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Submission form

Regulation of Residential Property Managers

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# How to submit this form

Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (HUD), would like your feedback on the proposals contained in the discussion paper *Residential Property Management – Regulatory Options*. Please provide your feedback by **5pm, Tuesday, 19 April 2022.**

Please complete this submission form and submit it to us by email to:

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

When completing this form, please provide comments and supporting explanations for your reasoning where relevant. Your feedback provides valuable information and informs decisions about the proposals.

We appreciate the time and effort you are taking to respond to this consultation.

# Submitter information

Te Tūāpapa Kura Kāinga would appreciate it if you would provide some information about yourself. If you choose to complete the section below it will be used to help us understand how different sectors view the proposals and options for the regulation of residential property managers. Any information you provide will be stored securely.

**Your name, email address, phone number and organisation**

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| Email address: |  |
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| Phone number: |  |

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| Organisation: |  |

Are you making this submission on behalf of a business or organisation?

Yes  No

If yes, please provide a brief description of your organisation and its aims.

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1. The best way to describe you or your organisation is:

Property Owner and/or Landlord

Tenant

Property Manager  Other (please specify below)

Property Management Company  Prefer not to say

Please specify here.

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1. If you are a property manager, are you a member of an industry body?

Yes  No

If you are, what industry body are you a member of?

Real Estate Institute of New Zealand (REINZ)

Property Managers Institute of New Zealand (PROMINZ)

Residential Property Managers Association (RPMA)

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| Other (please specify) |  |

**Privacy & Official Information**

*Privacy Act 2020*

The Privacy Act 2020 establishes principles about the collection, use and disclosure of personal information. Te Tūāpapa Kura Kainga adheres to these principles thus any personal information you supply to us will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in the discussion paper.

Please tick the box if you do not wish to have your name or other personal information to be included in any information about submissions we may publish.

*Official Information Act 1982*

While we are not proposing to publish the individual submissions we receive, they may be requested under the Official Information Act 1982. To assist us address any request we may receive under the Official Information Act, please respond to the following:

I consent to my submission being released if requested under the Official Information Act.

I consider my submission, or identifiable parts of my submission, should be withheld from release under the Official Information Act and have stated my reasons and the grounds that apply under section 9 of the Act for consideration by Te Tūāpapa Kura Kainga:

Reasons for Withholding Submission in whole or in part:

We will take any objection you may have into account and will consult with submitters when responding to requests under the Official Information Act.

**Follow Up**

Are you happy for Te Tūāpapa Kura Kāinga to contact you if we have questions about your submission?

Yes  No

**The Preferred Regulatory Model - Overview**

The regulatory system should promote public confidence in the delivery of residential property management services and protect the interests of property owners and tenants 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.

The following table depicts the emerging preferred regulatory model’s key features which we have assessed against a range of other options and outlined more fully in the discussion paper.

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| **System Features** | **Preferred Model Description** | **Rationale/Comment** |
| **Regulated Parties** | Residential property managers and residential property management organisations | Regulating both individuals and organisations provides better protection to property owners and tenants and allows a wider range of interventions to be applied. |
| **Registration and Licensing** | Public register for individuals and organisations.  Licensing for individuals only. | Registration requires all individuals providing property management services to list their name and place of business on a public register. Registration provides a means for identifying and contacting a practitioner.  Licensing requires individuals to meet the prescribed requirements to become licenced and to retain their licence. |
| **Professional Entry Requirements** | * 18 years of age * Fit and proper person test * Education/training *(“basic” course - 15 hours)​* | Entry requirements are complemented by a suite of on-going practice requirements.  Entry requirements are less onerous than for real estate agents but are in line with what property management industry bodies are requiring of their members. |
| **Industry Practice Standards** | * Continuing Professional Development​   *(20 hours per annum)*   * Code of Conduct​ * Indemnity and public liability insurance * Trust Accounts​ *(including* *independent review with periodic audits as required by the regulator)* | Property managers have to comply with the on-going practice requirements to be able to continue to operate as a property manager.  These ongoing requirements complement the entry requirements to ensure property managers meet appropriate competency and good practice requirements. |
| **Complaints & Disciplinary** | A tiered complaints system that allows for complaints to be escalated depending on their seriousness. The framework allows for mediation, or consideration by either a dedicated complaints committee or a tribunal.  Extending the mandate of either:   * REA Disciplinary Tribunal​ *(Preferred)*;   or Tenancy Tribunal *(Under consideration)* | This framework is intended to provide a mechanism for addressing complaints related to the professional conduct of a property manager (or organisation). It will complement established dispute resolution mechanisms such as those provided under the Residential Tenancies Act.  The regulator can investigate issues and take disciplinary action in its own right making it easier for vulnerable tenants to raise issues about property managers. |
| **Offenses & Penalties** | The details on proposed offences can found in the discussion paper.  General maximum penalties:   * for an individual – a fine not exceeding $40,000 * a company – a fine not exceeding $100,000. | Offences and penalties are required to help ensure parties comply with regulatory system requirements.  The proposed offences are consistent with legislative and regulatory good practice requirements.  The penalties are aligned with penalties applied in other similar regulatory systems. |
| **Regulatory Management** | Real Estate Authority’s mandate extended​; or  MBIE administered regulatory management  *(Under consideration)* | We propose a regulator independent of the property management industry. It will be more cost effective to establish the regulator’s functions within an existing organisation. Two options are under consideration. |
| **Cost recovery** | A mixed model involving full cost recovery of some services, partial recovery of others and no recovery of ‘public good’ regulatory stewardship costs / initial establishment costs. | A significant portion of the costs associated with the delivery of the regulatory system will be met by third parties through fees and levies rather than being funded by the Crown. |
| **Regulatory Stewardship** | Te Tūāpapa Kura Kāing | Regulatory stewardship involves overseeing the performance of the regulatory system. It requires providing policy advice on the system design and development; monitoring and evaluating the system; and monitoring and reporting on the performance of the regulatory authority. Te Tūāpapa Kura Kāinga is expected to fulfil this role. |

