

Background

Renters United is an advocacy group that organises renters and campaigns to make renting in New Zealand better for everyone. We see decent housing as a basic human right and our broken renting system as a barrier to realising this right for all.

In 2017, Renters United worked with ActionStation to collect hundreds of renters' stories and analysed these in the report *The People's Review of Renting*. We found four key needs failing to be met among the stories:

- a stable home,
- fair rent,
- a safe and healthy home, and
- meaningful enforcement.

These stories spoke of a power imbalance in the relationship between landlords and renters. The result of these interrelated problems is that renters are second-class citizens. Renters cannot reliably realise their rights to healthy and stable housing, as can property owners.

Following further consultation with members and tenant advocacy experts, in July 2018 we launched the Plan to Fix Renting. The Plan sets out 36 changes to the law and its application that will make the private rental sector healthy, safe, affordable, stable and — most importantly — fair.

Since then Renters United has been leading campaigning efforts, submitting on local and national plans, bills and reviews, and consulting with government officials as a member of the Tenants Advocacy Network.

Interpretation

“Action Station” is an independent, crowdfunded, community campaigning organisation.

“Discussion document” means *Residential Property Management Regulatory Options A Discussion Paper* published February 2022 by Te Tūāpapa Kura Kāinga, Ministry of Housing and Urban Development (HUD).

“Landlord” is synonymous with the term tenant used in the Residential Tenancies Act 1986.

“Private landlords” are property owners who service the tenancy by being named on the Tenancy Agreement, completing maintenance, communicating with the tenant or otherwise providing a service to the tenant that could otherwise be expected to be provided by a property manager.

“Property managers” incorporates anyone that provides the service of managing a residential property to a renter, regardless of their stake in the residential property being rented out.

“Renter” is synonymous with the term tenant used in the Residential Tenancies Act 1986.

“Te Tūāpapa Kura Kāinga” refers to Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD)

Setting the scene

With over one third of the households in Aotearoa renting¹ a crucial part of achieving the Government's objective of “ensuring New Zealanders have access to secure, healthy, and affordable housing” will be property management regulation that centres upholding the rights of tenants.

Since 1986 we've seen residential property management regulation focused around the economic transaction that occurs between a landlord and a tenant. We now have almost 40 years of evidence to show that this approach isn't working. There's rarely a week where we don't see multiple articles reporting on the tip of a large iceberg; human rights abuses committed by landlords and property managers alike.

The current regulatory system is set up in a way that empowers landlords to abuse the rights of tenants with no repercussions. The current regulatory system provides little to no support to renters to access their rights.

In 2017, alongside ActionStation, Renters United published *The People's Review of Renting*. Most stories, 62% of the 610 people interviewed², were about the quality of their home, but the second most discussed issues were about their property manager or landlord (41% of 610 stories³).

“The power is all in the landlord's hands and the tenant has almost none.” A common theme in the stories was the relative power landlords have over tenants - a dynamic particularly evident in the large number of stories about neglected maintenance and repairs. The stories show that neglected maintenance affects renters' quality of life, mental health and physical safety and in some cases imposed additional costs. Despite this, renters were reluctant to complain for fear of rent rises or eviction. This provided fertile ground for other types of abuse or illegal behaviour by landlords.

Since 2017 this has only gotten worse, evidenced by the increasing pressure community advocates are finding themselves under. Renter-centred regulation of all property managers is the perfect opportunity to reverse this trend, and provide renters with the ability to access the rights they always deserved.

¹ Statistics New Zealand, 2018 Census data

² Action Station and Renters United, *The People's Review of Renting*. August 2017, p7

³ Ibid

Regulation of Residential Property Managers

Scope

Private landlords (property owners that manage their own properties) must be in scope if the Government wishes to achieve their commitments of “ensuring New Zealanders have access to secure, healthy, and affordable housing”⁴.

With 600,000 households currently renting⁵, and with a greater proportion needing to rent long term due to the unaffordability of alternative accommodation and the pressures created by unregulated rent prices, the Government must commit to ensuring all renters are able to access their rights, and hold their private landlords and property managers to account.

