

Regulatory Impact Statement: Regulation of Residential Property Managers

Coversheet

Purpose of Document	
Decision sought:	<p>Cabinet approval to draft legislation that will promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers by:</p> <ul style="list-style-type: none">• 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 disputes resolution process.
Advising agencies:	Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (HUD)
Proposing Ministers:	Hon Dr Megan Woods, Minister of Housing
Date finalised:	17 October 2022
Problem Definition	
<p>The residential property management sector plays a significant role in the residential tenancies market, which houses nearly one in three households in New Zealand.</p> <p>While many property managers abide by appropriate professional standards set by industry associations they are members of or companies they are employed by, there is no mandatory licensing regime that extends across the entire property management sector. This lack of regulation means that minimum standards cannot be set or enforced across the industry, regulatory tools cannot be used to prevent or discipline poor practice, and there are no means to reliably exclude the worst actors from the industry after they have caused significant harm. Key stakeholder groups reiterate the significant risk that a lack of common industry good practice standards and controls, and an accessible independent disciplinary and disputes resolution process, pose to property owners and tenants.</p> <p>The Government is committed to ensuring New Zealanders have access to secure, healthy, and affordable housing. It wants to ensure residential property managers operate in a manner that supports public confidence in the integrity of the residential tenancies market and safeguards the interests of property owners, tenants, and other consumers, such as prospective tenants.</p>	
Executive Summary	
<p>Government intervention is required to address failures and reduce transaction costs in the residential property management market.</p> <p>HUD has considered a range of non-regulatory and regulatory interventions that will promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers.</p>	

We have also considered measures to address the risk that the regulation of residential property managers could have the unintended consequence of landlords shifting away from using licensed property managers and choosing to manage their own properties to avoid scrutiny of their compliance with the Residential Tenancies Act 1986 (RTA).

This regulatory impact assessment considers the following options for improving the performance of the residential property management sector:

1. Status Quo
2. Establishing a public register of all landlords
3. Government mandated voluntary certification of residential property managers
4. Licensing of residential property managers with associated industry standards
5. Tiered licensing of residential property managers and property management organisations with good practice industry standards (recommended option).

Options 1-4 were included in a discussion paper that informed a 10-week public consultation process between February-April 2022. Option 4 was covered in the most detail as the emerging preferred regulatory model at that time. The discussion paper also set out and sought views on variations or sub-options relating to various elements of the preferred regulatory model (for example, a range of professional entry requirements including differing levels of education and vocational experience, together with broader or stronger industry practice requirements). Appendix A provides a table summarising the key options that were assessed in the discussion paper.¹

Option 5 - our recommended option - takes account of feedback received through HUD's public consultation process. The key enhancements to this option over option 4 include:

- Public registration and tiered licensing of residential property managers and residential property management organisations
- Additional training and vocational experience required for 'full' and 'master' licences
- A Code of Conduct incorporating a commitment to industry good practice, ethical conduct and standards that foster cultural competence and address discrimination
- Reduced minimum annual continuing professional development (CPD) requirement
- Recognition of a broader set of competencies for inclusion in training and CPD programmes
- Annual audit of trust accounts operated by property management organisations
- A narrower set of clearly defined offences with specified penalty maxima
- Extension of the Real Estate Authority's mandate to act as the regulatory authority
- Extension of the Real Estate Agents Disciplinary Tribunal's mandate to cover residential property management related complaints and disciplinary matters.
- Consultation with affected parties including residential property managers, property owners/landlords, tenants and tangata whenua on enabling regulations and rules.

The preferred regulatory model has been subject to cost benefit analysis by the independent consultancy MartinJenkins who found that it is expected to deliver a modest net benefit. The incremental net present value of the proposed regulatory system, under a 5 percent social discount rate, is \$10.9M. The benefit to cost ratio is 1.07:1.

¹ The discussion paper is available at: https://consult.hud.govt.nz/policy-and-legislation-design/property-managers-review/user_uploads/regulation-of-property-managers-discussion-paper---february-2022-1.pdf

The options for mitigating the risk of landlords shifting away from the use of licensed residential property managers and choosing to manage their own properties to avoid compliance with RTA requirements are:

1. The counterfactual, including more focused compliance monitoring of landlords that manage their own residential tenancy properties by the Tenancy Services Compliance and Investigations Team
2. Registration of all landlords
3. Enabling the Tenancy Tribunal to order landlords that have acted unlawfully on two or more occasions in a five-year period to use a residential property manager for a specified period (preferred option)
4. Licensing of 'large' landlords defined as persons owning six or more residential properties used for residential tenancy purposes.
5. Licensing of all landlords.

This assessment concludes that the risk can be mitigated through:

- Increased compliance monitoring of landlords that do not use licensed property managers by Tenancy Services; and,
- enabling the Tenancy Tribunal to order the use of licensed residential property managers where a landlord has acted unlawfully on two or more occasions in a five-year period.

This approach does not incur any additional administrative cost. It is anticipated that Tenancy Services will be able to redirect existing resource, which is currently used to identify and address compliance issues with residential property managers, to focus on landlords. The regulatory cost incurred by any non-compliant landlords is anticipated to be the loss of 8-10 percent of weekly rental income to cover the cost of using a licensed property manager for the period ordered by the Tenancy Tribunal.

Stakeholder views

The public consultation process confirmed there is a broad recognition of the need for regulation of the residential property management sector. There is also broad support in principle for a licensing system that applies to both residential property managers and residential property management organisations.

There are differing views on some features of the regulatory model, such as the training standards that should apply to enter the occupation and the nature and extent of industry practice standards. There are also differing views on which organisation is best placed to act as regulator of the proposed system and which of the existing tribunals should be used as part of the complaints and disciplinary process.

The consultation process also surfaced broader concerns with the regulation of the wider residential tenancy market. This was reflected in tenants' concerns about compliance with, and enforcement of, the existing regulatory system as it applies to landlords, including Kāinga Ora and Community Housing Providers (CHPs).

We consider these concerns underpinned the call in many submissions from tenants, consumer advocacy groups, and some within the residential property management sector, for landlords to meet many of the occupational regulatory requirements proposed for residential property managers.

Consideration of further substantive reform of the RTA was out of scope for HUD's review. We consider the Government's significant reform of the RTA in 2020 should be given time to bed in and be evaluated before further measures are considered.

The core proposals in this assessment are intended to establish a robust regulatory system for a specific occupation that is not presently regulated. The proposed regulatory system for residential property managers is not intended to further regulate the activities of landlords in either the public or private sector – beyond addressing the risk that regulation of the residential property management sector could have the unintended consequence of landlords shifting away from the use of licensed property managers and choosing to manage their own properties to avoid compliance with RTA requirements.

The landlord-tenant relationship is already governed by the RTA and issues around compliance with, or understanding of, obligations under that Act are best addressed through that regime. The Public & Community Housing Act and the associated accountability arrangements that apply to Kāinga Ora and CHPs provide an additional means of ensuring those organisations and their staff meet their obligations to tenants.

The recommended interventions canvassed in this assessment have been refined to address stakeholder concerns where they align with the achievement of the Government's policy objectives. We anticipate, however, that some parties will continue to advocate for further regulation of landlords, either as part of this reform process or through further amendment of the RTA.

Limitations and Constraints on Analysis

This analysis has been framed by the scope established for the review, which has focused on addressing the harms associated with the activities of the residential property management sector.

While the analysis has taken account of the broader regulatory environment within which residential property managers operate, the review was not charged with addressing policy issues associated with existing regulatory settings in that wider environment, or with a review of the RTA.

Given the focus on identifying options for the occupational regulation of residential property managers, the initial analysis excluded consideration of extending the regulatory requirements that apply to landlords under the RTA.

HUD has, however, proposed an amendment to the RTA to provide the Tenancy Tribunal with the power to require the use of licensed residential property managers by landlords when they have been found to act unlawfully under the RTA on two or more occasions within a five-year period. The identification and assessment of this intervention arose as a means of addressing a risk identified with the proposals for the regulation of residential property managers. It has not arisen as part of a comprehensive review of the efficacy of the RTA as it applies to landlords and tenants.

Likewise, while we have taken account of the broader legislative environment that applies to the residential property management sector – including the Real Estate Agents Act – we have not been charged with undertaking a review of that legislation to ensure it remains fit for purpose for the regulation of the wider real estate industry.

There were some constraints imposed on HUD's analysis as a result of limitations in the data available on the residential property management sector and the operation of the wider residential tenancy market. There was also limited data available to quantify the cost of the harms arising from residential property management activities and to assess the benefits associated with the preferred regulatory intervention. These limitations are acknowledged in the body of this assessment and the associated cost benefit analysis.

On balance, however, we consider there is sufficient evidence to support the introduction of the proposed regulatory model for the residential property management sector.

HUD led the initial problem definition, options identification, and analysis process in collaboration with other key government agencies including the Ministry of Business Innovation and Employment, Ministry of Justice, Ministry of Social Development, Te Puni Kōkiri, Land Information New Zealand, the Real Estate Authority, the Office of the Privacy Commissioner, NZ Treasury and Department of the Prime Minister and Cabinet.

Our wider public consultation process took place during a period when the Government's Covid-19 restrictions placed some limitations on the scope and efficacy of our approach.

HUD released a discussion paper in February 2022 to support a ten-week public consultation process. Officials promoted the consultation process through direct mail to industry associations, tenant and consumer advocacy organisations, national Māori organisations, Wai 2750 claimants, and Māori housing providers. We also hosted or participated in five online stakeholder workshops and hui: a national peak body workshop, a regional focus group in Gisborne, a New Zealand-wide focus group, a webinar hosted by REINZ for its members, and a hui with Māori housing providers hosted by Te Matapihi.

