

# Residential Property Management

## Regulatory Options

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### **A Discussion Paper**

February 2022



**Te Tūāpapa Kura Kāinga**  
Ministry of Housing and Urban Development

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Any questions should be directed to:  
[propertymanagersreview@hud.govt.nz](mailto:propertymanagersreview@hud.govt.nz)

## FOREWORD

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I am pleased to introduce this discussion paper canvassing proposals for the regulation of the residential property management sector.

The Government is committed to ensuring New Zealanders have access to secure, healthy, and affordable housing. With nearly one in three people in New Zealand living in rental accommodation, a well-functioning residential tenancies market is vital to the achievement of that outcome.

Residential property managers play an increasingly important role in that market, managing over 40 percent of New Zealand's residential rental accommodation on behalf of property owners.

While industry bodies such as the Real Estate Institute of New Zealand (REINZ), the Property Managers Institute of New Zealand (PROMINZ), and the Residential Property Managers Association (RPMA) have established minimum competency and practice standards that apply to their members, the residential property management sector, as a whole, is not regulated.

We want to establish a system that provides assurance to property owners and the tenants that rent their properties that all residential property managers are required to meet appropriate standards.

Toward this end, the Government intends to introduce legislation that will promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants and other consumers by:

- establishing professional entry standards for residential property managers
- establishing industry practice standards for the delivery of residential property management services
- providing accountability through an independent, transparent, and effective disciplinary and complaints resolution process.

I encourage you to consider the proposals in this discussion paper and provide your views to Te Tūāpapa Kura Kāinga by 19 April 2022.

A handwritten signature in black ink, appearing to be 'Poto Williams'.

**Hon Poto Williams**

Associate Minister of Housing

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# INTRODUCTION

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## Purpose

Te Tūāpapa Kura Kāinga seeks your views on the proposals in this discussion paper for regulating the residential property management sector. Your submissions will inform our advice to the Associate Minister of Housing (Public Housing), Hon Poto Williams.

## The issues and affected parties

The residential property management sector plays a significant role in the New Zealand residential tenancies market. This market has grown over recent decades and now houses nearly one in three households in New Zealand.

We estimate there are between 2,096 and 7,881 residential property managers operating in New Zealand.<sup>1</sup> They are responsible for managing about 42 percent of rental properties on behalf of property owners.

While many property managers abide by appropriate professional standards, the sector as a whole is not required to meet minimum competency and industry practice standards. Community organisations, consumer and tenants' advocacy groups, real estate and property management companies and industry bodies representing property managers have highlighted the significant risk that a lack of common industry good practice standards and controls, and an accessible independent disciplinary and disputes resolution process pose to property owners and tenants.<sup>2</sup>

The Government is committed to ensuring New Zealanders have access to secure, healthy, and affordable housing. It wants to ensure residential property managers operate in a manner that supports public confidence in the integrity of the residential tenancies market and safeguards the interests of property owners, tenants and other consumers such as prospective tenants.

## Scope

This discussion paper:

- outlines the rationale for government regulation of the residential property management sector
- outlines and assesses a range of regulatory features and options
- sets out next steps for the development of our preferred approach.

### *Regulating residential property managers, not commercial property managers*

The focus of the regulatory regime is on the residential property management sector. Commercial property management activities are excluded from the scope of the regulatory system.

Residential property managers are contracted by property owners to manage and maintain a significant capital asset. This includes managing relationships with tenants and ensuring compliance with a broad range of legal obligations. There is no regulatory assurance available to the property owner that a property manager is able to deliver their services in a manner that meets those legal obligations.

Te Tūāpapa Kura Kāinga has not seen evidence of significant issues of concern in the commercial property management sector. The relationship between commercial property managers, property owners and commercial tenants is different in nature to the relationships in the residential tenancy sector. The same power imbalance does not exist between these parties as parties to commercial arrangements would generally get professional advice. Moreover, commercial tenants are not in a position where they may be concerned about losing their home.

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<sup>1</sup> Full definitions of the terms residential property manager and residential property management organisation are provided in Appendix A.

<sup>2</sup> For example, see the organisations that supported the Real Estate Institute of New Zealand's "Call for Change" campaign advocating for the regulation of property managers in New Zealand: <https://www.acallforchange.co.nz/supporters>

*Regulating property management organisations*

In addition to regulating the activities of residential property managers, we consider there is a need to regulate the activities of residential property management organisations to mitigate the risks their activities pose to tenants and property owners.

Both tenants and property owners may deal with multiple property managers within a property management company. Establishing standards that apply to the organisations that employ residential property managers may be an effective means of addressing some of the risks to tenants and property owners. It would enable the application of a wider range of interventions than would be possible if we focus more narrowly on occupational regulation of residential property managers. Property management organisations are, therefore, within the scope of the proposed regulatory system.

*Property owners are not in scope*

We consider owners of residential property who choose to let their properties themselves, do not need to be regulated parties under the proposed regulatory system. The activities of property owners who choose to let their own residential properties to tenants are already adequately regulated through the Residential Tenancies Act 1986 (RTA). While property owners, as landlords, are directly accountable for meeting requirements under the RTA, there are challenges holding property managers to account when they are acting as agents on behalf of the landlord. We will consider the nature of the relationship between property managers and property owners. This would include considering the effects of actions or inactions of a property owner on the ability of a property manager to meet their obligations and what measures, if any, may be required to address this.

It is important to note that the regulatory system will complement and be additional to protections offered to tenants under the RTA and existing civil remedies available to both property owners and tenants. The system will introduce professional entry requirements and industry practice standards that are designed to address the causes of, among other things, breaches of RTA requirements. This is expected to lead to improved compliance with that legislation. It will also provide remedies for breaches of the proposed regulatory requirements that will apply to property managers that are currently not covered by the RTA.

*Body Corporate managers are not in scope*

For the avoidance of doubt, the regulatory system will not cover Body Corporate managers who are subject to a range of regulatory requirements under the Unit Titles Act 2010.

**How to have your say**

Written submissions on the issues raised in this discussion paper are due by 5:00pm, Tuesday, 19 April 2022.

You are welcome to respond to any or all of the issues raised in this discussion paper. Where possible please include evidence to support your views.

Please use the submissions form provided at:

<https://consult.hud.govt.nz/policy-and-legislation-design/property-managers-review>

You can complete your submission online or download and email it to us at:

[propertymanagersreview@hud.govt.nz](mailto:propertymanagersreview@hud.govt.nz)

## Use of information

The information provided in your submission will be used to inform the policy development process, including advice provided to Ministers on the proposed regulation of residential property managers. We may contact you directly if we require clarification of any matters raised in your submissions.

## Release of information

We propose publishing our submissions analysis. This will include a summary of submitters' views and the names of individuals or organisations that have made submissions.

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including Te Tūāpapa Kura Kāinga. Any personal information you supply to us in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in this discussion paper. Please clearly state in the submissions template and any email or covering letter if you do not wish your name, or any other personal information, included in the summary of submissions.

Submissions may be requested under the Official Information Act 1982. Please set out clearly in the submissions template or in your covering letter or email if you have any objection to the release of the information contained in your submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. We will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.

## Next steps

When the submissions period closes on 19 April 2022, we will analyse the submissions and report to the Associate Minister of Housing (Public Housing). We anticipate the Minister will seek Cabinet decisions on the regulation of property managers later in 2022.

If agreed by Cabinet, the regulation of residential property managers will require the introduction of new legislation. This would provide another opportunity for public input when the Government's draft Bill is being considered by a Parliamentary Select Committee. Further engagement would also occur with affected parties during the development of enabling regulations.

Further details on timeframes for the introduction of a draft Bill and the establishment of the regulatory system are included on page 54 in this discussion paper.

# PREFERRED REGULATORY MODEL

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## Overview

This section outlines our preferred regulatory model. The remainder of the discussion paper provides further context and analysis of the options we have considered during the development of the model.

### *Objectives*

The regulatory system should promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants and other consumers by:

- establishing professional entry standards for residential property managers
- establishing industry practice standards for the delivery of residential property management services
- providing accountability through an independent, transparent, and effective disciplinary and complaints resolution process that applies to residential property managers and delivery of property management services.

### *Regulated parties*

The system will regulate the activities of residential property managers and residential property management organisations. The proposed legislation would bind the Crown and captures 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.

### *Registration and licensing*

To be employed or trade as a residential property manager individuals would need to hold a licence issued by a regulatory authority that determines the licensee meets specified licensing requirements. While residential property management organisations would not need to hold a licence to trade and employ property managers, they would be subject to the industry standards and the complaints and disciplinary arrangements established under the legislation. The regulator would maintain a public register of residential property management organisations and licensed property managers.

Licences would be renewed annually. Arrangements for imposing conditions on licences or suspending and revoking licences, are provided for under the complaints and disciplinary system. Decisions by the regulator to impose conditions, suspend or revoke a licence would be subject to appeal to the proposed disciplinary tribunal.

### *Entry standards*

To obtain a residential property management licence, applicants will need to be at least 18 years of age, meet the requirements of a fit and proper person test, and provide evidence that they meet the minimum training and education requirements. These requirements, established in regulation, are expected to include satisfactory completion of a training course. The course could involve about 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.



*Professional and industry practice standards*

Residential property managers and residential property management organisations will need to comply with professional and industry practice standards. These standards will include:

- meeting continuing professional development (CPD) requirements, expected to involve about 20 hours each year
- annual licence renewal
- operating in accordance with a Code of Conduct
- holding professional indemnity and public liability insurance
- operating trust accounts
- ensuring trust accounts are subject to independent annual review
- ensuring accounts are available for periodic audit as may be required by the regulator.

*Complaints and disciplinary framework*

The regulatory system will 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’.

Either the Real Estate Agents Disciplinary Tribunal (REA Disciplinary Tribunal) or the Tenancy Tribunal could have their mandates extended to provide an independent disputes and disciplinary service. On balance, it is proposed to extend the mandate of the REA Disciplinary Tribunal 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.

*Offences and penalties*

A number of offences with appropriate penalties will be included in legislation to ensure compliance with regulatory requirements. They will form part of the system’s overall compliance management framework and complement other features that encourage voluntary compliance or address non-compliance.

The proposed offences and penalties framework is designed to be an effective compliance management mechanism proportionate to the form of non-compliance being addressed. The proposed offences and penalties are aligned with those included in similar occupational regulatory systems, such the Real Estate Agents Act 2008.

### *Management and stewardship*

An independent regulator would be responsible for the regulatory service design and delivery. Its functions would include:

- education and professional development
- registration and licensing
- standard setting
- compliance management
- disputes resolution.

The regulatory authority's powers and functions will be vested in a body independent of the property management industry. This could involve either extending the Real Estate Authority's (REA) mandate or having the Ministry of Business, Innovation and Employment (MBIE) - who currently have a number of occupational licensing regimes in their organisation – provide regulatory management services. Further analysis is required to assess the implementation issues and costs associated with these two options.

Te Tūāpapa Kura Kāinga would act as the steward of the new regulatory system. Further consideration needs to be given to the implications for the current accountability arrangements for courts and tribunals and the REA performed by the Ministry of Justice, and Tenancy Services performed by MBIE.

### *Cost recovery*

A significant proportion of the costs associated with the delivery of the regulatory systems should be met by the property management sector through fees and levies rather than being funded by the Crown. Principles based on equity, efficiency, justifiability, and transparency would be incorporated in primary legislation to frame the establishment of cost recovery arrangements.

The cost recovery requirements, including levels of charges, will be established in regulations subject to Ministerial approval. Before seeking to recover costs, the regulator would be required to ensure affected parties, or representatives of affected parties, have been consulted. The affected parties include property managers, property owners, tenants and tangata whenua.

An initial government appropriation of funding may be required to cover the regulator's establishment and first year operating costs.

Table 1 shows the emerging features of the preferred regulatory model alongside other options we have considered but set aside.

#### **Questions**

**Do you agree or disagree with the proposed objectives for the regulatory system?**

*Strongly Agree/Agree/Not sure/Disagree Strongly Disagree. Please explain why/comment.*

**Do you agree or disagree with the emerging regulatory model as a whole?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment.*

**Are there any changes that should be made to the overall regulatory model?**

*Please explain why/comment.*

**Table 1: Emerging regulatory model**

System features	Preferred model description		Other feature options considered but set aside	
Regulated parties	Residential property managers and residential property management organisations		Commercial property managers/ organisations (Out of scope)	Landlords/ residential property owners (Out of scope)
Registration and licensing	Public Register (Individuals and organisations)	Licensing (Individuals only)	Certification	Licensing (Individuals and organisations)
Professional entry requirements	18 years of age and fit and proper person test	Education/training ("Basic" course - 15 hours)	Education/ Training Intermediate course; or Level 4 Certificate; or Level 5 Qualification	Industry experience
Industry practice standards	Continued professional development (20 hours per annum)	Code of Conduct	Standard industry contract provisions	
	Indemnity and public liability insurance	Trust Accounts (including independent review and periodic audits as required by the regulator)	Trust Account audit Annually	
Complaints and disciplinary framework	Complaints panel and REA Disciplinary Tribunal (Preferred option)	Complaints panel and Tenancy Tribunal (Option under consideration)	Using existing NZ Disputes Tribunal	Complaints panel and new tribunal
Offences and penalties	Offences and penalties aligned with similar regulatory systems			
Regulatory management	REA's mandate extended (Option under consideration)	MBIE administered regulatory management (Option under consideration)	A designated industry association	New standalone regulatory authority
Cost recovery	Mixed model with full cost recovery of some services, partial recovery of others, and no recovery of 'public good' regulatory stewardship costs and initial establishment costs		No cost recovery	Partial and full cost recovery options
Regulatory stewardship	Te Tūāpapa Kura Kāinga			

# CONTEXT

## Residential tenancy market

New Zealand has seen a greater proportion of people renting as rising house prices put homeownership beyond their reach. Census data shows that homeownership peaked in the 1990s at 74 percent and fell to 65 percent of households by 2018.

Figure 1 shows the number of people residing in rental accommodation grew to over 1.4 million people in 2018.

