



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Residential Property Management

Regulatory Options

Summary of submissions

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Introduction

Purpose

This report summarises the submissions and feedback that Te Tūāpapa Kura Kāinga Ministry for Housing and Urban Development (HUD) received during consultation on proposals for the regulation of residential property management sector.

Consultation and engagement

The Associate Minister for Housing, Hon Poto Williams, released the government's discussion paper on proposals for the regulation of residential property managers on 16 February 2022.

The discussion paper was designed to support a 10-week public consultation process, that was originally scheduled to run until 19 April 2022, but was extended to enable further engagement.

The discussion paper, a one-page summary and both on-line and downloadable versions of a submission form were available on HUD's website: <https://consult.hud.govt.nz/policy-and-legislation-design/property-managers-review>

In conjunction with the Minister's release of the discussion paper, HUD promoted the consultation process through direct mail to industry associations, tenant and consumer advocacy organisations, national Māori organisations, Wai 2750 claimants and Māori housing providers. We also undertook a social media campaign on Facebook and Instagram. MBIE Tenancy services also sent out *Tenancy Matters* – a bi-monthly update filled with news, tips and information for tenants and landlords.

HUD also engaged with the HIVE, a platform co-founded by the social change agency Curative and the Ministry of Young People and led by 15 young people. The HIVE's public engagement campaign on the proposed regulation of residential property managers received 1,262 responses from young people across Aotearoa. They also met privately with 12 young people representing a diverse range of cultural and gender identities. Their views were reflected in a written submission.

As part of the consultation process HUD hosted or participated in the following workshops and hui:

- National peak body workshop (10 March 2022)
- Gisborne focus group workshop (14 March 2022)
- NZ-wide focus group workshop (16 March 2022)
- Real Estate Institute of New Zealand (REINZ) webinar (6 April 2022)
- Te Matapihi engagement hui (17 May 2022)

Approach to analysis

We have carefully assessed all the submissions and the feedback received through the workshops and hui. We have grouped and summarised that feedback in a series of key themes which largely relate to the key topic areas and the associated questions canvassed in the discussion paper.

Where appropriate we have included quotes to illustrate some of the key themes. We have edited some quotes for clarity.

Some submitters commented on topics that were not directly part of a response to a question. Analysts have taken that information and collated it by topic and assessed support for it. Therefore, the number of responses to a topic may not match the number of responses to a specific question.

Submitters did not always answer all questions in our submission form and some submitters choose not to use our submission form at all. Where the submitters intent is clear we have included their support or opposition to a particular proposal in the summary of the survey results. Submitters often requested changes, so our assessment of 'support' is subjective. For this document, 'somewhat' includes support for the intent, if not the wording, of the policy. 'Unclear' means that the submitter addressed the question but may not have clearly indicated their position on the policy.

When assessing the responses, we have where appropriate sought to identify commonalities and difference of view between different sector groups – such as landlords/property owners, tenants, and residential property managers. While valuing the views offered in submissions from individuals, we are also aware that some submissions reflect the views of their wider membership.

Overview of submissions

In total we received 456 submissions from a wide range of individuals and organisations with an interest in the residential property management sector and the wider residential tenancy market.

206 submissions were received from individuals responding to a Renters United campaign that invited individuals to complete a submission using standard statements that could be mixed and matched to reflect their view on the regulatory proposals. These responses constitute 45 percent of the total submissions received and 76 percent of submissions from tenants.

Some industry associations with significant membership bases sought the views of their members before providing a consolidated submission. For example, REINZ, which has over 16,000 members, received 328 responses on the regulatory proposals outlined in the discussion paper that informed its submission.

The following table summarises the submissions by submitter type.

Table 1: Number of submissions, by submitter type

Submitter type	Number
Property Owner and/or Landlord	92
Tenant	270
Property Manager	28
Property Management Company	35
Prefer not to say	3
Other	50
Not answered	15
[TOTAL]*	493

*Note the submitter type total (493) is greater than the number of submissions (456) because submitters were able to select more than one option when filling out the submission form.

Key themes

Table 2: Key Themes

Theme	Feedback
The need for regulation	Broad recognition of the need for government regulation.
Hapū/Iwi/Māori interests	<p>There is a need to ensure the Crown meets its Treaty of Waitangi obligations.</p> <p>There needs to be appropriate engagement during the development of policy advice, legislative and regulatory design, and implementation.</p> <p>The advice to Cabinet should highlight how the regulatory proposals will address issues of concern to hapū/iwi/Māori.</p> <p>Consideration should be given to the inclusion of Māori in regulatory stewardship and governance arrangements.</p>
Regulatory objectives	Broad support for the proposed regulatory objectives.
Landlords	Private and public sector landlords should be covered by the proposed regulatory system. The protections available to tenants under the Residential Tenancies Act 1986 (RTA) are not sufficient. Registration and licensing of landlords would offer a means of ensuring they are able to meet their obligations to tenants.
Other exclusions	<p>Kāinga Ora should be covered by the proposed legislation.</p> <p>Clarification on coverage of Community Housing Providers (CHPs) required. Including CHPs could result in duplication and added compliance costs as they are already regulated by the Community Housing Regulatory Authority (CHRA).</p>
Real Estate Agents practising as property managers	Real estate agents should be required to hold a separate license if they intend to also offer residential property management services.
Registration and licensing	<p>Strong support for a public register. Individual property managers <i>and</i> property management organisations should be licensed.</p> <p>There should be tiers or classes of license to recognise the different types of license holder and their different obligations. This approach could include ‘provisional’ license holders who are working under supervision until they meet the requirements to be fully licensed and operate in their own right.</p>
Complaints & disciplinary framework	<p>Broad support for the proposed complaints and disciplinary framework.</p> <p>Mixed views on tribunal options. The Tenancy Tribunal was favoured by tenants and some residential property managers, while other submitters favoured the Real Estate Authority (REA) Disciplinary Tribunal.</p>
Regulatory management & stewardship	<p>Support for an independent regulator. Mixed views on whether the REA’s mandate should be extended, or the Ministry of Business, Innovation and Employment (MBIE) undertake the regulatory function. Tenants, Citizens Advice Bureau (CAB) and the Residential Property Managers Association (RPMA) preferred MBIE, while REINZ and others including Consumer NZ and the NZ Law Society preferred the REA.</p> <p>Acknowledgement of HUD’s stewardship role, although there was some concern at the fragmentation of management and stewardship functions across multiple government agencies.</p>
Cost recovery	Broad support for the cost recovery model although tenants and some consumer advocates suggested tenants should not have to pay a fee to lodge claims for consideration by the Disciplinary Tribunal.
Delivery	Legislation should be implemented more quickly than currently planned.