As we outlined in the previous section “Setting the scene” we categorically disagree with the statement made by Te Tūāpapa Kura Kāinga that the interactions between private landlords and tenants “are already adequately regulated through the Residential Tenancies Act”⁶. This statement clearly outlines that Te Tūāpapa Kura Kāinga has been unsuccessful in understanding the reality of renting in Aotearoa.

The pressure already placed on renters to understand not only their rights and obligations, but those of their landlord, then understand how to enforce their rights, and having to enforce said rights with no support, while working multiple jobs in order to be able to pay unregulated extortionate rent prices should lead no party to believe that the interactions between private landlords and tenants “are already adequately regulated through the Residential Tenancies Act”⁷.

Any person currently renting would be able to describe to you how inaccessible the Tenancy Tribunal is. Any person who reads a newspaper, watches the news, or talks to someone who is renting would be bombarded with evidence that the relationship between private landlords and renters is not sufficiently regulated.

⁴ Hon Poto Williams, *Residential Property Management Regulatory Options. A Discussion Document*, February 2022, p3

⁵ Ibid Statistics New Zealand

⁶ Te Tūāpapa Kura Kāinga, *Residential Property Management Regulatory Options. A Discussion Document*, February 2022, p6

⁷ Ibid

Property manager regulation needs to complement the existing regulation under the Residential Tenancies Act 1986. It therefore needs to recognise that private landlords also provide a service of property management to renters. Private landlords should be expected to treat renters with respect as much as any property manager.

The discussion document focuses primarily on the relationship between a property owner and a property manager. It's important that Te Tūāpapa Kura Kāinga recognises that even if there is a dispute between a property owner and a property manager, the person or group renting the property, relying on a continuous service to provide them a home, is the party with the most at risk, and has the most to lose.

We agree with Te Tūāpapa Kura Kāinga that companies that employ individuals for the purpose of managing residential tenancies should be regulated alongside the individual employees, and sole traders, that provide property management services for residential tenancies.

We also believe that this scope should include companies that own properties and employ individuals to manage residential properties owned by the company. The conduct of these property managers should be regulated to the same standard as individual property managers and property management companies.

It is unreasonable to expect that companies managing thousands of residential properties, who hire employees to manage these properties, would not be governed by this regulation.

Certification, registration and licensing options

We believe that certification, registration and licensing are all key components for a regulatory system that delivers on the Government's commitment of "ensuring New Zealanders have access to secure, healthy, and affordable housing"⁸

We agree with Te Tūāpapa Kura Kāinga that simply providing a register and certification would not be enough. The private sector already provides a small level of training and registration and the continued conduct by the industry as a whole shows that incentives of accreditation aren't enough for property managers to make the investment in a private certification model.

⁸ Ibid Hon Poto Williams

This is where we believe it's essential for the Government to recognise how important it is that when renters are accessing their human right to a decent home, the parties providing that service are educated, certified, registered, and licensed.

We want to emphasise the importance of a public register of property managers that details the status of their training (both initial training and ongoing training), the status of their licence, and whether they are employed by a regulated employer. Companies that provide property management services should also be detailed in this register, as should the registered property managers they employ.

We also believe that in the event that a property manager's licence lapses or they are deregistered this is detailed in the register.

Licensing is an essential part of an effective regulatory model. Requiring property managers to hold a licence empowers the regulatory body to suspend or deregister property managers who fail to uphold the code of practice. Property managers hold extreme amounts of power over tenants, and those who continue to abuse that power should have their licence revoked accordingly in order to protect the other parties involved.

Companies that employ property managers for the purpose of providing property management services should also be required to register, become certified and hold a licence that can be revoked. It's important to recognise that employers also hold power over property managers and if an employer were to abuse that power their ability to run a company that provides property management services should be revoked.

We believe that being a real estate agent and property manager are different industries. The services they provide are different, as are the parties they have to interact with and the nature of the power property managers directly have over renters. For that reason we believe that real estate agents should be required to undertake the same amount of training as someone who isn't a real estate agent. Real estate agents should also be required to hold a separate licence to their real estate agent licence that can be revoked or suspended.