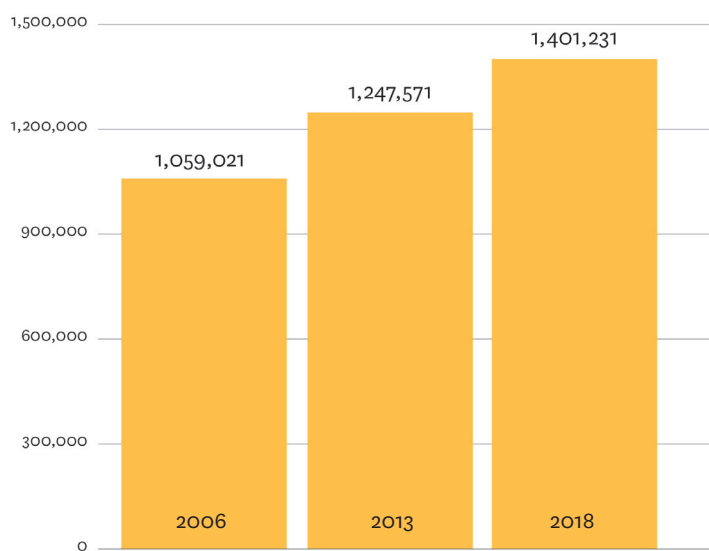
Almost 600,000 households, or one-third of New Zealand households are in rental accommodation. It is likely that a greater proportion of these households will need to rent long term given current housing affordability settings. Māori are also more likely to rent than Pakeha, with 52 percent of Māori households renting compared to 35 percent of Pakeha households.<sup>3</sup>

The residential tenancy market is challenging with increasing demand for rental accommodation not always being matched by supply. This is reflected in continued growth in rent prices across the country. According to the Statistics NZ Rent Price Index, rental inflation has generally been growing at a faster rate than inflation overall.

Rental accommodation is provided by a variety of different landlords.

Figure 2 shows the majority of rental accommodation is provided by the private sector.

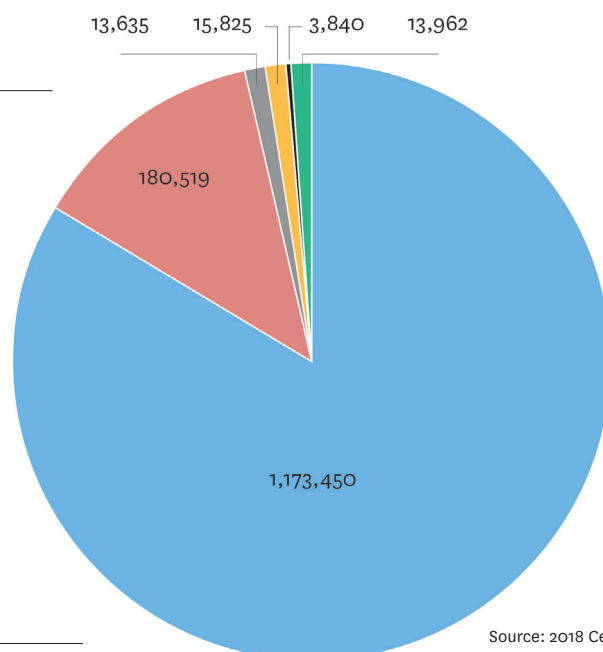
Figure 1: Number of renters over time



Source: Census Data

Figure 2: Number of tenants with each type of landlord

- Private person, trust or business
- Kāinga Ora/Housing New Zealand
- Other community housing provider
- Local authority or city council
- Iwi, hapū, or Māori trust
- Other



Source: 2018 Census Data

<sup>3</sup> 2018 Census data

## Residential property management sector

As the residential property market has grown, so has the role of property managers within it.

We estimate that there are between 2,096 and 7,881 residential property managers operating in New Zealand.<sup>4</sup> They are responsible for managing about 42 percent of rental properties on behalf of property owners. Large property management companies are responsible for around 40 percent of the residential property portfolio under the care of the property management sector. Smaller property management organisations and sole traders are responsible for the remainder of the portfolio.

Residential property managers typically charge property owners a percentage of weekly rental income. Residential property managers can provide a range of services such as:

- initial property inspection and rental appraisals
- property letting, including tenant and lessee vetting
- bond lodgement and refund transactions and safe stewardship of tenants' money
- collecting and managing rental income
- managing payments to contractors and property owners
- regular property inspections
- organising maintenance and repairs
- providing or contracting building management activities
- regularly reporting to the property owner
- performing rental reviews
- arranging for the payment of insurance and local authority rates and other property expenses
- managing compliance with relevant minimum standards, legislative requirements, and minimising business risk on behalf of property owners.

Residential property managers' earnings vary depending on skills and experience and the type of work that they do. Residential property managers with up to three years' experience usually earn between \$61,000-\$82,000 a year, while those with three or more years' experience may earn between \$82,000-\$102,000 a year<sup>5</sup>. Real Estate Institute of New Zealand (REINZ) has advised there is a shortage of good property managers and salaries have increased as a consequence.

### *Industry self-regulation*

While the residential property management sector as a whole is not required to meet minimum competency and industry practice standards, industry bodies have established requirements that apply to their members.

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<sup>4</sup> MBIE data shows that 2,096 property managers have lodged a bond with tenancy services as at 31 August 2021. This data is based on bonds lodged with tenancy services and may undercount tenancies where the landlord's details are on the bond lodgement, but the property is managed by a property manager. Tenancies where a bond has not been charged are also not captured in this data. 7,817 people indicated they are a property manager by trade in the 2018 Census.

<sup>5</sup> Hays, FY2021/21 Salary Guide – Australia and New Zealand, 2021, cited by Careers New Zealand: <https://www.careers.govt.nz/jobs-database/finance-and-property/property-services/property-manager/about-the-job>.

*Real Estate Institute of New Zealand<sup>6</sup>*

REINZ is a membership organisation representing more than 16,000 real estate professionals nationwide. As at September 2021, REINZ represent over 1,200 members who carry out residential property management activities. REINZ estimates that around a quarter of these property managers work within mixed real-estate agencies, and around 30 percent are considered to be sole traders with the balance working in larger property management exclusive businesses.

REINZ members aspire to best practice standards and are bound by the REINZ Codes of Agency Practice and Individual Membership. REINZ currently offers agency (organisation) membership and is looking to introduce an individual membership with a range of membership classes. REINZ offers membership to property managers and has a REINZ Property Management Accreditation Programme that applies to both organisations and individuals. Under this programme individuals are required to have completed the New Zealand Certificate in Property Management, undertake annual continued professional development. All property management agency members of REINZ are required to have professional indemnity insurance, a trust account that is either audited or independently reviewed annually and abide by REINZ's code of conduct.

*Property Managers Institute of New Zealand<sup>7</sup>*

The Property Managers Institute of New Zealand (PROMINZ) is a professional body for property management professionals that operates under the umbrella of the Property Institute of New Zealand (PINZ). It provides nationally accredited qualifications, guidance on career pathways and resources to assist property managers within their roles. PROMINZ is dedicated to supporting, building, and setting standards for the profession. We understand PROMINZ has about 80 members.

PROMINZ has a number of membership classes that are designed to encourage and recognise professional development and advancement within the profession. To progress through the membership classes individuals need to meet training, industry experience, continuing professional development and good character test requirements.<sup>8</sup> Members are subject to credit and criminal history checks, need to adhere to the PROMINZ Code of Ethics and Code of Practice, use a trust account for business transactions, and hold professional indemnity and public liability insurance.<sup>9</sup> Members are also subject to the PROMINZ complaints process which is designed to ensure professional standards are maintained.

*Residential Property Managers Association<sup>10</sup>*

The Residential Property Managers Association (RPMA) is a professional association for residential property managers, which was established in 2021. As at December 2021, RPMA represents 83 residential property managers. To obtain RPMA membership, property managers have to:

- observe the RPMA Code of Ethics
- commit to continued professional development (a minimum of 10 hours annually)
- complete a Criminal History Check
- hold public liability insurance
- use a designated Rent Account where money is held in trust.

RPMA has 5 classes of licences.<sup>11</sup> To obtain the 'Qualified Residential Property Manager' licence, individuals have to complete the NZ Certificate of Residential Property Management qualification (or equivalent) and the RPMA Ethics Module.

RPMA has its own complaints procedure to resolve issues between a property manager and their client (either a property owner or a tenant).

<sup>6</sup> For information about REINZ see <https://www.reinz.co.nz/about>, <https://www.reinz.co.nz/identifying-a-member> and <https://www.reinz.co.nz/reinz-residential-property-management-accreditation>.

<sup>7</sup> For information about PROMINZ, see [https://propertyinstitute.nz/Category?Action=View&Category\\_id=1592](https://propertyinstitute.nz/Category?Action=View&Category_id=1592).

<sup>8</sup> To qualify for Accredited Residential Property Manager status a PROMINZ member must:

- have at least 2 years full time work experience (post qualification) in a property field and supply the names of three independent referees two of whom must be Property Institute members
- meet the PROMINZ entry criteria and be a current affiliate of the Property Institute of New Zealand (PINZ)
- have achieved 20 hours of CPD and maintain that level of activity for each year ARPM is retained
- hold Level 4 NZ Certificate of Residential Property Management (or equivalent); or demonstrate their industry knowledge and experience in a detailed interview and questionnaire
- pay the annual administration fee of \$125
- have recently completed the PROMINZ Ethics Module
- not carry out any activity that brings PROMINZ or PINZ into disrepute including but not limited to: Any act of dishonesty such as fraud or theft; or any breach of the institute/s ethical codes of conduct.

The PROMINZ Council reserves the right at its discretion to revoke Accreditation from any member who acts in a way that is inconsistent with the values and ethos of the Institute.

## Wider regulatory environment

The Residential Tenancies Act 1986 (RTA), and its associated regulations, is the primary legislation that regulates interactions between landlords and tenants.

The RTA defines the rights and obligations of landlords and tenants of residential properties, establishes a tribunal (the Tenancy Tribunal) to promptly resolve disputes arising between landlords and tenants, and establishes a fund into which bonds payable by tenants are held.

In some circumstances, a property manager may be considered a landlord under the RTA and be subject to its requirements. This depends on what is contained in the tenancy agreement, and whether a property manager is listed as the landlord or as an agent of the landlord.

While disputes between landlords and tenants are covered by the RTA, disputes between a property owner and property manager are not. Property owners can pursue claims against property managers under the general law, the Fair Trading Act 1986, or the Consumer Guarantees Act 1993.

The purpose of the Real Estate Agents Act 2008 is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work. It regulates the work and licensing of real-estate agents in New Zealand but excludes property managers. Action can be taken against a property manager under the real estate regime where they are also a licensed real estate professional and the conduct may amount to serious misconduct or disgraceful conduct.

## The problem

There are no occupational regulatory requirements that apply to all residential property managers. A wide range of stakeholders, including industry bodies representing property managers such as REINZ and PROMINZ,<sup>14</sup> have highlighted the significant risk that a lack of common industry practice standards, controls, and an accessible, independent disciplinary and disputes resolution process pose to property owners and tenants and to the reputation of residential property managers.

New Zealand's rental market has changed over time with a greater portion of people renting. Many vulnerable groups rent. Children, Māori and Pacific peoples are over represented in those that rent. It is important to ensure renters are being treated fairly and with dignity to ensure their wellbeing.

As a large portion of rental properties are managed by property managers, many tenants are likely to deal with a property manager. However, vulnerable tenants can face a significant power imbalance when dealing with property managers. Vulnerable tenants may not want to raise issues or take issues to the Tenancy Tribunal for fear of losing their home, or fear of jeopardising their ability to secure rental accommodation in the future.

Collectively, property managers not only play an important role in the rental sector due to the large portion of rental properties they manage, they also hold significant power when it comes to tenant relationships. This power imbalance can be further exacerbated in a housing market where the demand for rental properties exceeds supply.

In a tight rental market poor quality property management services affect the wellbeing of tenants more acutely, including their security of tenure. When tenants have insecure tenure, they may move more often. Moving often can have negative consequences for their health, education and employment outcomes. For example, people who move often are less likely to be affiliated with a primary health care provider (doctor, nurse or medical centre). Moving frequently also creates additional stress and cost for tenants.

Insecure tenure can also significantly affect children.<sup>12</sup> International evidence links a lack of secure sustainable housing with low academic performance, and negative health outcomes for young children. Children who change schools more often are more likely to receive special education services and show up in truancy data.<sup>13</sup>

Table 2 outlines ways that the unregulated activities of property managers can harm residential property owners and tenants and what causes that harm.

<sup>9</sup> See [https://propertyinstitute.nz/memberconnex.com/Attachment?Action=Download&Attachment\\_id=2199](https://propertyinstitute.nz/memberconnex.com/Attachment?Action=Download&Attachment_id=2199).

<sup>10</sup> For information about RPMA see <https://www.rpma.org.nz/about-us/>.

<sup>11</sup> Trainee, Affiliate, Qualified Residential Property Manager, Senior Residential Property Manager, and Fellow of RPMA.

<sup>12</sup> G Thomas Kingsley, Audrey Jordan and William Traynor (2012). Addressing Residential Instability: Options for City and Community Initiatives, *Cityscape* 14:3 168.

<sup>13</sup> Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub (2018) A Stocktake of New Zealand's Housing, page 40.

