

Impact Summary: Termination of tenancy for assault on landlord

Section 1: General information

Purpose

The Ministry of Housing and Urban Development (HUD) is responsible for the analysis and advice set out in this Impact Summary. This analysis and advice has been produced for the purpose of informing final policy decisions by Cabinet.

The proposal is to introduce a new termination ground to the Residential Tenancies Amendment Bill (the Bill) where a tenant has assaulted the landlord or relevant parties (e.g. their agent), by:

- a. enabling the landlord to issue a termination notice with 14-days' notice, without needing to apply to the Tenancy Tribunal;
- b. requiring the notice to be supported by independent evidence in the form of a Police charging document;
- c. providing time for the tenant to consider applying to the Tenancy Tribunal to overturn the notice; and
- d. if the tenant makes an application, ensuring that the notice has no effect until the Tenancy Tribunal has determined the matter.

The Bill amends the Residential Tenancies Act 1986 (the RTA) to modernise it. It aims to balance the rights and obligations of tenants and landlords. This includes increasing security of tenure for tenants and promoting good-faith relationships in the renting environment.

The Bill was reported back to the House on 7 July. If Cabinet agrees to proceed with the new termination ground, these changes would need to be given effect through a Supplementary Order Paper (SOP).

Key Limitations or Constraints on Analysis

Issues in scope of the proposal

The Associate Minister for Housing (Public Housing) has asked officials to consider introducing a new termination ground to the Bill through an SOP in which a landlord could terminate a tenancy on grounds of assault.

This ground would enable a landlord to issue a termination notice, without applying to the tenancy tribunal, if the tenant has physically assaulted the landlord or other relevant parties, as defined below:

- a family member of the landlord
- an agent of the landlord
- the owner of the premises
- a family member of the owner.

The proposal is separate to, and does not seek to replace, section 55 of the RTA. Section 55 gives landlords the ability to apply to the Tenancy Tribunal for the termination of a tenancy for non-payment of rent, damage to the premises, threats or assault.

The proposed grounds for termination are narrower than section 55. The following circumstances are included in section 55 but will be out of scope of the new termination ground:

- non-payment of rent or damages;
- non-physical assault;
- the threat of assault; and
- the assault of another occupant, or a neighbour.

Evidence of the problem and assumptions

We reviewed submissions on the Bill that related to potential risks to landlords as a result of the Bill. Some submitters on the Bill raised concerns that the Bill may increase the risk of physical harm. Two submitters suggested that these risks could be reduced by introducing a new means to quickly terminate the tenancy of a tenant where this risk eventuated. The Bill as reported back to the House did not include an amendment to this effect.

The risk to landlords is assumed to be sufficiently serious and plausible to warrant consideration of a new termination ground, noting that under the Bill:

- The removal of 'no cause' terminations by the Bill may make it harder to remove a difficult tenant.
- The new notice provisions in the Bill for terminating a tenancy for anti-social behaviour may escalate anti-social behaviour by tenants, which could include an assault on a landlord.
- The cumulative effect of the Bill may increase applications to the Tenancy Tribunal and, in turn, increase wait times for Tenancy Tribunal cases, which may put the landlord at greater risk of physical assault or retaliatory damages.

The concerns raised by submitters are understood as perceived risks, because it cannot be known what effect the Bill will have until it comes into law. As such, the proposal seeks to address a perception of risk rather than an existing issue.

While the original regulatory impact assessment, *Residential Tenancies Act Reform: Improving fairness in the Act*, noted a possible increase in compliance costs to landlords associated with the termination provisions for anti-social behaviour, it did not raise safety issues.

The concerns outlined above are described in further detail in section 2.1 and taken into account in the options analysis in section 3 of this document.

Range of options considered

The options considered in this analysis are limited to:

- the status quo – no further change is required to the Bill as the RTA already provides a means to terminate a tenancy on grounds of an assault via an application by the landlord to the Tenancy Tribunal; and
- the proposal – a new ground for termination included in an SOP to the Bill that would enable a landlord to terminate a tenancy on grounds of assault, without applying to the Tenancy Tribunal.

Criteria used to assess options

The criteria used to assess the two options are:

1. Effectiveness: it can be reasonably expected that assaults on landlords or other parties (e.g. their family) will be minimised.
2. Timeliness: a tenancy can be terminated quickly in circumstances of assault.