We agree with Te Tūāpapa Kura Kāinga that the regulation should bind the crown. Property managers employed by the crown should be held to the same standard as property managers in the private sector. Everyone that provides the service of managing a residential tenancy should be held to the same, high, standard.

Qualification and renewal requirements

Broadly we agree with the proposed qualification and renewal requirements proposed by Te Tūāpapa Kura Kāinga. We believe that property managers should be at least 18 years of age, that they must pass a fit and proper person test and that they must undergo training in order to be qualified to become registered and licensed.

We would like to emphasise the importance of having a training requirement. Many of the property managers operating today would greatly benefit from training, and alongside effective regulations and disciplinary processes, so would renters.

We believe that in order to start a company that employs property managers it's vital to have experience as a property manager, as well as undergoing training that prepares employers for the new responsibilities that comes with running a regulated company. To become a real estate branch member an additional licence is required, as well as three years experience⁹. We believe a similar system should also be applied to the regulation of property managers.

Training

Property managers have an immense amount of responsibility, to both property owners and renters. They are responsible for ensuring that people renting in Aotearoa have access to secure and healthy homes. All too often however the lack of training provided to property managers, especially in areas of human interaction lead to a breakdown in communication.

Communication is an essential part of the role of a property manager. Not only do they have to communicate with renters, both current and aspiring, but property owners, contractors, and many other legal parties in order to effectively carry out their job.

Training for property managers should recognise the skills required to keep healthy relationships, and we find it difficult to believe that even this could be covered in 15 hours.

REINZ provides a 15 hour beginners course¹⁰ for property management that aims to get people up to speed with their code of practice and currently existing regulations. The introduction of

⁹ The Real Estate Authority, *Required criteria and qualifications to work in real estate*, accessed at <https://www.rea.govt.nz/>

¹⁰ Te Tūāpapa Kura Kāinga, *Residential Property Management Regulatory Options. A Discussion Document*, February 2022, p26

these regulations will mean that more time needs to be spent on teaching the basics of the regulation itself. Again, we don't believe the regulation itself could be covered within 15 hours.

A level 4 certificate for residential property management already exists¹¹ and Real Estate Agents, which hold less power over people looking for housing than property managers, are required to take a similar level 4 certificate¹².

Property managers are put in a position with the power to dictate the lifestyles of renters, make decisions that impact their short term and long term health, they therefore need to be trained so that they are capable of handling this responsibility, and so that they don't abuse this power.

We don't believe it would be possible to provide training to this extent in a time period any shorter than one week.

Individuals that have direct reports providing services as property managers also hold additional responsibilities such as providing oversight for their reports, as well as being able to provide them with guidance and advice.

Property managers should also be required to complete ongoing training in order to renew their licence. The training should be enough to remind them of their responsibilities, communicate any changes to regulations and provide ongoing training for interpersonal relationships.

The training should have a minimum requirement of supervised training (like seminars, workshops etc.) with the rest being made up by unsupervised training (self directed etc.).

Professional and industry practice standards

Property managers should be bound by a code of conduct and codes of practice that uphold the rights of tenants, that includes the way that they engage with tenants both verbally and non-verbally. As mentioned in the upcoming section "Offences and penalties" failing to uphold the rights of tenants should be disciplined, including suspension or de-registering.

¹¹ The Skills Organisation Incorporated, *Residential Property Manager*, accessed at <https://skills.org.nz>

¹² Ibid The Real Estate Authority

In order for the codes to uphold the rights of renters the codes should be developed and maintained in partnership with renters and their advocates to ensure they are fit for purpose. This must go beyond post-draft consultation and actively involve renters and their advocates with appropriate compensation.

Renters United supports requiring property managers to hold trust accounts and for these trust accounts to be audited annually to ensure that property managers are upholding their responsibilities to appropriately manage funds.

Complaints and discipline

In order for the regulation of property managers to meet the government's goals, the regulation needs to be built upon a justice system that upholds the rights of all parties involved, recognises the power imbalance that exists between the parties, and makes upholding their rights as accessible as possible.