**Table 2: Harmful unregulated property management activities**

Harm	Causes
<b>Caused to residential property owners</b>	
<p><b><i>Reputational harm and additional costs as a result of:</i></b></p> <ul style="list-style-type: none"> <li>• liabilities for the acts and omissions of property managers failing to meet legal obligations under, for example, the Residential Tenancies Act, Fair Trading Act, and Human Rights Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient information available for property owners to determine the credentials of property managers.</li> <li>• No compulsory minimum competency standards that help ensure property managers are aware of their legal obligations and have the skills and experience to deliver services to an appropriate standard.</li> <li>• Variation in practitioner practices. No industry practice standards that support compliance with legal requirements.</li> <li>• Contractual agreements may establish different accountabilities, rights and obligations between the parties and fail to reflect appropriate practice standards that are consistent with legal obligations.</li> </ul>
<p><b><i>Return on investment compromised through:</i></b></p> <ul style="list-style-type: none"> <li>• misappropriation or misuse of rental income and bonds</li> <li>• poor advice on RTA compliance</li> <li>• poor valuation advice on rental income potential</li> <li>• failure to maintain occupancy rates through timely letting when vacancies occur.</li> </ul>	<ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards including, minimum integrity standards for entry to the occupation.</li> <li>• Variation in practitioner practices. No consistent industry practice standards that reflect and reinforce compliance with good practice requirements.</li> <li>• No requirement to use audited trust accounts.</li> </ul>
<p><b><i>Asset value compromised through:</i></b></p> <ul style="list-style-type: none"> <li>• inadequate property inspection to identify tenant damage and maintenance needs</li> <li>• inadequate property maintenance.</li> </ul>	<ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards including minimum integrity standards for entry to the occupation.</li> <li>• Variation in practitioner practices. No industry practice standards that reflect and reinforce industry compliance with good practice requirements.</li> </ul>



Harm	Causes
<b>Caused to residential tenants</b>	
<p><b>Breaches of tenants' rights under the RTA such as failing to provide or ensure:</b></p> <ul style="list-style-type: none"> <li>• housing meets the healthy homes standards</li> <li>• timely resolution of property maintenance issues</li> <li>• quiet enjoyment of the property -</li> <li>• compromise tenant wellbeing including access to secure, healthy, and affordable housing.</li> </ul>	<p>Power imbalance between property managers and vulnerable tenant groups amplifies harm and the potential for harm from:</p> <ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations.</li> <li>• Variation in property managers' practices. No industry practice standards that support compliance with legal requirements.</li> </ul>
<p>Discrimination based on age, sex, sexual orientation, marital status, family status, colour, race, ethnic or national origins, religious or ethical beliefs, political opinion, or employment status which breaches the Human Rights Act and compromises access to secure, healthy, and affordable housing.</p>	<p>Power imbalance between property managers and vulnerable tenant groups amplifies harm and the potential for harm from:</p> <ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations.</li> <li>• Variation in property managers' practices. No industry practice standards that support compliance with legal requirements.</li> </ul>
<p>Over-collection of tenants' personal information and other breaches of tenants' rights under the Privacy Act.</p>	<ul style="list-style-type: none"> <li>• Power imbalance between property managers and vulnerable tenant groups.</li> <li>• Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations.</li> <li>• Variation in property managers' practices. No industry practice standards that support compliance with legal requirements.</li> </ul>
<p>Misuse or misappropriation of tenants' bond or rental results in financial harm.</p>	<ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards including minimum integrity standards for entry to the occupation.</li> <li>• No requirement for use of audited trust accounts.</li> </ul>
<p>Failure to treat tenants, and prospective tenants, with courtesy and respect undermines human rights and wellbeing.</p>	<ul style="list-style-type: none"> <li>• Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations.</li> <li>• Variation in property managers' practices. No industry practice standards, including code of conduct requirements.</li> </ul>

There are a number of harms that can occur to tenants and property owners through inadequate delivery of property management services. REINZ in their information paper - A Call for Change - has provided specific examples of some of these harms. Common themes set out in the paper include:

- discriminating against tenants and asking for inappropriate personal information
- not complying with the RTA
- renting out spaces that do not comply with the RTA
- stealing bond and rental money from tenants and property owners.

Submissions received during the recent RTA reforms process further supported these examples and provided additional evidence. Tenants, in particular, reported they are reluctant to complain about property managers as they fear they may not be able to secure a rental property in the future if they take a case to the Tenancy Tribunal.

Tenants and landlords use a number of different ways to raise issues about the conduct of property managers. Depending on the nature of the issue, complaints are made to Tenancy Services, Consumer NZ, REINZ, PROMINZ, and REA.

Based on the evidence presented, including the views of industry participants and other affected parties, a threshold for government regulation has been met as the unregulated nature of the property management sector poses significant risks and can cause significant harm to property owners and tenants.

While property managers who belong to an industry body such as REINZ,<sup>14</sup> PROMINZ, or RPMA are subject to a range of measures designed to ensure good practice, a significant portion of the industry are not covered.

A cost-effective occupational regulatory system is required to hold all residential property managers to account for their conduct. It can help ensure appropriate professional standards are established and met across the entire industry, in addition to resolving claims or causes of action under contract or legislation.

As part of the cost benefit analysis of a new regulatory regime, Te Tūāpapa Kura Kāinga will commission further research on harm caused to test this largely qualitative evidence. This analysis, together with the stakeholder feedback received through the public consultation process, will inform our final regulatory impact assessment and advice to Ministers.

## Questions

**Do you consider government regulation of property managers is required to address the risks posed by property managers to tenants or the owners of residential properties they manage?**

*Yes/No/Don't Know – Please explain why/ comment*

**Do you have any other comments to make on our overview of the residential tenancy market, the residential property management sector, or the current regulatory environment?**

*Yes/No - Comment*

<sup>14</sup> REINZ, A Call for Change – Residential Property Management – Industry Regulation (28 September 2019).

Available at: [https://static1.squarespace.com/static/5ceefcf4b24e9f0001b744eb/t/5d8ad470def8834a610e2e91/1569379447645/RPM+Industry+Regulation+Information+Paper\\_FINAL.pdf](https://static1.squarespace.com/static/5ceefcf4b24e9f0001b744eb/t/5d8ad470def8834a610e2e91/1569379447645/RPM+Industry+Regulation+Information+Paper_FINAL.pdf).

## FRAMING OUR APPROACH

### Objectives

We have identified the harms that the unregulated activities of property managers can pose to both tenants and the owners of properties used for residential tenancy purposes. We have also noted the risk that these activities pose to public confidence in the residential tenancy market and to the reputation of the property management sector.

The purpose of government regulation is, therefore, to promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants and other consumers by:

- establishing professional entry standards for residential property managers
- establishing industry practice standards for the delivery of residential property management services
- providing accountability through an independent, transparent, and effective disciplinary and complaints resolution process that applies to residential property managers and the delivery of property management services.

### Assessment criteria

Our final assessment of the options outlined in this discussion paper will take place following public consultation. It will be based on the following criteria:

Effectiveness	How effective is the proposed system in achieving the system's regulatory objectives? In particular, will it protect the interests of the owners of residential property, tenants and other consumers such as prospective tenants and promote public confidence in the delivery of residential property management services? Will the system deliver net economic benefits? Any trade-offs between regulatory objectives or intended outcomes should be highlighted.
Proportionality	Are compliance requirements and costs proportionate to the expected benefits? Any changes to regulatory systems, including enabling legislation, should have benefits that outweigh the cost of the changes.
Certainty	Will regulatory requirements, processes and decisions be transparent, predictable, and consistent with other policy settings and provide certainty to regulated parties?
Flexibility and durability	Will regulated parties have the scope to adopt least cost and innovative approaches to meeting their legal obligations? <sup>25</sup> Can the regulatory system evolve in response to new information and changing circumstances?
Implementation risk and cost	Are the implementation risks, timeframes, and costs acceptable? Is the system based on established and proven regulatory features or will it include untested or novel solutions? How certain are the implementation timeframes and costs? Are they within acceptable bounds?

<sup>25</sup> A regulatory system is flexible if the underlying regulatory approach is principles or performance based and policies and procedures are in place to ensure that it is administered flexibly, and non-regulatory measures are used where possible.

# REGULATORY SYSTEM FEATURES

## Objectives

In developing a system for the regulation of residential property managers we have addressed a number of key questions:

- Who should we regulate?
- What certification, registration or licensing arrangements should apply to regulated parties?
- What entry requirements should regulated parties need to meet?
- What ongoing industry practice standards should apply?
- How should regulated parties be held to account?
- Is there a need for an offences and penalties regime to complement the complaints and disciplinary process?
- What regulatory stewardship and management arrangements are required?
- How should the costs of regulation be met?

## Regulated parties

We have already set out the rationale for establishing a system focused on the regulation of residential property managers and residential property management organisations and why we do not think it appropriate to include 'landlords' managing their own properties in the regime.

### *Act to Bind the Crown*

We consider it important to ensure residential property managers, whether they be in the private, community or public sector, are accountable for operating in accord with appropriate regulatory requirements. We propose the legislation would also bind the Crown. This would have implications for Kāinga Ora – Homes and Communities (Kāinga Ora) who manage some residential property on behalf of other property owners. Kāinga Ora and any of its staff that provide property management services would need to meet the proposed regulatory requirements. This regulation would not apply to Kāinga Ora providing tenancy management services relating to its own housing stock.

### *Exemptions*

We anticipate the legislation would provide a general power of exemption under regulation that can be used to exclude occupational groups from regulatory system requirements. This could include parties that may provide advice to property managers, such as property lawyers, who are subject to their own occupational disciplinary arrangements. We also expect administrative staff working for property management organisations who support and work under the supervision of licensed property managers would also be exempt.

There may be a case for exempting other groups from all or part of the regulatory system's requirements. For example, we are interested in stakeholders' views on how to treat licensed real estate agents who also provide property management services.

## Questions

**Do you agree the regulatory system should apply to individuals and organisations providing property management services operating in the private, community and public sectors?**

*Strongly Agree/Agree/Not sure/Disagree Strongly Disagree. Please explain why/comment*

**Should real estate agents be exempt from holding a property managers' licence but still held to account for compliance with industry entry and practice standards through the complaints and disciplinary process?**

*Please explain why/comment*

## Certification, registration and licensing

There are a range of frameworks for regulating occupations the Government can employ including – certification, registration, and licensing.

### *Certification*

Certification would involve an agency (either a designated industry association or an independent regulator) empowered by statute certifying to the public that individuals have satisfied particular requirements that indicate their competence as property managers. Those individuals would be given the right to use a designated occupational title such as ‘certified property manager’. Certified property managers would be listed in a public register by the statutory agency. To retain their certified status individuals would need to:

- meet professional practice standards established by the agency
- abide by any industry practice standards established by the agency
- be subject to any disciplinary process and requirements established by the agency.

Individuals that are not certified can still offer property management services in competition with certified practitioners.

### *Registration*

Registration would require all individuals providing specified residential property management services to list their name and place of business in a public register maintained by an agency empowered by statute to do so. There would be no restrictions on entry to the occupation apart from the requirement to be on the register. Registration alone would not attest to an individual meeting a particular level of competence. It provides a means for identifying and providing information to registered practitioners.

The public register could be used alongside or as part of the other regulatory mechanisms outlined in this paper. It could, for example, be used to identify ‘certified’ property managers as well as those practitioners that do not currently meet certification requirements (e.g. are in training, have lapsed registration, or have been de-registered).

### *Licensing*

Licensing would require all individuals providing specified residential property management services to hold a licence issued by an agency empowered by statute to do so. Licensees would need to meet prescribed entry requirements, including minimum competency standards. To retain their licence individuals would need to:

- meet professional practice standards established by the agency
- abide by any industry practice standards established by the agency
- be subject to any disciplinary process and requirements established by the agency.

Licensing requirements could be extended to include all residential property management organisations. Organisations would need to meet prescribed entry requirements which would include - but not necessarily be limited to - the employment of licensed property managers and evidence of a commitment to, and capability to meet, industry practice standards established by the agency. To retain their certified status organisations would need to:

- confirm staff delivering prescribed property management services were licensed
- abide by any industry practice standards established by the agency
- meet any reporting or audit requirements established by the agency
- be subject to any disciplinary process and requirements established by the agency.

### *Options Assessment*

Table 3 summarises our assessment of options to regulate property managers. On balance, we consider a regulatory system centred on the licensing of all individuals wanting to trade as property managers is likely to be the most effective approach.

A certification scheme may not result in a significant change in the proportion of the property management sector electing to be certified and meet prescribed professional standards. While it ensures appropriate minimum standards would apply to property managers who seek and achieve certification, it places the onus on property owners to distinguish between certified and uncertified practitioners when seeking a service provider. Such a scheme would largely mirror the accreditation programmes provided by REINZ, PROMINZ, and RPMA. As such it does not appear to be a significant improvement on the current industry self-regulation schemes.

While a registration scheme would identify who is providing property management services, it does not establish minimum competency or practice standards. Consequently, it would be of limited benefit to property owners and tenants. However, a public register should be a key component of the proposed licensing regime and cover both individual residential property managers and residential property management organisations.

Licensing provides a mechanism for ensuring all individuals trading as property managers meet minimum standards and are held to account. While this would increase compliance costs, we consider this is proportionate to the benefits derived by regulated parties, property owners and tenants.

A licensing scheme covering both individuals and organisations providing residential property management services is also an effective mechanism of ensuring minimum standards are met and practitioners are held to account. It would enable a fit and proper person test to be applied to the directors of property management organisations. It would reinforce the responsibility of organisations employing property managers to ensure they operated in a manner that enables compliance with professional and industry good practice. It would enable particular industry requirements to be sheeted home to organisations who would need to have policies, process and systems in place to enable their employees to meet them (such as, for example, any industry standard requiring the use of trust accounts). This could also include ensuring appropriate supervision of staff not yet qualified or who are subject to licensing conditions imposed by the regulator or disciplinary tribunal.

#### *Implementing a licensing regime*

There are compliance costs associated with licensing organisations and tailoring licensing classes and accountability arrangements to include them. Practice standards and accountability arrangements incorporated in statute could still be applied to residential property management organisations without requiring them to be licensed. While licensing would help strengthen the accountability framework, we consider the system's regulatory objectives may be achieved more cost effectively through the licensing of individuals alone. Residential property management organisations would still be subject to the industry practice standards and could be held to account through the complaints and disciplinary system.

#### *Renewing licences*

The regulatory system will also need to specify renewal requirements and timeframes for licence holders. We propose that licences be renewed on an annual basis subject to:

- confirmation that continuing professional development requirements have been met
- the regulatory authority being satisfied the property manager continues to meet the fit and proper person requirements, is complying with practice standards and has not engaged in misconduct
- the payment of the annual licensing fee.