The consultation process generated significant interest from residential property managers, residential tenancy property owners, landlords, tenants, and Māori housing providers. 456 submissions were received.

While we received constructive feedback from participants in Te Matapihi's hui, the online nature of the engagement process was a limitation. Broader and deeper engagement with Māori housing providers and wider iwi representatives would have resulted in a richer understanding of the issues and the manner in which interventions can be designed to address these concerns and any unintended consequences.

Written submissions, together with the feedback received through the workshops and hui, have been carefully considered and informed further analysis and the final proposals summarised in the preferred options outlined in this regulatory impact assessment. Our preferred approach also reflects further feedback from other government agencies and has been subject to an economic cost benefit analysis.

The proposal to provide the Tenancy Tribunal with the power to require the use of licensed residential property managers by landlords when they have been found to act unlawfully under the RTA on two or more occasions within a five-year period, responds to concerns that arose during the consultation process. It has not been subject to stakeholder engagement or public consultation in its own right. While referenced in MartinJenkins' cost benefit analysis, this proposed intervention has not been subject to a cost benefit analysis in its own right. Our assessment of its regulatory impact is necessarily qualitative.

If the proposal is accepted by Cabinet, together with the wider model for the regulation of the residential property management sector, it will be subject to further public scrutiny and input during Select Committee consideration of the draft legislation. We have also proposed that there be further engagement with representatives of affected parties including industry property owners, tenants, and tangata whenua during the development of the associated regulations and rules. Moreover, further formative research and outcome evaluation will inform the development and stewardship of the proposed regulatory system.

We consider, therefore, that this assessment provides an adequate foundation for Ministers to make informed decisions on the proposed regulatory interventions.

Responsible Manager



Claire Leadbetter
Manager, Policy and Legislation Design Team
Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (HUD)

17 October 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	HUD
Panel Assessment & Comment:	HUD's quality assurance panel has reviewed the Regulatory Impact Assessment (RIA) <i>Regulation of Residential Property Managers</i> . The panel considers the RIA meets the quality assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Current state

Housing and the Residential Tenancies Market

1. New Zealand has seen a greater proportion of people renting as declining housing affordability put homeownership beyond their reach. Census data shows that homeownership peaked in the 1990s at 74 percent and fell to 65 percent of households by 2018.
2. The number of people residing in rental accommodation grew to over 1.4 million people in 2018. Almost 600,000 households, or one-third of New Zealand households, are in rental accommodation. It is likely that a greater proportion of these households will need to rent long term given current housing affordability settings. Māori are also more likely to rent than Pākehā, with 52 percent of Māori households renting compared to 35 percent of Pākehā households.²
3. The residential tenancy market is challenging, with increasing demand for rental accommodation not always being matched by supply.
4. According to MBIE bond data, as of 31 August 2021, 78 percent of landlords (private and public) own one rental property, with 19 percent owning between two and five, and around 3 percent owning more than six properties.

Residential property management sector

5. As the residential property market has grown, so has the role of property managers within it. We estimate that there are between 2,096 and 7,881 residential property managers operating in New Zealand.³ They are responsible for managing about 42 percent of rental properties on behalf of property owners.
6. Large property management companies are responsible for around 40 percent of the residential property portfolio under the care of the property management sector. Smaller property management organisations and sole traders are responsible for the remainder of the portfolio.
7. Residential property managers typically charge property owners a percentage of weekly rental income along with a margin or fee for specified services. Residential property managers can provide a range of services to property owners such as:
 - initial property inspection and rental appraisals
 - property letting, including tenant and lessee vetting
 - bond lodgement and refund transactions and safe stewardship of tenants' money

² 2018 Census Data

³ MBIE data shows that 2,096 property managers have lodged a bond with tenancy services as of 31 August 2021. This data is based on bonds lodged with tenancy services and may undercount tenancies where the landlord's details are on the bond lodgement, but the property is managed by a property manager. Tenancies where a bond has not been charged are also not captured in this data. 7,817 people indicated they are a property manager by trade in the 2018 Census.

- collecting and managing rental income
 - managing payments to contractors and property owners
 - regular property inspections
 - organising maintenance and repairs
 - providing or contracting building management activities
 - regularly reporting to the property owner
 - performing rental reviews
 - arranging for the payment of insurance and local authority rates and other property expenses
 - managing compliance with relevant minimum standards, legislative requirements, and minimising business risk on behalf of property owners.
8. Residential property managers' earnings vary depending on skills, experience, and the type of work that they do. Residential property managers with up to three years' experience typically earn between \$61,000-\$82,000 a year, while those with three or more years' experience may earn between \$82,000-\$102,000 a year⁴. The Real Estate Institute of New Zealand (REINZ) has advised there is a shortage of good property managers, and salaries have increased as a consequence.

The current system – voluntary industry self-regulation

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

Real Estate Institute of New Zealand (REINZ)

10. REINZ is a membership organisation representing more than 16,000 real estate professionals nationwide. As of September 2021, REINZ represents over 1,200 members who carry out residential property management activities. REINZ estimates that around a quarter of these property managers work within mixed real estate agencies, and around 30 percent are considered to be sole traders with the balance working in larger property management exclusive businesses.
11. REINZ members aspire to best practice standards and are bound by the REINZ Codes of Agency Practice and Individual Membership. REINZ currently offers agency (organisation) membership and is looking to introduce an individual membership with a range of membership classes. REINZ offers membership to property managers and has a REINZ Property Management Accreditation Programme that applies to both organisations and individuals. Under this programme, individuals are required to have completed the New Zealand Certificate in Property Management and undertake annual CPD. All property management agency members of REINZ are required to have professional indemnity insurance, a trust account that is either audited or independently reviewed annually, and abide by REINZ's Code of Conduct.

⁴ Hays, FY2021/21 Salary Guide – Australia and New Zealand, 2021, cited by Careers New Zealand: <https://www.careers.govt.nz/jobs-database/finance-and-property/property-services/property-manager/about-the-job>.

Property Managers Institute of New Zealand (PROMINZ)

12. PROMINZ is a professional body for property management professionals that operates under the umbrella of the Property Institute of New Zealand (PINZ). It provides nationally accredited qualifications, guidance on career pathways, and resources to assist property managers within their roles. PROMINZ is dedicated to supporting, building, and setting standards for the profession. We understand PROMINZ has about 80 members.
13. PROMINZ has a number of membership classes that are designed to encourage and recognise professional development and advancement within the profession. To progress through the membership classes individuals need to meet training, industry experience, continuing professional development and good character test requirements.⁸ Members are subject to credit and criminal history checks, need to adhere to the PROMINZ Code of Ethics and Code of Practice, use a trust account for business transactions, and hold professional indemnity and public liability insurance.⁹ Members are also subject to the PROMINZ complaints process which is designed to ensure professional standards are maintained.

Residential Property Managers Association (RPMA)

14. The RPMA is a professional association for residential property managers that was established in 2021. As of December 2021, RPMA represented 83 residential property managers. To obtain RPMA membership, property managers have to:
 - observe the RPMA Code of Ethics
 - commit to CPD (a minimum of 10 hours annually)
 - complete a criminal history check
 - hold public liability insurance
 - use a designated rent account where money is held in trust.
15. RPMA has 5 classes of licences. To obtain the 'Qualified Residential Property Manager' licence, individuals must complete the NZ Certificate of Residential Property Management qualification (or equivalent) and the RPMA Ethics Module.
16. RPMA has its own complaints procedure to resolve issues between a property manager and their client (either a property owner or a tenant).

The wider regulatory environment

17. The activities of residential property managers are shaped by the wider legislative and regulatory environment. Their actions need to take into account the rules and regulations set out in other relevant legislation, such as the RTA.
18. The RTA, and its associated regulations, is the primary legislation that regulates interactions between landlords and tenants.
19. The RTA defines the rights and obligations of landlords and tenants of residential properties, establishes a tribunal (the Tenancy Tribunal) to promptly resolve disputes arising between landlords and tenants, and establishes a fund into which bonds payable by tenants are held.

20. In some circumstances, a property manager may be considered a landlord under the RTA and be subject to its requirements. This depends on what is contained in the tenancy agreement, and whether the property manager or property owner is listed as the landlord.
21. While disputes between landlords (whether property owners or property managers) and tenants are covered by the RTA, disputes between a property owner and property manager are not. Property owners can pursue claims against property managers under the general law, the Fair-Trading Act 1986, or the Consumer Guarantees Act 1993.
22. The purpose of the Real Estate Agents Act 2008 (REAA) is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work. It regulates the work and licensing of real estate agents in New Zealand but excludes property managers. Action can be taken against a property manager under the real estate regime where they are also a licensed real estate professional, and the conduct may amount to serious misconduct or disgraceful conduct.
23. Residential property managers also need to take account other relevant legislation, including the:
 - Crimes Act (1961)
 - Commerce Act (1986)
 - Fair Trading Act (1986)
 - Public and Community Housing Management Act (1992)
 - Human Rights Act (1993)
 - Trans-Tasman Mutual Recognition Act (1997)
 - Building Act (2004)
 - Crown Entities Act (2004)
 - Real Estate Agents Act (2008)
 - Kāinga Ora Homes and Communities Act (2019)
 - Public Service Act (2020)
 - Privacy Act (2020).