The need for regulation

Problem Definition

Most submitters (92 percent) considered that government regulation of residential property managers is required to address the risks posed by them to tenants and the owners of residential property. A handful of submissions, mainly from independent residential property managers, considered regulation was unnecessary and would introduce unnecessary compliance costs.

74 percent of submissions that responded to our survey questions strongly agreed or agreed with the proposed regulatory objectives and the emerging regulatory model outlined in the discussion paper. Many of these submitters offered suggestions on how the model could be extended or improved. These views are reflected in the further analysis included in this submission summary.

Participants in the hui hosted by Te Matapihi observed that while the discussion paper indicated that Māori were over-represented in the residential tenancy market, it did not describe how the proposed regulatory system addressed Māori needs or how Māori would be involved in the governance, design, or delivery of the system.

Regulatory Objectives

Of the 238 people who responded to the question, 74 percent were in support of the proposed objectives for the regulatory system. Many of the comments made by submitters were related to issues that will be discussed later in the analysis, however, there were a few key themes identified that specifically relate to the proposed regulatory objectives.

Tenants' advocacy groups acknowledged that while the proposed regulation of residential property managers is a step in the right direction, greater emphasis needs to be placed on tenants. As the ones who will, in many cases, suffer the consequences of poor property management services, the proposed objectives should be centred around tenants to protect their interests and rights. Concern was also expressed about the potential for discrimination against Māori and property management work undertaken by Māori in their communities. Submissions recommended that the proposed objectives should address and meet the differing needs of these groups.

Tenant groups highlighted the need to improve compliance with existing systems and legislation relating to the rental market. There was consistent feedback that the relationship between the landlord and tenant is not adequately regulated through the RTA and more should be done to address this issue, such as improving the compliance management services provided by Tenancy Services and the accessibility of the Tenancy Tribunal.

In terms of the intent of the proposed regulatory system, tenant groups questioned why the objectives focus on improving public confidence in the delivery of residential property management services, rather than on improving the quality of these services.

Property manager representatives expressed concern that the regulatory model could drive property managers out of the industry. Increasing compliance and operational costs could make it difficult for small companies or sole traders to stay in business. To alleviate financial pressure on property managers, it was suggested that the Crown subsidise the cost of regulation.

A small group, largely comprising residential property managers, disagreed with the need for regulation, arguing that it was unnecessary, costly, and less effective than self-regulation.

Regulated parties

What was proposed

The discussion paper proposed that the activities of residential property managers and residential property management organisations providing property management services to property owners be subject to government regulation. The proposed legislation would bind the Crown and capture any public sector organisations and employees that deliver property management services. There would be scope for the regulator to provide exemptions from all or part of the system's regulatory requirements for occupations that have appropriate standards and accountability arrangements already in place.

Commercial property managers and body corporate managers were excluded from the scope of the proposed regulatory system. Similarly, residential property owners who choose to let their properties themselves would not become regulated parties under the proposed legislation as their activities are already adequately regulated through the RTA.

Summary of responses

Over 80 percent of submitters strongly agreed or agreed that the regulatory system should apply to individuals and organisations providing property management services in the private, community or public sectors.

Many submissions were concerned that private landlords were not included in the proposed regulatory system.

Most submitters who addressed the issue also considered real estate agents should *not* be exempt from holding a property management licence. Some submitters also sought clarification around the application of the regulatory system to private student accommodation providers, Kainga Ora, CHPs and various Māori housing models.

Issue 1: Regulation of Private Landlords

Submitter views

Many submissions offered a view on whether private landlords should be included in the regulatory system, despite this being outside the proposed scope of the regime. These views were primarily in favour of the inclusion of private landlords in the proposed occupational licensing system, although a number of landlords submitted that they should not be included.

Those in favour of expanding the scope of the regulatory system to include private landlords often expressed the view that most of the rental market is managed by private landlords. Some submitters felt that the protections available to tenants under the RTA are either not sufficient, or not sufficiently complied with. These submitters considered that that registration and licensing of landlords would offer a further means of ensuring they met their obligations to tenants. Others suggested that if private landlords are not included, some property owners will choose to stop using property management services in favour of managing properties themselves. This would enable property owners to reduce

costs and avoid the additional focus property managers might bring to compliance with RTA requirements.

Issue 2: Regulation of Private Student Accommodation Providers

Submitter views

The submission from the Hive proposed that student accommodation providers should be subject to regulation under the proposed regime. 60 percent of the young people that responded to the Hive's public engagement process considered that private student accommodation providers should be considered property managers. They also considered private landlords should be included in the regime because regardless of whether it is one property or one hundred the landlord should be considered a property manager and held accountable to the same regulations. From their perspective, all tenants are governed by the same laws, so the same approach should be taken with the people renting them their accommodation.

The submission noted student accommodation exists in a legislative grey area, not covered by the RTA or the proposed Residential Property management legislation. The submission suggested the lack of regulation is only serving to amplify the power imbalance that already exists between young people and landlords, which opens young people up to inappropriate rules and surveillance.

