recommends Option A1 on the basis that it is more accessible to victims.

(B) What qualifies as evidence of family violence

Option B1 – Police documents, charging documents and support letters from a narrow list of people

Description of Option B1

19. Option B1 would make regulations prescribing the following forms of qualifying evidence (of which the victim would need to provide only one):
- a) a Police Safety Order, if the withdrawing tenant is the person at risk and the Police Safety Order was issued during the time they were a tenant of the premises
 - b) the first page of a Protection Order⁶ if the withdrawing tenant is the person at risk and the Protection Order was issued during the time they were a tenant of the premises
 - c) the first page of a Protection Order if the withdrawing tenant is the person at risk and the Protection Order was issued prior to the current tenancy and is accompanied by a statement from the victim that they have been a victim of

⁶ During consultation the issue was raised that Protection Orders include significant information about the experience of the victim and that only the front page should be required, so that the landlord does not receive detailed personal information about the victim's experience.

family violence while they were a tenant of the premises (that does not need to be formally witnessed)⁷

- d) a charging document relating to family violence against the withdrawing tenant during the time they were a tenant of the premises, or
 - e) a letter, email or statutory declaration from a specified person stating they have reasonable grounds to believe the tenant is a victim of family violence while they were a tenant of the premises
20. The list of people who can provide support letters, emails or statutory declarations were determined on the basis that they are professionals who may reasonably be expected to have expertise in family violence, or to exercise sound professional judgement. This list would comprise:
- a) healthcare professionals (doctors, nurses, psychologists, psychotherapists, midwives and osteopaths⁸)
 - b) counsellors
 - c) social workers
 - d) lawyers
 - e) family violence and/or sexual violence service providers, and
 - f) Police.

Analysis of Option B1

- 21. Police Safety Orders, Protection Orders and charging documents are clear and reliable forms of evidence of family violence and are accessible for some victims. However, most victims of family violence will not have these documents at the time they seek to leave their tenancy.
- 22. Support letters provide a more accessible form of evidence, however, the relatively narrow list of people who may write support letters may not be accessible to some victims due to factors including financial costs, a lack of trusting relationships with these people, and a lack of availability in some communities. For example, accessing healthcare professionals may be prohibitively expensive for some victims or they may not have access to a healthcare professional that they trust.
- 23. Support letters from a narrow list of professionals are a reliable form of evidence as those listed are likely to have the expertise required to identify family violence and be required to have regard to their industry's code of conduct when determining whether to provide the necessary evidence.

⁷ Protection Orders are issued on the basis that they are required to protect someone from current and future family violence. For this reason, we consider that those issued prior to the current tenancy should be permitted evidence with minimal additional verification.

⁸ Osteopaths were not targeted as a priority but requested through their representative body to be included. We support including osteopaths on the basis that they are similarly qualified and registered health practitioners to those we prioritised for inclusion (i.e. covered by s 5(1) of the Health Practitioners Competence Assurance Act 2003) and we therefore consider them able to exercise sound professional judgement in providing qualifying evidence for the purposes of a family violence withdrawal notice.

Option B2: Police documents, charging documents, support letters from a wide list of people and statutory declarations from the victim (recommended option)

Description of Option B2

24. Option B2 would make regulations as per Option B1 but would expand the list of people who can provide a support letter and permits the victim to make their own statutory declaration as an additional form of qualifying evidence if they wish.
25. The expanded list of people who can write support letters was determined on the basis that they may reasonably be expected to be involved in the community and interact with victims regularly, and/or have sound judgement. This would include, in addition to the people identified in Option B1 (paragraph 20):
 - a) leaders of religious communities
 - b) Māori community providers
 - c) school principals and professional leaders (as defined in the Education and Training Act 2020)
 - d) the victim's employer
 - e) the victim's landlord / property manager
 - f) home support service workers
 - g) probation officers
 - h) Māori wardens, and
 - i) Whānau Ora providers
26. Option B2 would also allow (but not require) a tenant to provide their own statutory declaration as evidence. A statutory declaration is a written document that must be completed in front of an authorised witness.⁸ It is a criminal offence to make a false declaration.