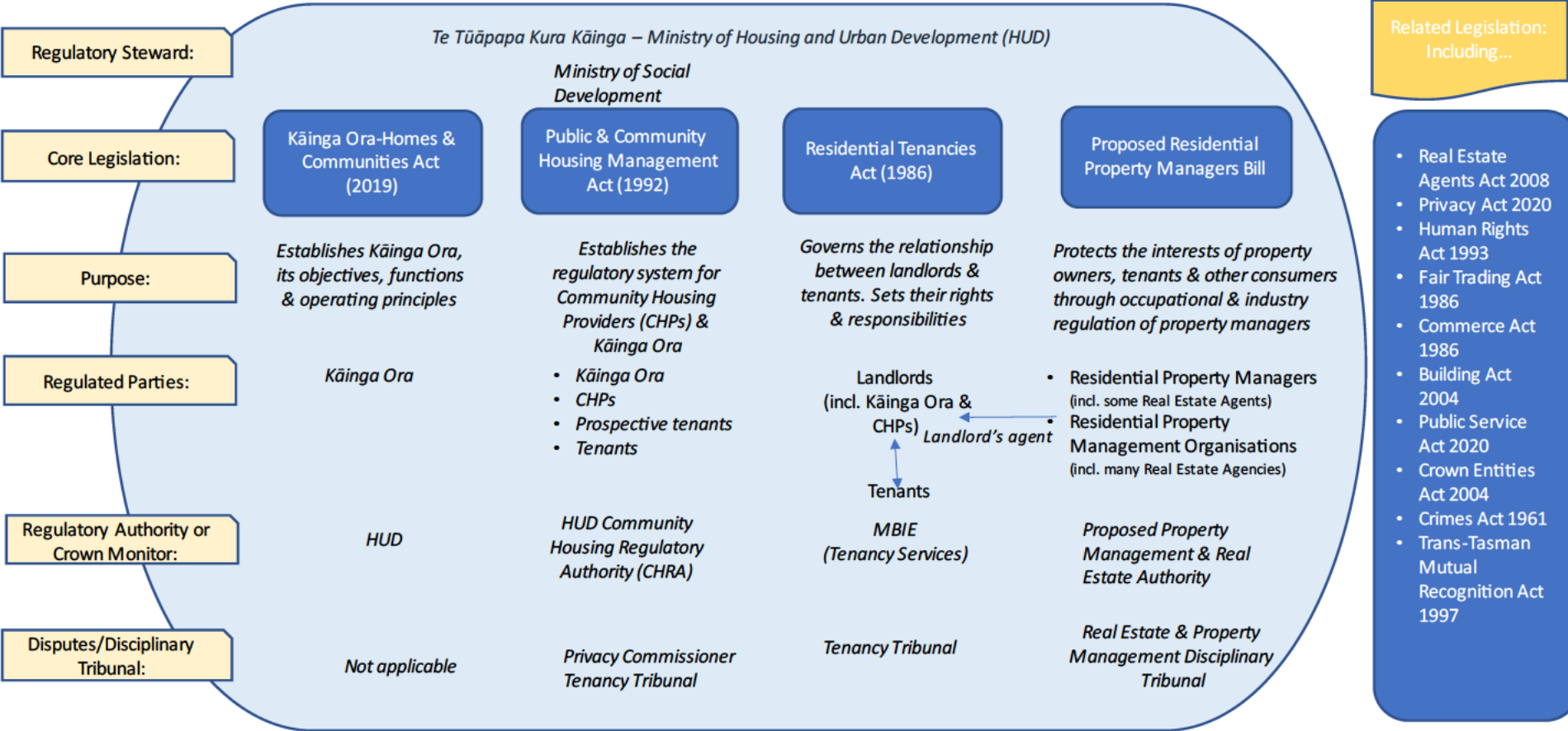
How is the status quo expected to develop if no action is taken?

24. REINZ, PROMINZ and the RPMA will continue to promote the application of their professional standards and seek to grow their membership base.
25. We anticipate, however, that due to the absence of a mandatory licensing regime that applies to the sector as a whole, a proportion of the residential property management industry will continue to operate outside these voluntary industry standards. The lack of regulations enforcing professional and industry practice standards, regulatory tools preventing and disciplining unsatisfactory behaviour, and methods to exclude the worst actors from the industry, means there are limited incentives for property managers to practice and enforce good behaviour. This will ultimately result in harm to some property owners and tenants. Even when industry associations and property management companies do require their members and employees to abide by certain professional and industry practice standards, the standards, and consequences for breaching them, may be highly variable across the industry. As a consequence, the market failures that underpin variable standards in the delivery of residential property management services, and the resulting potential for harm, will continue.

26. Figure 1 provides an overview of the residential tenancy system and the place of proposed residential property management regulation within it.

Figure 1:

The Residential Tenancy System



What is the policy problem or opportunity?

Nature, scope, and scale of the problem

27. There is no mandatory licensing regime that applies to all residential property managers. The absence of a robust regulatory system means that minimum standards cannot be set or enforced across the industry, regulatory tools cannot be used to prevent or discipline poor practice, and there are no means to exclude those worst actors from the industry after they have caused significant harm. The absence of such regulations has resulted in variable practice and heightens the risk of failures in the residential property management market, including behaviours with the potential for harm to both property owners and tenants.
28. Residential property managers are contracted by property owners to manage and maintain a significant capital asset. This includes managing relationships with tenants and ensuring compliance with a broad range of legal obligations. However, there is no regulatory assurance available to the property owner that a property manager will deliver their services in a manner that meets those legal obligations.
29. As noted earlier, residential property managers are responsible for managing 42 percent of the residential tenancy market. That market is continuing to grow as a greater proportion of New Zealanders are accommodated in rental housing. Māori and Pacific peoples are disproportionately represented in those that rent. Māori, for example, are more likely to rent than Pākehā, with 52 percent of Māori households renting compared to 35 percent of Pākehā households.
30. A wide range of stakeholders, including industry bodies representing property managers such as REINZ, PROMINZ and the RPMA, have highlighted the significant risk that a lack of common industry practice standards, controls, and an accessible, independent disciplinary and disputes resolution process pose to property owners and tenants and to the reputation of residential property managers.
31. There are limited sources of robust data quantifying the harms from poor property management practices, in part because of the present lack of regulation. However, anecdotal evidence from tenants and property owners highlights the significant risk that the lack of regulation of property managers poses to them.
 - a. In one instance, a tenant was required to take two different property management companies to the Tenancy Tribunal, for the same rental property, within the space of a year, for mistreatment. For both cases, the property owner was ordered to pay the tenant a total of \$1440, even though it was the property manager that was deemed to be at fault.
 - b. In another case, a property manager employed by a real estate company stole approximately \$50,000 from property owners after changing their bank details so that rental payments were redirected into their personal account.
 - c. Similarly, almost 25 property owners were potentially robbed of thousands of dollars by one property manager, who took varying amounts from weekly rental payments over the course of two years. One of the affected owners noted that landlord insurance does not cover instances of fraud.
32. Table 1 outlines ways that the unregulated activities of property managers can harm residential property owners and tenants and what causes that harm.

Table 1: Harms to Residential Tenancy Property Owners & Residential Tenants

Harm	Causes
To residential property owners	
<p>Reputational harm and additional costs as a result of:</p> <ul style="list-style-type: none"> • Liabilities for the acts and omissions of property managers failing to meet legal obligations under, for example, the Residential Tenancies Act, Fair Trading Act, and Human Rights Act. 	<ul style="list-style-type: none"> • Insufficient information available for property owners to determine the credentials of property managers. • No compulsory minimum competency standards that help ensure property managers are aware of their legal obligations and have the skills and experience to deliver services to an appropriate standard. • No industry standards that support compliance with legal requirements. • Contractual agreements may establish different accountabilities, rights and obligations between the parties and fail to reflect appropriate practice standards that are consistent with legal obligations.
<p>Return on investment compromised through:</p> <ul style="list-style-type: none"> • Misappropriation or misuse of rental income and bonds • Poor advice on RTA compliance • Poor valuation advice on rental income potential • Failure to maintain occupancy rates through timely letting when vacancies occur • Cost of resolving any disputes between the tenant and property owner as a result of mismanagement • Excessive property repair costs as a result of poor-quality property management services 	<ul style="list-style-type: none"> • Variation in property managers' competency. No compulsory minimum competency standards including, minimum integrity standards that help ensure property managers are aware of their legal obligations and have the skills and experience to deliver services to an appropriate standard. • No consistent industry practice standards that reflect and reinforce compliance with good practice and legal requirements. • No requirement to use audited trust accounts.
<p>Asset value compromised through:</p> <ul style="list-style-type: none"> • Inadequate property inspection to identify tenant damage and maintenance needs • Inadequate property maintenance. 	<ul style="list-style-type: none"> • Variation in property managers' competency. No compulsory minimum competency standards including minimum integrity standards for entry to the occupation. • No industry practice standards that reflect and reinforce industry compliance with good practice requirements.
<p>Discrimination based on:</p> <ul style="list-style-type: none"> • Age, sex, sexual orientation, marital status, family status, colour, race, ethnic or national 	<ul style="list-style-type: none"> • Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations.