Issue 3: Regulation of Kāinga Ora

Submitter views

A number of submitters proposed that Kāinga Ora should be subject to the proposed regulatory regime. Where reasons were given, the most common was the need for consistency across the public and private sector. Some submitters cited individual cases where the service provided by Kāinga Ora tenancy managers had not met their expectations.

Issue 4: Regulation of Community Housing Providers

Submitter views

Several submissions raised questions about whether registered CHPs would be included in the proposed regime. While submitters were generally supportive of the regime covering property managers in both the private and the public sector, most submissions that mentioned CHPs raised concerns that the community housing sector was already regulated, and that imposing further licensing and compliance on the sector would be unnecessary and potentially raise costs.

Issue 5: Regulation of Iwi/Māori Housing Providers

Submitter views

Some submissions were concerned that the proposed regime might impact on the provision of some forms of Māori housing, such as papakāinga and iwi-owned rent-to-buy developments. We explored these concerns further in a hui with Māori housing providers, organised by Te Matapihi. Providers were concerned that the proposed regime was not a good fit for these forms of housing. Moreover, while in most cases those managing tenancies would not be considered property managers under the regime, there was the potential for some unintended impacts.

Issue 6: Licensed Real Estate Agents

The discussion paper asked submitters whether real estate agents should be exempt from holding a property managers license but still held to account for compliance with industry entry and practise standards through the proposed complaints and disciplinary process.

Submitter views

Most submitters who addressed this issue considered that licensed real estate agents should also be required to hold a separate residential property management license if they are intending to offer residential property management services. This view was shared equally by landlords, tenancy, and consumer groups and in submissions from the residential property management industry.

It is notable that REINZ submitted that real estate agents providing property management services should be licensed and registered under this regime. It confirmed that real estate agents should be required to comply with industry entry requirements, and continuing practise standards, as well as being subject to the same complaints and disciplinary process as other residential property managers.

Certification, registration & licensing

The discussion paper canvassed options of the regulation of residential property managers including certification, registration, licensing of individual property managers, and licensing of both individual property managers and residential property management organisations. It also addressed license renewals, conditions, suspension, and revocation.

What was proposed

The discussion paper proposed that:

- *Licensing of Individuals:* To be employed or trade as a residential property managers individuals would need to be hold a license issued by a regulatory authority that determines the licensee meets specified requirements.
- *Public Register:* The regulator would maintain a public register of licensed residential property management organisations and licensed property managers.
- *Annual Renewals:* Licenses would need to be renewed annually

- *Conditions, suspension & Revocation:* Arrangements for imposing conditions on licenses, revoking or suspending licenses would be provided for under the complaints and disciplinary system (with such decisions subject to appeal rights).

Summary of responses

Most submissions supported the introduction of a registration and licensing system. The establishment of a public register was endorsed as a key means of enabling consumers to know who was licensed to provide residential property management services.

There was widespread support for requiring residential property management organisations to be registered and licensed as well individual property managers.

Some submissions suggested that different licence classes or tiers should be introduced to recognise the different types of licence holder and differences in their status and regulatory obligations.

Issue 1: Licensing of Residential Property Management Organisations

The discussion paper asked submitters whether organisations offering residential property management services should *not* be required to hold a licence provided they are subject to industry practice standard and the complaints and disciplinary arrangements. 70 percent of respondents that addressed this question disagreed or strongly disagreed with this proposition.

Submitter views

Submissions from landlords, tenancy and consumer advocacy groups and the residential property management industry as a whole were of the view that residential property management organisations should be required to hold a license.

Submitters considered licensing was required as the organisation should be responsible for meeting a number of the regulatory requirements (such as providing trust accounts and arranging for their review and audit and providing public liability and indemnity insurance for their staff) and should be held to account for them.

Some submitters suggested licensing would enable the proposed fit and proper person test to be applied to the directors of residential property management organisations. Property management organisations establish the organisational culture that shapes the behaviour of the property managers they employ. Licensing would reinforce the responsibility of organisations employing property managers to ensure they operate in a manner that enables compliance with professional and industry good practise.

It was submitted that licensing organisations would enable the regulator to suspend, place conditions on or revoke a license if an organisation failed to meet its regulatory obligations.

One submitter noted that if licensing fees are used to assist with the funding of the regulatory system, then organisations that are subject to the industry practise standards and the complaints and disciplinary arrangements should hold a license to contribute to those costs.

Issue 2: Licensing Classes

The licensing proposal set out in the discussion paper did not consider the establishment of different licensing tiers or classes.

Submitter views

A number of submissions have suggested that the regulatory system should provide for the establishment of different licensing classes to recognise different types of licence holder and differences in their status and regulatory obligations.

In addition to providing different classes of license for individual property managers and property management organisations, the licensing system could provide for ‘provisional or trainee license holders’ who are working under-supervision until they satisfy the requirements to operate in their own right. This would enable new entrants to be employed in the industry and ‘learn on the job.’

A licensing class could also be established to recognise property managers with higher qualifications and experience which should be a requirement to manage a residential property management organisation and supervise provisional license holders.

Issue 3: Licensing renewals, conditions, suspension, and revocation

Submitter views

There was broad support for the annual renewal of licenses. Submitters noted that it provides the consumers and the general public with confidence that property managers and property management organisations are meeting their ongoing licensing obligations.

Arrangements for imposing conditions, suspending, or revoking licenses as part of the complaints and disciplinary system (with such decisions subject to appeal rights) was also endorsed.

Occupational entry requirements

The discussion paper canvassed a range of occupational entry options including minimum age, fit and proper person, education and training, and industry experience requirements.