Analysis of Option B2

27. A wider list of people who can write support letters will be more effective in terms of increasing the accessibility of evidence options for victims. Victims may be more comfortable disclosing their situation to someone from the wider list or making their own statutory declaration, allowing them to obtain qualifying evidence and issue a withdrawal notice more quickly and easily than under Option B1.
28. A trade-off here is that a wider list may be perceived as being less credible, with landlords more likely to question or attempt to challenge withdrawal notices that are supported by letters from a wider group of people or victims themselves.
29. HUD considers that this wider list remains credible on the basis that it includes community leaders and registered professionals subject to codes of conduct whose evidence would be objective in the same way as the narrower list. Enabling victims to provide their own statutory declaration, rather than requiring them to approach a third party to obtain a support letter, is especially important for accessibility and was strongly supported during consultation. Statutory declarations are reliable forms of evidence as they must be completed in front of an authorised witness, and it is a criminal offence to make a false declaration.

Comparison of the options

	Option B1 – Police documents, charging documents and support letters from a <u>narrow</u> list of people	Option B2 – Police documents, charging documents, support letters from a <u>wider</u> list of people and <u>declarations from the victim</u>
Effective	+ Provides options that are likely to be somewhat accessible to victims.	++ Provides a wider range of options that are likely to be accessible to victims.
Reliable	++ Evidence options are relatively narrow and could be perceived as more robust, providing assurance to landlords.	+ Enabling a wider list of people to provide evidence may result in the perception that the process is less credible.
Clear	+ Evidence options are easy for tenants and landlords to understand.	+ Evidence options are easy for tenants and landlords to understand.
Overall assessment	+	++

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

30. HUD recommends Option B2. While both options score highly, effectiveness (in terms of withdrawal notices being accessible to victims to use) is prioritised, meaning Option B2 compares more favourably.

(C) Permitted disclosure

31. Under the primary legislation, landlords or a person or class of person prescribed for the purpose of giving declarations as qualifying evidence will be required to treat both the notice and the supporting evidence with confidentiality. This is to protect the privacy and safety of the victim, including from discrimination in the future, and prevent re-traumatisation for the victim. Disclosure of information included in a family violence termination notice or supporting evidence is only permitted if it:
- is with the consent of the tenant who gave the notice, or
 - is for the purpose of seeking legal advice, or
 - is for the purposes of, or in connection with, any legal proceedings or procedure under this or any other Act to settle a dispute between the landlord and the tenant, or between the landlord and a guarantor of the tenant, in relation to the tenancy, or
 - is otherwise authorised or required by or under any enactment or rule of law.
32. The options considered are to rely on this regime as set out in the RTA, or to prescribe additional types of permitted disclosure through regulation. Note that any person who uses or discloses a family violence termination notice or supporting evidence unless the disclosure is permitted would be committing an unlawful act and may be liable for exemplary damages of up to \$3,000.

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Option C1 – no additional regulations

Description of Option C1

33. Under the primary legislation, disclosure of the withdrawal notice would only be permitted under the narrow list of circumstances outlined in paragraph 31 above. There may be situations where a tenancy has a property manager or landlord in addition to the property owner. In such cases, the party who receives the withdrawal notice may have difficulty arranging the two-week rent reduction if they are unable to disclose the withdrawal notice to the other party.

Analysis of Option C1

34. This option meets the effectiveness criteria as it provides for the safety and ongoing privacy of the victim. Stakeholders were clear that limiting disclosure as much as possible is crucial for the safety of the victim. However, Option C1 does not meet the criteria of reliable and clear, as landlords will not have a clear understanding of the process and will likely question why the remaining tenants are paying a reduced rate of rent and may incorrectly attempt to enforce the ordinary rent level.

