

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 renters 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.

2. Summary

2.1. Renters United strongly supports the progression of the Residential Property Managers Bill. We believe that this bill is a good start, and we agree there is a need for property manager regulation, but the bill must go further to achieve its objectives.

2.2. The bill should include landlords (entities, or individuals), Kianga Ora, and Community Housing Providers. Regardless of who they rent from, every renter deserves to benefit from a regulated and licensed rental market. There has been massive success internationally with regulatory and licensing schemes that include private landlords. Rent Smart Wales delivers excellent outcomes for renters, landlords and property managers and has a compliance rate of 95%.

2.3. We believe that a landlord who has been ordered to use a property manager under s109AA RTA should not be able to become a licensed property manager themselves for the period stipulated in the order and at a minimum a public register of landlords who have been ordered to use a property manager under s109AA RTA should be made freely available.

2.4. s109AA of the RTA must be strengthened to accommodate the complex ownership structures that exist within the residential tenancy sector so that the likes of shell companies, trusts and other corporate entities can't be used to avoid an order made under s109AA.

2.4. Renters and their advocates must be represented on the Complaints Committee when the complaint is made by a renter.

2.5. We believe property managers should hold at least a level 4 certificate. A level 4 certificate for residential property management already exists¹ and Real Estate Agents, which hold less power over people looking for housing than property managers, are required to take a similar level 4 certificate².

¹ NZQA, New Zealand Certificate in Residential Property Management (Level 4), Qualification Number 1809

² The Real Estate Authority, *Required criteria and qualifications to work in real estate*, accessed at: <https://www.rea.govt.nz/real-estate-professionals/apply-for-your-licence/required-criteria-and-qualifications-to-work-in-real-estate/>

3. Setting the scene

3.1 With over one third of the households in Aotearoa renting³, and a growing proportion of those facing discrimination (especially oppressed groups) 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 renters.

3.2 Since 1986 we've seen residential property management regulation focused around the economic transaction that occurs between a landlord and a renter. 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.

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

3.4 In 2017, alongside ActionStation, Renters United published *The People's Review of Renting*. Most stories, 62% of the 610 people interviewed⁴, were about the quality of their home, but the second most discussed issues were about their property manager or landlord (41% of 610 stories).

3.5 “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 renters - 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.

3.6 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.

³ Statistics New Zealand, 2018 Census data

⁴ Action Station and Renters United, *The People's Review of Renting*. August 2017, p7

Regulation of Residential Property Managers

4. Scope

4.1 Private landlords (property owners that manage their own properties), Community Housing Providers, and Kainga Ora must be in scope if the Government wishes to achieve their commitments of “ensuring New Zealanders have access to secure, healthy, and affordable housing”⁵.

4.2 With 600,000 households currently renting⁶, 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 landlords and property managers to account.

4.3 Some of the best property management licensing schemes overseas, namely Ireland and Wales, require both private landlords and agents to be licensed. It’s evident that this continues to be an effective scheme as Rent Smart Wales reports an estimated compliance rate of 95%⁷.

4.4 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”⁸. This statement clearly outlines that Te Tūāpapa Kura Kāinga has been unsuccessful in understanding the reality of renting in Aotearoa.

4.5 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”⁹.

⁵ Hon Poto Williams, *Residential Property Management Regulatory Options. A Discussion Document*, February 2022, p3

⁶ Ibid Statistics New Zealand

⁷ Shelter Cymru, *How Wales Deals With Criminal Landlords (clue: it's not the same as England)*, accessed at: <https://sheltercymru.org.uk/>

⁸ Te Tūāpapa Kura Kāinga, *Residential Property Management Regulatory Options. A Discussion Document*, February 2022, p6

⁹ Ibid

4.6 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.

4.7 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.

4.8 In Rent Smart Wales, landlords are considered to be providing property management services if they perform on or more tasks from a predefined list such as interviewing prospective renters or preparing tenancy agreements. Private landlords who contract all of these tasks out are not considered to be providing a property management service and therefore not required to hold a licence¹⁰.

4.9 The bill focuses primarily on the relationship between a property owner and a property manager. It's important that the Government 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.

4.10 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. Large private landlords employing people to provide property management services for their own properties must be licensed.