1. Do you agree or disagree with our proposed objectives for the regulatory system?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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1. 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*

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

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# The case for intervention

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| The residential property management sector plays a significant role in the New Zealand residential tenancies market, which houses nearly one in three New Zealand households.  We estimate that there are between 2,096 and 7,881 residential property managers operating in New Zealand. They are responsible for managing about 42 percent of rental properties.  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. A wide range of stakeholders have highlighted the significant risk that a lack of common industry good practice standards, controls and an accessible independent disciplinary and disputes resolution process pose to property owners and tenants.  The Government is committed to ensuring New Zealanders have access to secure, healthy and affordable housing. Towards that end we want 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 and tenants. |

1. 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*

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1. Do you have any comments on our overview of the residential tenancy market, the residential property management sector, or the current regulatory environment?

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# Establishing a new occupational regulatory system

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| We are proposing to regulate the activities of residential property managers and residential property management organisations. The proposed legislation would bind the Crown and, therefore, capture public sector organisations and employees that deliver residential property management services. There would be scope for the regulator to provide exemptions from all or part of the system’s requirements for occupations that have appropriate standards and accountability arrangements already in place. |

1. 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*

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1. Should real estate agents be exempt from holding a property manager license but still held to account for compliance with industry entry and practice standards through the complaints and disciplinary process?

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# Certification, Registration and Licensing

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| To be employed or trade as a residential property manager individuals would need to hold a licence issued by a regulatory authority that determines they meet 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 industry practice standards and complaints and disciplinary arrangements. The regulator would maintain a public register of residential property management organisations and licensed property managers. |

1. 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*

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1. 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*

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

Yes  No

*If yes, please comment.*

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# Occupational Entry Requirements

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| To obtain a residential property management licence, applicants will need to be at least 18 years of age, meet a fit and proper person test, and provide evidence that they meet the minimum training and education requirements. Those requirements are expected to include satisfactory completion of a training course involving approximately 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. |

1. 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*

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1. 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*

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

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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1. 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*

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1. 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*

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# Professional and Industry Practice Standards

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| Residential property managers and residential property management organisations will need to comply with professional and industry practice standards. These will include:   * Meeting Continuing Professional Development requirements, anticipated to involve a commitment of around 20 hours each year * Operating in accord with a Code of Conduct * Holding professional indemnity and public liability insurance * Operating trust accounts * Ensuring trust accounts are subject to independent review annually and periodic audit as may be required by the regulator from time to time. |

1. 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*

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1. Do you agree that property manager should abide by a Code of Conduct?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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1. Should property managers be required to use trust accounts?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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1. 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*

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1. 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*

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# Complaints and Disciplinary Framework

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| The regulatory system will incorporate an independent complaints and disciplinary framework. It will be modelled on the framework that applies to real estate agents.  The regulator would triage complaints, which includes determining whether a complaint involves a breach of the property management legislation or should be referred to another organisation. The regulator could also proactively identify, investigate and initiate disciplinary proceedings in its own right. For complaints that are covered by the legislation, resolution can take place through mediation, a Complaints Committee appointed by the regulator (for cases that may involve ‘unsatisfactory conduct’) and through 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 Tribunal-related services. On balance, however, we propose extending the mandate of the REA Disciplinary Tribunal to cover property management issues.  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. |

1. Do you agree with the proposed complaints and disciplinary framework?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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

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# Offences and Penalties

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| 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, where necessary, address non-compliance.  *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 unlicenced 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 * Failure to meet obligations in relation to property management transactions that may be specified in primary or secondary legislation such as:   + Failure to hold money in audited trust accounts   + Failure 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.   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.   The proposed offences and penalties are aligned with those included in similar occupational regulatory systems – in particular the Real Estate Agents Act 2008. |

1. Do you agree with the proposed offences framework?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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1. Are there any additional offences that should be included in the framework?

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1. Do you agree with the proposed maximum penalties?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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# Regulatory Management and Stewardship

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| 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.   We propose that the regulator’s powers and functions 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) 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, however, further consideration will need to be given to the implications for the current accountability arrangements for Courts and Tribunals, the REA and Tenancy Services, which are performed by the Ministry of Justice and MBIE. |

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

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1. Do you have any issues or concerns with the regulatory authority’s proposed functions?

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1. 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*

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1. Which entity is best placed to perform the regulator’s functions:

Real Estate Authority (REA)

MBIE

Other

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*Please explain why/comment*

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# Cost Recovery

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| A significant proportion of the costs associated with the delivery of the regulatory system 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 the charge levels, will be established in regulations which will be subject to Ministerial approval. Before seeking to recover costs, the regulatory authority 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 to cover the regulatory authority’s establishment and first year operating costs may be required. |

1. Do you agree with the proposed cost recovery framework?

Strongly Agree  Agree  Not sure  Disagree  Strongly disagree

*Please explain why/comment*

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

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# Delivery and Next Steps

When the submissions period closes, we will analyse the submissions and report to the Associate Minister of Housing (Public Housing).

If agreed by Cabinet, the regulation of residential property managers will require 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 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 meet the legislation’s regulatory requirements; and,
* The regulator to complete the initial registration and licensing of all regulated parties (with phased renewal dates to smooth the administrative burden associated with this process).

Te Tūāpapa Kura Kāinga will also implement monitoring and evaluation arrangements.

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| **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 & 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 |

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

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1. Do you have any final comments you wish to make?

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