

# Regulatory Impact Statement: Physical assault termination notice regulations under the Residential Tenancies Act 1986

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions.
Advising agencies:	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD)
Proposing Ministers:	Minister of Housing
Date finalised:	11 August 2022
Problem Definition	
<p>Section 55AA of the Residential Tenancies Act 1986 (RTA) enables a landlord to terminate a tenancy with 14 days’ notice where the tenant has physically assaulted the landlord/owner, a member of the landlord/owner’s family, or the landlord’s agent, and a charge in respect of the physical assault has been filed against the tenant by or on behalf of the Crown.</p> <p>Section 55AA was added to the RTA by the Residential Tenancies Amendment Act 2020 (the Amendment Act 2020) with the objective of mitigating the risk of physical harm. To provide clarity and to ensure section 55AA operates in accordance with Parliament’s intention, regulations need to be made which prescribe qualifying evidence of a charge having been filed and prescribe information that must be included in an assault termination notice.</p>	
Executive Summary	
<p>The proposal is to make regulations for the assault termination notice provisions. The RTA provides that an assault termination notice must include the prescribed information, and be accompanied by qualifying evidence that a charge has been filed in respect of the assault.</p> <p>The regulations will prescribe:</p> <ul style="list-style-type: none"><li>• The information that must be included in an assault termination notice.</li><li>• Qualifying evidence of a charge having been filed.</li></ul> <p>If the regulations are not made, there will be a lack of legislative clarity because the RTA contains provisions permitting landlords to serve assault termination notices, which must include qualifying evidence with the notice, however, the qualifying evidence has not been prescribed in regulations.</p> <p>The objective sought in relation to the policy problem is to ensure a <b>just and efficient termination process</b>.</p> <p>The options considered for the information requirements regulations were:</p> <ul style="list-style-type: none"><li>• Option 1A: Require a description of the assault and who engaged in it, including the date, time and approximate location (recommended).</li></ul>	

- Option 1B: Require advice about what happens if the tenant applies to the Tenancy Tribunal (recommended).

The options considered for the qualifying evidence regulations were:

- Option 2A: Declarations by Police (not recommended).
- Option 2B: Written confirmation by Police (recommended).
- Option 2C: Charging document (recommended).

Landlords and tenant organisations and the Police were generally supportive of the proposed content of the regulations.

## Limitations and Constraints on Analysis

### Options limited by prior policy decisions to regulate

Parliament passed the Amendment Act 2020 which provides for the ability to make the regulations, with Parliament contemplating regulations being made. Due to Parliament's intention and the legislative uncertainty of not regulating, it is not feasible to not regulate.

### Options limited by scope of regulations

The content of the regulations is determined by the empowering provisions in the RTA which enable regulations to be made in respect of any of the following matters:

- Information to be included in an assault termination notice.
- Persons, or classes of persons, whose declarations are qualifying evidence that a charge has been filed.
- Types of qualifying evidence that a charge has been filed.

### HUD undertook targeted consultation

Due to the narrow scope of the regulations, consultation was targeted. We consulted with key landlord and tenant organisations on the regulatory proposals during 2021.

### Cost benefit analysis

For the purposes of this regulatory impact statement, HUD has not carried out formal cost benefit analysis for any of the options. Analysis was undertaken previously with regard to the costs and benefits of introducing the assault termination notice provisions. That regulatory impact statement is available here:

<https://www.treasury.govt.nz/sites/default/files/2020-08/ria-hud-assault-jul20.pdf>

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 judgments (positive and negative) of the options considered here have been used to determine the recommended options, informed by consultation with stakeholders.

**Responsible Manager(s) (completed by relevant manager)**

Claire Leadbetter

Manager

Policy and Legislation Design

Te Tūāpapa Kura Kāinga – 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?

#### Context

1. The RTA sets out the rights and obligations of landlords and tenants for the approximately 600,000 households who rent in New Zealand. The RTA includes provisions for terminating tenancies for assault. Assault by tenants is relatively uncommon; in 2021 there were 84 landlord applications for dispute resolution for termination for assault, out of a total of 14,654 landlord applications.

#### Section 55A: Termination by notice for physical assault by tenant

2. In response to concerns raised by submitters on the Amendment Bill, section 55AA was added to the RTA through the Amendment Act, which enables a landlord to terminate a tenancy with 14 days' notice where the tenant has physically assaulted the landlord/owner, a member of the landlord/owner's family, or the landlord's agent, and a charge in respect of the physical assault has been filed against the tenant by or on behalf of the Crown.
3. Section 55A currently lacks clarity because the requisite regulations have not been made, which prescribe the *information* that must be included in an assault termination notice, and *qualifying evidence* of a charge having been filed.