What was proposed

The discussion paper proposed that:

- *Minimum age:* Applicants for a license would need to be at least 18 years of age
- *Education & Training:* Applicants would need to provide evidence that they meet minimum training and education requirements which were expected to include satisfactory completion of a training course that would involve around 15 hours study and cover:
 - Legislative and regulatory requirements related to residential property management
 - Knowledge about maintaining a property

- Managing relationships with tenants
- Conduct expected from a property manager
- Financial and trust account management
- *Fit & Proper Person Test*: Applicants would need to meet a fit and proper person test
- *Industry Experience*: No industry work experience would be required prior to licensing.

Summary of responses

There was widespread support for the proposed entry requirements. 89 percent of submitters that responded to the question agreed that with the minimum age requirement, 79 percent of submitters supported the requirement for a fit and proper person test, while 84 percent supported the need for minimum training and education requirements.

However, over half of respondents (59 percent) considered a 15-hour training programme was not sufficient. Over 78 percent of respondents who addressed the question considered property managers should be required to gain some industry experience under the supervision of an experienced practitioner before becoming fully licensed.

A number of submissions provided suggestions on the knowledge and skills that should be developed in the training programme together with the level of qualification that should be required. Many, including most submissions from tenants, considered a week-long training programme was required while others, including some residential property managers or their representatives, recommended the Level 4 Certificate in Residential Property Management¹ should be a minimum licensing requirement.

Finally, many submitters suggested the fit and proper person test requirements should be extended to cover parties involved in the governance and management of residential property management organisations.

Issue 1: Minimum age requirement & the Bill of Rights Act

Submitter views

There was broad support for the proposal that licensed property managers should be at least 18 years of age. Submitters noted the residential property manager acted as an agent on behalf of the property owner and was required to enter into contracts. Consumer NZ, for example, observed that the proposal is in line with the age criteria for real estate agents and for property managers in some Australian states and will recognise the need for property managers to be able to sign legally binding contacts.

¹ See <https://www.nzqa.govt.nz/nzqf/search/viewQualification.do?selectedItemKey=1809>

Issue 2: Higher minimum vocational training & education requirements

Submitter views

Many submitters considered a 15-hour training programme was not sufficient. Most submissions from tenants considered that a week-long training programme was required. Other submissions, including some from residential property managers or their representatives, recommended that the Level 4 Certificate in Residential Property Management² should be a minimum licensing requirement.

Some submissions suggested that adequate initial training was preferable to reliance on greater ongoing continuing professional development (CPD) to lift and maintain professional standards.

Issue 3: Vocational Training – with more emphasis on relationship management and cultural competence, including Te Ao Māori

Submitter views

Submitters suggested a wider range knowledge and skill requirements should be incorporated into the training and education programme than those outlined in the discussion paper.

They confirmed there was a need for training programmes to address:

- The application of a wide range of legislative requirements to delivery of residential property management services
- Best practise property management operations financial management, asset, and tenancy management
- Ethics and the conduct expected of a residential property manager
- Managing relationships with tenants.

Many submissions suggested that more emphasis should be placed on the development of effective interpersonal communication and relationship management skills, including the cultural competencies required to engage with diverse ethnic groups, in particular Māori as tangata whenua and new migrants that were disproportionately represented in the residential tenancy market.

“We think training should include topics such as listening and communication skills, awareness of values, understanding diversity, human rights, and Te Tiriti o Waitangi. ... It is important that training and entry requirements help to embed a culture of respectful engagement...”

Moreover, it was recommended that training requirements be established in consultation with tenants and tenant advocates to ensure that training adequately reflects tenants’ interests and embeds a culture of respectful engagement.

² See <https://www.nzqa.govt.nz/nzqf/search/viewQualification.do?selectedItemKey=1809>

Issue 4: Extending the Fit and Proper Person Test

Submitter views

There was broad support for applying a fit and proper person test to individuals wanting to deliver residential property management services. Many submitters considered the test should also apply to parties involved in the governance and management of residential property management organisations.

Issue 5: Industry experience

Submitter views

There was widespread support for requiring applicants to gain practical experience under the oversight of an experienced practitioner before being able to practise independently.

One submitter suggested on the job training under supervision should form part of an induction and probationary period prior to licensing to ensure that learning happened in an applied context and in a manner that minimises risks to property owners and tenants. Another submission proposed a year-long apprenticeship model to provide a supported pathway into residential property management.

Some industry representatives disagreed with an experience requirement noting it could present a barrier to practising the profession. It was noted that there are a number of sole traders and that some real estate agencies would not have experienced staff to provide supervision because of high staff turnover. A potential new entrant who was wanting to operate as a self-employed sole trader or someone employed in a small real estate agency may have minimal or no access to an experienced practitioner. As an alternative it was suggested that, provided they could demonstrate good understanding of the legislation and good practise, an applicant should be licensed and then have access to a mentor.

Professional practice standards

What was proposed

The discussion paper proposed that property managers and property management organisations be required to meet industry practise standards including:

- *Continued Professional Development*: Residential property managers would need to complete 20 hours of CPD per annum.
- *Code of Conduct*: Individuals and organisations would have to abide by the standards set out in the Code, including:
 - Commitment to operating in accord with relevant legislative and regulatory requirements
 - Ethical behaviour and conduct in relation to landlords and tenants
 - Demonstrated competence, knowledge, and skill

- Adherence to industry practice standards
- Commitment to the industry's disputes resolution and disciplinary arrangements.
- *Trust accounts:* Property managers would be required to use trust accounts for rental and bond money. These accounts would be subject to independent review and periodic audits as required by the regulator.
- *Indemnity and Public Liability Insurance:* The regulations would require property managers to hold both forms of insurance given the nature of the tasks they undertake.

Other options considered, but set aside in the original proposal, were standard industry contract provisions and an annual trust account audit.

