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Office of the Minister of Housing

Cabinet Social Wellbeing Committee

Policy decisions for family violence withdrawal notices regulations and physical assault termination notices regulations under the Residential Tenancies Act 1986

Proposal

- 1 I seek Cabinet's agreement to policy decisions for the following regulations to be made under the Residential Tenancies Act 1986:
 - 1.1 family violence withdrawal notice regulations and
 - 1.2 physical assault termination notice regulations.

Relation to government priorities

- 2 The government has made addressing family violence and sexual violence a priority through the creation of a new Ministerial portfolio for the Prevention of Family and Sexual Violence. The family violence withdrawal notices regulations will support the Government's priority to address violence in homes and communities and aligns with Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence.

Executive Summary

- 3 Family violence is a significant societal issue and New Zealand has the highest reported rate of intimate partner violence in the OECD. Government spends \$1.5 billion to \$2 billion annually on the consequences of family violence and sexual violence (Auditor General 2021). Victims are more vulnerable when they seek to leave their partner, so must be supported to leave safely.
- 4 As one measure to support victims of family violence, the Residential Tenancies Amendment Act 2020 (the Amendment Act) included changes that enable tenants who are experiencing family violence to withdraw from a tenancy with only two days' notice. The Amendment Act also included changes that will enable landlords to terminate a tenancy with 14 days' notice where the tenant physically assaults the landlord/owner, a member of the landlord/owner's family, or the landlord's agent, and the Police file a charge relating to the assault. Regulations now need to be made setting out the detail for how these provisions will work in practice.
- 5 I am seeking Cabinet agreement to policy proposals on the family violence withdrawal notice regulations and the physical assault termination notice regulations. Specifically, this paper seeks agreement on:
 - 5.1 information that should be included in each notice;

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- 5.2 what evidence will be required for each notice;
 - 5.3 circumstances where it is permitted to disclose information in the family violence withdrawal notice; and
 - 5.4 any exemptions to rent reductions for remaining tenants following use of a family violence withdrawal notice.
- 6 If Cabinet agrees, Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (the Ministry) will develop drafting instructions and the Parliamentary Counsel Office will draft the regulations.

Background

Residential Tenancies Amendment Act 2020

- 7 The Amendment Act included changes to enable tenants who are experiencing family violence to withdraw from a tenancy with only two days' notice. It also included changes to enable landlords to terminate a tenancy with 14 days' notice where the tenant physically assaults the landlord/owner, a member of the landlord/owner's family, or the landlord's agent, and the Police file a charge relating to the assault.
- 8 These provisions, which enable regulations to be made, came into force in August 2021. Tenant advocacy groups are eager for the regulations to be in place as soon as possible so that tenants experiencing family violence can more easily leave unsafe living situations quickly without on-going rent liability.

Family violence withdrawal notices (tenants)

- 9 The purpose of the family violence withdrawal notice provisions is to support victims of family violence to leave their tenancy quickly and seek safety by removing the barrier of ongoing liability for rent. The regime has the following elements:
- 9.1 The minimum notice period for a family violence withdrawal notice is two days, and after the withdrawal date the tenant will not be liable for any further rent. In reality, I expect a tenant would give notice once they are safe from danger, so the notice period would run after they had left the property.
 - 9.2 It is an unlawful act for a landlord or a specified person to disclose, without authorisation, any information or qualifying evidence relating to the withdrawal by a tenant for family violence reasons.
 - 9.3 Any remaining tenants in the tenancy will pay a reduced rent for a two-week period, proportional to the number of tenants left in the tenancy.
 - 9.4 If the Tenancy Tribunal hears a case relating to a family violence withdrawal notice, hearings must be held in private, evidence must be given remotely if a party requests this and the necessary facilities are

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available, and the names and identifying details of the parties must be suppressed by the Tenancy Tribunal.

- 10 The provisions were modelled on the New South Wales domestic violence regulations, which enable victims of domestic violence to end their tenancy immediately if they provide qualifying evidence, such as a court document or declaration by a prescribed 'competent person'.
- 11 Regulations, contemplated by the primary legislative provisions, need to be made to set out the detail for the new provisions, including:
 - 11.1 what information must be included in a family violence withdrawal notice;
 - 11.2 what qualifies as evidence of family violence;
 - 11.3 types of permitted disclosure; and
 - 11.4 tenancies that are exempt from the rent reduction provision.