3. Fairness: the reason for termination is appropriately tested by an independent body and/or supported by evidence so it is fair to the tenant.
4. Consistency: the approach aligns with the purpose of the Bill; in particular, protecting security of tenure for tenants and balancing the rights of landlords and tenants.

Limitations on consultation and testing

As the proposal is being considered after the Bill has been reported back to the House, consultation has been limited to government agencies only. The Associate Minister requested that concerns over assaults on landlords be addressed in the same amendment bill, rather than a later legislative vehicle, because it seeks to address concerns related to this Bill.

It has not been possible to undertake consultation with external stakeholders and still meet the expected timeframes for the Bill.

The proposed changes will be subject to debate during the Committee of the Whole House stage of the legislative process.

Responsible Manager (signature and date):



21/07/2020

Naomi Stephen-Smith
Manager, Tenures and Housing Quality
Ministry of Housing and Urban Development

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Joint panel from the Ministry of Housing and Urban Development and Ministry of Justice.

Quality Assurance Assessment:

This Regulatory Impact Assessment (RIA) partially meets the RIA quality assurance criteria.

Reviewer Comments and Recommendations:

The joint Ministry of Housing and Urban Development, and Ministry of Justice Quality Assurance (QA) Panel has reviewed *Impact Summary: Termination of tenancy for assault on landlord*, prepared by Housing and Urban Development. The QA Panel considers that the information and analysis summarised in the RIA partially meets the quality assurance criteria.

In reaching this conclusion the QA panel notes that the analysis has been constrained by:

- The short period of time in which to scope and develop it
- A lack of empirical evidence about the nature and extent of the problems and the number of stakeholders affected
- An inability to consult with the affected parties (particularly tenants who are likely to be affected by the proposed approach).

In light of these limitations and constraints, the QA panel cautions against using the analysis in this impact summary to support or fully inform decisions to change the policy settings in the Bill. This is primarily because it is not possible to be confident that the stated objectives are being met in the best possible way as alternative options have not been able to be considered. The QA Panel considers that additional time and consultation could have allowed for and informed the development of further options, assessment of the expected effectiveness of the options, and identification of all expected impacts of the proposal.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

A landlord can currently seek to remove a violent or anti-social tenant in two ways...

The Residential Tenancies Act 1986 (the RTA) recognises that landlords have a right to safety and so provides the means to remove a tenant where there is a safety risk or where physical harm has occurred.

Under section 55(1)(c) of the RTA, landlords can apply to the Tenancy Tribunal for the termination of a tenancy if a tenant has assaulted, or threatened 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 in the same building or premises; or
- any neighbour in the same building or premises.

Tribunal orders indicate that applications to terminate a tenancy under section 55(1)(c) are often made at the end of a chain of events. For example, there may have been police callouts to the premises, or a landlord may have issued a 14-day notice under section 56 of the RTA and the tenant may have failed to comply with the notice (this notice does not terminate a tenancy but gives the tenant 14 days to remedy the issues, such as rent arrears or damage to the premises).

In addition, the RTA provides landlords with the ability to issue a 90-day 'no cause' termination notice to a tenant under section 51. Submissions on the Bill indicate that some landlords view this notice as a means of removing an anti-social tenant in a manner that minimises the risk of aggravating the situation.

... but submitters note that aspects of the Bill relating to anti-social behaviour could put landlords at greater risk of harm

The Bill as introduced and reported back to the House removes the ability to issue a 90-day 'no cause' termination notice. This change is a central part of the reforms in the Bill to improve security of tenure for tenants. It will come into effect when some sections of the Bill commence, possibly as early as July 2020.

Landlords will still be able to terminate tenancies for a range of fair and justified reasons. For anti-social behaviour, the Bill introduces a new provision (section 55A) whereby a landlord can apply to the Tenancy Tribunal for a termination order if they have issued three notices for separate anti-social acts over a 90-day period. This process gives a tenant a chance to improve their behaviour and, if it does not improve, enables them to know why the tenancy was terminated.

Submitters on the Bill raised concerns that the issuing of multiple notices could create or further aggravate a tense situation between a landlord and a tenant. We consider it possible that landlords may experience an escalation in anti-social behaviour with each notice that is served. In an extreme case, this could result in the tenant assaulting the landlord or other relevant party. However, there is currently no evidence to support the degree to which (if any) that this will occur.

