



**Community
Housing
Aotearoa**

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Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development
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BLUF: Community Housing Aotearoa has long supported the regulation of the property management industry to better uphold the rights of tenants and property owners. We submit that Community Housing Providers registered with the Community Housing Regulatory Authority should be exempt from the regulations as CHPs already have an intensive, extensive, and proactive regulatory regime through CHRA's initial registration and annual monitoring requirements. Additional regulation of the CHP sector will incur an unnecessary resource and time burden on organisations who deliver affordable housing and other social goods, often on slim financial margins.

Community Housing Aotearoa – Ngā Wharerau o Aotearoa (CHA) thanks the Ministry of Housing and Urban Development – Te Tūāpapa Kura Kāinga (MHUD) for the opportunity to share our perspectives on the upcoming Property Management Regulation. We have prepared this submission in response to the questions posed in the "Residential Property Management Regulatory Options – A Discussion Paper" released February 2022.

CHA is an Incorporated Society and a peak body for the community housing sector. To achieve our vision of 'all New Zealanders well-housed', we have a strategic focus on supporting a well-functioning housing system and working toward the realisation of the right to housing. We are also mindful of the larger institutional and regulatory settings within which our members and other community organisations operate.

Our 75 provider members provide homes for nearly 30,000 kiwis nationally across 18,520 homes, and our 30 partner members include developers, consultants, and local councils. Community Housing Providers (CHPs) are primarily not for dividend entities that develop, own, and manage social and affordable housing stock, with rental and progressive homeownership tenure offerings. We work closely with national Māori housing advocate Te Matapihi, which represents Iwi-based and Māori community housing providers. More about us can be found [here](#).

Our submission on the questions posed in the discussion paper is as follows:

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.

Agree- CHA agrees with the proposed objectives of the regulatory system for property managers. CHA has long advocated for such a position as a necessary protection for property owners and tenants who reside in properties managed by a third party. The current state of the sector is untenable with Property Managers being regulated through not fit-for-purpose legislation such as the Fair Trading Act and the Consumer Guarantees Act. The proposed objectives of the regulatory system will improve the quality of service provision by property managers and create a fit-for-purpose Disciplinary Tribunal to mediate disputes. The Citizen's Advice Bureau, the Tenant's Protection Association, and our members are regularly contacted



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by tenants who are having their rights and security of tenure undermined by improper practices from their property managers. The proposed objectives of the regulatory system are a step towards improved protections for the rights of tenants and property owners.

We believe it is necessary to further clarify the proposed interaction between the regulatory system established for property managers and the existing Tenancy Tribunal enforcement of the Residential Tenancies Act. There appears to be the potential for significant overlap in issues related to the conduct of property managers.

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.

Agree - CHA agrees with the emerging regulatory model as a whole, but CHA currently reserves some concerns about how it will be implemented. These concerns particularly surround the inclusion of the already-regulated community housing sector in the Property Management regulations. CHA agrees that the nature of the existing power imbalance between property managers and tenants necessitates the former having some form of regulation to benchmark the quality and nature of operations of the sector. As we will discuss later, however, such a regulatory body already exists for registered Community Housing Providers.

We also question the proposed exclusion of owners who manage their properties directly. The same knowledge of legislative and regulatory requirements related to residential property management, knowledge about maintaining a property, managing relationships with tenants, and conduct from a property manager should be expected from them as a third-party agent. HUD should examine ways in which landlords who own and manage two or more of their properties demonstrate their ability to fulfil the functions of a Property Manager appropriately and effectively.

Finally, we believe there needs to be additional clarity regarding the types of tenancies covered. For example, rent-to-buy, co-operatives, cohousing models and other intermediate forms of ownership may not fit neatly into this regulatory model. In addition, Transitional Housing funded by government is currently excluded from RTA but is not required to be delivered by registered Community Housing Providers, leaving a gap in recourse for residents with concerns about the services received.

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

Please explain why/comment.

No additional comments.



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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

Yes - CHA believes regulation of property managers is a necessary component of far broader changes to our legislative and housing systems required to generate positive outcomes and experiences for tenants. The effectiveness of recently strengthened protections for tenants and landlords in the RTA and Healthy Homes Regulations are being undermined by a lack of accountability mechanisms for individual property managers and lack of knowledge by some owners. The property management sector is regulated in many other countries. In Aotearoa, rentals managed by non-landlords constitute a large portion of total rental properties. Regulation is a key piece of the puzzle to establish a legal benchmark for Property Managers' operations, creating greater accountability and transparency of the sector. As owners constitute the majority of persons managing tenancies, they also need to demonstrate minimum competencies.

