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Office of the Minister of Housing
Cabinet Legislation Committee

RESIDENTIAL TENANCIES (TERMINATION FOR PHYSICAL ASSAULT BY TENANT AND WITHDRAWAL FOLLOWING FAMILY VIOLENCE) REGULATIONS 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022.

Executive Summary

- 2 The Residential Tenancies Amendment Act 2020 (the Amendment Act) included changes to enable:
 - 2.1 landlords to terminate a tenancy with 14 days' notice where the tenant has assaulted the landlord/owner, the landlord/owner's family, or the landlord's agent, and the Police have filed a charge; and
 - 2.2 victims of family violence to withdraw from a tenancy with two days' notice.
- 3 On 29 August 2022 Cabinet agreed to policy decisions for the regulations setting out the operational detail for these provisions [CAB-22-MIN-0336.01].
- 4 The regulations cover: the information to be included in the notices; the evidence to accompany the notices; the circumstances where it is permitted to disclose family violence withdrawal notices; and the tenancies for which rent is not reduced following a family violence withdrawal.
- 5 The regulations will provide clarity and ensure the provisions operate as intended. A key focus in developing the regulations has been to ensure the evidence requirements are accessible for victims of family violence.
- 6 The regulations will come into force on 29 December 2022. Approved forms, templates and guidance will be provided on the Tenancy Services website in advance of the regulations coming into force.

Policy

- 7 The Amendment Act included changes to enable:
 - 7.1 landlords to terminate a tenancy with 14 days' notice where the tenant has assaulted the landlord/owner, the landlord/owner's family, or the landlord's agent, and the Police have filed a charge; and
 - 7.2 victims of family violence to withdraw from a tenancy with two days' notice.
- 8 The Amendment Act included provisions to enable the making of regulations in relation to these provisions.
- 9 On 29 August 2022 Cabinet agreed to policy decisions for the regulations and authorised the Minister of Housing to make any further minor policy decisions consistent with the proposals in the paper under SWC-22-SUB-0150 as necessary to address any issues which arise during the drafting process [CAB-22-MIN-0336.01].
- 10 Regulations have been drafted in accordance with Cabinet decisions, as summarised below. Making regulations will provide clarity and ensure the provisions operate as intended.

Termination for physical assault by tenant

Information to be included in an assault termination notice (clause 5)

- 11 The regulations prescribe the following information be included in an assault termination notice:
 - 11.1 a description of the physical assault, the names of the person(s) assaulted and of the tenant who carried out the assault;
 - 11.2 the date, approximate time, and location of the assault;
 - 11.3 whether the person(s) assaulted is/are the landlord, the owner, a member of the landlord's or owner's family, or the landlord's agent; and
 - 11.4 a statement that, if the tenant applies to the Tenancy Tribunal challenging the termination notice before the tenancy terminates, the tenancy does not terminate under the assault termination notice except in accordance with an order of the Tribunal.
- 12 The prescribed information is in addition to the standard information requirements for all termination notices under the Residential Tenancies Act 1986 (RTA), for example that the notice must identify the premises to which it relates and specify the date by which the tenant is to vacate the premises.

Qualifying evidence (clause 6)

- 13 Along with an assault termination notice, landlords are required to provide one type of qualifying evidence that a charge has been filed in relation to the

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physical assault. The regulations prescribe the following types of qualifying evidence for this purpose:

- 13.1 The charging document that has been filed by or on behalf of the Crown in respect of the physical assault carried out by the tenant.
- 13.2 A written statement from a Police employee confirming that a charge in respect of the physical assault carried out by the tenant has been filed by or on behalf of the Crown.

Withdrawal following family violence regulations

Information to be included in a family violence withdrawal notice (clause 7)

- 14 The regulations prescribe the following information be included in a family violence withdrawal notice:
 - 14.1 the name of the withdrawing tenant;
 - 14.2 the address of the premises to which the notice relates; and
 - 14.3 the date that the withdrawal will take effect.

Qualifying evidence (clauses 8 and 9)

- 15 The regulations are designed to provide a wide range of evidence options for victims of family violence to make it as easy as possible for tenants experiencing family violence to leave dangerous living situations quickly.
- 16 Tenants are required to provide only one type of evidence to accompany a family violence withdrawal notice, which must demonstrate the family violence occurred while they are or were a tenant of the premises. Accordingly, the regulations prescribe the following types of qualifying evidence:
 - 16.1 A written statement (stating the person has reasonable grounds to believe the tenant is a victim of family violence) by specified people, such as healthcare practitioners, social workers, family violence service providers, Whānau Ora navigators, Māori wardens, and religious leaders.
 - 16.2 A statutory declaration made by a person on the list of people who can make written statements (above) or made by the withdrawing tenant themselves.
 - 16.3 The first page of a protection order (and if the protection order was issued before the tenancy it must be accompanied by a statement by the tenant they have been a victim of family violence while they were a tenant of the premises).
 - 16.4 A Police safety order.
 - 16.5 A charging document relating to family violence against the withdrawing tenant.