Submitters on the Bill have also argued that some provisions could lead to an increase in applications to the Tenancy Tribunal (e.g. by removing no-cause termination notices) and that the Tenancy Tribunal already takes too long to hear applications. There is a concern that landlords may be more at risk of harm following the passing of the Bill and that,

combined with the possibility of longer wait times for Tenancy Tribunal hearings, this could put some landlords in unduly difficult or unsafe circumstances.

Introducing a separate termination process for harm (i.e. assault), that is additional to section 55(1)(c), could mitigate the above risks.

2.2 Who is affected and how?

Impact on landlords

Landlords or other parties may be the victims of assault or threatened assault. This may impact the person's mental or physical wellbeing; a landlord could lose confidence in other tenancy situations or could be seriously injured.

Current provisions in the RTA give landlords the ability to apply to the Tenancy Tribunal to terminate the tenancy of the tenant where assault or threatened assault has occurred, as well as the ability to issue a 90 day termination notice with 'no cause'. The latter option is often seen by landlords as a safer way to remove an anti-social tenant because it reduces the risk of escalating the situation.

However, the Bill as introduced and reported back to the House removes the 'no cause' termination provision in lieu of a process that requires three notices to be issued to the tenant before an application to the Tenancy Tribunal can be made for a termination order. This was seen by some submitters on the Bill (generally landlords) as having the potential to increase the risk of harm to landlords and other relevant parties.

A few submitters suggested that this risk could be reduced by expediting the exit of tenants who demonstrate extreme anti-social behaviour e.g. assaulting a landlord.

Impact on tenants and their families

A tenant whose tenancy is terminated by the Tenancy Tribunal per s55(1)(c) of the RTA may have few or no alternative accommodation options. If the tenant has family, including children, then this impact will extend to other, possibly vulnerable, people and may lead to homelessness.

The removal of 'no cause' terminations through the Bill will improve security of tenure for tenants. Where landlords still seek to terminate a tenancy, tenants will know why their tenancy is ending, that a justified reason exists for the termination, and that they can challenge this at the Tenancy Tribunal. For example, section 55A for anti-social behaviour provides a process wherein the tenant is given chances to improve their behaviour and, if it does not improve, enables them to know why the tenancy was terminated.

2.3 What are the objectives sought in relation to the identified problem?

The objectives sought in relation to the problem are as follows:

- a. appropriately provide for the safety of landlords and other relevant parties who have been assaulted by a tenant
- b. promote timely processing of terminations associated with assaults
- c. ensure a just process for tenants and landlords
- d. ensure that solutions are consistent with the intent of the Bill.

Section 3: Options identification

3.1 What options have been considered?

Only two options have been identified and considered in the development of this proposal, due to time constraints placed on the Bill and direction from the Associate Minister.

Option 1: Status Quo

To avoid doubt, the status quo is taken to be both the existing provisions in the RTA and the provisions in the Bill as reported back to the House on 7 July; in particular, the removal of 90 day no cause terminations and the introduction of termination provisions for anti-social behaviour.

Clause 37 of the Bill inserts a new section (s55A), 'Termination for anti-social behaviour'. This section will permit a landlord to issue notices for acts of anti-social behaviour. If the landlord issues three notices for three separate anti-social acts within a 90 day period, the landlord can then apply to the Tenancy Tribunal to have the tenancy terminated, provided that the application to the Tribunal is made within 28 days after the landlord gave the third notice.

Unlike notices for non-payment of rent or for damage to premises, these notices do not necessitate a 14-day period for the tenant to remedy the situation, because it may be difficult to remedy some acts of anti-social behaviour. The notices can be served on consecutive days if necessary and emailed or hand-delivered directly to the tenant by the landlord. A termination on these grounds would normally take at least a month, with timeframes dependent on a range of factors (e.g. location, tribunal workload). This is arguably too long a period for extreme acts of anti-social behaviour, such as an assault on a landlord.

An assault is normally a criminal matter subject to prosecution in a District Court under section 9 of the Summary Offences Act 1981 for 'common assault' or for more serious cases, under section 196 of the Crimes Act 1961. Reaching a criminal conviction for assault can take time, or a prosecution may not take place at all.