origins, religious or ethical beliefs, political opinion, disability, or employment status which breaches the Human Rights Act	<ul style="list-style-type: none"> No industry practice standards that support compliance with legal requirements. Variation in property managers' relationship management skills, cultural competence, and awareness of conscious and unconscious bias and discrimination.
<p>Limited ability for redress for issues with property managers that occur outside the RTA, risking:</p> <ul style="list-style-type: none"> Continued non-compliance that compromises return on investment and asset value if property owner chooses to stay with the company Additional costs from finding a new property management company 	<ul style="list-style-type: none"> Lack of accessible independent disciplinary and disputes resolution process available for property owners when issues arise outside of the RTA
To residential tenants	
<p>Breaches of tenants' rights under the RTA such as failing to provide or ensure:</p> <ul style="list-style-type: none"> Housing meets the healthy homes standards Timely resolution of property maintenance issues Quiet enjoyment of the property Compromise tenant wellbeing including access to secure, healthy, and affordable housing. 	<ul style="list-style-type: none"> Power imbalance between property managers and vulnerable tenant groups amplifies harm and the potential for harm Tenants not having the luxury to change property management companies they have issues with unless they decide to move out Tenants accepting unreasonable terms, that are often settled outside the court, for fear of losing their home or being blacklisted
<p>Discrimination based on:</p> <ul style="list-style-type: none"> Age, sex, sexual orientation, marital status, family status, colour, race, ethnic or national origins, religious or ethical beliefs, political opinion, disability, or employment status which breaches the Human Rights Act and compromises access to secure, healthy, and affordable housing. 	<ul style="list-style-type: none"> Power imbalance between property managers and vulnerable tenant groups amplifies harm and the potential for harm Variation in property managers' relationship management skills, cultural competence, and awareness of conscious and unconscious bias and discrimination.
Over-collection or inappropriate use of tenants' personal information and other breaches	<ul style="list-style-type: none"> Power imbalance between property managers and vulnerable tenant groups. Variation in property managers' competency. No compulsory minimum competency standards to

of tenants' rights under the Privacy Act.	<p>ensure property managers are aware of their legal obligations.</p> <ul style="list-style-type: none"> • No industry practice standards that support compliance with legal requirements. • Little consequence or repercussion for property managers that repeatedly behave inappropriately or do not fulfil their roles professionally
Misuse or misappropriation of tenants' bond or rental results in financial harm.	<ul style="list-style-type: none"> • Variation in property managers' competency. No compulsory minimum competency standards including minimum integrity standards for entry to the occupation. • No requirement for use of audited trust accounts.
Tenants having to pay high rent	<ul style="list-style-type: none"> • The significant imbalance between supply and demand for rental properties puts property managers in a strong negotiating position, leaving tenants in a "take it or leave it" situation • Strong incentive for property managers to increase the rent as much and as often as possible due to the structure of the property management business • No requirement for property manager to keep a good record of rent, which means they could end up charging more rent or the wrong tenants
Failure to treat tenants, and prospective tenants, with courtesy and respect undermines human rights and wellbeing	<ul style="list-style-type: none"> • Variation in property managers' competency. No compulsory minimum competency standards to ensure property managers are aware of their legal obligations. • No industry practice standards, including code of conduct requirements. • Property managers' primary client is the property owner and there is no requirement for the property manager to deal with the tenant in a fair and respectful way

33. REINZ in their information paper – *A Call for Change* – has provided specific examples of some of these harms. Common themes set out in the paper include:
- Discriminating against tenants and asking for inappropriate personal information
 - Not complying with the RTA
 - Renting out spaces that do not comply with the RTA
 - Stealing bond and rental money from tenants and property owners.
34. Submissions on the recent RTA reform provided further anecdotal evidence in support of a number of the above concerns. Due to a significant imbalance between supply and demand for rental properties, property managers sit in a strong negotiating position, while tenants frequently feel they are in a "take it or leave it" situation. In the absence of regulation this creates an opportunity for property management companies to exploit vulnerable tenants in a number of ways, including:
- Handling tenant's private information inappropriately

- Entering the rental property inappropriately or holding inspections at inconvenient times for the tenant
 - Preventing tenants from making their rental property a home because it is easier to say no than check in with the property owner
 - Sustained rental increases
 - Discriminating against or acting inappropriately towards tenants.
35. Poor quality property management services have the potential to impact on tenant wellbeing. As well as the potential impacts during the duration of a tenancy – such as poor property standards or the violation of quiet enjoyment – poor quality property management can lead to high turnover of tenants (whether through tenants choosing to leave, or property managers preferring turnover in order to raise rents), resulting in a less secure tenure environment for tenants overall. Moving often can have negative consequences for health, education, and employment outcomes. For example, people who move often are less likely to be affiliated with a primary health care provider (doctor, nurse, or medical centre). Moving frequently also creates additional stress and cost for tenants.
36. Insecure tenure can also significantly affect children. International evidence links a lack of secure sustainable housing with low academic performance and negative health outcomes for young children. Children who change schools more often are more likely to receive special education services and show up in truancy data.
37. While property managers who belong to an industry body such as REINZ, PROMINZ, or RPMA are subject to a range of measures designed to ensure good practice, a significant portion of the industry is not covered.
38. Based on the evidence presented – including the views of industry participants and other affected parties – a threshold for government regulation has been met as the unregulated nature of the property management sector poses significant risks and can cause significant harm to property owners and tenants.
39. A cost-effective occupational regulatory system is required to hold all residential property managers to account for their conduct. It can help ensure appropriate professional standards are established and met across the entire industry, in addition to resolving claims or causes of action under contract or legislation.

Stakeholders' views

40. Property owners/landlords, property managers and representatives of property management organisations, and tenants and tenants' advocacy groups together with Māori housing providers gave feedback on the proposals in HUD's discussion paper.
41. Public consultation confirmed there was broad recognition of the need for regulation. 92 percent of people who made submissions on the discussion paper consider that government regulation of residential property managers is required to address the risks posed by them to tenants and property owners.
42. There was a small portion of submitters, mainly consisting of independent residential property managers, who disagreed with the need for regulation. They argued it would be costly and unnecessary to replace existing voluntary industry self-regulation.

43. The majority of submissions supported the proposed regulatory model outlined in the discussion paper, although there were a range of views on particular features of the model and how to best refine them in order to improve its efficacy.
44. The overarching issues consistently raised in workshops and written submissions were concerns about the regime not including private landlords, questions about whether the regime would apply to Kāinga Ora and CHPs, engagement with Māori in a manner that meets the Crown's obligations under the Treaty of Waitangi, and concerns about the timeframe to implementation.
45. Participants in the hui hosted by Te Matapihi observed that while the discussion paper indicated that Māori were overrepresented in the residential tenancy market, they were not satisfied that it adequately described how the proposed regulatory system addressed Māori needs or how hapū/iwi/Māori would be involved in the governance, design, or delivery of the system. These concerns have been taken into account in consequent design of the regime, including proposed consultation requirements and expectations for regulator Board members.
46. We have taken this feedback into account when developing the refined regulatory model and proposing the approach to the development and implementation of enabling regulations and rules in consultation with affected parties.

What objectives are sought in relation to the policy problem?

47. The Government is committed to ensuring New Zealanders have access to secure, healthy, and affordable housing. With nearly one in three people in New Zealand living in rental accommodation, a well-functioning residential tenancies market is vital to the achievement of that outcome.
48. There is a need to establish a system that provides assurance to property owners and the tenants that rent their properties that all residential property managers are required to meet appropriate standards.
49. The purpose of government regulation is, therefore, to promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers by:
 - establishing professional entry standards for residential property managers
 - establishing industry practice standards for the delivery of residential property management services
 - providing accountability through an independent, transparent, and effective disciplinary and complaints resolution process that applies to residential property managers and the delivery of property management services.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

50. Our assessment of the options has been based on the following criteria, which have been weighted equally in the assessment process:

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

What scope will options be considered within?

Regulating residential property managers, not commercial property managers

51. The proposed options are designed to address the harms arising from the activities of the residential property management sector. Commercial property management activities are excluded from the scope of the regulatory system.
52. Te Tūāpapa Kura Kāinga has not seen evidence of significant issues of concern in the commercial property management sector. The relationship between commercial property managers, property owners, and commercial tenants is different in nature to the relationships present in the residential tenancy sector. The same power imbalance does not exist between these parties, as parties to commercial arrangements would generally get professional advice. Moreover, commercial tenants are not in a position where they may be concerned about losing their home.

Real estate agents that trade as property managers

53. Real estate agents that also trade as residential property managers have been considered within the scope of the options considered in this assessment. While real estate agents are licensed under the REAA, the interventions considered in this assessment address the distinct issues and occupational requirements associated with residential property management.

Regulating property management organisations

54. We consider there is a need to identify options that mitigate the risks the activities of residential property management organisations, as well as individual residential property managers, pose to property owners and their tenants.
55. Both tenants and property owners may deal with multiple property managers within a property management company. Establishing standards that apply to the organisations that employ residential property managers may be an effective means of addressing some of the risks to tenants and property owners. It would enable the application of a wider range of interventions than would be possible if those interventions focused more narrowly on residential property managers. Property management organisations are, therefore, within the scope of this analysis.