An annual renewal requirement is consistent with the approach taken in similar regulatory systems including requirements under the Real Estate Agents Act.

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<sup>16</sup> Unsatisfactory Conduct is defined as conduct that:

- a. Falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensed person; or
- b. Contravenes the person's obligations under the legislation in a way that is more than minor or inconsequential; or
- c. Is incompetent or negligent; or
- d. Would reasonably be regarded by licensed persons of good standing as being unacceptable.

### Conditions on licences

We propose the regulatory authority be empowered to impose conditions on a licence holder where the authority has determined they have failed to meet industry standards and as such engaged in unsatisfactory conduct.<sup>16</sup> Conditions on a licence holder may relate to:

- requirements for education, supervision by another licensed property manager, relevant workplace experience or professional development, that must be met to achieve or maintain a licence
- limits on the services a property manager can provide
- any other requirements needed to ensure a licence holder will comply with their statutory obligations and provide services in accord with generally accepted professional standards and industry practice standards.

### Suspending a licence

We also propose that the regulatory authority be empowered to suspend a licence when it is satisfied the licence holder has engaged in misconduct.<sup>17</sup> To do so, however, the authority would need to provide reasonable notice of their intention to suspend the licence and in doing so invite the licensee to provide information to satisfy the authority that its decision to suspend is not appropriate. The authority may lift the suspension if it is satisfied that the reasons for the suspension no longer apply.

A licence holder would have the right to seek a review of any decision made by the authority to impose conditions or suspend their licence.

### Revoking a licence

The regulatory authority would also have the power to revoke a licence at the request of the licence holder, or on grounds including but not limited to the licence having been suspended, the licence holder has exhausted their review rights, or where the Disciplinary Tribunal has ordered cancellation of the licence.

### Appeals against regulator decisions

The regulator's decisions to impose conditions, suspend or revoke a licence would be subject to appeal to the proposed disciplinary tribunal.

## Questions

### **Do you agree that individual property managers should be required to hold a licence?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

### **Do you agree that organisations offering residential property management services should not be required to hold a licence provided they are subject to industry practice standards and the complaints and disciplinary arrangements?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

### **Do you have any comments on the proposed licence renewal, conditions, suspension, and revocation arrangements?**

*Yes/No - Comment*

<sup>17</sup> Misconduct occurs when a regulated party's conduct:

- would reasonably be regarded by regulated parties of good standing, or a reasonable member of the public, as disgraceful; or
- wilfully or recklessly (whether by act or omission) fails to meet a statutory obligation that is more than minor or inconsequential; or
- constitutes an offence for which the regulated party has been convicted, being an offence that reflects adversely on regulated party's fitness to be licensed.

**Table 3: Regulatory framework**

Options:	Certification	Registration	Licensing (Individuals only)	Licensing (Individuals and organisations)
<b>Description</b>	Persons that meet requirements prescribed by an agency empowered by statute may trade as a 'certified property manager'. Other persons that do not meet these requirements may still operate as 'uncertified' property managers.	All persons wanting to deliver prescribed property management services must be listed on a public register maintained by an agency empowered by statute to do so. No other requirements apply.	All persons wanting to deliver prescribed property management services must hold a licence confirming that they meet statutory requirements.	All persons and organisations wanting to deliver prescribed property management services must hold a licence confirming that they meet statutory requirements.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Establishes appropriate competency and professional practice standards.</li> <li>No barrier to entering the occupation.</li> </ul>	<ul style="list-style-type: none"> <li>Universal coverage.</li> <li>Provides transparency for government and service users.</li> <li>Low compliance cost.</li> <li>Could complement other options.</li> </ul>	<ul style="list-style-type: none"> <li>Universal coverage of all individual property managers.</li> <li>Establishes appropriate competency and professional practice standards.</li> <li>Provides accountability arrangements.</li> </ul>	<ul style="list-style-type: none"> <li>Universal coverage of all individuals and organisations. Establishes appropriate competency and professional practice standards.</li> <li>Enables stronger accountability arrangements for organisations as well as individuals.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Fails to deliver universal coverage.</li> <li>Additional compliance costs for 'certified' parties which may be reflected in service fees and then passed on in higher rental costs.</li> </ul>	<ul style="list-style-type: none"> <li>No assurance of appropriate competency or adherence to professional practice standards.</li> <li>Risk of misleading service users.</li> </ul>	<ul style="list-style-type: none"> <li>Additional compliance costs and a potential barrier to entry.</li> <li>Risk of additional costs being reflected in service fees and then passed on in higher rental costs.</li> </ul>	<ul style="list-style-type: none"> <li>Additional compliance costs and a potential barrier to entry.</li> <li>Risk of additional costs being reflected in service fees and then passed on in higher rental costs.</li> </ul>
<b>Implementation issues</b>	<ul style="list-style-type: none"> <li>Establishment of certification standards through regulations</li> <li>Certification periods to be phased in over the calendar year to smooth application and renewal.</li> <li>Arrangements for aligning with, rationalizing, or recognising existing industry certification arrangements.</li> </ul>	<ul style="list-style-type: none"> <li>Establishment of registration requirements in primary and secondary legislation.</li> </ul>	<ul style="list-style-type: none"> <li>Regulations to establish standards.</li> <li>Identifying exemptions and recognition arrangements.</li> <li>Transitional period for current property managers to meet licensing standards.</li> <li>Licence periods to be phased over the calendar year to smooth application and renewal.</li> </ul>	<ul style="list-style-type: none"> <li>Need to specify standards and licence classes for individuals and organisations in legislation.</li> <li>Identifying exemptions and recognition arrangements</li> <li>Transitional period required for current practitioners to meet licensing standards.</li> <li>Licence periods to be phased in over the calendar year to smooth application and renewal.</li> </ul>
<b>Summary assessment</b>	<p><b>Not sufficient</b></p> <p>Enables recognition of individuals meeting minimum standards and holds them to account. Unlikely to result in a significant change in the proportion of property managers meeting those standards. Consequently, there are limited benefits for property owners and tenants.</p>	<p><b>Not sufficient in its own right</b></p> <p>Publicly identifies who is providing services. It does not, establish minimum competency and practice standards. A public register should complement the licensing option by providing a public register of property managers and property management organisations.</p>	<p><b>Preferred approach</b></p> <p>A mechanism for ensuring all individuals trading as property managers meet minimum standards and are held to account. While there is an increase in compliance costs, these costs are expected to be proportionate to the benefits derived by regulated parties, property owners and tenants.</p>	<p><b>Not required</b></p> <p>Individuals and organisations providing residential property management services meet minimum standards and are held to account. There is an increase in compliance costs. Provided organisations are required to meet industry standards and are subject to disciplinary action, system objectives may be achieved more cost effectively without licensing.</p>



## Occupational entry requirements

A key feature of the regulatory system will be occupational entry requirements. Entry requirements help ensure practitioners meet appropriate conduct and competency standards.

We have assessed the following possible entry requirements:

- minimum age
- a fit and proper person test
- minimum education/training
- industry experience.

### *Minimum age*

Many occupational regulatory regimes include an age requirement. Minimum age requirements can guard against the exploitation of minors, provide a means of mitigating risks associated with physical or cognitive development, or act as a proxy for other competency requirements that are assumed to be age related.

However, minimum age requirements have been used less in more modern occupational regulatory regimes as they engage the right to freedom from discrimination on grounds of age (which applies from age 16) and it is necessary to show that it is a justified limitation on this right.

Property managers need to enter into legally binding contracts with property owners and tenants (tenancy agreements) which requires them to be at least 18 years of age.

We propose the legislation require property managers to be at least 18 years of age.

### *Fit and proper person test*

Most occupational regulatory systems require regulated parties to show they meet appropriate standards of personal and professional integrity for the work they are doing. This is usually based on past behaviour and can include police checks, checks on fraudulent behaviour, or other checks specific to the occupation.

Property managers are engaged in positions of trust that involve stewardship of significant assets, significant financial transactions, and the management of personal information. Their tenancy selection and tenancy management decisions can have significant implications for individuals and whānau. They need to establish and maintain professional relationships with property owners, prospective and actual tenants in a manner that complies with a wide range of legislative and regulatory requirements including the RTA, Human Rights Act, and the Privacy Act.

We propose property managers be required to meet a fit and proper person test. The test would be provided for in primary legislation with detailed criteria established in regulation. We anticipate the criteria would include bankruptcy and take into account convictions for offences such as fraud, dishonesty, theft, harm to children or violence, together with any other criteria the Regulatory Authority or the responsible Minister identifies as being in the public interest to take into account.

Introducing a fit and proper person test as an entry requirement will provide assurance to property owners and tenants and enhance the reputation of the property management sector.

### *Minimum level of education and training*

Training and education requirements help ensure licensed practitioners meet minimum competency standards.

We propose that residential property managers meet minimum education and training requirements before being able to deliver property management services. Property managers should be able to demonstrate that they are familiar with:

- legal requirements related to residential property management (RTA, Human Rights Act, Unit Titles Act, the Privacy Act, and others)
- knowledge about maintaining a property
- managing relationships with tenants
- conduct expected from a property manager.

We have set out four broad options for educational and training requirements at the entry level:

Basic Training Course	A basic training course (about 15 hours) would need to be completed before being able to be employed or trade as a property manager. This would be similar to the Beginner's Guide to Property Management training course currently offered by REINZ. This option will give property managers a basic knowledge before entering the occupation. The cost of the REINZ training course is \$299+GST for non-members and \$199+GST for REINZ members.
Intermediate Training Course	Require an intermediate training course (5 days) to be completed before being able to be employed or trade as a property manager.
Level 4 Certificate	Require a Level 4 Certificate in Property Management to be completed before being able to trade independently as a property manager. Completed over several months (usually between 8 to 12 months) at a cost of about \$1,000 - \$2,000. <sup>18</sup>
Level 5 Qualification	Require a Level 5 Qualification in Property Management to be completed before being able to trade independently as a property manager. <sup>19</sup>

There are trade-offs to consider when requiring property managers to meet minimum education and training requirements before entering the profession. The longer the training course, the more in-depth knowledge a property manager will have before they enter the profession. However, careful consideration is needed as to whether this level of knowledge is required to be a competent property manager. The longer the training course is the more expensive it will be and fewer prospective property managers will enter the profession. This could result in shortages of property managers and for property management services to become more expensive and for these costs to be passed on to tenants.

Shorter training courses would lower the barrier to entry and could be supplemented by continued professional development or requirements for on the job training under the supervision of a licensed property manager.

We propose individuals wanting to be employed or trade as residential property managers should be required to complete a basic training course before being licensed. We consider that a basic training course provides a good knowledge base without being overly expensive or time consuming to complete. This proposal would create a relatively low barrier to enter the profession. A basic training course, along with a fit and proper person test and continued professional development, would ensure property managers meet appropriate minimum competency standards, without imposing unreasonable compliance costs. Transitional arrangements enabling the recognition of prior learning or experience could be incorporated for established property managers.

<sup>18</sup> Individuals could either complete the qualification before commencing employment or commence employment under the supervision of a certified or licensed property manager. They would not be able to trade independently as a property manager until they complete the qualification.

<sup>19</sup> Individuals could either complete the qualification before commencing employment or commence employment under the supervision of a certified or licensed property manager. They would not be able to trade independently as a property manager until they complete the qualification.

### Industry experience

Some occupational regulatory systems require applicants to gain practical experience under the oversight of an experienced practitioner before being able to practice independently.

Industry experience can complement any theory-based education or training. New entrants can undertake some tasks while being supervised by an experienced practitioner and observing good practice. Industry experience is crucial for occupations where there is the risk of significant harm occurring or where practical experience is essential.

The options we have considered include:

- no industry experience required
- 6 months industry experience required
- 12 months industry experience required.

While there are benefits to requiring industry experience before a property manager can be fully licensed, there are also costs and disadvantages that need to be considered.

Requiring industry experience would extend the time taken to become fully licensed and serve as an additional barrier to entry. It would also require experienced professionals to take on responsibility for those that would like to enter the industry. Larger companies will find it easier to provide this industry experience although it may constrain the number of new people being able to enter the industry.

Including a requirement for industry experience will add additional complexity to the regime if different licence classes are required to accommodate individuals still meeting their industry experience requirement.

We looked at other comparable international regimes<sup>20</sup> where property managers are regulated. While some regimes do require property managers to have some level of industry experience before becoming licenced, not all international regimes do.

On balance, we do not consider it necessary to require industry work experience as a pre-requisite to becoming a licensed residential property manager. This approach minimises compliance costs and barriers to entry. The other regulatory requirements we are proposing will ensure property managers meet minimum competency standards and are held to account for any breaches of industry standards.

## Questions

**Do you agree that a fit and proper person test should be required of property managers?**

*(Strongly agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

**Do you agree there should be a minimum training or education requirement to be able to trade as a property manager?**

*(Strongly agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

**Do you agree that a basic level of training of about 15 hours, along with other requirements, is sufficient to lift the standards of property managers?**

*(Strongly agree/Agree/Not sure/Disagree/Strongly Disagree)*

**If you do not agree, what would you consider to be an appropriate level of training?**

**Should property managers be required to gain some industry experience under the supervision of an experienced practitioner before becoming fully licensed?**

*(Strongly agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

**Do you agree that there should be a minimum age requirement of 18 years of age?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

<sup>20</sup> The international regimes that we explored were Scotland, Ireland, Wales, and two states in Australia – Victoria and New South Wales.