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- 17 A statutory declaration is a written document that must be completed in front of an authorised witness (for example, a Justice of the Peace or a Solicitor). A written statement does not need to be witnessed.

Types of permitted disclosure, or circumstances in which disclosure is permitted, of the family violence withdrawal notice or the accompanying evidence (clause 11)

- 18 In order to ensure the tenant's safety, wellbeing and privacy, the RTA limits the circumstances for which disclosure of the family violence withdrawal notice and the accompanying evidence is permitted. For example, disclosure of the notice by the landlord is permitted if it is with the consent of the tenant who gave the notice or if it is for the purposes of seeking legal advice.
- 19 In addition to the circumstances permitted in the RTA, the regulations prescribe the landlord and the landlord's agent may disclose a family violence withdrawal notice or any of the accompanying qualifying evidence to each other or to the owner, but only where necessary or desirable for reasons related to the tenancy. For example, this may be necessary where the property manager needs to explain the reason for the rent reduction to the owner.

PACHMA tenancies in relation to which rent is not to be reduced (clause 10)

- 20 The RTA provides that, following a family violence withdrawal, the rent payable for the tenancy is reduced for two weeks in accordance with a formula that ensures the rent payable is proportionate to the remaining number of tenants.
- 21 The RTA provides that a tenancy is exempt from the rent reduction formula if the tenants pay income-related rent or in other prescribed circumstances.
- 22 The regulations prescribe that all PACHMA tenancies are exempt from the rent reduction formula. The exemption is appropriate in order to treat tenants eligible for income-related rent equitably and reduce double handling, and therefore make for a clearer process for both the Ministry of Social Development and remaining tenants.

Timing and 28-day rule

- 23 The regulations will come into force 29 December 2022. No waiver of the 28-day rule is sought.

Compliance

- 24 The regulations comply with:
- 24.1 the principles of Te Tiriti o Waitangi/the Treaty of Waitangi;
 - 24.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 24.3 the principles and guidelines set out in the Privacy Act 2020;

- 24.4 relevant international standards and obligations;
- 24.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Principles of Te Tiriti o Waitangi/the Treaty of Waitangi

- 25 The regulations comply with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, including the principle of equity. Consideration has been given to ensuring a wide range of options are available to meet the evidence requirements for the family violence withdrawal notices, with a particular focus on ensuring the evidence options will be accessible for Māori.
- 26 Māori are more likely to experience family violence¹ and may face more or different barriers to accessing evidence of family violence for the purpose of the regulations; for example, Māori are significantly more likely to distrust the Police,² and experience a number of practical barriers in accessing the public health system.³
- 27 Allowing a broad range of people to provide evidence, including those who may not be registered practitioners but who have close connections with their communities, will increase equitable outcomes for Māori.

Privacy Act 2020

- 28 The regulations comply with the principles and guidelines set out in the Privacy Act 2020. Consideration has been given to compliance with the principle of data minimisation, including by:
 - 28.1 only requiring the first page of a Protection Order as evidence, rather than an entire Protection Order which can contain significant information which is not necessary for the purposes of the regulations; and
 - 28.2 only requiring written statements to include a short statement that the person has reasonable grounds to believe that the tenant has experienced family violence while a tenant of the tenancy, and not

¹ The prevalence rate of family violence for Māori females was just over double that for females overall (6.9% compared with 3.1%), and the rate for Māori males was about three times that for males overall (3.4% compared with 1.2%). Ministry of Justice. 2022. New Zealand Crime and Victims Survey. Cycle 4 survey findings. Descriptive statistics. June 2022. Results drawn from Cycle 4 (2020/21) of the New Zealand Crime and Victims Survey. Wellington: Ministry of Justice.

² Respondents to the NZPCSS of Pacific and Māori ethnicity were significantly more likely to have “not much or no trust and confidence” in Police. New Zealand Police Citizens’ Satisfaction Survey: Report for 2019/20.