Property owners are not in scope

56. We consider owners of residential property who choose to let their properties themselves do not need to be regulated parties under the proposed regulatory system. The activities of property owners who choose to let their own residential properties to tenants are already adequately regulated through the RTA.
57. While property owners, as landlords, are directly accountable for meeting requirements under the RTA, there are challenges holding property managers to account when they are acting as agents on behalf of the landlord. We have considered the nature of the relationship between property managers and property owners. This includes considering the effects of actions or inactions of a property owner on the ability of a property manager to meet their obligations and what measures, if any, may be required to address this.
58. It is important to note that any intervention will complement and be additional to protections offered to tenants under the RTA and existing civil remedies available to both property owners and tenants. The system will introduce professional entry requirements and industry practice standards that are designed to address the causes of, among other things, breaches of RTA requirements. This is expected to lead to improved compliance with that legislation. It will also provide remedies for breaches of the proposed regulatory requirements that will apply to property managers that are currently not covered by the RTA.
59. This means Kāinga Ora and CHPs are not covered by the proposed options as they and their staff are not providing property management services. Both Kāinga Ora and CHPs act as social landlords and are already regulated under the Public and Community Housing Management Act (1992).
60. The Government has, however, recognised the value of ensuring Kāinga Ora and CHPs' staff develop and maintain the competencies required to ensure the delivery of services to vulnerable tenants. Accordingly, using existing accountability mechanisms available to it under the Public and Community Housing Act, the Minister will require Kāinga Ora and CHPs to establish and meet appropriate education and continuing professional development performance standards together with other measures that ensure appropriate professional competency and services standards are met.

Body Corporate managers are not in scope

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

Definitions

62. Appendix B provides preliminary working definitions for the terms: landlord, residential property manager, and residential property management organisations.

International benchmarks

63. To inform the development of the options we considered regulatory systems in the following countries and Australian states:
- Scotland: Housing (Scotland) Act 2014
 - Ireland: Irish Property Services Regulatory Authority
 - Wales: Rent Smart Wales
 - Victoria, Australia: The Residential Tenancies Act 1997 (Vic) and Estate Agents Act 1980 (Vic)
 - New South Wales, Australia: Property and Stock Agents Act 2002 and the Property and Stock Agents Regulation 2014.
64. We also considered comparable occupational regulation systems in New Zealand, such as the regime regulating real estate agents.

What options are being considered?

Option One – Status Quo

65. The status quo would entail the continuation of voluntary industry self-regulation which would apply the members of REINZ, PROMINZ and the RPMA.

Option Two – Certification

66. Certification would involve an agency (either a designated industry association or independent regulator) empowered by statute certifying to the public that individuals have satisfied requirements that indicate their competence as residential property managers. Those individuals would have the right to use a designated occupational title such as 'certified property manager'.
67. Certified property managers would be listed in a public register by the statutory agency. To meet and retain their certified status, individuals would need to:
- Meet professional practice standards, including:
 - A minimum age requirement
 - Meeting a fit and proper person test
 - Completing an entry level training course
 - Abide by industry practice standards, including:
 - Meeting annual CPD requirements
 - Complying with a Code of Conduct and any other practice standards established by the agency, which may include use of trust accounts and holding public liability and indemnity insurance
 - Be subject to any disciplinary process and requirements established by the agency.

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

Option Three – Registration

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

Option Four – Licensing of individual RPMs with associated industry standards

71. Licensing would require all individuals providing specified residential property management services to hold a licence issued by an agency empowered by a statute to do so and to be listed on a public register.
72. Licensees would need to meet prescribed entry requirements, including minimum competency standards. To retain their licence individuals would need to:
- Be at least 18 years of age
 - Meet professional practice standards established by the agency, including
 - A minimum basic training requirement
 - A fit and proper person test
 - Abide by any industry practice standards established by the agency, including
 - CPD of 20 hours per annum
 - Compliance with a Code of Conduct
 - Provision of indemnity and public liability insurance
 - Use of trust accounts subject to independent review and periodic audit as required by the regulator
 - Be subject to any disciplinary processes and requirements established by the agency.

Option Five – Tiered licensing of individual RPMs and RPM organisations

73. Option five would require all residential property manager and residential property management organisations to hold a licence and to be listed on a public register.
74. The key enhancements to this option over option four include:
- Public registration and tiered licensing classes covering both residential property managers and residential property management organisations
 - Additional training and vocational experience required for ‘full’ and ‘master’ licensing classes
 - A Code of Conduct requiring a commitment to industry good practice, ethical conduct and standards that foster cultural competence and address discrimination
 - Reduced minimum CPD requirement of 10 hours verifiable training per annum
 - Recognition of a broader set of competencies for inclusion in training and CPD programmes
 - Annual audit of trust accounts operated by residential property management organisations

- A narrower set of clearly defined offences with specified penalty maxima
 - Extension of the Real Estate Authority's mandate to act as the regulatory authority of the new system
 - Extension of the Real Estate Agents Disciplinary Tribunal's mandate to cover residential property management related complaints and disciplinary matters.
 - A legislative requirement for consultation with affected parties including residential property managers, property owners/landlords, tenants and tangata whenua on enabling regulations and rules.
75. The professional entry and industry practice framework associated with each licence class would be enabled by the primary legislation with specific standards or requirements established in the associated regulations and rules following further consultation with affected parties.
76. Table 2 provides a summary of high-level regulatory requirements by licensing class. Appendix C provides a fuller summary of the key features of this preferred licensing model.
77. Table 3 provides a comparative summary of the four substantive options considered in this assessment.

Table 2: Residential property management licensing class requirements

Residential Property Management Licensing Class Requirements				
	Provisional Residential Property Manager (RPM)	Licensed Residential Property Manager	Licensed Master Residential Property Manager	Licensed Residential Property Management Organisation
Conditions	Licensed to provide prescribed RPM services under supervision of a Licensed Master RPM	Licensed to provide RPM services as a residential property manager while employed or contracted by a residential property management organisation)	Licensed to provide RPM services, supervise provisional RPMs and manage, or operate as, a Residential Property Management Organisation	Licensed to operate as a Residential Property Management Organisation, employ RPMs and deliver RPM services.
Entry Standards	18 Years of Age Completion of Basic Training (2 days) Satisfies Fit & Proper Person Test	18 Years of Age Completion of Intermediate Training (5 days) 6-month vocational experience Satisfies Fit & Proper Person Test	18 Years of Age Completion of National Certification in Property Management (Level 4) or equivalent 18 months vocational experience Satisfies Fit & Proper Person Test	The Chief Executive, General Manager or equivalent office holder satisfy Fit & Proper Person Test. All officers be proper persons and include a Licensed Master Residential Property Manager The organisation has the capability and capacity to operate in accord with the Code of Conduct and meet industry practice standards
Practice Requirements	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Meets Trust Account & Annual Audit requirements Meets Indemnity & Public Liability Insurance requirements for all staff Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator

Table 3: Comparative summary of the four substantive options

System features	Option 2 – Certification	Option 3 – Registration	Option 4 – Licensing RPMs	Option 5 – Tiered licensing of RPMs & RPMOs
Regulated parties	Residential property managers (voluntary)	All residential property managers	All residential property managers & RPM organisations	Residential property managers and RPM organisations
Registration and licencing	Public register	Public register	Public register Licencing (individuals only)	Public register Licencing classes for individuals & organisations: - Provisional - Full - Master - Licensed Organisation
Professional entry requirements	Established by the agency		18 years of age Fit and proper person test Basic training course	18 years of age Fit and proper person test Basic, intermediate, and NQF Level 4 training for provisional, full and Master licences respectively Industry experience (6 months to be fully licensed, 18 months for Master)
Industry practice standards	Established by the agency		CPD (20 hours per annum) Code of conduct Indemnity and public liability insurance Trust accounts with independent review and periodic audits as required by the regulator	CPD (10 hours verifiable training per annum) Code of conduct Indemnity and public liability insurance (organisations) Trust accounts operated by organisations with annual audit
Complaints and disciplinary framework	Established by the agency		Complaints panel, and either REA Disciplinary Tribunal or Tenancy Tribunal	Complaints panel and REA Disciplinary Tribunal
Offences and penalties			Offences and penalties aligned with similar regulatory systems	Narrower range of offences with specified maxima aligned with similar regulatory systems
Regulatory management	Industry body or independent regulator		REA or MBIE	REA
Cost recovery			Mixed model	Mixed model
Stewardship	Te Tūāpapa Kura Kāinga			

How do the options compare to the status quo?

Comparative Assessment					
	<i>Option One – Status Quo</i>	<i>Option Two – Certification</i>	<i>Option Three – Registration of RPMs</i>	<i>Option Four – Licensing of RPMs with associated industry standards</i>	<i>Option Five – Tiered licensing of RPMs & RPM organisations</i>
Effectiveness	0	0/+ Establishes common standards, but certification voluntary so no universal application. Limited additional contribution to policy objectives over status quo	0/+ Improves transparency for consumers & government agencies, but no impact on professionalism or service standards. Limited contribution to policy objectives	+ Establishes common professional and industry practice standards & disciplinary arrangements that apply to all RPMs which will lift sector performance and meet objectives.	++ Establishes common professional and industry practice standards & disciplinary arrangements that apply to all RPMs & RPM organisations which will lift sector performance and meet objectives.
Proportionality	0	0/+ Benefits from common standards	0 Benefits of transparency balanced by additional cost	+ Compliance requirements & costs outweighed by the expected benefits	0/+ Additional compliance costs associated with training and audit, offset by reduced CPD and efficiencies from organisations meeting other requirements and outweighed by additional benefits of a more effective regulatory system
Certainty	0	0/+ Provides greater certainty to consumers compared with variation in differing industry groups' standards under the status quo	0 Greater transparency but no more certainty around professional practise or regulation of it for consumers or regulated parties	+ Greater transparency and certainty around professional practise and regulation of it for consumers and regulated parties	+ Greater transparency and certainty around professional practise and regulation of it for consumers and regulated parties
Flexibility & Durability	0	+ Scope to update in response to changing circumstances	0/+ Standard register envisaged. Scope to update if necessary to ensure it remains fit for purpose.	+ Regulations, rules & transitional arrangements provide flexibility to regulated parties for how they meet requirements. Scope to update in response to changing circumstances	++ Licensing classes provide development pathway and greater flexibility to regulated parties in how they meet legal requirements. Scope to update regulations and rules in response to changing circumstances
Practicality / Risk	0	0/- Established regulatory principles and features. Implementation risks identified and could be mitigated.	0 Established regulatory principles and features. Implementation costs but no significant risks if implemented	0/- Established regulatory principles and features. Implementation risks identified and mitigated. Appropriate implementation timeframes & transitional arrangements identified.	0/- Established regulatory principles and features. Implementation risks identified and mitigated. Appropriate implementation timeframes & transitional arrangements identified.
Overall assessment	0	0/+ Marginal improvement over status quo only. Would establish common professional standards, but voluntary nature means not all practitioners are certified.	0/+ Improves transparency, but no significant contribution to policy objectives in own right. A useful addition to other interventions.	+ Cost effective means of meeting objectives. Significant improvement on the status quo.	++ Cost effective means of meeting objectives. Significant improvement on the status quo with greater emphasis on regulation of RPM organisations as well as individual RPMs (<i>preferred option</i>)