If a landlord or their agent has been assaulted by a tenant who resides at one of their properties, they may not feel comfortable or safe waiting for a conviction to take place and may want the tenancy to end as quickly as possible. To terminate a tenancy under these conditions, a landlord has recourse to section 55(1)(c) of the RTA, which requires the landlord to apply to the Tenancy Tribunal for a termination order.

Publicly accessible Tribunal orders indicate that applications from landlords on grounds of assault or threatened assault are reasonably frequent, with about 100 cases per year. In these orders, the termination of a tenancy is more likely where there is a police charge, a recording of the event, or third-party witnesses.

Applications on grounds of assault or threatened assault are typically treated as urgent, which means the hearing can be held at shorter notice (10 working days or less). However, this is not formally required, so there is no guarantee of an expedited hearing.

A termination associated with assault or threatened assault is typically immediate and accompanied by a possession order. The timeframe for the possession order varies from midnight the same day of the hearing to up to three weeks.

The Tenancy Tribunal must be satisfied on the balance of probabilities that the alleged assault has taken place to order the termination of a tenancy under section 55(1)(c). A Tenancy Tribunal hearing is likely to occur before the assault charge has been proven or disproven in a District Court. The Tribunal will therefore need to make a decision about an alleged assault by weighing evidence from each party to decide which version of events is more likely to be true.

Option 2: Termination of a tenancy by a landlord on grounds of assault without application to the Tenancy Tribunal

Amend the Bill by SOP to introduce a new ground for a landlord to terminate a tenancy without application to the Tenancy Tribunal, where the tenant has assaulted the landlord or other relevant party. This ground would be separate from and would not replace section 55(1)(c) of the RTA, which covers a wider range of circumstances.

To reduce the likelihood of an unfair or unwarranted termination, the landlord would need to make a complaint to the Police to secure a charging document to support the termination notice. It would be provided as independent evidence when the termination notice is served.

The most conclusive and reliable form of evidence would be a conviction for assault by a District Court. However, this would most likely take months to obtain, and a much longer time than an application to the Tenancy Tribunal. Alternatively, a landlord could be given a right to issue a termination notice where the tenant has applied physical force, sufficient for a charge under the Summary Offences or Crimes Acts, and where the Police have issued a charging document for this offence.

However, these documents are issued by the Police at their discretion, in accordance with the Solicitor General's Prosecution Guidelines. Timeframes for a charging document can range from immediate for serious assaults resulting in an arrest, to months in the case of less serious assault. Charges may not be laid at all, even if the Police believe that an assault has occurred, due to considerations of public interest for example.

A tenant would have the right to apply to the Tenancy Tribunal if they dispute the allegation, so the termination notice for assault would need to include a period during which the tenant could apply to overturn the notice, before the tenancy is terminated. If the tenant makes an application to the Tribunal, the landlord would need to prove that they had been assaulted by the tenant.

Placing the burden of proof on a landlord (as the respondent) is the reverse of the default approach to a hearing under the Residential Tenancies Act, where the onus of proof is on the applicant. Unless special provision is made for these circumstances, the tenant (as the applicant) would need to prove that assault had not occurred. This would arguably place too higher threshold for an application to succeed, hence the proposed reversal of the burden of proof.

The notice period would need to take into account the timeframe for applications to be heard, plus some time for vacating the premises in the event the tenant's application was not upheld by the Tribunal. To allow for this, the tenant could be given 14 days to apply to the Tenancy Tribunal, with the termination notice suspended pending the outcome of the hearing. If the application was declined, the tenancy would be terminated with immediate effect, which usually means that the tenant would have 48 hours to vacate the premises.

3.2 Which of these options is the preferred approach?

Criteria for analysis

The two options identified (above) were assessed against the following criteria:

Criteria	Measure
Effectiveness	It can be reasonably expected that assaults on landlords or other parties (e.g. their family) will be minimised.
Timeliness	A tenancy can be terminated quickly in circumstances of assault.
Fairness	The reason for termination is appropriately tested by an independent body and/or supported by evidence so it is fair to the tenant.
Consistency	The approach aligns with the purpose of the Bill; in particular, protecting security of tenure for tenants and balancing the rights of landlords and tenants.