#### How is the status quo expected to develop if no action is taken?

4. If the regulations are not made, the status quo remains: the provisions under section 55A will lack clarity and may not operate as Parliament intended.
5. However, landlords will still be able to use section 55, which predates the Amendment Act 2020, to terminate tenancies for tenant assault. Section 55 requires a Tenancy Tribunal order to terminate whereas section 55AA does not, but section 55 is wider than section 55AA in that it also covers assault of neighbours, the threat of assault, and assault by someone other than the tenant where that assault was with the tenant's permission or caused by the tenant.
6. Under section 55 of the RTA, landlords can apply to the Tenancy Tribunal to terminate a tenancy where the tenant has assaulted, or has threatened to assault, or has caused or permitted any person to assault, or to threaten to assault, any of the following persons:
  - the landlord or any member of the landlord's family
  - the owner of the premises or any member of the owner's family
  - any agent of the landlord
  - any occupier of any building of which the premises constitute a part
  - any neighbour of the premises or of any building of which the premises constitute a part.
7. Applications to the Tenancy Tribunal under section 55 are typically treated as urgent and held at shorter notice (10 working days or sooner) than other hearings. Where a termination associated with assault or threatened assault is ordered, it is often immediate and accompanied by a possession order.

## What is the policy problem or opportunity?

**Regulations are needed to provide clarity and ensure new section 55AA operates in accordance with Parliament's intention**

8. Regulations are required to implement section 55AA of the RTA in accordance with Parliament's intention.
9. If regulations are not made, there would be a lack of legislative clarity which means landlords and tenants may not understand their rights and obligations.
10. To some extent, the risks arising from the lack of clarity are being mitigated by providing guidance material to the public, for example, on the Tenancy Services website.

## What objectives are sought in relation to the policy problem?

11. The objectives sought in relation to the policy problems are to provide for a **just and efficient termination process**.
12. Ensuring a just termination process is a priority as termination of a tenancy is likely to have a significant impact on a tenant.

## Section 2: Deciding upon options to address the policy problem

### What criteria will be used to compare options?

13. The criteria used to assess the regulatory options are:
  - **Fairness:** tenancies should be terminated where there is sufficient evidence and just processes.
  - **Clarity:** the assault termination notices should be clear and enable both parties to understand their rights and obligations.
  - **Efficiency:** the process should be timely and minimise costs for landlords and other agencies.
14. There is a relationship between clarity and fairness: a lack of clarity undermines fairness as it makes tenants and landlords less likely to understand their rights and obligations.

### What scope will options be considered within?

15. The RTA enables regulations to be made to provide clarity and ensure the physical assault termination provisions operate as Parliament intended. The scope of the regulatory option is determined by the empowering provisions which enable regulations to be made in respect of any of the following matters:
  - Information to be included in an assault termination notice.
  - Persons, or classes of persons, whose declarations are qualifying evidence that a charge has been filed.
  - Types of qualifying evidence that a charge has been filed.

### What options are being considered?

Regulations for information to be included in an assault termination notice

#### *Background*

16. The RTA enables regulations to be made which prescribe information that must be included in an assault termination notice. The information requirements are in addition to other requirements for all termination notices, which are that a termination notice must:
  - be in writing,
  - identify the premises to which it relates,
  - specify the date by which the tenant is to vacate the premises,
  - if the notice is given by the landlord, set out the reasons for the termination, and
  - be signed by the party giving the notice, or by that party's agent.
17. The RTA also requires that an assault termination notice must advise the tenant of the tenant's right to make an application to the Tribunal challenging the notice.
18. Any 'prescribed information' requirements will be additional to the above requirements.

**Option 1A – Require a description of the assault and who engaged in it, including the date, time and approximate location (recommended)**

#### *Description of Option 1A*

19. Option 1A requires that an assault termination notice must include a description of the assault and who engaged in it, including the date, time and approximate location. This is aligned with the requirements for anti-social behaviour notices under the RTA.

*Analysis of Option 1A*

- 20. Option 1A supports fairness by providing tenants with information about the alleged assault that will help them to decide whether they want to challenge the termination notice in the Tenancy Tribunal. This supports a just process.
- 21. Option 1A supports clarity for the tenant by providing information about the alleged assault. This may reduce unnecessary Tenancy Tribunal disputes as it makes the reason for the termination clear.
- 22. Option 1A may be somewhat administratively burdensome for landlords and therefore less efficient, although this can be mitigated by the use of termination notice templates available on the Tenancy Services website. In addition, it may be emotionally/psychologically burdensome for landlords to describe an assault. However, this is justified as considering the very short termination notice period, it is particularly important that tenants understand what is alleged so that they can decide whether to challenge the termination notice through the Tribunal.
- 23. Landlord and tenant organisations generally supported the inclusion of Option 1A in the information requirements. No specific concerns were raised about Option 1A. One stakeholder noted that the requirement to provide this information may reduce Tenancy Tribunal disputes as it makes the reason for the termination clear.