Assessment criterion key: ++ significant improvement; + moderate improvement; 0 neutral/no change; - worse than the status quo; - - much worse than the status quo

What option is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

78. Our preferred approach is option five – the introduction of tiered licensing classes covering residential property managers and residential property management organisations.
79. This approach incorporates feedback received through HUD’s public consultation process and, in our view, delivers a more flexible, durable, and cost-effective solution than option four.
80. There are some additional compliance costs in option five arising from the additional training and experience requirements associated with the full and master licensing classes, the introduction of licensing requirements for residential property management organisations and the requirement for annual audit of trust accounts.
81. In our view these additional costs are offset in part by the reduction in the required number of verifiable CPD training hours, the efficiencies gained by having insurance and trust account requirements met by residential property management organisations rather than individual property managers, and the additional flexibility provided to the sector in terms of how it meets regulatory requirements. Overall, the refinements are expected to result in a system that is better able to meet its objectives than option four and deliver a better net benefit.
82. Both licensing options offer significant net benefits over the certification option (option two). Certification would only deliver a marginal improvement on the status quo through the establishment of common certification requirements for the sector. We do not anticipate that it would result in a significant increase in coverage of those residential property managers and property management organisations that currently choose to sit outside the various industry-based certifications programmes.
83. Option three – the introduction of a public register of residential property managers – enables consumers and regulatory bodies to identify who is offering residential property management services but does not contribute to ensuring appropriate competency or service standards are met. It would not make any significant contribution to the achievement of the Government’s policy objectives in its own right. We do, however, consider a public register would be a useful element within a broader licensing approach and have therefore incorporated it into the preferred regulatory model.

What are the marginal costs and benefits of the preferred option?

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact (forecast to FY2032/3)	Evidence Certainty
<i>Regulated groups:</i>			
<ul style="list-style-type: none"> <i>Regulated groups (residential property managers and organisations)</i> 	Direct costs associated with meeting regulatory requirements (eg levy, training and audit costs) and indirect costs associated with changing business practises to meet new mandated serviced standards	\$131.7M	Medium
<i>Government groups (Regulator; HUD; MBIE – Tenancy Services; and Ministry of Justice)</i>	<p>s 9(2)(f)(iv) establishment and ongoing costs associated with delivering new regulatory functions, providing tribunal services, and system monitoring and evaluation</p> <p>Absorption into baseline of other costs associated with, for example, regulatory stewardship, triaging complaints, and monitoring the REA's extended mandate</p>	\$28.2M + other low costs	Medium
<i>Consumers:</i>			
<ul style="list-style-type: none"> <i>Residential property owners</i> 	Any costs passed on by regulated parties in the form of increased charges (a portion of the cost identified against RPMOs above, which is estimated to total \$70 per property). It is expected that some of these costs will be passed on to tenants.	Low	Medium
<ul style="list-style-type: none"> <i>Tenants</i> 	As above, any cost passed on by landlords in rental as a result of increased charges by RPMOs. Those RPMO costs would be the equivalent of \$1-2 per property per week if all net sector costs were passed to tenants	Low	Medium
Total monetised costs		\$159.9M	
Non-monetised costs		<i>Low</i>	<i>Medium</i>

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact (forecast to FY2032/3)	Evidence Certainty
<i>Regulated groups:</i>			
<ul style="list-style-type: none"> Residential Property Managers and RPM organisations 	<p>Benefits include the avoided costs for the RPM sector including reduced disputes, liabilities, disputes and management costs.</p> <p>In addition to quantified benefits RPMs might expect to gain reputational benefits and potentially an increase in market share from increased confidence the RPM sector service offering.</p>	52.0	Low
<i>Consumers:</i>			
<ul style="list-style-type: none"> Residential Property Owners 	Avoided costs arising from improved overall levels of service by RPMs that reduce incidence and severity of harms	80.7	Medium
<ul style="list-style-type: none"> Tenants 	Avoided costs arising from improved overall levels of service by RPMs that reduce incidence and severity of harms	38.1	Medium
Total monetised benefits		\$170.8M	
Non-monetised benefits		Medium-High	<i>Medium</i>

Note: The monetised costs and benefits are drawn from MartinJenkins, Costs and Benefits of Regulating the Residential Property Management Sector, Draft Report dated 1 August 2022

84. MartinJenkins estimate the total regulatory cost inclusive of any budget funding is 2.3 percent of the estimated total value of the residential property management sector. The estimated the incremental net present value of the proposed regulatory system, under a 5 percent social discount rate, is \$10.9M. The benefit to cost ratio is 1.07:1.
85. An unintended consequence of the proposed approach is a risk that some landlords may shift away from the use of licensed residential property managers and choose to manage their own properties in order to avoid compliance with RTA requirements. This risk is addressed in Section 3 of this report.
86. As noted in the table, there is a higher degree of certainty around the estimated costs of the preferred option than there is with the anticipated benefits. Measures to address this uncertainty and other implementation risks are outlined in Section 4.

Section 3: Landlord intervention options analysis

Introduction

87. This section considers options for addressing the risk that raising the professional standards and performance of residential property managers could have the unintended consequence of some landlords shifting away from the use of licensed residential property managers. They could choose to manage their own residential tenancy properties to avoid compliance with RTA requirements.

What criteria will be used to compare options to the status quo?

88. Our assessment has been based on the following criteria which have been weighted equally in the assessment process:

Effectiveness	How effective is the proposed system in achieving the system's regulatory objectives? In particular, is it an effective means of mitigating the risk of landlords shifting away from the use of licensed residential property managers and choosing to manage their own properties to avoid compliance with RTA requirements? Will the system deliver net economic benefits? Any trade-offs between regulatory objectives or intended outcomes will be highlighted and taken into account.
Proportionality	Are compliance requirements and costs proportionate to the expected benefits? Any changes to regulatory systems, including enabling legislation, should have benefits that outweigh the cost of the changes.
Certainty	Will regulatory requirements, processes and decisions be transparent, predictable, and consistent with other policy settings and provide certainty to regulated parties?
Flexibility and durability	Will regulated parties have the scope to adopt least cost and innovative approaches to meeting their legal obligations? Can the regulatory system evolve in response to new information and changing circumstances?
Implementation risk and cost	Are the implementation risks, timeframes, and costs acceptable? Is the system based on established and proven regulatory features or will it include untested or novel solutions? How certain are the implementation timeframes and costs? Are they within acceptable bounds?

What is the scope of the problem?

89. The scope of this options analysis is limited to assessing interventions that are designed to address the risk that the regulation of residential property managers could result in landlords shifting away from the use of licensed residential property managers and choosing to manage their own properties to avoid compliance with RTA requirements.

Landlord intervention – what options are being considered?

Option One – *Counterfactual*

90. The landlord-tenant relationship is governed by the RTA. The protections for tenants established under the RTA, including recourse to the Tenancy Tribunal, apply to tenants housed by Kāinga Ora and CHPs.
91. Landlords will continue to be subject to regulations established by the RTA. Recent legislative amendments to the RTA have increased the accountability arrangements that apply to landlords.
92. We anticipate that, as a consequence of the introduction of new legislation covering residential property managers, the Tenancy Services Compliance and Investigations Team will be able to redirect existing resource that is currently used to identify and address compliance issues with residential property managers to monitoring and enforcing landlord compliance with the RTA. As a result, we anticipate greater scrutiny of the landlords.

Option Two – *Registration*

93. This would entail extending the public register of property managers to include landlords as well as residential property managers and residential property management organisations.
94. Registration would require all property owners acting as the landlord for their own property (“private landlord”), Kāinga Ora, and registered Community Housing Providers (CHPs) to list their name and place of business in a public register maintained by an agency empowered by a statute to do so.
95. There would be no restrictions on registration. Registration alone would not attest to an individual meeting a particular level of competence. It simply provides a means for identifying and providing information to individuals and organisations on the register.

Option Three – *Tenancy Tribunal able to order the use of licenced residential property managers*

96. This would involve amending the RTA to provide the Tenancy Tribunal with the power to order landlords that have been found to have acted unlawfully under the RTA twice in a five-year period to use a licenced residential property manager for a designated period.