The discussion paper also proposed that the regulator have the power to develop, maintain and promote any other standards required to meet the purpose of the regulatory system.

Summary of responses

Submitters were largely supportive of having industry practice standards. Of the 456 submitters:

- 80.5 percent agree with having a CPD requirement
- 87.5 percent agree that a Code of Conduct is necessary
- 66.9 percent support the use of a trust account
- 70.8 percent agree that the trust account should be subject to independent review with the regulator able to require the periodic audit of accounts.

Issue 1: How much Continuing Professional Development is required

Submitter views

While there was broad support from all parties for a CPD requirement, there was feedback that the proposed 20 hours of CPD per annum was too high. Submitters found it unusual that we were proposing a greater CPD requirement than the suggested entry level training requirement of 15 hours.

The RPMA submitted that it was unsustainable and costly to expect property managers to complete 20 hours of CPD each year. REINZ, on the other hand, supported having 20 hours of CPD a year but recommends this is split into 10 hours of verifiable training hours (VT) and 10 hours of non-verifiable training (NVT). VT includes programmes delivered by approved training providers while NVT covers topics and types of learning at the property manager's discretion.

Generally, submitters felt that 10 hours of CPD per annum would be a more appropriate requirement.

Issue 2: What CPD should cover

Submitter views

Submitters gave feedback on what CPD should encompass beyond what is already detailed in the discussion paper. This should include training on:

- Changes in legislative requirements that impact on the delivery of property management services
- Developments in residential property management good practice
- “Soft” skills including interpersonal skills, relationship management and conflict resolution
- Cultural awareness and competency, including an understanding of Te Ao Māori and Te Tiriti
- Ethics and human rights, including addressing conscious and unconscious bias and discrimination
- Disability awareness
- Privacy and personal information.

Issue 3: Code of Conduct

Submitter views

There was widespread support for a Code of Conduct. Only a handful of submissions, mainly from independent residential property managers, disagreed with the proposed requirement, arguing that it is unnecessary and would create a barrier to entry.

Some submitters who support the development of a Code of Conduct, proposed that it should include, or be complemented by, a Code of Ethics. Tenants and tenants’ advocacy groups stressed the importance of developing the Code in partnership with tenants to ensure it is fit for purpose. Other submitters proposed that the Code of Conduct address discrimination, be informed by Te Tiriti o Waitangi and be developed in partnership with iwi and Māori.

Issue 4: Trust Accounts to be operated by organisations

Submitter views

A mix of property owners, tenants, property managers and property management companies support the use of trust accounts. Some submitters, including RPMA and REINZ, proposed that property management companies should be required to operate trust accounts for the benefit of their clients. Individual property managers should not be expected to operate their own trust accounts.

Those who disagree with the trust account requirement suggested that it would impose additional costs on property managers. Some property owners find that the existing arrangements agreed upon with their property manager work well and see no need for intervention.

Issue 5: Trust account review and audit requirements

Submitter views

The majority of submitters agree with the need for trust accounts to be subject to independent review and periodic audit. There is a strong view that it is only worth having trust accounts if they are regularly audited with a number of submitters proposing annual audits.

Submitters who disagree with the requirement largely do so due to concerns over the cost of auditing, arguing this process will impose additional costs on property owners and tenants.

The New Zealand Property Investors Federation (NZPIF), for example, advised that it is expensive to perform a yearly audit and favoured having an independent review and 3-yearly audit or the provision for the regulator to carry out or require a full audit.

REINZ recommended that trust accounts be subject to an independent review each year with a more formal audit carried out at least every third year.

Issue 6: Public liability and indemnity insurance

Submitter views

Of the 211 submitters who responded, 56 percent support the proposal to require property managers to hold both professional indemnity and public liability insurance.

There was some debate over whether insurance should be held by individual employees or the organisation. REINZ and Tenants Protection Association, for example, both argued that unless the property manager is a sole trader, it should be the property management organisation that is required to hold professional indemnity and public liability insurance.

Issue 7: Development of additional industry practise standards

As noted earlier, the discussion paper also proposed that the regulator have the power to develop, maintain and promote any other standards required to meet the purpose of the regulatory system.

Submitter views

The proposal that the regulator have the power to introduce other standards attracted little specific comment from submitters. NZPIF submitted that the regulator should be responsible for standard setting for education and professional development, but not design and delivery. Renters United noted that standards should be developed and maintained in partnership with renters and their advocates to ensure they are fit for purpose.

Complaints and disciplinary framework

What was proposed

The discussion paper proposed that the regulatory system incorporate an independent complaints and disciplinary framework. It is modelled on the framework that applies to real estate agents.

The framework provides a process for the regulator to triage complaints. This involves determining whether a complaint involves a breach of the property management legislation or should be referred to another organisation. The regulator can also proactively identify, investigate, and initiate disciplinary proceedings in its own right – using the Complaints Committee and Tribunal hearing process to address cases where the regulator considers disciplinary action is warranted. Complaints covered by the legislation, can be resolved through mediation, a Complaints Committee for cases that may involve ‘unsatisfactory conduct’, or a Disciplinary Tribunal for more serious cases that may involve ‘misconduct’.

Where a Complaints Committee determines a case involves ‘unsatisfactory conduct’, it will decide on the remedy or penalty which may include censure, requiring an apology, requiring further training, imposing a fine of up to \$10,000 for an individual or \$20,000 for a company, or requiring costs and/or compensation to be paid to the complainant. Where the Committee determines a case involves ‘misconduct’ it will refer the complaint to the Disciplinary Tribunal to decide on the charge and any penalty.

The Disciplinary Tribunal would make decisions on cases involving unsatisfactory conduct or misconduct. It would be able to impose a range of penalties including suspending or cancelling a licence, imposing fines up to a maximum of \$15,000 on an individual or up to \$30,000 on a company or ordering the licensee to meet a complainant’s costs and/or pay compensation of up to \$100,000.