Option C2 – permit disclosure between the landlord and/or property manager and/or property owner (recommended option)

Description of Option C2

35. Option C2 would make regulations permitting disclosure of the withdrawal notice between the landlord and/or property manager and/or owner of the property to which the withdrawal notice relates. If the victim-tenant serves the notice to the property manager, the landlord and/or owner may wish to see the qualifying evidence to satisfy themselves that the requirements of the withdrawal notice were followed.

Analysis of Option C2

36. This option enables the withdrawal of the tenant and the subsequent search for a new tenant to function smoothly and effectively. It still protects the privacy of the victim as it does not significantly widen the number of parties who have access to the withdrawal notice and the qualifying evidence. It creates a clearer and more and effective process as all affected parties will understand why the remaining tenants are temporarily paying a reduced rate of rent.

Comparison of the options

	Option C1 – no additional regulations	Option C2 – permit disclosure between the landlord and/or property manager and/or property owner
Effective	++ Protects the privacy of victims.	++ Protects the privacy of victims (extends permitted disclosure only very marginally in some cases).
Reliable	0 Landlords will not have assurance that the correct process has been followed.	+ Landlords will have assurance that the correct process has been followed.
Clear	0 Landlords will not have a clear understanding of the process or why a reduced rent is being applied.	+ Landlords will have a clear understanding of the process and why a reduced rent is being applied.
Overall assessment	0	+

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

37. HUD recommends Option C2 because it enables the rent reduction to be implemented more easily and provides assurance to necessary parties (but no wider) that the correct process has been used.

(D) Rent reduction exemptions

38. The primary legislation allows any remaining tenants to pay a reduced rent for two weeks after the withdrawal date, proportional to the number of tenants left in the tenancy. The two-week reduction of rent minimises the financial impact on remaining tenants, balanced against the financial impact on landlords. It also allows the tenants time to seek a new tenant or flatmate, should they want to.
39. The primary legislation stipulates that the rent is not reduced if the rent payable under the tenancy by the remaining tenants is income-related rent. This reflects that social housing policy and legislation already provides a mechanism to manage the financial impacts for remaining tenants, with tenants required to notify the Ministry of Social Development (MSD) if their circumstances change⁹ and MSD required to recalculate their rent on this basis. Applying the two-week rent reduction formula to these tenants would result in many cases in double handling e.g. the rent recalculation having to

⁹ Tenants have an obligation to notify MSD of a change in circumstances only if that change is likely to result in an increase in the amount of rent they pay (not a reduction). However, it would be in their interests to notify MSD if such a notification resulted in a rent reduction. Even if they fail to do so, legislation sets out that MSD “if satisfied that at some earlier time a lower income-related rent was appropriate, must make any necessary refund”.

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happen twice. MSD has also advised they would need to update their IT system to adjust rent following a family violence withdrawal.

40. A review following a change in circumstances may reduce the amount of rent remaining tenants pay if the household income has decreased. Any reduction is permanent (until circumstances change again) and backdated to the change in circumstance – in this case when the withdrawal notice came into effect.
41. The primary legislation also enables regulations to prescribe further rent reduction exemptions where:
 - a) the tenancy is a Public and Community Housing Management Act 1992 (PACHMA) tenancy prescribed, or of a class prescribed, for the purposes of this subsection, or
 - b) the tenancy, or the landlord under the tenancy, is prescribed, or of a class prescribed, for the purposes of this subsection
42. The options considered are to rely on this regime as set out in the RTA to exempt only tenancies where the rent payable is income-related rent, or to prescribe additional exemptions through regulation.

Option D1 – no additional regulations

Description of Option D1

43. The two-week rent reduction would apply to all tenancies except for tenancies where the rent payable is income-related rent, as per the primary legislation.

Analysis of Option D1

44. This would include the vast majority of PACHMA tenancies but not all, and as such may not be easy to understand or able to be considered reliable. It would not treat all tenants eligible for income-related rent equitably, because tenants eligible for income-related rent but not receiving it would be subject to the rent reduction.

Option D2 – remaining PACHMA tenancies are exempt from the rent reduction formula (recommended option)

Description of Option D2

45. Option D2 would make regulations prescribing an exemption from the two-week rent reduction for all remaining PACHMA tenancies.