Termination for physical assault notices (landlords)

- 12 The purpose of the assault termination notice provisions is to provide for a just and efficient termination process where a tenant physically assaults the landlord/owner, the landlord/owner's family, or the landlord's agent. The regime has the following elements:
 - 12.1 Landlords may serve tenants with a 14-day termination notice where the tenant has physically assaulted the landlord/owner, the landlord/owner's family, or the landlord's agent, and the Police have filed a charge in relation to the assault.
 - 12.2 If the tenant makes an application to the Tenancy Tribunal challenging the notice before the tenancy is terminated, the tenancy does not terminate under the notice, but the Tribunal may make an order terminating the tenancy.
- 13 Regulations, contemplated by the primary legislative provisions, also need to be made to set out the detail for how the termination for physical assault provisions will work, including:
 - 13.1 what qualifies as evidence of physical assault; and
 - 13.2 what information must be included in a physical assault termination notice.

Targeted consultation was undertaken in 2021

- 14 The Ministry carried out targeted consultation with stakeholders in 2021 on the detail of both sets of regulations. Officials did not undertake a full public consultation process due to the narrow and sensitive nature of the regulations. Consultation focussed on family violence service providers, community organisations, and organisations representing tenants and landlords.

- 15 Stakeholders were generally supportive of the intent of the family violence withdrawal notice regulations and were particularly interested in what would count as evidence of family violence. They emphasised the importance of keeping evidence requirements broad so that the regulations are accessible to victims seeking to leave unsafe living situations quickly and easily. Stakeholders noted there is a delicate balance in keeping the evidence requirements broad and accessible to victims, while also ensuring evidence comes from a reliable source due to the financial implications for landlords and any remaining tenants.

Family violence withdrawal notices – policy decisions

Objective and criteria for policy options

- 16 The overall objective for the family violence withdrawal notices is to enable tenants who are experiencing family violence to remove themselves from danger in order to be safe, by removing the barrier of ongoing liability for rent. The criteria used for assessing policy options for the family violence withdrawal notices were effectiveness, reliability and clarity. Effectiveness, in terms of ensuring the regime is as accessible to family violence victims as possible, was given more weight than the other criteria, because of the overriding need to enable tenants in dangerous situations to quickly seek safety.

Information to be included in a family violence withdrawal notice

- 17 The regulations need to prescribe the information that must be included in a family violence withdrawal notice. I recommend the following information be required to be included in a family violence withdrawal notice:
- 17.1 the premises to which the notice relates;
 - 17.2 the date that the withdrawal will take effect; and
 - 17.3 the name of the tenant.
- 18 I do not recommend that the tenant needs to sign a withdrawal notice. This is because tenant advocacy groups and family violence organisations pointed out that the requirement to sign the withdrawal notice may be difficult for some victims, particularly those who do not have access to a printer and want to email the withdrawal notice. Requiring the tenant to sign the notice may create a barrier for victims wanting to leave their tenancy.

What qualifies as evidence of family violence

- 19 The regulations can prescribe the type of qualifying evidence which can accompany family violence withdrawal notices, or the persons, or classes of persons whose declarations can be qualifying evidence.
- 20 I recommend that a letter or email from a specified person, a statutory declaration from a victim or a specified person, a Police Safety Order, the first page of a Protection Order (issued during the time they were a tenant of the premises) or a charging document qualify as evidence of family violence. Any

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one of these forms of evidence will be sufficient to meet the evidence requirements.

- 21 For Protection Orders issued prior to a tenancy, these will be permitted as evidence when accompanied by a statement from the victim that they have been a victim of family violence while they were a tenant of the premises (the statement does not need to be formally witnessed). This meets the temporal requirement of section 56B(1)(a) of the Amendment Act, that is, the notice must be accompanied by qualifying evidence that the tenant has been a victim of family violence *while a tenant of the premises*.
- 22 I note that there is a wide spectrum of circumstances that victims may be in and logistical issues they may face in attempting to seek safety. Providing a broad range of evidence options will make the regulations more accessible and more effectively enable tenants experiencing family violence to leave dangerous living situations quickly.
- 23 Police Safety Orders, Protection Orders and charging documents are clear and reliable forms of evidence, for victims who have already engaged with the justice system. However, I note that many victims would not have these documents at the time they seek to leave their tenancy, so it is appropriate for a range of trusted people, such as professionals and leaders in certain communities and roles, to be able to provide a supporting letter or email as evidence of family violence.
- 24 Accordingly, I recommend enabling the following specified health professionals, religious leaders, Māori leaders, and other community leaders to provide letters/emails as evidence of family violence:
- 24.1 a doctor registered with the New Zealand Medical Council;
 - 24.2 a nurse registered with the Nursing Council of New Zealand;
 - 24.3 a psychologist registered with the New Zealand Psychologists Board;
 - 24.4 a counsellor who is a member of the New Zealand Association of Counsellors or the Christian Counsellors Association;
 - 24.5 a social worker registered with the Social Workers Registration Board;
 - 24.6 Police;
 - 24.7 a person employed by a family violence service provider;
 - 24.8 a school principals or professional leader (as defined in the Education and Training Act 2020);
 - 24.9 a Māori Warden appointed under the Māori Community Development Act 1962;