Either the REA Disciplinary Tribunal or the Tenancy Tribunal could have their mandates extended to provide an independent disputes and disciplinary service. On balance, it was proposed that the mandate of the REA Disciplinary Tribunal should be extended to cover residential property management issues.

All parties would have the right to appeal a Complaints Committee decision to the REA Disciplinary Tribunal and retain a further right of appeal to the High Court, and to Court of Appeal on questions of law. Complaints Committee and Disciplinary Tribunal decisions would be published in a publicly accessible ‘decisions’ database.

Summary of responses

Submitters were largely supportive of the overall complaints and disciplinary framework, with 82 percent of those who expressed a view strongly agreeing or agreeing with the proposed approach.

There were mixed views on the proposed disciplinary tribunal delivery options, but a strong shared interest in ensuring the complaints system was both independent and easily accessible.

Issue 1: Delivery of disciplinary tribunal services

Submitter views

There were mixed views on what entity would be best placed to deliver disciplinary tribunal services.

REINZ supported extending the REA Disciplinary Tribunals' mandate to hear complaints regarding property managers. 79 percent of feedback received by REINZ from its members favoured the REA's mandate being extended rather than using the Tenancy Tribunal. Its members expressed concern at the backlog of applications in the Tenancy Tribunal and inconsistencies between adjudicators.

On the other hand, the RPMA disagreed with extending the REA Disciplinary Tribunal's mandate advising that its members considered different standards were applied to different companies and that it was difficult to get a complaint into the process.

Consumer NZ supported the extension of the REA Disciplinary Tribunal's mandate for the reasons stated in the discussion paper. They could, however, also see merit in having a 'one-stop shop' by extending the Tenancy Tribunal's mandate. They would like to see further analysis of the issue and options.

CAB could see benefits in integrating the regulatory functions into either the REA or the Tenancy Tribunal. Their primary interest was in ensuring the system is easy to access and use. Adopting a tenant's point of view, they considered incorporation into the jurisdiction and function of the Tenancy Tribunal would be preferable.

NZPIF also preferred complaints to be heard in the Tenancy Tribunal. While concerned with the current delays in hearing cases in the Tenancy Tribunal, NZPIF considered that if a tenant had an issue with a property manager and a landlord it would involve additional time and cost to use different dispute systems.

While not specifically referencing the Tenancy Tribunal, Renters United considered MBIE should be responsible for the delivery of the complaints and disciplinary process.

Submitters suggested that if a decision was made to extend the mandate of the REA Disciplinary Tribunal its name should be changed to better reflect its extended scope.

Issue 2: Access, claims management and referral issues

Submitter views

A key concern raised by tenants and consumer representatives was the need to ensure an accessible and streamlined entry point to the complaints and disciplinary process with any differentiation in service provision being managed behind the scenes.

While some submitters expressed concern with the operation of the existing RTA complaints resolution system, they noted that it was one tenants were familiar with. They tended to favour complaints system options that involved the use of established pathways and institutions with which they were most familiar, such as Tenancy Services and the Tenancy Tribunal.

Offences and penalties

What was proposed

The discussion paper proposed several criminal offences with appropriate penalties be established to ensure compliance with regulatory requirements.

They are intended to form part of the regulatory system's overall compliance management framework and complement other features that encourage voluntary compliance or address non-compliance. The other features of the compliance management framework include:

- using a civil disciplinary and complaints process to address unsatisfactory conduct or misconduct
- the role of the regulatory authority in fostering compliance, including ensuring regulated parties are aware of their obligations through communication and education initiatives, the use of warnings and directives or, in more serious cases, licence suspensions, imposition of licence conditions or licence revocation.

The offences and penalties are intended to be proportionate to the form of non-compliance being addressed. They are aligned with those included in similar occupational regulatory systems, such as the Real Estate Agents Act (REAA).

The proposed criminal offences are designed to complement the civil remedies available through the complaints and disciplinary framework.

The proposed offences include:

- providing false or misleading information to obtain a licence or register as a residential property manager
- failing to notify the regulatory authority of a change in circumstances that would have a material impact on eligibility to gain or retain registration or a licence
- practising as a residential property manager when unregistered or unlicensed (unless exempt from these requirements)
- employing or contracting an unregistered or unlicensed person as a residential property manager to provide residential property management services
- failing, without reasonable excuse, to comply with a lawful requirement of the regulatory authority established in primary or secondary legislation such as, for example, producing financial records or other documents specified in regulation
- failing to meet obligations in relation to property management transactions that may be specified in primary or secondary legislation such as:
 - failing to hold money in audited trust accounts
 - failing to pay a person lawfully entitled to money received
 - rendering false financial accounts
 - failing to disclose a conflict of interest
- resisting, obstructing, or providing false or misleading information to any person undertaking a lawful function provided for in legislation

- failing to comply with a lawful summons or acting in contempt of a Tribunal or other Court hearing proceedings established under the legislation.

The discussion paper proposed that unless a lesser penalty maximum is provided for a specific offence, the maximum penalties should be a fine not exceeding \$40,000 for an individual and a fine not exceeding \$100,000 for a company or other organisation.

Summary of responses

Submitters were largely supportive of the current list of offences. Of the 409 responses, over 80 percent supported the proposed offences and penalties framework. There were 112 submissions commenting on whether any additional offences should be included in the framework, with many suggesting they be extended to include, for example, breaches of the Code of Conduct. Submissions from tenants and tenants' advocacy groups also tended to call for higher penalties to be introduced.

Issue 1: Broader range of offences.

Submitter views

Renters United submitters had a strong view that the offences framework should be extended to cover breaches of the Code of Conduct.

The New Zealand Law Society advised that the list of proposed offences be reconsidered once the Code of Conduct is established to ensure specific breaches of the Code equate to an offence, where appropriate.