**Table 4: Entry requirements**

Features:	Minimum Age Requirement	Fit and Proper Person Test	Minimum Level of Education/Training	Industry Experience
<b>Options</b>	<ol style="list-style-type: none"> <li>No minimum age requirement</li> <li>Set minimum age requirement at 18 years</li> </ol>	<p>Criteria will be specified in regulations and could include consideration of:</p> <ul style="list-style-type: none"> <li>criminal convictions related to dishonesty</li> <li>financial issues such as bankruptcy</li> <li>violent behaviour.</li> </ul>	<ol style="list-style-type: none"> <li>Basic training course (15 hours)</li> <li>Intermediate training course (5 days)</li> <li>Level 4 Certificate in property management</li> <li>Level 5 Qualification in property management</li> </ol>	<ol style="list-style-type: none"> <li>No industry experience</li> <li>6 months industry experience</li> <li>12 months industry experience</li> </ol>
<b>Pros</b>	<ul style="list-style-type: none"> <li>Sets a clear rule for entry that is easy to measure.</li> <li>Ensures property managers are able to sign legally binding contracts in their own right.</li> </ul>	<ul style="list-style-type: none"> <li>Cost effective means of ensuring integrity of individuals entering the profession.</li> <li>Relatively simple to implement.</li> <li>Promotes high ethical standards and enhances the profession's reputation.</li> <li>Integral to protecting landlords and tenants from undue harm.</li> </ul>	<ul style="list-style-type: none"> <li>Ensures practitioners meet minimum competency requirements.</li> <li>Basic level training course sufficient to provide good basic skills and knowledge.</li> <li>Would not place an unreasonable burden on applicants.</li> </ul>	<ul style="list-style-type: none"> <li>Allows new entrants to develop competency under supervision.</li> <li>Enables new entrants to gain practical experience and observe good practice on the job while also meeting training/qualification requirements.</li> <li>Lowers risks of inconsistent industry practice impacting adversely on property owners and tenants.</li> <li>Reduces number of parties that need to be licensed.</li> </ul>
<b>Cons</b>	Other tools available to assess competency.	<p>Additional administrative costs on regulated parties and regulator.</p> <p>Regulator would assess each applicant against statutory criteria.</p>	<p>Makes it more difficult for new property managers to enter the industry.</p> <p>Training can be expensive, adding costs to become licensed.</p> <p>Reducing the supply of new entrants and increasing the cost of entry could increase the costs of using a property manager.</p>	<p>Makes it more difficult for property managers to enter the industry and extends the time required to become fully licensed.</p> <p>Fewer property managers in the industry will push up the cost of using a property manager.</p> <p>Larger companies would manage this requirement better than smaller companies.</p>
<b>Implementation issues</b>	None.	<p>One universal test will need to be developed to apply to all property managers.</p> <p>Criteria will be set either in regulation or by the regulatory authority the industry will have an opportunity to comment on the criteria.</p>	<p>Primary legislation enables the regulator to establish minimum requirements.</p> <p>Transitional arrangements required for those already operating to either recognise previous training or experience or to meet the new minimum competency requirements.</p>	<p>New entrants not fully licensed until they have some industry experience.</p> <p>Requires new entrants to be employed by an established property management organisation until they are fully licensed.</p> <p>Requires different licence classes to be considered.</p>
<b>Summary assessment</b>	<p><b>Yes</b></p> <p>Recognises need for property managers to sign legally binding contracts.</p>	<p><b>Yes</b></p> <p>This a minimal requirement and consistent with other occupational regulatory systems in New Zealand and internationally.</p>	<p><b>Yes</b></p> <p>Option 1 - A basic level training course should be a pre-requisite to becoming licensed.</p>	<p><b>No</b></p> <p>Will present a barrier for new entrants and add regulatory cost. The training requirement, and the fit and proper person test are sufficient entry requirements.</p>

## Professional and industry practice standards

Professional and industry practice standards help ensure property managers maintain appropriate levels of competency and service delivery.

The standards we have considered for the regulatory system include:

- continuing professional development
- a code of conduct
- trust accounts and whether they are audited
- indemnity and public liability insurance
- standard industry contract provisions.

In assessing these possible standards, we have taken into account the approach adopted in similar occupational regulatory systems in New Zealand and in overseas property management regulatory systems.

### *Continuing professional development (CPD)*

Many systems regulating occupations require CPD to maintain and enhance the knowledge, skills and experience needed to remain fully competent following completion of formal training. CDP can provide a means of mitigating risks associated with a loss of skills and knowledge and ensure that professionals stay on top of any changes in law, policy, and industry good practice. It does, of course, involve an additional cost for regulated parties and needs to be overseen by the regulator.

CPD can take different forms. For example, it can include completing short training courses, or attending a webinar or conference. Some property managers are already undertaking some form of CPD. For example, property managers that are members of REINZ who hold the REINZ property management accreditation are currently required to undertake at least 10 hours of unstructured professional development annually. PROMINZ and RPMA also require full members to complete continued professional development. PROMINZ 's requirements are based on a minimum number of points which we understand equate to 20 hours each year. This is similar to the approach taken in Wales in the Rent Smart Wales Model.

An indication of the likely impact of a CPD requirement on regulated parties is provided in our summary assessment options in Table 5:

- CPD of 10 hours each year
- CPD of 20 hours each year.

We propose that the primary legislation make provision for CPD with the detailed requirements to be enabled through regulations. A commitment of around 20 hours a year should be sufficient to maintain appropriate competency standards.

The benefits outweigh the additional costs it will impose on those property managers that are not already undertaking CPD through either REINZ, PROMINZ or RPMA. Ensuring property managers stay abreast of law changes, regulatory requirements, and industry good practice is essential. It will help ensure property managers continue to meet minimum competency requirements and operate in accord with industry standards.

### *Code of conduct*

A code of conduct establishes the standard of professional conduct expected in an industry and provides a basis for holding both individuals and organisations providing services to account. A code of conduct is an important tool for ensuring appropriate standards are maintained by regulated parties. It provides greater confidence to consumers and other stakeholders in the integrity and level of service provided by the regulated parties.

We envisage the code would include the following broad elements:

- 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.

Table 5 includes a summary of our assessment of a code of conduct requirement. We conclude that a code of conduct should be a feature of the regulatory system. This is consistent with the existing approach adopted by industry bodies such as REINZ, PROMINZ, and RPMA. The benefits to industry practitioners, property owners and tenants, outweigh the additional regulatory costs.

#### *Trust accounts*

A trust account is a legal arrangement through which funds are held in trust by a third party for the benefit of another party. Trust accounts keep money separate from the other assets of the individual or the business in case of an insolvency event.

Property managers handle large sums of money. Currently, property managers are not subject to any rules about how they handle money received on behalf of landlords. This lack of oversight or regulation on how money is treated increases the risk of funds being misused, fraud and the loss of money if companies become insolvent. Examples of inappropriate use of funds provided by stakeholders include:

- property managers retaining interest earned on the rental income held before it is passed to landlords
- property managers channeling rental income through personal revolving mortgage accounts
- misappropriation of rental income.

Trust accounts will require rent and bond money to be paid into a separate bank account from the property manager's personal accounts, keeping these funds separate from other assets. This reduces the opportunity for this money to be misused and protects both the property owner and the tenant in the event of the property manager becoming insolvent.

We propose introducing a requirement for property managers to use trust accounts for rental and bond money. This provides assurance to all parties that funds will be kept in a secure manner and the risk of misappropriation is reduced.

#### *Audit requirements*

An audit is an independent examination of financial information of an entity. Auditing would reveal whether there has been any financial mismanagement. It will enable the registrar to take appropriate action and ensure any harm is remedied.

A requirement for periodic independent audit would reduce the risk of financial mismanagement and misappropriation. This further reduces the risk of harm to property owners or tenants.

Audit requirements can take different forms. We have assessed the following options in Table 5:

- introducing a requirement to have trust accounts reviewed independently.
- requiring an audit annually
- introducing a requirement for an audit on request of the regulator.

Introducing an audit requirement would provide an additional level of security around the funds managed by property managers. We understand the cost of auditing could range between \$1,000 to \$3,500 per annum. An independent review by a qualified professional is, however, more cost effective. It is about half the cost of an audit and still provides oversight of trust accounts. REINZ currently has a similar requirement for its members.

We propose the primary legislation provide for trust accounts to be reviewed independently by a qualified professional, as well as providing the regulator with the power to request audits periodically.

#### *Professional insurance*

Professional indemnity insurance provides protection to businesses that provide advice to clients. Professional indemnity insurance protects individuals against the risk of making a professional mistake. It meets the cost of defending legal claims against them (such as for negligence or breach of professional duties) and the cost of damages resulting from such claims. Many professionals hold professional indemnity insurance, including lawyers, accountants, real estate agents, brokers, valuers.

Public liability insurance covers property damage that an individual may be liable to pay to a third party. We understand property managers have been subject to claims for property damage.

We considered whether all property managers should be required to hold insurance. Many property managers oversee a large portfolio of rental properties (70+) and provide advice to owners about how to maximize the return on their investment. Property managers are exposed to significant financial risk if they have been negligent. Without some type of insurance, there may be inadequate compensation available to landlords.

Requiring indemnity insurance would ensure that all property managers have a minimum level of insurance coverage for any legal claims made against them for professional errors. Requiring public liability insurance would protect property managers from claims relating to property damage.

Requiring property managers to hold professional indemnity and public liability insurance policies would result in increased costs for those managers that currently do not hold it. We understand that professional indemnity insurance could cost a property manager about \$100 per month for \$1 million insurance cover.

This would add additional regulatory costs to individual property managers who do not already hold insurance. They may seek to pass on these costs to property owners in the form of increased service charges. This could either affect property owners' returns or result in these costs being passed on to tenants through increased rents.

Given the nature of the tasks property managers undertake and the risks they present, we consider that holding both forms of insurance should be a compulsory requirement.

Given the nature of the tasks property managers undertake and the risks they present, we consider that holding both forms of insurance should be a compulsory requirement.

#### *Standard industry contract provisions*

Standardising contract provisions across the sector helps parties to the contract (property manager, landlord, or property owner) to be fully informed through a familiar contract format and standard provisions.

We considered whether the regulatory authority should have the power to be able to prescribe standard industry contract provisions.

In our early engagement with stakeholders, they did not identify contract terms as being insufficient or any other issues related to the contract terms.

Requiring standard provisions could provide greater certainty for both property managers and property owners. However, it could also result in a more prescriptive regime and provide less flexibility for property managers and owners to tailor an agreement that best meets their needs.

On balance we do not consider there is a need to establish standardised contract provisions.

## **Questions**

**Do you agree that property managers should be required to undertake continuing professional development?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*

**Do you agree that property managers should abide by a Code of Conduct?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*

**Should property managers be required to use trust accounts?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*

**Should property managers' trust accounts be subject to independent review with the regulator able to require the periodic audit of accounts?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*

**Should property managers be required to hold both professional indemnity and public liability insurance?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*





**Table 5: Professional and industry practice standards**

Features	Continuing Professional Development (CPD)	Code of Conduct	Trust Accounts	Auditing of trust accounts	Professional Insurance	Standard Industry Contract Provisions
<b>Options</b>	1. 10 hours CPD per annum 2. 20 hours CPD per annum	Only one option was assessed against the status quo.	Only one option as assessed against the status quo.	1. Independent review (similar to REINZ requirement) 2. Auditing annually 3. Auditing on request of the regulator	1. Professional indemnity insurance 2. Public liability insurance 3. Professional indemnity and public liability insurance.	Only one option was assessment against the status quo.
<b>Pros</b>	Property managers stay informed of law changes.  Opportunity for property managers to expand skill set.	Sets clear standards for the conduct expected of property managers.  Enhances and complements protections contained in the RTA.	Trust accounts provide assurance and security for funds received by property managers.  Low risk of costs being passed on to property owners.	Additional level of security around the funds managed by property managers.  Increased likelihood of issues being identified.	Ensures all property managers have a minimum cover for legal claims made against them	Standardised provisions provide greater certainty and transparency for property owners.
<b>Cons</b>	Impose additional costs and time commitment on property managers.  Additional complexity to the regime.	Increases the complexity and thus cost, of the regime.  Success of the code will depend on how it is enforced and whether there are clear sanctions	Additional cost to property managers that are not currently members of either PROMINZ or REINZ.	Additional cost to property managers that are not currently members of REINZ.	Additional cost to property managers that are not members of industry bodies that have professional insurance requirements.	Limited evidence that this is of concern for the industry.  May create a more prescriptive regime with less flexibility.
<b>Implementation issues</b>	Establishment of the required standards of training in regulations	Establish a standardised code for the industry. Detailed criteria specified in the regulations.		The regulatory authority could have the power to decide audit frequency.	The appropriate level of minimum cover needs to be determined by the regulatory authority.	Standard terms would need to be drafted to provide an industry template contract.
<b>Summary assessment</b>	<b>Yes</b>  CDP should be required. 20 hours each year should be sufficient. This aligns with current industry practice.	<b>Yes</b>  The additional costs are not be onerous and there will be benefits from providing additional protections to property owners and tenants.	<b>Yes</b>  Property managers handle large sums of money on behalf of others. The use of trust accounts should reduce the misuse of funds.	<b>Yes</b>  Independent review with the regulator able to request a full audit periodically.	<b>Yes</b>  Option 3 is the preferred option.	<b>Not required</b>  Contract terms do not appear to be an industry issue. This requirement could reduce flexibility to tailor an agreement to meet the parties' needs.

## Complaints and disciplinary framework

A robust complaints and disciplinary framework will be critical to ensure property owners, tenants, other consumers and the public in general have confidence in the residential property management industry. It helps ensure property managers are held to account and deliver a high standard of service. It helps mitigate the risk of harm to property owners, tenants and other consumers, and offers remedies when standards are not met.

The proposed complaints and disciplinary framework is designed to complement established disputes resolution mechanisms such as the Tenancy Tribunal. It is intended to provide a means to address complaints relating to the professional conduct of a property manager, or property management organisation, which involves a breach of the property management legislation or its associated regulations. It may be used by anyone who considers they may be harmed by the conduct of a property manager or property management organisation.

It is important that complaints are dealt with in a cost-effective way. This means it should be easy for property owners, tenants and other consumers (such as prospective tenants) to raise complaints about property managers. The complaints process should also recognise that some tenants are in a vulnerable position when complaining about the conduct of a property manager. Enabling the regulator to proactively investigate complaints and initiate disciplinary proceedings in its own right is one means of recognising and addressing this vulnerability.