³ Low-income whānau mentioned financial costs, transportation issues and practicalities such as organising leave and/or childcare as obstacles to accessing clinics, attending appointments and receiving appropriate levels of healthcare. Graham, R. and Masters-Awatere, B., 2020. Experiences of Māori of Aotearoa New Zealand's public health system: a systematic review of two decades of published qualitative research. *Australian and New Zealand journal of public health*, 44(3), pp.193-200.

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requiring any information about the nature of family violence experienced; and

28.3 limiting the disclosure of the family violence withdrawal notice between the landlord, the landlord's agent, and the owner, to only circumstances where necessary or desirable for reasons related to the tenancy.

29 The Minister of Justice has been consulted on making these regulations in accordance with the statutory requirements under sections 138E(2) and 138F(2) of the Residential Tenancies Act 1986.

Regulations Review Committee

30 There are no anticipated grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

31 The regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

32 Two Regulatory Impact Assessments were prepared in accordance with the necessary requirements, and were submitted at the time that Cabinet approval was sought of the policy relating to the regulations [SWC-22-MIN-0150].

Publicity

33 A news article will be published on the Tenancy Services (Ministry of Business, Innovation and Employment) website about the regulations. Guidance will also be published on the Tenancy Services website to assist stakeholders to understand and use the regulations. The Ministry will send emails to key stakeholders about the regulations.

Implementation

34 Approved forms for the qualifying evidence and the withdrawal/termination notices will be published on the Tenancy Services website. Templates will also be published on the Tenancy Services website (for example, rent reduction notification templates).

35 Guidance will be published on the Tenancy Services website to assist stakeholders to understand and use the regulations. Guidance will be provided for the Tenancy Services Call Centre to respond to stakeholder enquiries about the regulations.

- 36 The Ministry will send emails to key stakeholders about the regulations following their gazettal, and provide key stakeholders with the approved forms once they are made available.

Proactive release

- 37 I intend to proactively release this paper within 30 business days as provided for in Cabinet Office Circular CO(18)4.

Consultation

- 38 In preparing this paper the Ministry consulted with: the Ministries of Business, Innovation and Employment, Health, Justice, Social Development; the Ministries for Women, Pacific Peoples, and Ethnic Communities; the Treasury; Te Puni Kōkiri; NZ Police; Te Puna Aonui; Oranga Tamariki; the Department of Corrections; the Office for Disability Issues; the Parliamentary Counsel Office, the Department of Prime Minister and Cabinet, Kāinga Ora, and the Office of the Privacy Commissioner. The Ministry also consulted with the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator on the regulations.
- 39 The Ministry consulted with landlord and tenant representative organisations, community organisations, family violence organisations, relevant regulatory authorities in the health sector, teachers' unions, Whānau Ora commissioning agencies and the Māori Wardens Entity Group on the details of the regulatory proposals.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 Note the Residential Tenancies Amendment Act 2020 amended the Residential Tenancies Act 1986 to enable:
 - 1.1 landlords to terminate a tenancy with 14 days' notice where the tenant has assaulted the landlord/owner, the landlord/owner's family, or the landlord's agent, and the Police have filed a charge; and
 - 1.2 victims of family violence to withdraw from a tenancy with two days' notice.
- 2 Note that on 29 August 2022, Cabinet agreed to policy decisions for regulations to prescribe [CAB-22-MIN-0336.01]:
 - 2.1 information to be included in an assault termination notice;
 - 2.2 qualifying evidence that a charge has been filed in respect of the physical assault against the tenant by or on behalf of the Crown;
 - 2.3 qualifying evidence that the tenant has been a victim of family violence while a tenant of the premises;
 - 2.4 information to be included in a family violence withdrawal notice;
 - 2.5 types of permitted disclosure, or circumstances in which disclosure is permitted, of the family violence withdrawal notice or the accompanying evidence; and
 - 2.6 PACHMA tenancies in relation to which rent is not to be reduced.
- 3 Note that the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022 will give effect to the decisions referred to in paragraph 2 above;
- 4 Note that the Minister of Justice has been consulted on the making of the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022 in accordance with the statutory requirements under sections 138E(2) and 138F(2) of the Residential Tenancies Act 1986.
- 5 Note the advice of the Minister of Housing that the requirements referred to in paragraph 4 above have been met.
- 6 Authorise the submission of the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022 to the Executive Council.

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- 7 Note that the Residential Tenancies (Termination for Physical Assault by Tenant and Withdrawal Following Family Violence) Regulations 2022 come into force on 29 December 2022.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Housing