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

Yes - CHA believes that in addition to the proposed objectives of the Property Management regulatory system, a greater emphasis should be placed on increasing the capacity of Tenancy Tribunal. The Tribunal needs to be better equipped to address disputes that arise between tenants and property managers/owners, where most disputes in the rental market will likely occur and where the greatest power-imbalance resides. Unlike property owners, tenants have no or little say in who manages their tenancy, reinforcing the power-imbalance with tenants accountable to property managers but with minimal accountability in the opposite direction. The Tenancy Tribunal needs to be better resourced to address the current backlog of claims and to increase the number of enforcement staff dedicated to ensuring tenancies comply with the RTA, the Healthy Homes Standards and other regulations.

Abuses of power and improper practice not only effect tenants, but also prospective tenants and the wider population. Prejudicial practices by property managers and landlords have created additional barriers for already disadvantaged groups to access rental houses. This jeopardizes the ability of those households to build their rental experience, further disadvantaging them when in competition with other households for limited rental stock. Tenancy Services should be enabled to be more proactive in their identification and sanctioning of property managers or landlords who engage in discriminatory behaviour. The improper actions of individual property managers and landlords can undermine the ability of tenants (and prospective tenants) to realise the key elements of the right to a decent home, such as affordability, habitability, and security of tenure. These regulations need to be established to standardise best practice and the Tribunal need to be resourced to effectively protect tenant rights.



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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

We **strongly agree** that the regulatory system should apply to individuals (including owners) and organisations providing property management services in the private and public sectors because there are not currently any regulatory oversight mechanisms in place. CHA supports the establishment of Property Management Regulations, as the private and public sectors are currently operating without formalized, fit-for-purpose legal benchmarks. The regulatory system should apply to individual property managers to generate greater lines of accountability between individual actors and their professional conduct. Property management organisations should also be included in the regulation to hold them to account where improper practice and documented patterns of failures to comply with regulations are common with an organisation.

We **strongly disagree** that the regulatory system should apply to individuals and organisations providing property management services in the regulated Community Housing Provider sector. Community Housing Providers (CHPs) are registered with and regulated by the Community Housing Regulatory Authority (CHRA), within Te Tūāpapa Kura Kāinga created by Part 10 of the [Public and Community Housing Management Act](#). CHRA assesses prospective CHPs across five Performance Standards; Management, Governance, Financial Viability, Asset Management, and Tenancy Management. More information about the Performance Standards can be found [here](#). To satisfy these Performance Standards, CHPs and their staff/kaimahi must demonstrate their adherence to an extensive and closely prescribed policy framework. CHRA's Performance Standards are set at a high threshold which exceed those indicated to be included in the Property Management Regulations. These standards dictate the nature of the organisations' operations to ensure a high-level of care for tenants and property owners in instances where CHPs manage properties on behalf of a third party. In addition to the extensive registration process, CHPs are also required to provide annual reports documenting their continuing compliance with the Standards. This includes active monitoring from CHRA to ensure their policies are aligned with the Standards and reflect any changes to the law or regulations. Registered CHPs must also submit annual audited accounts and copies of board minutes to the CHRA. If CHPs are not excluded from Property Management Regulations, it will create additional time and resource burdens for already regulatorily-stretched organisations who serve and support their communities. There is already precedent for registered CHPs attaining statutory carve-outs such as in the Residential Tenancies Act and the Healthy Homes regulations.



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

There is insufficient information in the discussion document regarding the licensing requirements for real estate agents related to property management for us to make a comment at this time.

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

Agree – licensing individual property managers creates direct lines of accountability for individual actors and their professional conduct. Currently, a property manager with a history of improper practice may only be held personally responsible through their organisation's internal processes, assuming they are not self-employed. The licensing framework provides a transparent public framework through which individual actors can be held personally responsible and operators who bring the property management sector into disrepute can see their licence to operate revoked. Owners who chose to not obtain a license or who have their license revoked could hire a licensed property manager to ensure business continuity and that professional standards are met for their tenants.

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

Agree – If the disciplinary process adopted can sanction organisations where systemic problems are documented, it seems sufficient to licence individual property managers, rather than organisations. Property management organisations should be recorded on a charter that they have residential property management operations to ensure they fall under the purview of the regulator, the industry practice standards, and the Disciplinary Tribunal. CHA believes there needs to be an enforcement mechanism for property management organisations with a recurrent pattern of breaches, both in their actions as an organisation or the individual property managers contracted or under their employ.