Our proposed complaints and disciplinary process for the residential property management sector is modelled on the framework that applies to real estate agents under the Real Estate Agents Act 2008. Figure 3 depicts a process for the regulator to triage complaints which includes determining whether a complaint involves a breach of the property management legislation, whether it should be referred to another organisation, or whether it is inconsequential, frivolous or vexatious and should be dismissed. The process enables the regulatory authority to proactively identify, investigate, and initiate disciplinary proceedings in its own right utilising the Complaints Committee and Tribunal hearing process to address cases.<sup>21</sup> For complaints that are covered by the legislation, it enables resolution through mediation, a Complaints Committee (for cases that may involve 'unsatisfactory conduct') and a Disciplinary Tribunal (for more serious cases that may involve 'misconduct'). The maximum penalties outlined in the following paragraphs for both the Complaints Committees and the Disciplinary Tribunal are aligned with those provided for in the Real Estate Agents Act.

A Complaints Committee would be established by the regulatory authority. The Committee would include a lawyer, someone with property management expertise, and someone with experience in working with consumer interests. Where a 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 be independent of the regulatory authority. It 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.

Parties dissatisfied with a triaging decision made by the regulator, or with the outcome of mediation, would have the ability to appeal to the Disciplinary Tribunal. As noted earlier, decisions by the regulator to impose conditions, or suspend or revoke a licence of a regulated party would be subject to appeal to the disciplinary tribunal.

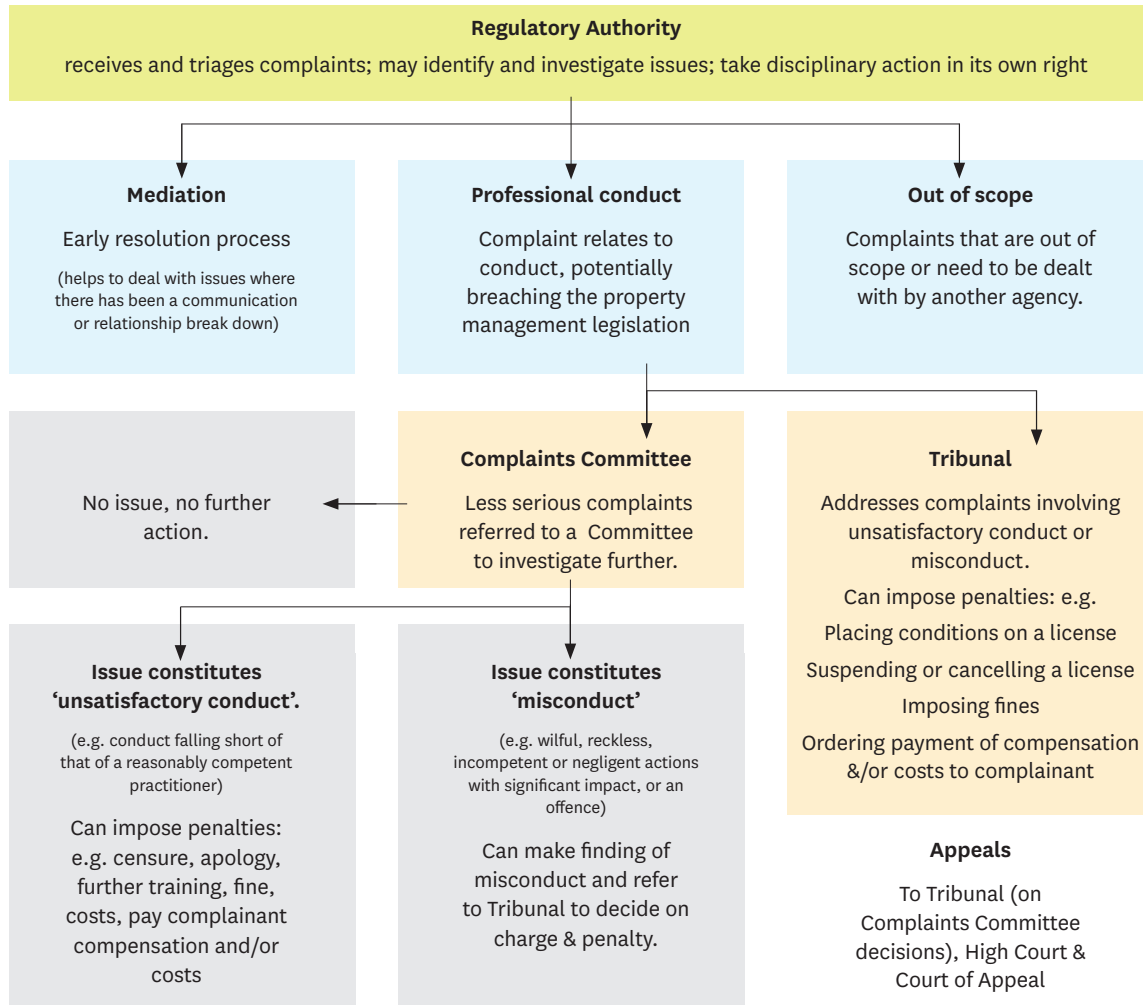
All parties would have the right to appeal a Complaints Committee decision to the Disciplinary Tribunal and retain a further right of appeal to the High Court, and to the Court of Appeal on questions of law.

Complaints Committee and Disciplinary Tribunal decisions would be published in a publicly accessible 'decisions' database.

<sup>21</sup> We anticipate the enabling legislation would provide the regulatory authority with powers to obtain or require the provision of information from regulated parties which are similar to those included in the Real Estate Agents Act.

Figure 3: **Complaints and Disciplinary framework\***

Note this framework is designed to complement, not replace, the complaints and disputes resolution framework under the Residential Tenancies Act 1986.



\* A tiered complaints system is common in New Zealand's other property related occupational regulation schemes, including real estate agents, valuers and architects. This framework is modelled on the real estate agents' framework.

### Delivery Options

Table 6 assesses three delivery options for providing the complaints and disciplinary service:

- extending the mandate of the REA Disciplinary Tribunal
- extending the mandate of the Tenancy Tribunal
- establishing a new stand-alone authority.

Under all options the regulatory authority would be responsible for triaging complaints made to it, providing mediation services, and establishing Complaints Committees as required. The substantive difference between the three options is in the consideration of more serious cases through a Tribunal.

Our preliminary conclusion is that it would be more cost effective to extend the mandate of either the REA Disciplinary Tribunal or the Tenancy Tribunal to cover property management complaints and disciplinary matters, rather than establishing a new Tribunal. Either the REA Disciplinary Tribunal or the Tenancy Tribunal could provide an independent disputes and disciplinary service. On balance, however, we propose extending the mandate of the REA Disciplinary Tribunal to cover property management issues.

The REA Disciplinary Tribunal is an established body with experience in handling disciplinary matters. We consider the Tribunal is well placed to leverage its understanding of occupational regulation and disciplinary matters while developing the necessary understanding of the property management sector and the legislation the sector needs to comply with (such as the RTA).<sup>22</sup>

This model would require a two-phase process for RTA related cases that distinguishes between RTA related claims and property management related claims and disciplinary matters. The Tenancy Tribunal will still address and settle RTA related complaints. However, where the Tenancy Tribunal considers a case presented to it under the RTA raises issues relating to the professional conduct of a property manager, it will be able to refer that case to the REA Disciplinary Tribunal to address the disciplinary issues (providing an effective triaging process for the significant volume of RTA claims).

Complaints from property owners about property managers would be lodged directly with the regulatory authority. While tenants could also lodge complaints about the professional conduct of property managers with the regulator, we anticipate this would be less common and they would continue to view the Tenancy Tribunal as their primary avenue for redress.

Over the coming months, we will engage further with the REA, MBIE, the Ministry of Justice and the two Tribunals concerned to better understand the implementation issues and costs and also take into account stakeholder submissions before providing final recommendations on the preferred approach to the Associate Minister of Housing (Public Housing).

### Questions

#### Do you agree with the proposed complaints and disciplinary framework?

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*

#### What are your views on the proposed disciplinary tribunal delivery options?

<sup>22</sup> If the Tribunal's mandate was extended, there would also be value in widening the criteria for appointing Tribunal members to include persons with property management sector expertise.

**Table 6: Complaints and disciplinary framework delivery options**

Options:	1: Extend the REA Disciplinary Tribunal’s mandate	2: Extend the Tenancy Tribunal’s mandate	3: Establish a new tribunal
<b>Description</b>	The Disciplinary Tribunal’s mandate would be extended to cover property managers. The regulatory authority would triage complaints, provide mediation services, and establish Complaints Committees.	The Tenancy Tribunal’s mandate would be extended to cover property managers. The regulatory authority would triage property management related complaints, provide mediation services, and establish Complaints Committees.	A new disputes resolution tribunal would be established to address complaints regarding property managers’ conduct. The regulatory authority would triage property management related complaints, provide mediation services, and establish Complaints Committees.
<b>New functions and powers</b>	<ul style="list-style-type: none"> <li>• The regulator may receive and triage complaints, provide mediation services and appoint complaints committees. It can also identify, investigate, and initiate disciplinary proceedings in its own right.</li> <li>• The regulator can refer complaints to either a Complaints Committee or the Tribunal.</li> <li>• Complaints Committees may make decisions on cases involving ‘unsatisfactory conduct’ and refer cases it determines involve ‘misconduct’ to the Tribunal.</li> <li>• Complaints Committees can impose remedies and penalties including: censure, requiring an apology, further training, payment of a fine, complainant cost and/or compensation.</li> <li>• The Tribunal may make decisions on cases involving either unsatisfactory conduct or misconduct. It can impose the same remedies and penalties as a Complaints Committee as well as impose licence conditions, suspend, or cancel licences, impose higher fines, require payment of higher levels of compensation along with costs to complainants.</li> </ul>		
<b>Pros</b>	<ul style="list-style-type: none"> <li>• The Tribunal addresses disciplinary matters for real estate agents similar in nature to those with property managers.</li> <li>• Leverages Tribunal’s specialist knowledge of occupational regulation and conduct/disciplinary matters.</li> <li>• Distinguishes between the high volume of RTA-related claims and the smaller number of claims raising disciplinary issues relating to property managers (effective triaging).</li> <li>• Small REA complaints caseloads mean the Tribunal should be able to accommodate property management related complaints (about 50-80 REA claims per annum).</li> <li>• Using an existing Tribunal minimises establishment and operating costs.</li> <li>• Low-cost structure (\$30 application fee).</li> </ul>	<ul style="list-style-type: none"> <li>• One tribunal to consider all matters relating to residential tenancy and residential property management complaints.</li> <li>• Provides additional powers to the Tenancy Tribunal to address non-compliance on RTA matters that involve property managers.</li> <li>• Tribunal able to identify and consider property manager conduct issues as well as breaches to the RTA.</li> <li>• “One-stop-shop” for tenants.</li> <li>• Minimises establishment and operating costs by using an existing Tribunal.</li> <li>• Low-cost structure (\$20.44 application fee).</li> </ul>	<ul style="list-style-type: none"> <li>• Deals specifically with complaints about property managers, developing specialist expertise.</li> </ul>
<b>Cons</b>	<p>No direct link to tenancy complaints under the RTA.</p> <p>Some cases will need to be referred from the Tenancy Tribunal where it finds they raise property manager conduct issues, resulting in inefficiencies.</p> <p>Would need to develop understanding of, and expertise in, the residential property management sector.</p> <p>Potential for confusion about which tribunal should be used by tenants and landlords.</p>	<p>The Tribunal would need to develop its understanding of the property management occupational regulatory system and the application of new disciplinary penalties.</p> <p>Property management professional conduct complaints may get lost in the large volume of RTA complaints (TT receive about 18,000 complaints per annum).</p>	<p>Inefficient to establish a standalone tribunal. Potentially small case load (REINZ receives about 12 property manager complaints a year).</p> <p>No coverage of wider tenancy issues under the RTA.</p> <p>Some cases may have to be referred from the Tenancy Tribunal where it considers cases raise property manager conduct issues.</p> <p>Potential for confusion about which tribunal should be used by tenants and landlords. Potential for low engagement from tenants.</p> <p>Long implementation period and higher establishment/operating cost.</p>
<b>Implementation issues</b>	The Tenancy Tribunal will still address RTA complaints. However, where the Tenancy Tribunal considers a case presented to it under the RTA raises issues relating to the professional conduct of a property manager it will require the Authority to refer that case to the Real Estate Agents Disciplinary Tribunal to address the disciplinary issues.	Regulatory Authority’s triaging function would not apply to RTA related cases lodged directly with the Tenancy Tribunal that raise professional conduct issues for property managers. Policy and business process issues will need to be addressed to close the disciplinary loop between the Tribunal and the Regulator.	The Tenancy Tribunal will still address RTA related complaints. However, where the Tenancy Tribunal considers a case presented to it under the RTA raises issues relating to the professional conduct of a property manager it will need to refer that case to the new Tribunal to address the disciplinary issues.
<b>Summary assessment</b>	<p><b>Preferred option</b></p> <p>This option uses an established disciplinary tribunal and enables a two-phase process for RTA related cases that distinguishes between RTA related claims and property management claimants and disciplinary matters.</p>	<p><b>Option under consideration</b></p> <p>This is a viable alternative to Option 1. It enables RTA claims and disciplinary matters to be dealt with by the same Tribunal. However, there is value in separating consideration of high-volume RTA claims from disciplinary matters relating to property managers and recognising the different nature of these proceedings.</p>	<p><b>Not recommended</b></p> <p>The benefits of a specialist standalone tribunal do not outweigh the costs. It would be more cost-effective to expand the scope of an existing tribunal.</p>

## Offences and penalties

### *Introduction – contributing to effective compliance management*

We consider there is a need to include a number of offences with appropriate penalties to ensure compliance with regulatory requirements. They will form part of the 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 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 proposed offences and penalties framework is designed to be an effective compliance management mechanism which is also proportionate to the form of non-compliance being addressed. Our proposed offences and penalties are aligned with those included in similar occupational regulatory systems, such as the Real Estate Agents Act.

### *Offences*

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.