The table on the next page uses the following key in assessing the options:

- ✗ does not meet criterion
- non-applicable or neutral in terms of meeting the criterion
- ✓ meets the criterion
- ✓✓ strongly meets the criterion

	Effectiveness	Timeliness	Fairness	Consistency
Option 1: Status quo	✓ Section 55(1)(c) of the RTA currently provides an effective means to terminate a tenancy, where the tenant has assaulted the landlord or other party, through an application to the Tenancy Tribunal. Further, a new section (s55A), 'Termination for anti-social behaviour' is being inserted into the RTA. This section will permit a landlord to issue notices for acts of anti-social behaviour. In the event of any increase of assaults following the commencement of the Bill, the Tenancy Tribunal may have the flexibility and responsiveness to continue to be an effective means to terminate a tenancy on grounds of assault, subject to available resourcing.	✓ An application to the Tenancy Tribunal for the termination of a tenancy on grounds of assault is typically treated as urgent, so can held at shorter notice (about 10 working days or sooner) than other hearings. However, there is no formal requirement that these hearings are treated as urgent, so there is no guarantee of an expedited hearing. The longer the waiting period, the more at risk the landlord is of further assault or retaliatory damage to their property.	✓✓ The Tenancy Tribunal process provides all parties to the dispute with the right to a fair hearing and time to prepare for the hearing. As the applying party, the burden of proof is on the landlord to establish that the assault took place. A tenant may present counterevidence. The adjudicator will consider the available evidence without bias towards one side or the other. The types of evidence permitted are not restricted. Where there is limited evidence, or only a charge rather than a conviction, it is appropriate to have an adjudicator independently determine whether to uphold or decline the application to terminate the tenancy.	✓✓ The existing provisions for terminating a tenancy on grounds of assault are consistent with the intent of the Bill: • they balance the rights of landlords and tenants, and • they protect a tenant's security of tenure by ensuring the termination of a tenancy only occurs after consideration by an impartial body.

	Effectiveness	Timeliness	Fairness	Consistency
Option 2: Amend the Bill	✖ The ability for a landlord to serve a termination notice directly where assault has occurred could set a strong precedent that may minimise the assaults on landlords or other parties. However, there is no conclusive evidence to suggest that the number of assaults on landlords will increase when new termination grounds for anti-social behaviour take effect, or that timeframes for applications to the Tenancy Tribunal will increase. There is also no certainty that this option will act to minimise assaults on landlords or other parties.	✖ The landlord would serve the termination notice directly with a 14-day notice period, without needing to apply to the Tenancy Tribunal. This could provide for the safety of the landlord quickly. However, this is unlikely in most circumstances, because: - the required evidence will need to be prepared before the notice is served and this may take time - the tenant may challenge the notice through the Tenancy Tribunal and there may be a waiting period for the hearing, during which the termination notice would be suspended - the tenancy may refuse to leave, so the landlord would need to apply to the Tenancy Tribunal for a possession order. Depending on Police workloads, and how they apply the Solicitor General's Prosecution Guidelines,	✓ A tenant will not automatically receive a fair hearing in advance of a termination notice being served. A landlord is able to serve the termination notice, despite their partiality to the decision. The risk of unfairness for the tenant is mitigated in four ways: - the notice must be supported by independent information i.e. a Police charging document; - there is a 14-day notice period to find other accommodation; - the tenant is able to apply to the Tenancy Tribunal to challenge the notice; - if the tenant does apply to the Tenancy Tribunal, the onus of proof is reversed so it remains with the landlord to establish that the assault took place. Although the termination notice could be supported by a charging	✖ This option increases the risk that a tenant (and their family) could be unfairly evicted, which may result in an increased uptake of emergency housing or homelessness. It could also place too much discretion in the hands of landlords. Therefore, the provisions would be generally at odds with the intent of the Bill.

		a charging document could take weeks or months to complete or may not occur at all. Therefore, the time taken to terminate the tenancy is more likely to take longer than the status quo.	document, this is not as robust as a conviction. The 14 day notice period does not provide much time for the tenant to seek advice and consider applying to the Tenancy Tribunal. However, this approximates the minimum of 10 working days that a tenant may have under the status quo. Some tenants could also lack the knowledge or confidence to engage in a legal process, which could act as a deterrent to applying to the Tenancy Tribunal. Alternatively, challenging the notice could also be used by a tenant as a means of extending the time available to secure alternative accommodation.	
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Preferred option

The status quo (option 1) is the preferred option of HUD officials.

It is difficult to know with certainty the effect of the Bill in terms of assaults on landlords. There is no evidence to suggest that option 2 will minimise or prevent any increase in assaults any more than the process under the status quo, even in the (unproven) event that these will increase under the new three notice provisions for terminating a tenancy on grounds of anti-social behaviour.