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- 24.10 a leader of a religious community who has a status within a church or other religious community that requires or calls for that person to provide guidance or service for that community;
 - 24.11 a psychotherapist registered with the Psychotherapists Board of Aotearoa New Zealand;
 - 24.12 a midwife registered with the Midwifery Council of New Zealand;
 - 24.13 an osteopath registered with the Osteopathic Council of New Zealand;
 - 24.14 a person employed by a sexual violence service provider;
 - 24.15 a person employed by a Whānau Ora provider;
 - 24.16 a home support service worker partially or wholly funded by Ministry of Health, Ministry of Social Development, District Health Boards or Accident Compensation Corporation;
 - 24.17 the victim's employer;
 - 24.18 the victim's landlord/property manager;
 - 24.19 a probation officer;
 - 24.20 a person employed by a Māori community provider that receives Crown funding; and
 - 24.21 a lawyer.
- 25 The people in the above groups will also have the option of providing a statutory declaration if preferred. Statutory declarations are a written document that must be completed in front of an authorised witness, and it is a criminal offence to make a false declaration.
- 26 I also recommend that victims should be able to make their own statutory declaration as evidence of family violence. This form of qualifying evidence will be an appropriate and accessible option for some tenants who are victims of family violence.

Types of permitted disclosure

- 27 The primary legislation requires landlords and those providing supporting evidence to treat both the withdrawal notice and the evidence with confidentiality to protect the privacy and safety of the victim, including from discrimination in the future, and prevent re-traumatisation for the victim.
- 28 Disclosure of this information is only permitted if it:
- 28.1 is with the consent of the tenant who gave the notice; or
 - 28.2 is for the purpose of seeking legal advice; or

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- 28.3 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
- 28.4 is otherwise authorised or required by or under any enactment or rule of law.
- 29 This regime ensures that a perpetrator is not party to the disclosure and thereby minimises the likelihood of retribution.
- 30 Any person who uses or discloses a family violence withdrawal notice or supporting evidence unless the disclosure is permitted as set out in paragraph 28 would be committing an unlawful act and may be liable for exemplary damages of up to \$3000.
- 31 I have the option to make regulations prescribing additional types of permitted disclosure. I recommend only the property manager, landlord and property owner of the tenancy to which the withdrawal notice relates can share the withdrawal notice with each other. This will enable these parties to discuss any logistical adjustments to the tenancy without undermining the privacy and safety of the victim. I do not consider there are any additional situations where it should be permitted to disclose the information in the withdrawal notice or accompanying evidence.

Exemptions from the rent reduction formula

- 32 If there are remaining tenants, they will 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.
- 33 I note that this might, in some cases, include the perpetrator of the family violence if they are a remaining joint tenant, however I consider that it is not possible to preclude this while still meeting the objectives of the policy.
- 34 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 (IRR) because social housing policy and legislation provides a more responsive and enduring way of managing the financial impacts for remaining tenants. Applying the two-week rent reduction formula to these tenants would result in many cases in double handling, that is, rent recalculation having to happen twice.
- 35 The primary legislation also enables me to make regulations prescribing further rent reduction exemptions where:
- 35.1 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
- 35.2 the tenancy, or the landlord under the tenancy, is prescribed, or of a class prescribed, for the purposes of this subsection.

- 36 I recommend making regulations that exempt all remaining PACHMA tenancies from the rent reduction formula. This would treat tenants eligible for income-related rent equitably, rather than distinguishing between those receiving/ not receiving IRR. It would reduce double handling (and therefore make for a clearer process for both the Ministry of Social Development and remaining tenants), as some public housing tenants not currently receiving IRR will subsequently apply for it after their circumstances change as a result of the use of a withdrawal notice. 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 PACHMA tenancies than those in the private rental market because the rent is based on household income rather than the market rent and can be adjusted if this changes.

Termination for physical assault regulations – policy decisions

Objective and criteria for policy options

- 37 The overarching objective is to ensure a just and efficient termination process. The following criteria were used for assessing policy options for the physical assault termination notice regulations: fairness, clarity and efficiency.