Option Four – *Licencing of “large” landlords*

97. This option involves establishing a licensing model for ‘large’ landlords – those individuals or organisations who own and lease to tenants six or more residential properties.
98. Licencing would require all residential property owners that wanted to lease a property to a tenant that they own to hold a licence issued by an agency empowered by a statute to do so.

99. The licensing requirements would be a subset of those we anticipate applying to property managers. Under this option, landlords would be required to:
- Appear on a public register
 - Complete a basic training course focused on compliance with the RTA and other relevant legislative requirements, including obligations under the Privacy Act and the Human Rights Act
 - Meet a fit and proper person test
 - Undertake CPD
 - Continue to be subject to the complaints process established under the RTA.

Option Five – *Licencing of all landlords*

100. This option involves all landlords, regardless of the number of properties they own and lease, to meet the licensing requirements outlined in option 4.

How do the options compare to the counterfactual: Landlord intervention options

Comparative assessment of landlord intervention options					
	Option One – Counterfactual	Option Two – Registration of landlords	Option Three – Tenancy Tribunal can order use of licenced RPMs	Option Four – Licencing of “large” landlords	Option Five – Licencing of all landlords
Effectiveness	0	- Registration would have no impact on landlords’ behaviour and would not achieve the objective	+ Cost-effective measure that addresses the risk and meets the objective of mitigating risk	0/+ Establishes professional entry and industry practice standards and disciplinary arrangements that would apply to some landlords, contributing to improvements in sector performance and addresses risk	+ Establishes professional entry and industry practice standards and disciplinary arrangements that would apply to all landlords, lifting sector performance and addresses risk
Proportionality	0	- Administrative and compliance costs outweigh expected benefits which are minimal	+ + Minimal cost outweighed by the expected benefits	- - The benefit of risk mitigation is outweighed by the anticipated compliance costs incurred by some landlords	- - The benefit of risk mitigation is outweighed by the anticipated compliance costs that would be incurred by all landlords
Certainty	0	0 Improves transparency but no more certainty around professional practice and conduct	+ Simple measure	0/+ Greater transparency and certainty around professional practice and conduct of some landlords	+ Greater transparency and certainty around professional practice and conduct of all landlords
Flexibility & Durability	0	0 Standard register envisaged. Scope to update enabling regulations if necessary to ensure it remains fit for purpose.	+ Scope to update in response to changing circumstances	0/+ Scope to update in response to changing circumstances	0/+ Scope to update in response to changing circumstances
Practicality / Risk	0	0/- Some implementation issues associated with establishing the register, aligning with existing systems and ensuring universal coverage	- Adjudicator training required. Also need to ensure Tribunal systems & processes enable adjudicators to apply the new intervention	- Significant implementation risks associated with developing and implementing a compliance management system for large landlords	- Significant implementation risks associated with developing and implementing a compliance management system for all landlords
Overall assessment	0	0 Increases the visibility of landlords but has no impact on their behaviour. Only effective when combined with other interventions.	+ Cost-effective means of addressing risk/meeting objective. Appropriate improvement to the Counterfactual (Recommended approach)	- Disproportionate response and cost to the risk the option is intended to address.	- - Disproportionate response and cost in relation to the risk the option is intended to address.

Assessment criterion key: ++ significant improvement; + moderate improvement; 0 no change / status quo; - worse than the counterfactual; - - much worse than the counterfactual

What option is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

101. On balance we consider that the risk of some landlords shifting away from the use of licensed residential property managers and choosing to manage their own properties to avoid compliance with the RTA can be mitigated through:
- Increased compliance monitoring of landlords that do not use licensed property managers by Tenancy Services; and,
 - enabling the Tenancy Tribunal to order the use of licensed residential property managers where a landlord has acted unlawfully on two or more occasions in a five-year period.
102. We consider the risk of this behaviour by residential property owners is very low in the first instance. Landlords that have chosen to use the services of a property manager generally do so to ensure their responsibilities under the RTA are met.
103. These added measures, therefore, are in our view an appropriate and cost-effective response to the risk that some may wish to avoid any increased cost associated with meeting obligations under the RTA that are identified by property managers.
104. While the licensing options would also mitigate the risk, the measures go beyond what is required to do so and would impose unnecessary and disproportionate regulatory costs on residential tenancy property owners.
105. The introduction of a public register would increase the visibility of landlords but not have any impact on their behaviour. This measure is only effective when combined with other interventions.

What are the marginal costs and benefits of the option?

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
<i>Regulated groups:</i>			
<ul style="list-style-type: none"> Residential Property Managers and RPM organisations 	No direct quantifiable costs, outside delivery of standard RPM services	-	High
<ul style="list-style-type: none"> Residential Tenancy Property Owners operating as Landlords 	Direct cost of engaging a licensed a licensed residential property manager if ordered by the Tenancy Tribunal	8-10% of weekly rental income	Medium
<i>Consumers:</i>			
<ul style="list-style-type: none"> Residential Property Owners contracting RPMs 	No direct quantifiable cost	-	High
<ul style="list-style-type: none"> Tenants 	No direct quantifiable cost. Risk that landlords could seek to pass on additional costs in increased rental	Low	Medium
Total monetised costs			
Non-monetised costs			
		Low	<i>Medium</i>

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
<i>Regulated groups:</i>			
<ul style="list-style-type: none"> Residential Property Managers and RPM organisations 	<p>Marginal increase in properties under management from landlords required to use their services by the Tribunal</p> <p>Maintains and possibly grows income streams as regulatory measures address risks associated with property owners' direct management of tenancies</p>	Low-Medium	Low-Medium
<i>Consumers:</i>			
<ul style="list-style-type: none"> Residential Property Owners using RPMs 	Improved compliance management of non-compliant landlords, improves reputational outcomes for residential tenancy property owners.	Low-Medium	Medium
<ul style="list-style-type: none"> Tenants 	Improved compliance management of landlords results improved service standards and outcomes	Medium	Medium-High
Total monetised benefits		-	-
Non-monetised benefits		Medium	Medium

106. The key risk and uncertainty associated with the preferred option is determining what measures are required to ensure Tenancy Tribunal adjudicators have the information required to determine when the application of the new penalty may be appropriate. This may require changes to Tenancy Tribunal systems and business processes for managing tribunal claim information and decisions. The information needs, business process and system changes and associated costs have not been identified.

Section 4: Delivery

How will the new arrangements be implemented?

Roles & Responsibilities

107. The Minister of Housing will be the responsible Minister for the proposed regulatory system. The Minister of Justice will be responsible for monitoring the performance of the Real Estate Authority in accord with the requirements of Crown Entities Act 2004.
108. Provision will be made for the Minister of Justice to consult with the Minister of Housing when establishing the government's priorities and expectations for the REA's delivery of its regulatory functions in relation to the residential property management sector.
109. HUD, as the regulatory steward for the proposed legislation, will advise the Minister of Housing and oversee the establishment of the regulatory system. HUD will be responsible for:
- Providing advice on the development of the primary legislation
 - Leading the development of the enabling regulations and supporting the REA with the establishment of the rules required to give effect to the regulations
 - Monitoring and reporting on the performance of the regulatory system
 - Advising the responsible Minister on any changes to the regulatory system to improve its performance.
110. The Ministry of Justice will be responsible for monitoring and reporting on the performance of the REA as the regulatory authority for the residential property management regulatory system. This will be an extension of its existing monitoring function in relation to the REA's regulatory functions under the Real Estate Agents Act. The Ministry of Justice will also continue to be responsible for oversight of the REA Disciplinary Tribunal.
111. A memorandum of understanding will be established between HUD and the Ministry of Justice to ensure appropriate engagement and consultation between the two agencies takes place to ensure the establishment of performance expectations for the REA and the monitoring of their performance is aligned with the governments overall policy objectives and priorities for the residential property management regulatory system.
112. The REA will be responsible for establishing and delivering the regulatory authority's functions, while the Ministry of Justice will oversee arrangements for extending the mandate of the REA Disciplinary Tribunal.
113. As part of the establishment process, we propose that the REA's name be amended to reflect its extended mandate and further consideration be given to the organisation's governance, management, and resourcing arrangements, including how the Crown will meet its Te Tiriti obligations.

Legislative Development

114. The regulation of residential property managers will require the passage of new legislation. This will provide another opportunity for public input when the Government's draft Bill is being considered by a Parliamentary Select Committee.
115. We anticipate that PCO will complete the development of a draft Bill in early 2023, with Cabinet approving its introduction to Parliament in the second quarter of 2023.

116. s 9(2)(f)(iv)
117. We anticipate the development of regulations and any associated rules that need to be developed by the regulator will commence once primary legislation is introduced to the House in June 2023. It is envisaged they will be completed and gazetted in mid-late 2024.
118. Consultation with affected parties will take place during the development of the regulations and rules required to give effect to the primary legislation. This will include engagement with representatives of residential property managers, property owners, landlords, tenants, and tangata whenua.

Implementation

119. To enable the establishment of the regulatory authority and the promulgation of enabling regulations, we anticipate the primary legislation will not come into force until approximately 12 months following its passage by Parliament.
120. We also anticipate the legislation will include transitional arrangements and a further transitional period of approximately 12 months to provide time for:
- Regulated parties to be able to meet the legislation's regulatory requirements
 - The regulatory authority to raise awareness of regulatory requirements and complete the initial registration and licensing of all regulated parties (with phased renewal dates to smooth the administrative burden associated with this process).