Analysis of Option D2

46. This option would treat tenants eligible for income-related rent equitably (rather than distinguishing between those receiving/ not receiving income-related rent). It would reduce double handling (and therefore make for a clearer process for both MSD and remaining tenants than option D1), as some public housing tenants not currently receiving income-related rent will subsequently apply for it after their circumstances change as a result of the use of a withdrawal notice.
47. The need to allow time for remaining tenants to find another flatmate or co-tenant with whom to share the rent is less relevant for social housing tenants than tenants in the private rental market because the rent they pay is based on their household income rather than the market rent.

Comparison of the options

	Option D1 – no additional regulations	Option D2 – exempt all remaining PACHMA tenancies
Effective	N/A Victims are not affected by the rent reduction.	N/A Victims are not affected by the rent reduction.
Reliable	0 Does not provide assurance to social housing tenants that the process is workable and robust.	+ Provides assurance to social housing tenants that the process is workable and robust.
Clear	0 Does not provide a clear process for social housing tenants and MSD.	+ Process is clear for social housing tenants and MSD.
Overall assessment	0	+

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 48. HUD recommends Option D2 – to exclude all PACHMA tenancies from the rent reduction formula. By removing the need for two separate processes for reducing the rent it is clearer to understand and navigate for remaining tenants and MSD and results in a more targeted, responsive, and enduring way of managing the financial impacts for remaining tenants than the rent reduction formula. Note that neither option was considered against the “effective” criterion because victims are not affected by the rent reduction.

Section 3: Delivering an option

How will the new arrangements be implemented?

49. The arrangements will be implemented by the drafting of new regulations under section 138F of the RTA. Oversight of the operation of the regulations will be carried out by Tenancy Services in MBIE and the Tenancy Tribunal.
50. Implementation will include publicising the regulations once they are gazetted and making information available on the Tenancy Services website. For the proposal to be effective, tenants must be aware that the new process exists, must find it easy to access and navigate, and must feel comfortable that they will not be stigmatised for terminating a tenancy due to family violence.
51. Information and educational material relating to the regulations will include information on the rights and responsibilities of landlords and tenants. HUD and MBIE will identify a network to work with to develop and disseminate this material, which we expect will include government agencies, tenancy services, private landlords, public and community housing landlords, emergency housing providers, healthcare professionals, and other community groups who support victims of family violence.
52. Some support and training may be required for those authorised to provide evidence in support of a family violence termination notice and possibly for Tenancy Tribunal adjudicators and mediators.
53. As noted in the limitations and constraints section, there will likely remain issues which a victim of family violence may face in exiting a tenancy that are not dealt with in these regulations. In particular, the current acute housing shortage may present a barrier, with alternative accommodation being hard to find in many places. Agencies will work to ensure that emergency housing is available, and victims may be able to access financial assistance from the Ministry of Social Development to cover the cost of this.

How will the new arrangements be monitored, evaluated, and reviewed?

General system-level monitoring and evaluation of the RTA

54. HUD is the regulatory steward for the residential tenancy system and is responsible for monitoring the implementation of changes in the Amendment Act 2020, including the withdrawal provisions. As part of this ongoing work, HUD policy officials are in regular contact with Tenancy Services within the Ministry of Business, Innovation and Employment (MBIE), which holds compliance, enforcement, information and education, and mediation functions for the RTA, and with Justice Services within the Ministry of Justice, which administers the Tenancy Tribunal.
55. Neither HUD nor MBIE will have visibility of family violence withdrawal notices as these will be confidential. To some extent, agencies will know if the termination notices are being invoked incorrectly and how often, by monitoring Tenancy Tribunal decisions in which they are being challenged by landlords, if orders are published. We may also consider other avenues as appropriate e.g. MBIE Service Centre calls and the Family Violence information line.
56. The evidential requirements as set out in regulations could be adjusted over time if there is a case for doing so. For example, further specified persons who can provide qualifying evidence that the tenant has been a victim of family violence could be added to the list.