Information to be included in a physical assault termination notice

- 38 The regulations need to prescribe the information that must be included in a physical assault termination notice.
- 39 I recommend that physical assault termination notices must include the following:
- 39.1 a description of the physical assault and who engaged in it;
 - 39.2 the date, approximate time and location of the behaviour; and
 - 39.3 advice 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 Tribunal may make an order terminating the tenancy.
- 40 These information requirements will enable tenants to understand the reason for the termination and provide them with sufficient information to decide whether to challenge the termination notice in the Tenancy Tribunal. Termination notice templates will be made available on the Tenancy Services' website to minimise the administrative burden for landlords.

Types of qualifying evidence

- 41 The regulations need to prescribe what qualifies as evidence that the Police have filed a charge in relation to the assault.
- 42 I recommend that written confirmation by Police or charging documents can be qualifying evidence. Only one of these documents would be required. These types of evidence are fair, as both are robust and come from a trusted source. Both types of evidence are also clear and will be administratively efficient in

comparison to other options, such as statutory declarations. In particular, the written confirmation option is likely to be less burdensome for the Police to provide, and correspondingly, it will likely be easier for landlords to obtain.

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Implementation

- 46 The Ministry and Tenancy Services in the Ministry of Business Innovation and Employment will prepare information and educational material to make tenants and landlords aware of the new regulations.
- 47 The family violence withdrawal notice process needs to be easy to access and navigate for tenants experiencing family violence who need to urgently seek safety.
- 48 Rights and responsibilities relating to the family violence withdrawals will be communicated to relevant stakeholder groups including government agencies, tenancy services, private landlords, public and community housing landlords, healthcare professionals, and other community groups who support victims of family violence. Some training may also be required for those authorised to provide evidence in support of a family violence withdrawal notices and for Tenancy Tribunal adjudicators and mediators.
- 49 The Ministry of Justice will implement procedural changes for Tenancy Tribunal hearings to ensure that private hearings and name suppression applies to applications involving family violence withdrawal notices, as well as ensure that facilities are available for providing evidence remotely.
- 50 The Police will need to be prepared to provide qualifying evidence.
- 51 Victims of family violence who leave the family home and who have no alternative housing options available to them may be able to access financial assistance from the Ministry of Social Development to cover the cost of

emergency housing. If a stay in emergency housing exceeds seven days, a contribution toward the cost of 25 percent of a person's income is required.

Financial Implications

52 There are no financial implications related to this paper.

Legislative Implications

53 Regulations are needed in order to implement the proposals. As required by sections 138E(2) and 138F(2) of the Residential Tenancies Act 1986, I have consulted with Minister of Justice on the proposals. The Parliamentary Counsel Office was also consulted and confirmed that regulations can be drafted following approval of policy decisions.

54 Subject to decisions on this paper, it is expected that the regulations will be submitted to Cabinet Legislation Committee for approval in December 2022.

Impact Analysis

Regulatory Impact Statements

55 The regulatory impact analysis requirements apply to this paper. Two regulatory impact statements have been prepared and are attached to this paper. A Ministry panel reviewed the regulatory impact statement for the family violence withdrawal notice regulations and the regulatory impact statement for termination for physical assault regulations. The panel reviewing these regulatory impact statement considers that they meet the quality assurance criteria.

Climate Implications of Policy Assessment

56 A Climate Implications of Policy Assessment (CIPA) is not required for these proposals.

Population Implications

57 The proposals in this paper aim to enable tenants who are experiencing family violence to remove themselves from danger in order to be safe. Because women, disabled people, older people, and Māori, Pasifika and ethnic populations are disproportionately affected by family violence, these groups are expected to benefit from the proposals. Disabled people, and Māori, Pasifika and ethnic populations are also more likely to rent.

58 Permitting a broad range of evidence should ensure that any tenant is able to use family violence notices if they need to. Allowing evidence to be supplied by religious leaders, Māori Wardens, Māori community providers, and Whānau Ora providers and also allowing for victims to make their own statutory declaration are intended to provide options which are accessible and culturally appropriate. While this range of qualifying evidence was supported in the

consultation it could be adjusted over time through changes to the regulations to improve access for a particular group.

Privacy Act 2020 obligations

- 59 The Privacy Act 2020 will apply to the handling of personal information relating to a family violence or physical assault withdrawal notice. Those handling personal information (including landlords and those providing evidence) will therefore need to comply with the Privacy Act 2020 obligations – including, for example, storing the information safely and disposing of it in a timely manner after it is no longer required for a lawful purpose. This will be particularly important considering the sensitivity of information relating to family violence.

Human Rights

- 60 The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 61 The Minister of Justice has been consulted on the making of these regulations in accordance with the statutory requirement under sections 138E(2) and 138F(2) of the Amendment Act.
- 62 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 .
- 63 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.