Retaining the status quo ensures that tenants and landlords receive a fair hearing before an impartial body (i.e. the Tenancy Tribunal) under the existing grounds in the Act. Natural justice for tenants is weakened in option 2 in the following ways:

- a landlord can terminate the tenancy by serving the notice directly;
- a tenant would not have the ability to challenge or defend the assault claim in the first instance unless they make an application to the Tribunal;
- the evidential requirements are not robust – even if a charge is laid, this does not mean an assault has taken place.

To ensure that natural justice is applied, it is more appropriate for the power to terminate a tenancy on grounds of assault to remain with an impartial body (i.e. the Tenancy Tribunal) and for assault charges to continue to be covered by criminal law processes.

Under the status quo a Tenancy Tribunal termination order could be delivered within a timeframe that is at least equivalent and probably faster than option 2:

- A tenancy may be terminated in 10 working days or less under the status quo if a landlord's application requests or signals the need for an urgent hearing and the Tribunal agrees;
- A tenancy may be terminated in 14 days under option 2 but is likely to take longer due to the evidential requirements and could be further delayed if the tenant challenges the termination notice or refuses to leave the premises.

On balance, the status quo is likely to be a faster and more predictable process because it does not have to rely on a Police charging document. Further, the termination order and a possession order can be made at the same hearing. There is also less likelihood of the decision being challenged, as all parties have had an opportunity to present their cases through the Tenancy Tribunal.

The status quo also enables a tenancy to be terminated in a manner that is consistent with the intent of the Bill to increase security of tenure and balance the rights of landlords and tenants, whereas option 2 would be inconsistent with the intent of the Bill.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment	Impact
Additional costs of proposed approach, compared to taking no action		
Landlords	As the burden of proof for an assault is placed on the landlord, the landlord or other relevant party would need to make a complaint to the Police to secure a charging document to support the termination notice. The outcome of this request will be uncertain, as Police may take weeks or months to file a charge or may decide not to make a charge.	Low
Tenants	The tenant (and their family, if any) would need to exit the tenancy at the end of the 14-day period and find alternative accommodation or apply to the Tenancy Tribunal to retain the tenancy. They will bear the costs of shifting and possibly homelessness, including if an application fails.	Low - high
Police	The Police could be placed under pressure by landlords to produce and expedite charging documents.	Low
Emergency housing providers	Emergency housing providers could see an increase in those needing emergency housing, but it is likely to be minimal.	Low
Non-monetised costs		<i>Low - High</i>
Expected benefits of proposed approach, compared to taking no action		
Landlords	A landlord would not need to apply to the Tenancy Tribunal to terminate a tenancy on grounds of assault. However, the landlord or relevant party would still need to file a complaint with the Police and request that a charging document is produced and expedited.	Low
Tenancy Tribunal	The Tenancy Tribunal may need to process fewer applications from landlords for termination orders. However, this could be offset to some extent where tenants make an application to contest a termination notice.	Low
Non-monetised benefits		<i>Low</i>

4.2 What other impacts is this approach likely to have?

The timeframes for the Bill mean there has been no opportunity to consult with external stakeholders such as landlords, property managers, tenants, renter advocacy groups, or community law representatives on this proposal.

While many submitters on the Bill disagreed with the removal of 90 day no cause terminations and raised concerns about the effectiveness and risks associated with the provisions for anti-social behaviour, it is unclear whether landlords or tenants would generally consider option 2 as an effective or proportionate means of addressing these concerns.

Impact on tenants

It can be anticipated that renters' advocacy groups would consider the proposal to be an unjust provision that is at odds with the Bill's intent to improve security of tenure, particularly if the eviction of a tenant could happen at short notice and outside the jurisdiction of the Tenancy Tribunal.

The ability for landlords to terminate a tenancy on grounds of assault will have a significant impact on tenants, particularly if the tenant has no or few alternative accommodation options. If the tenant has family, including children, they will also be affected by the termination of the tenancy. This could place the tenant in a position of increased discrimination without just cause.