Issue 2: Penalty levels

Submitter views

Submitters had a range of views on appropriate penalty maxima. Feedback given was the maximum penalties were too high, too low, or that there should be no "cap" on the maximum amount. Submissions also emphasised the importance of an escalation process and the need for specific penalty maxima for each offence.

Concerns were raised over the impact of penalties on small businesses or individuals on small salaries, with submitters stating that the proposed penalty maxima are too high in relation to property managers' average income. Submitters argued that basing the levels of penalties off the REAA is misleading as the transactions, commission rate, and operating margins in the real estate industry are significantly higher than those in the property management industry. Some submitters suggested that the penalties should be based on an individual or organisation's income instead, rather than providing a blanket fine maximum.

Submissions from tenants and tenant advocacy groups were concerned that the proposed maximum penalties were not high enough to discourage misconduct. A range of figures were suggested, with the most consistent feedback proposing the maximum fine for an organisation be doubled to \$200,000.

A couple of submissions raised the issue of whether the proposed maximum penalties were sufficient to act as an effective deterrent. In particular, Te Matapihi expressed concerns that it could be “difficult to determine if the maximum penalties will result in an ongoing operational or behavioural change that any penalty should be seeking to affect or if the result will be less people attracted to and retained in this profession”. They emphasised that the right balance needs to be found between discouraging misconduct and upholding accountability, while not creating a barrier to entry.

Regulatory management and stewardship

What was proposed

Management: The discussion paper proposed that an independent regulatory authority be responsible for regulatory service design and delivery. The functions of the regulator would include education and professional development, registration and licensing, standard setting, compliance management and disputes resolution. The regulatory authority’s powers and functions would be vested in a body independent of the property management industry. This could involve either extending the mandate of the REA or having MBIE provide regulatory management services.

Stewardship: The discussion paper proposed that HUD act as the steward of the new regulatory system in its role as lead adviser to the responsible Minister for the regulatory system. This would require HUD to provide policy advice on regulatory system design and development, and monitor, evaluate and report on the performance of the regulatory authority and the regulatory system.

Summary of responses

74.5 percent of submitters strongly agree or agree that the regulatory authority’s function be vested in a body independent of industry.

There were mixed views on which entity should undertake the regulator’s role. Submissions primarily from Tenants, tenants’ representatives, the CAB and RPMA considered MBIE best placed to perform the regulator’s functions, while others – including REINZ, Consumer NZ, and the NZ Law Society - favoured the REA. Others preferred an alternative option or chose not to respond.

Submitters were largely supportive of the proposal to have HUD perform the role of regulatory steward, although there was some feedback that other bodies would be better suited to this role.

Issue 1: Preferred provider of regulatory services

Submitter views

There were mixed views about which entity would be best placed to perform the role of regulator.

There was a strong preference from tenants and tenant representatives for MBIE to act as the regulator. Renters United members submitted that the REA should not be provider of regulatory services “...because they aren’t independent enough from the property management industry.” Renters United maintained that MBIE should be responsible for regulatory management as they can access relevant

resources that REA cannot. They argued that if MBIE were the regulator, the transfer of cases between the property managers complaints and disciplinary framework and the Tenancy Tribunal would be smoother and thus more effective than if it were managed by REA. Renters United also contend that the services provided by real estate agents do not have “...sufficient overlap with residential property managers to warrant extending the mandate of the REA”.

RPMA also proposed the MBIE was well placed to act as regulator. They considered MBIE was in a better position to recognise the systemic issues embedded in the property management industry. They noted that if the regulations were extended to capture property owners, MBIE would be the logical regulator option. RPMA was also concerned that property management regulation could be “lost” or given lower priority than real estate if undertaken by the REA.

Te Matapihi and CAB suggested MBIE was a good candidate for the regulator’s role as their existing knowledge, experience, and relationships with landlords and tenants means they are in a better position to deliver effective regulations that protect the affected parties. NZPIF also supported keeping regulator functions for tenants, property owners, and property managers under MBIE’s organisational umbrella.

REINZ, the New Zealand Law Society, and Consumer NZ supported REA as the regulator. They recognised that the REA is independent of industry and therefore would be an appropriate regulator. As the REA is an established regulatory authority, there were likely to have lower establishment and operating costs. The Law Society noted that the ongoing cost of regulation is likely to be lower under REA, who have existing policies, processes, and systems in place, than it would be under MBIE who would be required to set up a new regulatory framework. Consumer NZ noted, that should the regulator sit with REA, the efficiency of the regime might benefit from the overlap between real estate agents who also act as property managers.

Other submitters favoured a regulator not suggested by the discussion paper. These include establishing a new ministry of rental affairs or other stand-alone authority, placing the regulator with another existing body such as HUD or an existing consumer protection agency, or retaining the status quo and leaving the industry to self-regulate.

Regardless of which regulator HUD picks, submitters emphasised that it is important to have tenant representatives included in regulatory management. Renters United stressed that this representation must be paid to ameliorate the pressure currently placed on tenancy advocacy networks.

Participants in the hui organised by Te Matapihi suggested consideration should also be given to enabling Māori involvement in the governance of the regulatory authority and the design of the regulatory systems.

Issue 2: Functions and powers of the Regulator

Submitter views

There was widespread support for the proposed functions and powers of the regulator.

Submitters emphasised the importance of keeping tenants’ interests and rights central to the regulator’s functions and powers.

More specifically, Barfoot & Thompson asked for further clarification on the regulator’s role in the development and provision of education and CPD services. They were concerned that under the new

model, organisations who have already invested in accredited training programmes may no longer be able to provide these services to their staff. They noted that if they were required to outsource training to specific organisations or via REA or MBIE this would *“erode significant organisational intellectual property, institutional knowledge and investment”* and ultimately increase the business’ training costs.