Communications

- 64 Public announcement on the regulations will be considered at the time the regulations are approved.

Proactive Release

- 65 I propose to proactively release this paper within 30 business days of decisions by Cabinet. The released paper will be subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Housing recommends that the Committee:

Background

- 1 note the Residential Tenancies Amendment Act 2020 amended the Residential Tenancies Act 1986 to include changes that:
 - 1.1 enable tenants who are experiencing family violence to withdraw from a tenancy with only two days' notice; and
 - 1.2 enable landlords to terminate a tenancy with 14 days' notice where the tenant physically assaults the landlord/owner, a member of the landlord/owner's family, or the landlord's agent, and the Police file a charge relating to the assault;
- 2 note that the above changes came into force in August 2021 and tenant advocacy groups are eager for the family violence withdrawal notices regulations to be in place so that tenants experiencing family violence can more easily leave unsafe living situations quickly without on-going rent liability;

Family violence withdrawal notices regulations

- 3 agree a family violence withdrawal notice must include the following information:
 - 3.1 the name of the tenant;
 - 3.2 the premises to which the notice relates; and
 - 3.3 the date that the withdrawal will take effect;
- 4 agree the qualifying evidence can be either:
 - 4.1 a letter, email or statutory declaration from a specified person outlining they have reasonable grounds to believe the tenant is or was a victim of family violence while a tenant of the premises; or
 - 4.2 the first page of a Protection Order 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 and it is still in force; or
 - 4.3 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 family violence while they were a tenant of the premises (that does not need to be formally witnessed); or
 - 4.4 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; or

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- 4.5 a charging document relating to family violence against the withdrawing tenant during the time they were a tenant of the premises; or
 - 4.6 a statutory declaration completed by the withdrawing tenant outlining that they have been a victim of family violence while a tenant of the premises;
- 5 agree that the following persons may write a letter/email as evidence of family violence under 4.1 above:
- 5.1 a doctor registered with the New Zealand Medical Council;
 - 5.2 a nurse registered with the Nursing Council of New Zealand;
 - 5.3 a psychologist registered with the New Zealand Psychologists Board;
 - 5.4 a counsellors who is a member of the New Zealand Association of Counsellors or the Christian Counsellors Association;
 - 5.5 a social worker registered with the Social Workers Registration Board;
 - 5.6 Police;
 - 5.7 a person employed by a family violence service provider;
 - 5.8 a school principal or professional leader (as defined in the Education and Training Act 2020);
 - 5.9 a Māori Warden appointed under the Māori Community Development Act 1962;
 - 5.10 a leader of a religious community who has a status within a church or other religious community that requires or calls for that person to provide guidance or service for that community;
 - 5.11 a psychotherapist registered with the Psychotherapists Board of Aotearoa New Zealand;
 - 5.12 a midwife registered with the Midwifery Council of New Zealand;
 - 5.13 an osteopath registered with the Osteopathic Council of New Zealand;
 - 5.14 a person employed by a sexual violence service provider;
 - 5.15 a person employed by a Whānau Ora provider;
 - 5.16 a home support service worker partially or wholly funded by Ministry of Health, Ministry of Social Development, District Health Boards or Accident Compensation Corporation;
 - 5.17 the victim's employer;
 - 5.18 the victim's landlord/property manager;

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- 5.19 a probation officer;
 - 5.20 a person employed by a Māori community provider that receives Crown funding;
 - 5.21 a lawyer.
- 6 agree that the property manager, landlord and property owner of the tenancy to which the withdrawal notice relates may disclose the withdrawal notice to each other;
- 7 note the Residential Tenancies Act 1986 stipulates that the rent is not reduced for remaining tenants if the rent payable under the tenancy by the tenants is income-related rent;
- 8 agree to exempt all remaining Public and Community Housing Management Act 1992 tenancies from the two-week rent reduction;

Termination for physical assault regulations

- 9 agree that physical assault termination notices must include the following information:
- 9.1 a description of the physical assault and who engaged in it; and
 - 9.2 the date, approximate time and location of the behaviour; and
 - 9.3 advice 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 Tribunal may make an order terminating the tenancy;
- 10 agree the qualifying evidence that a charge has been filed in relation to a physical assault can be either:
- 10.1 written confirmation by the Police; or
 - 10.2 a charging document.

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Next steps

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- 12 invite the Minister of Housing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper;
- 13 authorise the Minister of Housing to make any further minor policy decisions consistent with the proposals in these recommendations as necessary to address any issues which arise during the drafting process;
- 14 note that it is expected that the regulations will be submitted to Cabinet Legislation Committee for approval in December 2022.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Housing