Mediation can be used to create a welcoming environment for any party, particularly renters to engage with the other parties involved with the support of an independent party. Mediation should be freely available to tenants in order for them to be able to quickly access their rights and resolve disputes. The mediators should be equipped with skills that allow them to recognise the risk that tenants are taking when applying for mediation, or reaching out for help, and should mediate a discussion between the parties in a respectful way.

Mediation can also be used as a pathway to a more formal complaints process where consensus can't be reached. The regulatory authority should play a role in ensuring that the process to transfer from mediation to a complaints process is as smooth as possible, and doesn't require renters to reiterate what was already said in mediation. This is especially important when renters are sharing an experience that may have caused trauma. The mediation and complaints process should not contribute to the trauma endured by renters by forcing them to go through lengthy, repetitive processes where they have to continue to describe distressing situations.

The regulatory authority should also conduct proactive investigations into property managers that are often in mediation, or where they otherwise have reason to believe that a systemic pattern of misconduct is being carried out by a property manager or a property management agency.

In any situation where a tenant is required to attend a hearing with the regulatory authority they should have the right to funded representation. Property managers will often have experience with disciplinary procedures, and some will have training to put them in a position where they are more likely to be successful in defending a case against them. The regulatory authority can even the playing field by allowing renters to appoint representation such as lawyers or advocates who would also have experience in the complaints tribunal.

Opportunities should also be made to recognise that a complaint by a property owner towards a property manager for their conduct likely had a negative effect for the renters as well. Parties should therefore be able to take joint complaints and the regulatory agency should understand the impact a property manager's conduct had on all parties involved.

As discussed later in the section “Regulatory stewardship and management” we believe that the Ministry of Business Innovation and Employment (MBIE) should be responsible for the delivery of the complaints and disciplinary framework.

Given there are more renters than property managers in Aotearoa, and assuming the regulatory model upholds the rights of renters, we expect a large number of cases brought to the attention of the regulatory authority will be taken by renters. This means that the body managing complaints about property managers and disciplinary decisions should be able to work closely with the Tenancy Tribunal to ensure that if a case needs to be transferred between the two complaints systems it can be done so with minimal friction.

We believe it's essential that renters are represented, and compensated for their representation, within the leadership of the regulatory authority. We also believe it's essential that mediators, adjudicators and anyone else that presides over decisions made within the complaints process are required to publicly declare the number of properties they own.

While \$20 may not be a lot for landlords, \$20 is enough to discourage, or stop renters from being able to uphold their rights. We encourage Te Tūāpapa Kura Kāinga to think of alternative ways to ensure that genuine complaints are being responded to in a timely manner without creating additional barriers for renters.

Offences and penalties

Using fines as a deterrent for unlawful behaviour will only work when renters are able to uphold their rights with minimal friction within the complaints process. Additionally fines will only work as a deterrent when they are substantial enough to disrupt the financial viability of the individual to continue as a property manager.

Penalties should not solely be limited to fines, but should also include suspension and deregistration of property managers. Property managers should have their licence revoked for continuous breaches of the code of practice, or for serious misconduct. As we have mentioned throughout our submission property managers have a significant amount of power over renters, and because of this we need to ensure that property managers that abuse that power are no longer able to do so.

Acting as a property manager without being regulated should be an offence, and this should include continuing to manage properties when unlicensed, suspended, or deregistered.

Broadly we believe that the maximum fine for individuals should be \$40,000 and companies \$200,000. These maximums don't include compensation that should be awarded when a property manager breaches the code of practice and it has a detrimental effect on another party involved.

Furthermore if a case is taken against a property manager, and that case is successful, all parties who were negatively impacted by that property manager's conduct should be compensated. For example cases taken by property managers shouldn't exclude tenants from compensation and vice-versa.

Regulatory stewardship and management

We agree that Te Tūāpapa Kura Kāinga should be the regulatory steward for the proposed Regulation of Residential Property Managers.