**Option 1B – Require advice about what happens to the termination if the tenant applies to the Tenancy Tribunal (recommended)**

*Description of Option 1B*

- 24. Option 1B requires that an assault termination notice must advise the tenant that if the tenant does make an application to the Tenancy Tribunal challenging the notice before the tenancy terminates, the tenancy will not terminate under the notice but the Tenancy Tribunal may make an order terminating the tenancy.

*Analysis of Option 1B*

- 25. Option 1B supports clarity. Without this information, there is a risk that tenants may mistakenly believe that they do not have sufficient time to apply to the Tribunal to challenge the notice before the tenancy terminates.
- 26. Option 1B also supports fairness by ensuring tenants have the information they need to make an informed decision about whether to challenge the notice in the Tenancy Tribunal, which supports a just process.
- 27. Option 1B may be slightly more administratively burdensome for landlords and therefore less efficient. The burden on the landlord can also be mitigated by the use of termination notice templates on the Tenancy Services website.
- 28. Landlord and tenant organisations generally supported the inclusion of Option 1B in the information requirements. One tenant advocacy stakeholder specifically provided feedback that it needs to be clear that the tenant must apply to the Tribunal *before* the tenancy terminates to prevent the tenancy from terminating under the notice.

**Options comparison**

	<b>Information requirements</b>
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	<b>Option 1A – Require a description of the assault and who engaged in it, including the date, time and approximate location</b>	<b>Option 1B – Require advice about what happens to the termination if the tenant applies to the Tenancy Tribunal</b>
<b>Fairness</b>	<p style="text-align: center;">+</p> Provides tenant with information about nature of alleged assault to help them decide whether to challenge the notice in the Tribunal.	<p style="text-align: center;">+</p> Provides tenants with information they need to help them decide whether to challenge the notice in the Tribunal.
<b>Clarity</b>	<p style="text-align: center;">+</p> Provides tenant with information about nature of alleged assault so that they understand the reason for termination.	<p style="text-align: center;">++</p> Clarifies rules for termination following application to Tribunal.
<b>Efficiency</b>	<p style="text-align: center;">0</p> Administrative burdens not significant and mitigated by use of templates. Emotional/psychological burden for landlord is proportionate	<p style="text-align: center;">+</p> Administrative burdens not significant and mitigated by use of templates.
<b>Overall assessment</b>	<p style="text-align: center;">+</p>	<p style="text-align: center;">+</p>

29. Both option 1A and option 1B are recommended as requirements.

Regulations for qualifying evidence that a charge has been filed

*Background*

30. The RTA enables two different sets of regulations to be made which prescribe qualifying evidence:

- ☐ Persons, or classes of persons, whose declarations are qualifying evidence.
- ☐ Types of qualifying evidence.

**Option 2A – Declarations by Police as qualifying evidence (not recommended)**

*Description of Option 2A*

31. Option 2A would permit qualifying evidence to be a statutory declaration by the Police that a charge has been filed in respect of the assault by the tenant against the landlord/owner, the landlord/owner’s family, or the landlord’s agent.

*Analysis of Option 2A*

32. Option 2A supports fairness. A statutory declaration by the Police would be a reliable source of evidence, which would support tenancies only being terminated where there is sufficient evidence.

33. Option 2A is likely to be clear for landlords and tenants to understand.



34. Option 2A is not efficient. Statutory declarations need to be made in front of an authorised person, which would be time consuming for the Police. This is unnecessarily burdensome, as a statutory declaration by the Police is unlikely to be more reliable than written confirmation by the Police. Landlords are also negatively impacted by a more time-consuming process.
35. Landlord and tenant organisations agreed that statutory declarations were not necessary. The Police provided feedback that statutory declarations would be unnecessarily time consuming.

### **Option 2B – Written confirmation by Police as a type of qualifying evidence (recommended)**

#### *Description of Option 2B*

36. Option 2B would permit qualifying evidence to be written confirmation (email or letter) from the Police that a charge had been filed in respect of the assault. The written confirmation would need to identify the alleged perpetrator (the tenant) and the alleged victim (the landlord/owner, the landlord/owner's family, or the landlord's agent).
37. The landlord would be able to request written confirmation from the Police, although there would be no legal obligation on the Police to provide the written confirmation within a particular time period.