### *General Penalties*

In keeping with the provisions in the Real Estate Agents Act, we propose that unless a lesser penalty maxima is provided for specific offences, the maximum penalties should be:

- in the case of an individual, a fine not exceeding \$40,000
- in the case of a company or other organisation, a fine not exceeding \$100,000.

### Discussion

The offences and penalties framework provides a necessary backstop that will help ensure compliance with regulatory system requirements. It can be used when other compliance management interventions by the regulatory authority have failed to achieve compliance.

The proposed offences are consistent with legislative and regulatory good practice requirements. The offences address matters where private enforcement of breaches of regulatory requirements is expected to be insufficient. The harms created by breaches are likely to be diffused across many affected parties, and the cost of private civil action is expected to outweigh the private benefit that an individual might gain from taking such action.

The maximum penalties are proportionate to the nature of the offences and are expected to be effective in deterring non-compliance. They are aligned with penalties applied in other regulatory systems, in particular the Real Estate Agents Act. While the functions of Real Estate Agents and Property Managers differ, a number of real estate agents and real estate agencies offer property management services. Where possible, alignment of offences and penalties provides certainty and consistency across related regulatory systems.

### Links and Dependencies

The proposed offences and penalties regime complements the complaints, disputes resolution and disciplinary framework.

It is important to note that nothing in the proposed regulatory regime affects any civil remedy a person may have against a residential property manager or a residential property management organisation (for example, through claims to the Tenancy Tribunal, the Disputes Tribunal, or through the District or High Court).

## Questions

### **Do you agree with the proposed offences framework?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

### **Are there any additional offences that should be included in the framework?**

### **Do you agree with the proposed maximum penalties?**

*(Strongly agree, agree, Not sure, Disagree, Strongly disagree) Please explain why/comment*



## Regulatory stewardship and management

### Introduction

We need to ensure there are appropriate regulatory stewardship and management arrangements in place for the regulatory system.

### Context

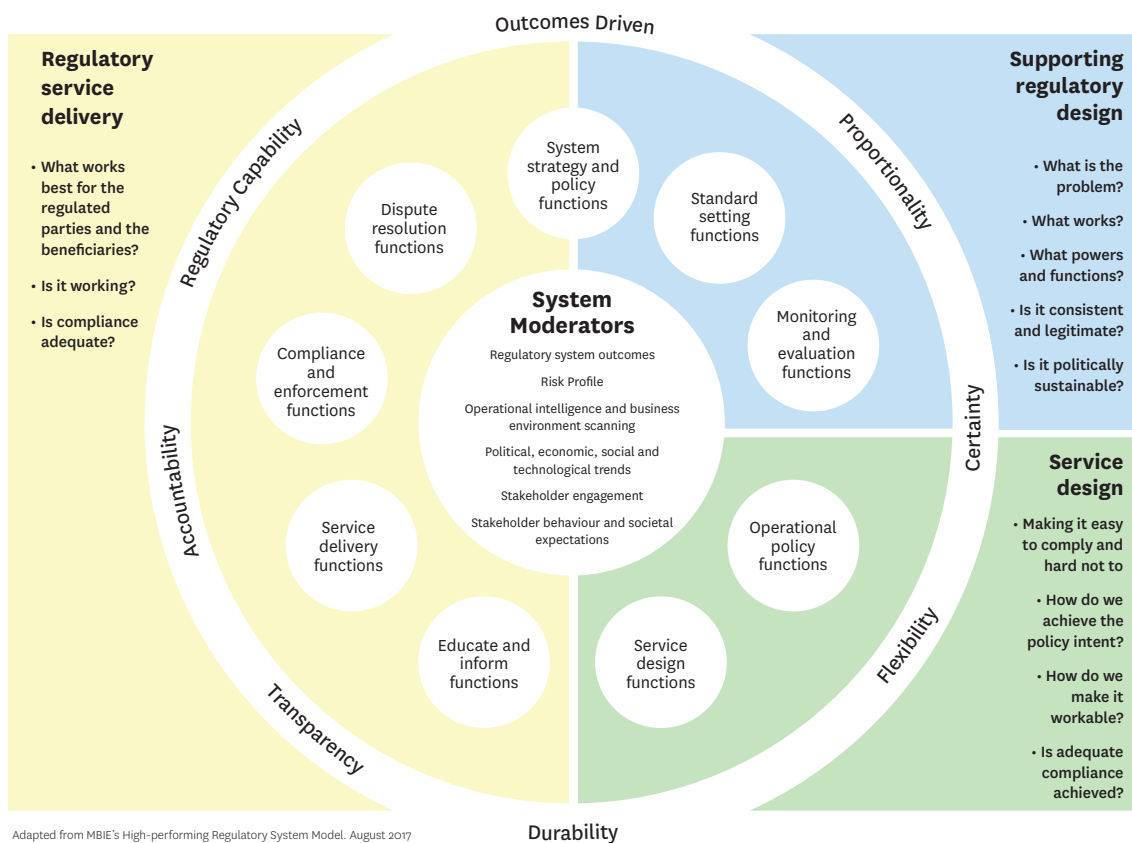
Regulatory stewardship involves overseeing the performance of the entire regulatory system, while regulatory management involves responsibility for the delivery of particular regulatory functions.

When considering the design and delivery of core regulatory stewardship and regulatory management functions it is useful to consider:

- how those functions form part of a fit for purpose regulatory system
- how the functions and wider regulatory system are influenced by a range of moderating factors and enabling regulatory principles.

Figure 4 illustrates the relationship between regulatory functions and the wider regulatory system.<sup>23</sup>

Figure 4: Regulatory System Model - A functional perspective



<sup>23</sup> Adapted from MBIE, MBIE's Regulatory Stewardship Strategy 2017/18 (August 2018), page 21.

Accountability for regulatory stewardship and management functions can be vested in one party – such as the Chief Executive of a core public service organisation. For example, the Chief Executive of MBIE is responsible for the regulatory stewardship of employment relations including core regulatory service design and delivery functions.

In practical terms the delivery of these functions is usually undertaken by different parties within the organisation headed by the accountable Chief Executive.

Accountability for stewardship and management functions can also be divided between different parties. The Ministry of Justice is, for example, responsible for the stewardship of the Real Estate Agents' regulatory system. The Real Estate Authority is responsible for the delivery of particular regulatory services within that system, while the Real Estate Agents Disciplinary Tribunal is charged with particular dispute resolution functions.<sup>24</sup>

### *Regulatory Stewardship*

We anticipate Te Tūāpapa Kura Kāinga, acting as the lead adviser to the responsible Minister for the regulatory system, will be responsible for regulatory stewardship. It involves taking a whole-of-system view, and a proactive, collaborative approach to the care of the regulatory system.<sup>25</sup> This will include:

- policy advice on regulatory system design and development (including the development of regulations and promotion of regulatory good practice)
- regulatory system monitoring, evaluation, and reporting
- monitoring and reporting on the performance of the regulatory authority.

### *Regulatory Management*

We propose a separate regulatory authority will be responsible for service design and delivery. The regulator's functions would include:

- Education and professional development: This includes:
  - facilitating the establishment of appropriate training and education standards to meet competency requirements for licensing purposes
  - ensuring the provision of education and ongoing professional development services.
- Registration and licensing: This includes:
  - establishing and maintaining a licensing system for regulated parties
  - establishing and maintaining a public register of regulated parties.
- Standard setting: This includes:
  - developing, maintaining, and promoting to regulated parties' professional entry and industry practice standards, including a code of conduct, fit and proper person requirements, and any other standards required to meet the purpose of the regulatory system.
- Compliance management: This includes:
  - providing operational policy advice and regulatory service design services
  - raising awareness of the regulatory system among regulated parties and promoting the benefits of using registered and licensed property managers

<sup>24</sup> The Tribunal hears and determines disciplinary charges made against licensees. The charges are referred to it by a Complaints Assessment Committee of the Real Estate Authority. The Tribunal also hears and determines applications for a real estate agent's or agency's licence to be suspended until the charges have been heard. It also deals with appeals against a committee's decisions and reviews the decisions of the Registrar not to grant or renew a real estate licence.

<sup>25</sup> See <https://g-reg.govt.nz/stewardship/>.

- providing information and advice on regulatory requirements to regulated parties
- providing investigation and audit services to monitor the activities of regulated parties and intervene where appropriate
- issuing warnings and requiring remedial actions to meet regulatory requirements
- taking disciplinary action, including imposing licensing conditions, licence suspension, licence disqualification/revocation or prosecution
- initiating proceedings in relation to offences established in enabling legislation.

*Disputes resolution:* This includes:

- establishing and overseeing a process for resolving complaints and disputes relating to regulated parties.

The regulatory authority may delegate or sub-contract the delivery of certain activities. For example, it might choose to establish broad competency requirements, and delegate or sub-contract the design and delivery of entry qualifications and associated training programmes that meet those standards.

We also anticipate the regulator's approach to resolving complaints and disputes will involve the appointment of an independent disputes' tribunal.

#### *Delivery Options*

We have identified the following options for the establishment and delivery of regulatory functions:

- an industry body: An industry body, such as REINZ, PINZ or PROMINZ or the RPMA, being established as the Regulatory Authority. The designated industry body could be named in primary legislation. Alternatively, the power to delegate any or all regulatory functions to a suitable industry association outside the public service could be included in primary legislation, subject to the industry body meeting certain qualifying criteria such as demonstrating:
  - they have the capability to perform delegated functions
  - they have the experience and expertise in the property management sector
  - broad industry support for them to perform the function
  - their governance arrangements enable input from key stakeholders in the property management sector
  - the delivery of the function or service is likely to be more timely, cost effective and efficient than other options available to the Government.
- *Real Estate Authority:* The legislative mandate of the Real Estate Authority would be extended to include regulatory management of property managers
- *MBIE administered regulatory management:* MBIE's Chief Executive would appoint a registrar responsible for the delivery of the regulatory management functions.
- *a new standalone regulatory authority:* A new independent regulatory authority would be established as a standalone agency.

#### *Preliminary Assessment*

Table 7 provides a preliminary assessment of the pros and cons of the delivery options.

In summary, we favour having the regulator's powers and functions vested in a body independent of the property management industry. In our view, the benefits of this approach outweigh the additional risks and costs associated with industry-based regulatory body. We consider it will be more cost effective to either extend the REA's mandate or provide for the delivery of regulatory management services by MBIE, rather than establishing an entirely new standalone authority. Further analysis is required to assess the implementation issues and costs associated with these two remaining options. We anticipate engaging with both REA and MBIE to progress this work.

## Questions

**Do you have any comments to make on Te Tūāpapa Kura Kāinga proposed regulatory stewardship role?**

**Do you have any issues or concerns with the regulatory authority's proposed functions?**

**Do you agree the regulatory authority's functions should be vested in a body independent of industry?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

**Which entity is best placed to perform the regulator's functions:**

- The Real Estate Authority (REA)
- MBIE
- Other?

*Comment (Why)*

**Table 7: Regulatory authority options**

	<b>Industry association (e.g., PINZ, PROMINZ, RPMA or REINZ)</b>	<b>Real Estate Authority</b>	<b>MBIE provided regulatory management</b>	<b>New standalone regulatory authority</b>
<b>Description</b>	An industry association would be designated as the regulatory authority.	The mandate of the Real Estate Authority would be extended to include regulatory management of property managers.	MBIE's Chief Executive would appoint a registrar responsible for the regulatory management of property managers.	A new independent regulatory authority would be established as a standalone agency.
<b>Pros</b>	<p>Industry ownership and knowledge provides foundation for industry buy-in and support.</p> <p>Leverages existing policies, processes, and systems within designated industry association.</p> <p>Current membership includes some (but not all) property managers.</p>	<p>Regulator independent of industry.</p> <p>Established regulatory authority that can leverage existing policies, processes, and systems.</p> <p>Synergies arising from regulation of real estate agents some of whom are also property managers.</p>	<p>Regulator independent of industry.</p> <p>Ability to leverage existing policies, processes and systems associated with other regulatory authorities administered by MBIE.</p> <p>Synergies from providing residential tenancy services and administration of the Tenancy Tribunal.</p>	<p>Regulator independent of industry.</p> <p>Greenfields approach to designing and delivering fit for purpose regulatory management services.</p>
<b>Cons</b>	<p>Risks associated with industry self-regulation.</p> <p>Conflict of interest in relation to industry advocacy role.</p> <p>Competing claims to the role across differing industry associations.</p> <p>Implementation risks associated with change in role and establishing new regulatory functions.</p> <p>Additional regulatory stewardship and audit requirements to oversee delivery by agency outside public service.</p>	<p>Would need to develop specialist knowledge of property management sector.</p> <p>Property management regulation could be 'lost' or given lower priority in relation to the larger real estate sector.</p>	<p>Would need to develop specialist knowledge of property management sector.</p> <p>Property management regulation could be 'lost' or given lower priority given the wide range of other occupational regulatory regimes for which MBIE has accountability.</p>	<p>Would need to develop specialist knowledge of property management sector.</p> <p>Potential for higher establishment and operating costs and longer establishment timeframes compared with an established independent regulatory authority.</p>
<b>Summary assessment</b>	We favour having the regulatory authority's powers and functions vested in a body independent of the property management industry. In our view the benefits of this approach outweigh the additional risks and costs associated with an industry-based regulatory body. We consider it would be more cost-effective to establish the regulator's function within the REA or MBIE, rather than establishing a new stand-alone authority.			

## Cost recovery

We consider a significant proportion of the costs associated with the delivery of the regulatory system should be met by third parties through fees and levies rather than being funded by the Crown.

### *Rationale*

The regulatory system will deliver benefits to residential property managers and the property management sector. It also has benefits for property owners and associated downstream benefits to tenants as it mitigates the harms associated with the delivery of property management services. Effective regulation of property managers also helps to promote public confidence in the integrity of the residential tenancy market, which is a significant provider of safe, dry homes in New Zealand.

On balance, we consider a significant proportion of the cost associated with delivery of regulatory system services should be met by property managers as it is their activity that creates the risks the system is designed to manage.