Renters United believes that The Ministry of Business Innovation and Employment (MBIE) should be responsible for regulatory management. MBIE are well placed to be the regulatory manager because they provide access to a breadth of resources that are inaccessible to a separate body like the Real Estate Authority.

With MBIE providing regulatory management the Government, alongside its ministries will have more readily available insight to the residential property management industry. This will allow officials and elected members of Parliament to make more informed policy decisions.

It will also make transferring cases between the property manager complaints and discipline framework and the Tenancy Tribunal smoother, making the process more effective than if it were to be managed by the Real Estate Authority.

Additionally we believe that the Real Estate Authority (REA) is not sufficiently distanced from the property management industry to provide independent oversight of the regulatory framework. The services provided by real estate agents don't have sufficient overlap with residential property managers to warrant extending the mandate of the REA.

We also strongly believe that in order for the regulatory model to be effectively managed the body within MBIE that manages the regulation must include representation from renters and their advocates. This representation must be paid as an excessive amount of pressure is already placed, especially on tenancy advocates, by ministries such as the Ministry for Social Development.

Cost Recovery

We agree with Te Tūāpapa Kura Kāinga that the costs of the regulation, licensing and regulation should be covered by the property managers themselves. Property managers create the risks, and therefore the requirement for regulation, so they should have the responsibility of covering the costs.

It is however important to recognise that some of these costs will be absorbed by the market. Renters have the least bargaining power of the three parties, are therefore the most vulnerable to exploitation, and the most likely to take on some of the cost of this regulation. It is therefore important that the complaints and discipline procedures are designed to be accessible to tenants, and we've explained this in detail in the section titled "Complaints and discipline".

We agree that the regulation, training, and licensing should also be partially covered by the general tax pool, and support an unrecoverable investment from the general tax pool in order to instantiate the regulatory framework.

Index: discussion document questions and answers

The emerging regulatory model

Do you agree with the proposed objectives for the regulatory system?

- Agree
- The objectives should also include effectively upholding the rights of tenants

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

- Agree
- See “Overview” page 3

Overview

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

- Yes
- See justification in the section “Overview” page 3

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?

- See “Overview” page 3

Regulated parties

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

- Strongly agree
- We also provide justification for extending the scope to private landlords in the section “Scope” on page 4

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

- Disagree
- See “Certification, registration and licensing options” page 6

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

- Strongly Agree
- See “Scope” page 4

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

- Strongly Disagree
- Organisations should be required to hold a licence, even if they employ property managers for the purpose of managing their own properties. See “Scope” page 5.

Entry requirements

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

- Strongly agree
- See “Qualification and renewal requirements” page 7

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

- Strongly agree
- See “Training” page 7

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 disagree
- No less than 40 hours will be sufficient. See “Training” page 7

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

- Disagree
- We do believe however that experience should be required to manage an organisation, or direct reports that provide property manager services. See “Training” page 7.

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

- Agree
- See “Qualification and renewal requirements” page 7

Professional and industry practice standards

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

- Strongly agree
- See “Training” page 8

Do you agree that property managers should abide by a code of conduct?

- Strongly agree
- See “Professional and industry practice standards” page 8

Should property managers be required to use trust accounts?

- Strongly agree
- See “Professional and industry practice standards” page 9

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

- Strongly agree
- See “Professional and industry practice standards” page 9

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

- Agree

Complaints, discipline, offences and penalties

Do you agree with the proposed complaints and disciplinary framework?

- Agree
- See “Complaints and discipline” page 9

Do you agree with the proposed offences framework?

- Agree
- See “Offences and penalties” page 11

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

- Yes, branches of the code of practices should be an offence that allows tenants to receive compensation
- See “Offences and penalties” page 11

Do you agree with the proposed maximum penalties?

- Agree
- We propose maximum penalties for organisations is doubled to \$200,000. See “Offences and penalties” page 11

Regulatory stewardship and management

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

- Strongly agree
- See “Regulatory stewardship and management” page 11

Which entity is best placed to perform the regulators functions?

- MBIE

Cost recovery

Do you agree with the proposed cost recovery framework?

- Agree
- See “Cost Recovery” page 12

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