Impact on Māori

Placing the discretion on the landlord to serve termination notices creates the risk of discrimination. Given the over-representation of Māori in the Justice system, Māori could be disproportionately affected by the proposal, which could undermine the Crown's obligations under the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Submissions on the Residential Tenancies Amendment Bill

While a large number of submitters raised concerns about the removal of the 90-day no cause terminations and questioned the effectiveness and risks associated with the provisions for anti-social behaviour, very few called for a right of immediate termination by a landlord.

It has not been possible to undertake consultation with external stakeholders for this particular proposal because of time constraints. Consultation has been undertaken with government agencies.

The Ministry of Justice has made the following points:

- Providing landlords with the power to terminate a tenancy on their belief of assault provides them with a power normally reserved for the judiciary. A tenant would not have the ability to challenge or defend the assault claim in the first instance unless they challenge the claim to the Tenancy Tribunal.
- The proposed process would not necessarily be faster than the existing one. If there is an instance of assault, the Police will become involved and a charge will be laid. This process still requires several procedural steps.
- The proposal that a landlord could terminate a tenancy if a charge was laid by Police is not appropriate. As an alternative, even if a charge is laid, this does not mean that an assault has taken place and does not guarantee a faster process for quick termination of tenancy. If Police are involved this is a matter that will already be covered by the criminal law and should not be dealt with under the RTA.
- Placing the discretion on the landlord to impose termination notices creates the risk of discrimination. This may lead to the risk that this policy could disproportionately affect Māori and could undermine the Crown's obligations under Te Tiriti. Where a discretionary power is given, there is also room for discrimination.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Legislative change

The proposed changes could be given effect through an amendment to the Residential Tenancies Amendment Bill (the Bill) by Supplementary Order Paper. The Bill was reported back to Parliament on 7 July.

Implementation risks and mitigations

The Tenancy Tribunal operates within a civil law framework in which an applicant must prove their case for the 'balance of probabilities' to be successful. If a tenant applied to the Tribunal to overturn an assault termination order, the onus would be on the tenant to prove that an assault had not occurred. This standard would be unfair and difficult to achieve, so would pose a risk that assault terminations will be unduly difficult to overturn.

The proposal mitigates this risk by reversing the onus of proof so that the landlord, as a respondent to this type of application, would need to prove that they or a relevant party had been assaulted by the tenant.

In resolving this risk, however, the proposed solution raises another: applying a different burden of proof than is usually applied could cause uncertain or inconsistent decision-making on the part of adjudicators. This risk would be addressed through the training referred in the next paragraph.

Implementation

HUD, the Ministry of Business, Innovation and Employment (MBIE), the Ministry of Justice are working to develop a legislative implementation plan to ensure operational policies, processes and systems are in place to give effect to the new requirements in the Bill.

Information and education relating to the RTA would need to include information on rights and responsibilities relating to the ability of landlords to terminate a tenancy where they or relevant parties experience an assault by a tenant. This will target relevant stakeholder groups including government agencies, the Police, tenancy services, and private landlords.

Some training may also be required for Tenancy Tribunal adjudicators on requirements associated with these termination provisions, such as the reversed burden of proof.

Operational oversight

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.

The new termination grounds for assault would come into effect when the Bill commences, which is six months from royal assent. Royal assent is likely to occur in July 2020.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

General system-level monitoring and evaluation of the RTA

HUD is the regulatory steward for the residential tenancy system and will monitor the implementation of the whole set of changes in the Residential Tenancy Amendment Bill (the Bill), 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.

Specific monitoring and evaluation of the new termination notices will require work across government, and consultation with rental advocacy groups

In order to gain an understanding of whether and how often the proposed termination provisions are being used by landlords and their impact on tenants, HUD will need to consult with:

- groups representing landlords, property managers, and tenants
- Tenancy Services (in MBIE)
- the Ministry of Justice
- the Police
- non-governmental organisations (including emergency housing providers).

Wide consultation is required because if termination notices are being used in the way they are intended, HUD and MBIE will not have visibility over them, as the notices will generally be a matter between tenants and landlords.

To some extent we will know if landlords are using termination notices incorrectly by monitoring Tenancy Tribunal decisions in which these notices are successfully challenged by tenants. We may also consider other avenues, as appropriate.

7.2 When and how will the new arrangements be reviewed?

As noted in section 7.1, HUD will work across government and with key stakeholder groups to review the new termination grounds after implementation. This will enable the identification of any issues that prompt the need for policy work leading to further legislative regulatory or operational policy change to address gaps or operational issues.