We propose that the cost of services that provide direct ('private good')<sup>26</sup> benefits to individual property managers – such as completing a training course or qualification that is a prerequisite to obtaining a licence, or obtaining a licence to provide property management services – should be paid by individual property managers in the form of a fee. Services that provide benefits to property managers collectively (club goods)<sup>27</sup> such as the provision of professional and industry standard setting services and a range of compliance management services - should be met through a levy on all licensed property managers that is paid in conjunction with the licensing registration fee.

Our approach to funding complaints and dispute resolution services recognises that cost should not act as a barrier to holding property managers to account and the need for the service arises from the activities of property managers. Ensuring property managers meet agreed professional standards through a complaints based disciplinary process also has club and some merit good aspects to it.<sup>28</sup> We propose, therefore, that it is primarily funded via a levy on the property management sector. We propose that in addition to a levy contribution from industry, a modest application fee should also apply to any party wishing to utilise the system's disputes resolution process to seek personal redress for the actions of a property manager. This acts as a check on frivolous claims and recognises there is a private benefit derived from the action.

We propose that the costs associated with the regulatory stewardship responsibilities for Te Tūāpapa Kura Kāinga be met from core government funding. The service is provided primarily to the responsible Minister and to Parliament and has wider public good benefits.<sup>29</sup>

### *The cost recovery framework*

Table 8 outlines more fully the relationship between regulatory system outputs, service users and the proposed cost recovery arrangements and the rationale for them.

<sup>26</sup> According to NZ Treasury guidelines, a private good is one where people can be excluded from its benefits at a lower cost and use by one person conflicts with use by another. Examples of private goods include passports, birth certificates and licences. There is a strong case for recovering the costs of a private good from those who benefit from it, usually through a fee.

<sup>27</sup> According to NZ Treasury guidelines a club good is one where people can be excluded from its benefits at a low cost but its use by one person does not detract from its use by another, at least until the point where congestion occurs. Examples of club goods provided by the public sector include toll roads and nature parks. A common way to charge for the use of a club good is a levy applied to a group of users, such as members of an industry group.

<sup>28</sup> According to NZ Treasury guidelines a merit good is one that is likely to be produced at a lower level than the community desires in a free market situation. This may be because the public benefit of the good is greater than the private benefit, and consumers only take into account the private benefit when making decisions.

<sup>29</sup> According to NZ Treasury guidelines a good is considered to be a public good when excluding people from its benefits is either difficult or costly and its use by one person does not detract from its use by another. There is a good case for recovering the costs of a public good through general taxation or, if the benefits are localised, from local government revenue. Examples include national security and street lighting. Many Government-provided outputs share the characteristics of public goods to some extent. Although such goods and services might have some elements of a public good, there still might be justifications for recovering costs.

**Table 8: Cost recovery arrangements**

<b>Regulatory System Outputs</b>	<b>Education and training</b> <ul style="list-style-type: none"> <li>Pre-requisite training</li> <li>Pre-requisite Qualifications</li> <li>Continuing Professional Development program.</li> </ul>	<b>Licensing and registration</b> <ul style="list-style-type: none"> <li>Licensing</li> <li>Public registration.</li> </ul>	<b>Standard setting</b> <ul style="list-style-type: none"> <li>Professional Practice Standards</li> <li>Industry Practice Standards.</li> </ul>	<b>Compliance management</b> <ul style="list-style-type: none"> <li>Promotion and information</li> <li>Advisory Services</li> <li>Warnings &amp; directives</li> <li>Disciplinary action and enforcement (licence conditions, suspensions, revocation)</li> <li>Prosecution of offences</li> <li>Investigation and audit.</li> </ul>	<b>Disputes resolution</b> <ul style="list-style-type: none"> <li>Disciplinary complaints (breach of professional standards)</li> <li>Dispute resolution (claimant seeking personal redress).</li> </ul>	<b>Regulatory stewardship</b> <ul style="list-style-type: none"> <li>System monitoring, evaluation &amp; reporting</li> <li>Regulator performance monitoring</li> <li>Regulatory system development.</li> </ul>
<b>Direct User/ Beneficiary</b>	Property Manager	Property Manager	Property Manager Sector	Property Manager Sector	<ul style="list-style-type: none"> <li>Property Management Sector</li> <li>Claimants (Property Owners, Tenants).</li> </ul>	<ul style="list-style-type: none"> <li>Minister</li> <li>Parliament</li> <li>Regulatory Authority.</li> </ul>
<b>Provider</b>	Third-party provider or Regulatory Authority	Regulatory Authority	Regulatory Authority	Regulatory Authority	<ul style="list-style-type: none"> <li>Regulatory Authority Complaints Panel (Complaints)</li> <li>Recognised Tribunal (Disputes).</li> </ul>	Regulatory Steward (Te Tūāpapa Kura Kāinga)
<b>Output's Economic characteristics</b>	Private Good	Private Good	Club Good	Club Good	Club and merit good (complaints and disputes) Private good (disputes)	Public Good
<b>Impact considerations</b>	Requirement and cost a necessary barrier to entry.	Requirement and cost a necessary barrier to entry.	Shared cost has a marginal impact on economic return from trade.	Shared cost has a marginal impact on economic return from trade.	Costs should not act as a barrier to enabling accountability and redress for harm.	Public good characteristics suggest this should be a cost to the Crown.
	Subject to other market considerations, property managers' regulatory costs could be passed on to property managers in increased service fees and as a consequence also impact on residential tenancy rental costs.					
<b>Funding method</b>	Fees (full cost)	Fees (full cost)	Levy incorporated into licensing fee (full cost)	Levy incorporated into licensing fee (full cost)	<ul style="list-style-type: none"> <li>Levy incorporated into licensing fee (majority of cost)</li> <li>Application fee for disputes where applicant seeks personal redress (part cost).</li> </ul>	Crown funding - Departmental Appropriation (full cost)

### *Checks and Balances*

To ensure appropriate checks and balances are established, we propose that the following principles frame the government's approach to cost recovery and be incorporated in primary legislation:

- *equity*: Funding for regulatory system outputs should generally be sourced from:
  - users or beneficiaries of the output; or,
  - the parties whose activities have caused the risk or adverse effect the output helps address.
- *efficiency*: Costs should be allocated and recovered in order to ensure the maximum benefits are delivered at minimum cost.
- *justi iability*: Costs should only be collected to meet the actual and reasonable costs (including indirect costs) associated with the output.
- *transparency*: Costs should be identified and allocated in relation to the outputs provided for the recovery period in which the outputs are provided.

The cost recovery requirements, including the level of charges, would be established in regulations which would be subject to Ministerial approval.

Before seeking to recover costs, the regulatory authority must ensure affected parties, or representatives of affected parties have been consulted. The affected parties include property managers, property owners, tenants and tangata whenua.

The Minister responsible for the regulatory system may also, from time to time, order a review of the levels and methods of cost recovery to ensure they are consistent with the legislation's cost recovery principles.

### *Implementation issues – establishment phase*

Current uncertainty around the actual number of property managers that will be subject to regulation creates challenges in establishing fees and levies at a level that will cover the regulatory system's costs. In addition, the regulatory authority will have establishment costs that need to be funded in advance of it receiving income through fees and levies. An initial government appropriation to cover the regulatory authority's establishment and first year operating costs may be required. Following the public consultation process, we anticipate estimating establishment costs, first year operating costs and any ongoing appropriation that might be required and factoring these estimates into advice to Ministers.

### *Indicative Costs*

The cost recovery framework and actual charge levels will be determined after:

- final decisions are made about the preferred regulatory model
- the preferred entity to act as the regulatory authority has been agreed
- further analysis can be undertaken to determine estimated direct and indirect costs.

While we cannot at this stage quantify proposed regulatory system fees and levies, we note the following benchmarks:

- *Vocational training*
  - The REINZ training course, Beginners Guide to Property Management, costs \$299 (excluding GST) for non-members and \$199 (excluding GST) for REINZ members.
  - The Rent Smart Wales model requires property manager to complete a training module before becoming licensed. This can be done online or in person. The training is estimated to take about 7.5 hours and cost is £50 (about NZ\$93) for online and £140 (about NZ\$261) for classroom attendance.
  - Costs for the Level 4 Certificate in Property Management from Skills range from \$994.75 for the online module to \$1950.00 for an integrated in-person and online module.



- *Licensing and membership fees*
  - The application fee to register as a valuer in New Zealand is \$820.
  - To gain a Real Estate Agent's licence in New Zealand, the cost is \$939.55. This includes the application fee, operational levy, and disciplinary levy. To retain a licence, agents need to pay \$724.50 per annum to cover the annual operational and disciplinary tribunal levies.
  - The Property Institute of New Zealand's fees vary by membership class. The senior member application fee is \$125 with an annual subscription fee of \$1,033.50.
  - In Wales and Ireland, the fee paid by property managers is dependent on the role they have within a property management organisation or the number of properties they manage.
  - In Victoria (Australia) property managers pay AUD\$392 (about NZ\$400) to obtain a licence, and in New South Wales (Australia) it costs AUD\$755 (about NZ\$769).
  
- *Disputes resolution*
  - It costs \$20.44 to lodge a claim with the Tenancy Tribunal.
  - It costs between \$45 - \$180 to lodge a claim with the Disputes Tribunal. The amount depends on the claim's size.

## Questions

**Do you agree with the proposed cost recovery framework?**

*(Strongly Agree/Agree/Not sure/Disagree/Strongly Disagree) Please explain why/comment*

**Are there any changes that should be made to the framework?**

## DELIVERY AND NEXT STEPS

### Overview

When the submissions period closes, we will analyse the submissions and report to the Associate Minister of Housing (Public Housing). We anticipate the Minister will seek Cabinet decisions on the regulation of property managers later in 2022.

If agreed by Cabinet, 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 draft Bill is being 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, we anticipate the primary legislation would not come into force until approximately 12 months following it being passed by Parliament.

We also anticipate the legislation will include transitional arrangements and a further transitional period of approximately 12 months to provide time for:

- Regulated parties to be able 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).

In conjunction with the legislation passing, Te Tūāpapa Kura Kāinga 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.

### Indicative implementation timeframes

Table 9 outlines indicative timeframes for the development, passage, and implementation of the legislation.

**Table 9: Indicative implementation timeframes**

Milestone	Target Date
Cabinet agrees to develop draft Bill	September 2022
Cabinet approves introduction of the draft Bill to Parliament	April 2023
Draft Bill's receives First Reading and referred to Select Committee	May 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

### Questions

**Do you have any concerns with the proposed development process and indicative timeline?**

**Do you have any final comments you wish to make?**

## APPENDIX A - DEFINITIONS

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The following meanings are given to terms used in this discussion paper:

**agent**, in relation to any person who is a landlord or a tenant, means an agent of that person in that person's capacity as landlord or tenant; and includes an employee of that person in that person's capacity as landlord or tenant. (*RTA 1986*)

**bond** means any sum of money payable or paid under a tenancy agreement as security for the observance and performance of the tenant's obligations under the agreement and this Act; but does not include any sum payable or paid by way of rent. (*RTA 1986*)

**landlord**, in relation to any residential premises that are the subject of a tenancy agreement, means the grantor of a tenancy of the premises under the agreement; and, where appropriate, includes—

- a. a prospective landlord; and
- b. a former landlord; and
- c. a lawful successor in title of a landlord to the premises; and
- d. the personal representative of a deceased landlord; and
- e. an agent of a landlord. (*RTA 1986*)

**letting agent**, in relation to a tenancy, means a person who, in the ordinary course of business, acts, or who holds himself or herself out to the public as ready to act, for reward as an agent. (*RTA 1986*)

**misconduct**, occurs when a regulated party's conduct:

- a. would reasonably be regarded by regulated parties of good standing, or a reasonable member of the public, as disgraceful; or
- b. wilfully or recklessly (whether by act or omission) fails to meet a statutory obligation that is more than minor or inconsequential; or,
- c. constitutes an offence for which the regulated party has been convicted, being an offence that reflects adversely on regulated party's fitness to be licensed. (Adapted from the *Forests (Regulation of Long Traders and Forestry Advisers) Amendment Act 2020* and the *Real Estate Agents Act 2008*.)

**residential property** means any property used, or intended to be used, exclusively or principally for residential purposes. (*Real Estate Agents Act 2008*)

**residential tenancy property owner** means a natural person or entity who owns a residential property that is made available for residential tenancy purposes. (Our preliminary definition)

**residential property manager** means a natural person, in trade, who can be self-employed, a sole trader or an employee of a property management organisation offering any or all of the following services in relation to residential properties:

- a. initial property inspection and rental appraisals
- b. property letting, including tenant and lessee vetting
- c. bond lodgement and refund transactions and safe stewardship of tenants' money
- d. collecting and managing rental income
- e. regular property inspections
- f. organising maintenance and repairs
- g. providing or contracting building management activities
- h. regularly reporting to the property owner
- i. performing rental reviews
- j. arranging for the payment of insurance and local authority rates and other property expenses
- k. managing compliance with relevant minimum standards and minimising business risk on behalf of property owners. (Our preliminary definition)

**tenancy**, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy. (RTA 1986)

**tenancy agreement**, in relation to any residential premises, means any express or implied agreement under which any person, for rent, grants or agrees to grant to any other person a tenancy of the premises; and, where appropriate, includes a former tenancy agreement and any variation of a tenancy agreement. (RTA 1986)

**tenant**, in relation to any residential premises that are the subject of a tenancy agreement, means the grantee of a tenancy of the premises under the agreement; and, where appropriate, includes—

- a. a prospective tenant; and
- b. a former tenant; and
- c. a lawful successor in title of a tenant to the premises; and
- d. the personal representative of a deceased tenant; and
- e. an agent of a tenant. (RTA 1986)

**Unsatisfactory Conduct** is defined as conduct that:

- a. falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensed person; or
- b. contravenes the person's obligations under the legislation in a way that is more than minor or inconsequential; or
- c. is incompetent or negligent; or
- d. would reasonably be regarded by licensed persons of good standing as being unacceptable. (*Adapted from the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 and the Real Estate Agents Act 2008.*)