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

Yes/No - Comment

Yes - The ability for a regulator or mandated judicial body to order a revocation, suspension, and the imposition of conditions on the licence of Property Managers seems a necessary precaution to protect the interests of tenants and property owners, and the reputation of the property management sector. Empowering the regulator or Disciplinary Tribunal to order a suspension or revocation of Property Managers' licenses creates additional incentives to



operate in a manner which upholds the rights and interests of all parties in line with the law. It also means that Property Managers who are identified as having a history of improper practice can be banned from holding a license, maintaining public confidence in the Property Management sector and upholding best practice. The preferred judicial body, the REA Disciplinary Tribunal, retains the mandate to make an order to "cancel or suspend" real estate licenses to protect public confidence in the sector and protect the interests of consumers. It would be appropriate to extend these powers to include the cancellation or suspension of Property Management licenses for the empowered regulatory or judicial body. MHUD should also examine the ability of the Tenancy Tribunal to make an order to the regulator for the suspension or revocation of a Property Managers license; it is not currently clear in the consultation document if the Tenancy Tribunal will have such powers.

Licence renewal should be reviewed on a 2- or 3-year cycle with the property manager passing a fit-and-proper person test to achieve re-registration.

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

Strongly Agree - CHA believes that property manager registration should be subject to a fit-and-proper persons test due to the large sums of money which are being handled by property managers and the imbalance of power that exists between property managers and tenants. Mandating some form of screening (such as a fit-and-proper person test) for registration is an important first step in mitigating misuses or abuses of existing power imbalances. A fit-and-proper person test should be accompanied by thorough regulation and an empowered judicial body to enforce regulations and deter abuses. While a Disciplinary Tribunal may be able to provide recourse for those who have experienced some damage from the improper practice of a Property Manager, a fit-and-proper person test is a necessary and proactive tool for identifying individuals with a history of unprofessional conduct or abuses of power akin to those imbalances between tenants and property managers. It is also important to include a time horizon so that individuals are not unnecessarily excluded from operating as property managers for minor indiscretions or mistakes that occurred years prior to application of licence requirements.

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

Strongly Agree – Training is necessary to ensure that property managers are made aware of their responsibilities to tenants and property owners, they are knowledgeable about their professional obligations and tenancy law, and that they have the sufficient background to operate effectively and efficiently. Education is an important requirement to ensure that the sector matures and that property managers are aware of any changes to tenancy law that may affect their operations. In the initial transition period to the new regulations, property managers who have been operating for years and can demonstrate their knowledge of the



tenets of property management should receive licence so as to not cause significant backlog of property managers undertaking the requisite training to achieve their licence.

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?

Not sure – CHA believes that 15 hours is insufficient to understand all the necessary law, operations, financial management skills, asset and tenancy management skills required for prospective property managers to operate effectively and appropriately. We note that the current requirements from industry bodies sets a much higher standard, requiring a New Zealand Certificate in Property Management. The "intermediate option" which is presented in the discussion document (5 days intensive training) seems a vaguely defined alternative. We suggest that a micro-credential programme may be an alternative intermediate option if the current standard set by the industry bodies is not adopted.

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

Agree– CHA believes that prospective property managers should spend some time under the supervision of an experienced practitioner, but the options presented in the Discussion Document seem overly burdensome and resource intensive for property management organisations. 6 months of shadowing an experienced practitioner seems prohibitive, especially for smaller organisations that are looking to grow within their communities and for owners managing their own properties. Longer timelines for industry experience and training may be viable for large property management organisations but may limit the growth of organisations with fewer staff. Furthermore, property management organisations may prefer to hire already licenced property managers rather than those in the licensing process (if 6 months under supervision is required) making the licensing process inaccessible for prospective property managers entering the field.

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

Agree- the minimum age requirement seems appropriate.

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

Strongly Agree – it seems necessary to establish a minimum amount of mandatory ongoing professional development so property managers are made aware of changes to tenancy law or best practice which effects their operations.



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

Strongly Agree – implementing a Code of Conduct establishes some values and ethics which underwrite the operations of individual property managers. Regulations can establish universal expectations regarding a property managers operational processes; a Code of Conduct establishes expectations over how they should operate.

Should property managers be required to use trust accounts?

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

Strongly Agree – most regulated sectors require practitioners to have business accounts separate to their own personal accounts. Requiring property managers to use trust accounts could provide an effective deterrence to improper financial conduct and make suspected instances of malpractice more traceable. If these regulations are intended to establish a minimum legal benchmark for the property management sector, mandating the use of trust accounts is a necessary and long-overdue inclusion to best practice. Other than for bonds, owners who manage their own properties would not be required to maintain separate trust accounts.

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

Agree – the regulator should be empowered to require an audit of accounts if they notice irregularities or have grounds to suspect the operations of a property manager may be improper. This is a necessary tool to have at the disposal of the regulator to ensure they are empowered to undertake their due diligence regarding the operations of property managers. Requiring all property managers to audit their accounts periodically seems overly burdensome and it is the opinion of CHA that audits should only be required when the regulator has indications of accounts not being handled properly.