4.11. Renters in Kianga Ora and CHP tenancies deserve access to the same high standard that this regulation aims to hold independent property managers to account for. We see property managers within these organisations harming renters and the current system does not adequately hold them to account.

¹⁰ Rent Smart Wales, *Landlord and Agent Licensing*, accessed at <https://www.rentsmart.gov.wales/>

5. Certification

5.1. 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”¹¹

5.2. 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.

5.3. We believe that a landlord who has been ordered to use a property manager under s109AA RTA should not be able to become a licensed property manager themselves for the period stipulated in the order. It is unreasonable to expect that someone who was barred from providing residential tenancy services would be able to provide residential property management services to someone else.

5.4. Section s109B RTA lays out pecuniary penalty orders for large landlords or landlords of boarding houses that have committed an unlawful act. We believe that an individual who has recently been issued an order under s109B RTA should be ineligible for certification.

5.5. We welcome members of the public being able to object to the issue of a licence. We believe that in the case that the complainant is unsatisfied with the outcome there is a right to appeal the decision of the registrar.

¹¹ Ibid Hon Poto Williams

6. Requiring use of licensed residential property manager

6.1 We support the addition of s109AA to the RTA. We do however question how enforceable this provision is given the difficulty renters already face accessing information about landlords and the difficulty they face enforcing their rights.

6.2. Without the provision of a public and freely accessible register that details landlords who must use a licensed property manager and for how long we believe it's unlikely renters would ever be aware their landlord was committing an unlawful act.

6.3. Many renters avoid conflict with their landlord due to the fear of being kicked out of their home. We believe it's unlikely a renter would feel comfortable reporting their landlord who was in breach of an order under s109AA would want to report their landlord.

6.4. We recommend that the Tenancy Compliance and Investigation Team are empowered to investigate breaches of s109AA.

6.5. The Bill doesn't provide any provisions for the enforcement of s109AA. We recommend that not complying with an order made under 109AA is explicitly made an unlawful act and the tenancy tribunal should be able to order pecuniary penalties.

6.6. Section 109AA of the RTA only binds the landlord who is listed on a tenancy agreement. While we believe that this would be a straightforward process for individuals we believe it would become more complex when dealing with entities. For example a business that receives an order under 109AA moves all of its assets into a separate entity that then continues to provide those services wouldn't be committing an unlawful act under 109AA RTA, therefore making the provision irrelevant.

6.7. Continuing this example a person A owns and manages a property of their own. Person B owns and manages a property of their own. Person A and B also jointly own and manage a property together. The landlord listed on this shared tenancy would be A&B. If landlord A&B committed unlawful acts and received an order under s109AA would this stop them from being able to manage the properties that they individually own and manage?

6.8. We believe that the unlawful offences that could satisfy the tribunal to make an order under s109AA RTA should include excessive breaches of quiet enjoyment and harassment, interference with power and water, and discrimination.

6.9. We support the intent and inclusion of s109AA, but we believe it must be extended to cover the complex commercial relationships and ownership structures that exist within the residential tenancy sector.

6.10. We reiterate that regulating and licensing all private landlords (individuals and entities) alongside property managers would be a better way to achieve the stated objectives.

7. Disciplinary procedures

7.1. Under s58(3) the Registrar has the power to dismiss complaints. There is no requirement in the Bill for the Registrar to notify the complainant of the outcome of the complaint or the reason it was dismissed. We would like to see the Registrar required to inform complainants if their complaint is dismissed and for what reason.

7.2. In any situation where a renter 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.

7.3. 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.

7.4. Renters and their advocates must be represented on the Complaints Committee when the complaint is made by a renter.

7.5. 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.

8. Training and Qualification

8.1. 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.

8.2. We believe that to become a regulated property manager you must hold a level 4 qualification. A level 4 certificate for residential property management already exists¹² and Real Estate Agents, which hold less power over people looking for housing than property managers, are required to take a similar level 4 certificate¹³.

8.3. 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.

¹² NZQA, New Zealand Certificate in Residential Property Management (Level 4), Qualification Number 1809

¹³ The Real Estate Authority, *Required criteria and qualifications to work in real estate*, accessed at: <https://www.rea.govt.nz/real-estate-professionals/apply-for-your-licence/required-criteria-and-qualifications-to-work-in-real-estate/>