#### *Analysis of Option 2B*

38. Option 2B supports fairness. Written confirmation by the Police is a reliable source of evidence, which would support tenancies only being terminated where there is sufficient evidence. Written confirmation is unlikely to be any less reliable than a statutory declaration.
39. Option 2B is likely to be clear for landlords and tenants to understand.
40. Option 2B is efficient; it is likely to be the most timely option for obtaining qualifying evidence, and the least burdensome on the Police. A more timely option is also beneficial for landlords.
41. Landlord and tenant organisations supported the inclusion of Option 2B. In particular, stakeholders noted that Option 2B was likely to be more timely than other options. The Police provided feedback that Option 2B was their preferred option and that it would create less workload for Police's constabulary and File Management Centre staff.

### **Option 2C – Charging document as qualifying evidence (recommended)**

#### *Description of Option 2C*

42. Option 2C would permit a charging document as qualifying evidence. A charging document would only be able to be used as evidence where the victim (the landlord/owner, the landlord/owner's family, or the landlord's agent) is identified, which they usually are. Landlords would be able to access a charging document under a Privacy Act 2020 or an Official Information Act 1982 (OIA) request to the Police.

#### *Analysis of Option 2C*

43. Option 2C supports fairness. A charging document is a reliable source of evidence, which would support tenancies only being terminated where there is sufficient evidence.
44. Option 2C is likely to be clear for landlords and tenants to understand.

- 45. Option 2C is reasonably efficient. A Privacy Act or OIA request for a charging document may be somewhat more burdensome for the Police than written confirmation, but this is unlikely to be significant. Option 2C also provides landlords with a statutory process for obtaining evidence, which is more guaranteed. There may be instances where the person seeking access to the information would be prevented from obtaining it due to specific considerations under the Privacy Act or the OIA, but this risk is likely to be narrow in scope.
- 46. Some landlord organisations preferred including both Option 2B and Option 2C as they perceived Option 2C as a backup measure that can be requested under the OIA/Privacy Act with an obligation to respond within a statutory timeframe. Police provided feedback that OIA or Privacy Act requests are unlikely to put significant pressure on Police systems, although noted that charging documents are less likely to be a timely option than written confirmation.

**Options comparison**

	Qualifying evidence		
	Option 2A – Declarations by Police	Option 2B – Written confirmation by Police	Option 2C – Charging documents
<b>Fairness</b>	++ Provides reliable evidence.	++ Provides reliable evidence.	++ Provides reliable evidence.
<b>Clarity</b>	+ Easy to understand.	+ Easy to understand.	+ Easy to understand.
<b>Efficiency</b>	- Unnecessarily time consuming for Police and landlords.	+ Least burdensome and time-consuming option.	+ Unlikely to significantly burden Police resources and provides a more guaranteed method of obtaining evidence for landlords.
<b>Overall assessment</b>	0	+	+

- 47. Both options 2B and 2C are recommended, with either alone being sufficient to satisfy the qualifying evidence requirements.

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

*Information requirements*

- 48. Both Option 1A (require a description of the assault and who engaged in it, including date, time and approximate location) and Option 1B (require advice about what happens to the termination if the tenant applies to the Tenancy Tribunal) are recommended. Both options support clarity and fairness by ensuring tenants have enough information to understand the reason for the termination and make a decision about whether to apply to the Tribunal. Both options are reasonably efficient; any burdens on the landlord are

justified and administrative burdens can be mitigated by use of templates. Both options would be required to meet the information requirements.

#### *Qualifying evidence*

49. Both Option 2B (written confirmation by Police) and Option 2C (charging documents) are recommended. Both options support fairness as they are reliable options that a charge has been filed, and minimise unnecessary administrative costs, particularly for Police. Option 2C is recommended as well as Option 2B as it provides a more guaranteed avenue for landlords to access qualifying evidence. Either option alone would be sufficient to meet the qualifying evidence requirements.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

50. The recommended options will be implemented by drafting new regulations under section 138E of the RTA.
51. Guidance material will be published on the Tenancy Services website to help both landlords and tenants to understand their rights and obligations for physical assault termination notices. HUD will need to work with Tenancy Services to produce an approved form for the physical assault termination notices, which will be published on the Tenancy Services website.
52. The Police will need to be prepared to provide qualifying evidence.
53. Oversight can be carried out by Tenancy Services in MBIE and the Tenancy Tribunal. The Tenancy Tribunal holds hearings to settle disputes between tenants and landlords and issues orders that are legally binding on the parties involved in the dispute.

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

54. HUD is the regulatory steward for the residential tenancy system and will monitor the implementation of the whole set of changes in the Amendment Act 2020, including the new termination provisions. As part of this ongoing work, HUD policy officials are in regular contact with Tenancy Services within 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. Some information will be able to be obtained through monitoring Tenancy Tribunal decisions in which the notices are challenged by tenants.