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

Strongly Agree – CHA believes that requiring property managers to hold professional indemnity and public liability insurance is a necessary inclusion into regulations to insulate individual property managers from the consequences of incidental misconduct. It seems necessary to require the holding of insurance as property managers who choose not to hold it may be able to deliver their services at a lower and more competitive price. This potentially incentivises owners to engage these property managers and exposing them to more risk.

Do you agree with the proposed complaints and disciplinary framework?



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

Not sure– The proposed complaints and disciplinary framework as posited in the Discussion Document has too great ambiguity and is too theoretical to make an informed comment on its suitability. More work needs to be done to clarify the powers and mandates of the regulators and the disciplinary tribunals before a comment on the efficacy of the complaints and disciplinary framework can be made.

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

CHA believes that greater clarity needs to be offered surrounding the jurisdictions of the Tenancy Tribunal and the Disciplinary Tribunal mandated to cover property management disciplinary matters. Significant ambiguity exists for what constitutes a general breach under the RTA, a breach of the Property Management Regulations, and a breach of the RTA which concerns the professional conduct of a property manager. This requires clarification as the Tenancy Tribunal and the Disciplinary Tribunal ostensibly have different powers, fining systems, and importantly, different abilities to make orders against property management organisations or property managers personally. There would be many instances where general breaches of RTA are the result of misconduct or improper practice by property managers. Consequently, two materially similar cases could be handled in differently empowered tribunals depending on the assessment of the claim in the triage process. An example of this may be a Property Manager for whom their improper or negligent practices has led to frequent RTA breaches upon which numerous unconnected tenants are impacted. If these are seen as isolated RTA breaches the authority to arbitrate such a claim will likely lie with the Tenancy Tribunal, but if it is viewed as recurrent failures of a property manager's professional conduct then it may be referred to the regulator or the empowered Disciplinary Tribunal. Unless a pattern of malpractice by individual property managers is identified during the triage or documented within a claim, property managers may not face any responsibility for their malpractice (such as revocation or suspension of licence) beyond any internal procedures within the property management organisation if the claims are handled within the Tenancy Tribunal. These matters require clarification and additional opportunities for public consultation once they have been formally proposed.

Do you agree with the proposed offences framework?

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

Agree – The offences framework proposed in the Discussion Document is not extensive but provides a good outline of the nature of offences which will be included in the regulations.

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

No comment



Do you agree with the proposed maximum penalties?

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

Agree – the proposed maximum penalties appear consistent with those of similarly mandated tribunals. We cannot think of any reason as to why the penalties should exceed those which the Tenancy Tribunal is empowered to order.

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

Te Tūāpapa Kura Kāinga is a suitable body to be the regulatory steward given their expertise and focus on New Zealand's housing system writ-large. The regulatory management function over the RTA is held by Tenancy Services within MBIE. If the Real Estate Authority, within the Ministry of Justice, is given the regulatory management function for Property Managers, there is a further split. We are concerned about the potential for poor coordinate across these three Ministries and believe careful consideration be given to ensuring a coordinated approach is maintained for the benefits of tenants and landlords. Given that property managers are central to both relationships it seems appropriate that there is a single regulatory steward which oversees the totality of their operations and responsibilities to owners and tenants.

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

No issues or concerns.

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

Agree– vesting the regulatory functions in an industry organisation (such as PROMINZ, RINZ, RPMA, or REINZ) removes public accountability mechanisms which an in-government regulator would have. CHA has concerns with the risks that are associated with the self-regulation of the industry and the conflicts of interest that may arise when an industry organisation takes on regulatory responsibility.

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

The Real Estate Authority (REA)

MBIE

Other?

Comment (Why)

CHA believes **REA** is best placed to perform the regulator's functions as they have experience in a sector which overlaps with that of property management. Many real estate agents or real estate organisations also act as property managers, suggesting that REA also likely have connections to stakeholders and subject matter experts in property management. If the REA Disciplinary Tribunal is empowered to rule on Property Management disputes, there



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is a clear and already pre-existing relationship between the REA as a regulator and the REA Disciplinary Tribunal which should ease the transition to the new regulations for both parties. As noted above, this decision needs to be carefully developed to ensure a coordinated approach across Ministries.

Do you agree with the proposed cost recovery framework?

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

Agree – CHA believes that the costs associated with the functions of the regulator should be recovered through fees on individual property managers and property management organisations. CHA agrees with the sentiment that the cost of applying to a disciplinary tribunal should not be prohibitively high and other manners of funding the functions of the tribunal should be sought.

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

No comments

We would like to thank Ministry of Housing and Urban Development – Te Tūāpapa Kura Kāinga for the opportunity to submit on this discussion document. CHA is generally supportive of the direction of these regulations and we look forward to opportunities in the future to provide more of our perspectives into their implementation. This submission has been reviewed and endorsed by our members.

Ngā mihi,

Vic Crockford