TradeMe proposed that the regulator engage with advertising platforms in the interest of having a transparent market. They noted that services provided by the regulator, such as a public register, would be more effective if they are *“set up in a way that advertising platforms can easily, and affordably, integrate”*.

The Tenants Protection Association proposed the legislation include a *“whistle-blower”* provision that would allow property managers to inform the regulator of an organisation they have serious concerns about.

Issue 3: Regulatory stewardship

Submitter views

While there was broad support for HUD to take on the regulatory stewardship role, some submitters had concerns about the risks to the effective delivery of stewardship and management services across the broader residential tenancy system.

Te Matapihi was concerned at the *“...potential for increased fragmentation of the housing system and poor coordination across Ministries”* if the roles of regulatory steward, regulator for property managers, and regulator for the RTA were distributed across three different bodies – HUD, REA under MoJ, and MBIE, respectively. Community Housing Aotearoa voiced similar concerns to Te Matapihi and asked that *“careful consideration be given to ensuring a coordinated approach is maintained for the benefits of tenants and landlords.”*

Te Matapihi argued that MBIE might be better suited to the role of regulatory steward given their experience dealing with, and managing, regulatory systems. REA and MoJ were also suggested as alternatives to the regulatory stewardship position over HUD. A handful of submitters stated they would prefer to maintain the status quo.

REINZ supports HUD as steward of the new regulatory system, as does the Insurance Council of New Zealand – who argues it makes sense for one body to oversee the performance of the regulatory system, while another body is responsible for operational regulatory management.

Cost recovery

What was proposed

The discussion paper proposed a mixed model framework with full cost recovery of some services, partial recovery of others, and no recovery of ‘public good’ regulatory stewardship costs and initial establishment costs.

Summary of responses

Submitters were largely supportive of the proposal. Of the 400 responses, 70 percent supported the proposed cost recovery framework. Submitters raised various concerns about the cost recovery framework. Property managers and property management companies were concerned that the cost of regulation would drive small businesses out of the industry due to an inability to meet increasing costs in an already financially stressful market. These stakeholders suggested that the cost of regulation should be government funded or subsidised. Some submitters also felt that the discussion paper did not go into enough detail on the proposed cost recovery framework for them to provide informed feedback.

Issue 1: The application fee for tenants' claims.

Submitter views

Tenants and tenant advocacy groups recommended that complainants should not be required to pay a fee to lodge a claim with the regulatory authority. These submitters felt that a fee even of \$20 would reduce the number of cases taken and therefore the ability for the regulation to fulfil its objectives. Some argued that an application fee is inherently unfair as it places the burden on the tenant, when the fault lies with the property manager, and that it acts as a barrier to justice. Tenants Protection Association, Consumer NZ, NZ Public Service Association, and CAB all held this view.

Other submitters such as Te Matapihi and the New Zealand Law Society acknowledged the importance of a modest application fee.

Delivery and implementation

What was proposed

The discussion paper noted that the regulation of residential property managers will require the introduction of new legislation.

This will provide another opportunity for public input when the Government's Bill is considered by a Parliamentary Select Committee. Consultation with affected parties will also take place during the development of regulations required to give effect to the primary legislation.

To enable the establishment of the regulatory authority and the promulgation of enabling regulations, it was anticipated the primary legislation would not come into force until approximately 12 months following it being passed by Parliament. The discussion paper also anticipated that the legislation would include transitional arrangements and a further transitional period of approximately 12 months to provide time for:

- Regulated parties to meet the legislation's regulatory requirements; and,
- The regulatory authority to complete the initial registration and licensing of all regulated parties (with phased renewal dates to smooth the administrative burden associated with this process).

Consequently, it is anticipated the new legislation would complete its passage by mid-2024, commence in mid-2025, and have all provisions in force by mid-2026.

Milestone	Target Date
Cabinet agrees to develop draft Bill	October 2022
Cabinet approves introduction of the draft Bill to Parliament	May 2023
Draft Bill receives First Reading and referred to Select Committee	June 2023
Select Committee report back	Late 2023
Passage completed and Royal Assent	Mid 2024
Regulations gazetted	Mid-late 2024
Commencement	Mid 2025
All provisions in force	Mid 2026

Summary of responses

There were 154 submissions that provided feedback on the proposed development process and indicative timeline.

Issue 1: Earlier passage and implementation

Submitter views

The main issue raised by submitters is the proposed length of time to pass legislation and implement the proposals, with many tenants and property owners recommending a shorter timeframe. Submitters were concerned with the perceived lack of urgency from the Government in the face of a challenging rental market.

Other submitters acknowledged the importance of taking the time to develop and implement robust legislation. They agreed with the proposed timeframe provided consideration is made for sufficient publicity and time for consultation and public submissions.

Issue 2: Monitoring and evaluation

The discussion paper proposed that, in conjunction with the legislation passing, HUD will plan for and implement system monitoring and evaluation arrangements. This will enable the Ministry to inform the responsible Minister and Parliament on the system's overall performance and recommend any measures required to improve that performance.

Submitter views

There was little feedback from submitters regarding HUD's monitoring and evaluation arrangements.

Glossary and commonly used acronyms

BORA	Bill of Rights Act (1990)
CAB	Citizens Advice Bureau
CHP(s)	Community Housing Provider(s)
CHRA	Community Housing Regulatory Authority
CPD	Continuing professional development
HUD	Ministry for Housing and Urban Development
MoJ	Ministry of Justice
MBIE	Ministry of Business, Innovation and Employment
NZPIF	New Zealand Property Investors' Federation
REA	Real Estate Authority
REAA	Real Estate Agents Act (2008)
REINZ	Real Estate Institute of New Zealand
RPMA	Residential Property Managers Association of New Zealand
RTA	Residential Tenancies Act (1986)