System Monitoring, Evaluation & Review

121. In conjunction with the legislation passing, Te Tūāpapa Kura Kāinga will plan for, and implement, system monitoring and evaluation arrangements. This will enable the Ministry to inform the responsible Minister and Parliament on the system's overall performance and recommend any measures required to improve that performance.
122. HUD envisages that a substantive review of the regulatory system's effectiveness will take place five years after legislation's commencement.

Implementation Timeframes

123. Table 5 provides an overview of the indicative implementation timeframe:

Table 5: Delivery implementation timeframe

Milestone	Target Date	Comment
Cabinet agrees to develop draft Bill	October 2022	
Cabinet approves introduction of the draft Bill to Parliament	May 2023	Subject to PCO drafting capacity
Draft Bill receives First Reading and referred to Select Committee	June 2023	Subject to the availability of House time

Select Committee report back	Late 2023/Early 2024	Select Committee's consideration of the Bill spans the general election period allows up 7 months to consider submissions and report back
Passage completed and Royal Assent	Mid 2024	
Regulations gazetted	Mid-late 2024	14 months from June 2022 to develop, consult on and draft the regulations
Commencement	Mid 2025	Allows time for regulator to set up & sector to understand requirements.
All provisions in force	Mid 2026	Provides time for sector to complete licensing and comply with all requirements
Outcome evaluation	Mid-2030	

Risk Management

124. The proposed regulatory model and the associated implementation process has taken designed to take account of and address a strategic and operational risks.
125. Those risks and the associated mitigation management arrangements are summarised in the following table.

Issue/Risk	Mitigation
<i>Regulatory barrier to entry and increased compliance costs leads to reduced supply (and competition) particularly in smaller markets: Regulation could act as a barrier to entering the occupation in New Zealand or result in existing practitioners leaving the occupation</i>	<ul style="list-style-type: none"> • Legislation and regulation to be developed in accord with good practise principles, including effectiveness, proportionality, flexibility and durability • Regulatory impact assessments to be completed on enabling regulations. • Provision for transitional arrangements for existing residential property managers • Trans Tasman Mutual Recognition Act will apply enabling recognition of residential property managers that meet equivalent regulatory requirements in Australia
<i>Competent practitioners with significant industry experience without formal qualifications disadvantaged and presented with additional compliance costs</i>	<ul style="list-style-type: none"> • Transitional arrangements will be established for residential tenancy managers to enable Recognition of Prior Learning and experience.
<i>Required competencies and industry practise change over time</i>	<ul style="list-style-type: none"> • The regulator will be able to review and update the training & CPD curriculum

<i>Regulatory design results in compliance costs increasing to the point where they are not proportionate to the anticipated benefit</i>	<ul style="list-style-type: none"> • Legislation and regulation to be developed in accord with good practise principles, including effectiveness, proportionality, flexibility and durability • Statutory requirement to consult with affected parties on regulations and rules • Regulatory impact assessments to be completed on enabling regulations.
<i>Awareness of regulatory requirements:</i> Optimising the performance of the regulatory system requires regulated parties, residential tenancy property owners, tenants and prospective tenants to be aware of the systems objectives, compliance requirements and available remedies.	<ul style="list-style-type: none"> • The regulator's functions include promoting awareness of the regulatory system. • s 9(2)(f)(iv) [REDACTED]
<i>Licensing establishment and renewal lumpiness:</i> The REA will need to assess a large number of initial license applications & then renew those licensees annually generating a resourcing issue if they are not spread over the licensing year.	<ul style="list-style-type: none"> • Transitional arrangements to be established to spread initial licensing applications over a 12-month period • Initial licensing period to be varied in length to spread renewal requirements over each licensing year.
s 9(2)(f)(iv) [REDACTED]	[REDACTED]
s 9(2)(f)(iv) [REDACTED]	[REDACTED]
<i>Uncertainty around net benefits</i>	<ul style="list-style-type: none"> • Measured system design & further regulatory impact assessment of enabling regulation and rules. • Periodic HUD outcome evaluation and system review, including economic net benefit analysis
<i>Uncertainty around number of RPMs and RPMOs results in fees and levies being too high or too low</i>	<ul style="list-style-type: none"> • Further research on RMP and RPMO numbers • Consider pre-registration scheme to identify number of regulated parties • Provision in regulations for regulator to right-size levy after first year licensing completed.

Appendix A: Discussion Paper's emerging preferred model and other options

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

Appendix B: Preliminary definitions

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

landlord in relation to any residential premises that are the subject of a tenancy agreement, means the grantor of a tenancy of the premises under the agreement; and, where appropriate, includes— a. a prospective landlord; and b. a former landlord; and c. a lawful successor in title of a landlord to the premises; and d. the personal representative of a deceased landlord; and e. an agent of a landlord. (*Residential Tenancies Act 1986*)

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

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

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

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

Appendix C: Recommended regulatory model following public consultation

Objectives

1. The regulatory system should promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers by:
 - establishing professional entry standards for residential property managers
 - establishing industry practice standards for the delivery of residential property management services
 - providing accountability through an independent, transparent, and effective disciplinary and complaints resolution process that applies to residential property managers and delivery of property management services.

Regulated parties

2. The system will regulate the activities of residential property managers and residential property management organisations. The proposed legislation will bind the Crown and capture public sector organisations and employees that deliver residential property management services.
3. There will be scope for the regulator to provide exemptions from all or part of the system's regulatory requirements for occupations that have appropriate standards and accountability arrangements already in place.

Licensing

4. To be employed or trade as a residential property manager, individuals will need to hold a licence issued by the Real Estate and Property Management Authority that determines the licensee meets specified licensing requirements.
5. Residential property management organisations will also need to hold a licence to trade and employ property managers and they will be subject to the industry standards and the complaints and disciplinary arrangements established under the legislation.

Public Register

6. The regulator would maintain a public register of all licence holders.

Licensing Classes:

7. The legislation will provide for a tiered licensing system. The licence classes include:
 - Provisional Residential Property Manager (restricted practice under supervision)
 - Licenced Residential Property Manager (fully able to practice as a residential property manager while employed or contracted by a licenced residential property management organisation)
 - Licenced Master Residential Property Manager (licenced to supervise provisional residential property managers & manage or operate as a residential property management organisation)
 - Licenced Residential Property Management Organisation (able to employ or contract licenced property managers and offer residential property management services).
8. The entry or practice requirements associated with each licence class will be enabled by the primary legislation with specific requirements established in the associated

regulations and rules following consultation with affected parties. An illustrative summary of the proposed requirements by licence class is outlined in Table C1.

Licence renewals, suspensions, and revocation

9. Licences would be renewed annually. Arrangements for imposing conditions on licences, or suspending and revoking licences, are provided for under the complaints and disciplinary system.
10. Decisions by the regulator to impose conditions, suspend, or revoke a licence would be subject to appeal to the Real Estate and Property Management Disciplinary Tribunal.

Licensing class prerequisites

11. *Entry requirements:* All applicants for a residential property management licence need to be at least 18 years of age, meet the requirements of a fit and proper person test, and provide evidence that they meet the necessary training and vocational experience requirements for each licensing class.
12. *Vocational Training:* The content of vocational training programmes required as a prerequisite for each of the proposed licencing classes will be established in rules developed by the regulator in consultation with the relevant Workforce Development Council with key stakeholder groups.
13. To illustrate the requirements that would be established in the rules, applicants for each of the following licence classes would need to meet the following training requirements:
 - Provisional Residential Property Manager: Completion of a basic training course (of about 15 hours) before being able to undertake specified property management duties under the supervision of a licenced master residential property manager
 - Licenced Residential Property Manager: Completion of all components of an intermediate training course (about 5 days), which may be undertaken while employed as a provisionally licenced property manager before being contracted or employed as a licenced residential property manager by a licenced residential property management organisation
 - Licenced Master Residential Property Manager: Completion of the NZ Certificate in Residential Property Management (Level 4) or an equivalent or higher qualification recognised by the regulator before being able to trade as a master residential property manager, supervise provisional licence holders, and manage, or operate as, a residential property management organisation.
14. The content of training courses is expected to include:
 - legislative and regulatory requirements related to residential property management
 - knowledge about maintaining a property
 - conduct expected from a property manager
 - financial and trust account management
 - relationship management skills
 - managing relationships with tenants
 - development of culture competence, including an understanding of Te Ao Māori

- awareness of, and approach to managing, conscious and unconscious bias and discrimination in relation to age, gender, marital and family status, ethnicity, sexual orientation, disability
15. *Vocational Experience:* Residential property managers will be required to have 6 months experience working in a licenced residential property management organisation under the supervision of a licenced master residential property manager before being able to be fully licenced in their own right. To be eligible for a master residential property manager's licence, the applicant must have a minimum of 18 months experience.
 16. The requirement for on-the-job experience could present a barrier to practising as a property manager in parts of the country serviced by sole-traders or small companies that do not have licenced master residential property managers able to supervise a new employee. In these circumstances there should be discretion for the regulator to grant a right to practise under a provisional licence subject to agreed conditions being met. Those conditions would include satisfying specified training requirements before commencing trade and ensuring appropriate mentoring and monitoring arrangements are in place.
 17. Those education and training requirements, together with any necessary arrangements for their delivery, should be specified in regulation. The primary legislation should require that prior to approving the promulgation of the regulations, the responsible Minister must be satisfied that consultation has taken place with the appropriate Workforce Development Council and affected parties including representatives of tenants and consumers, landlords, residential property managers and tangata whenua.
 18. The regulatory authority should have the discretion to recognise prior learning and experience of regulated parties already employed as residential property managers at the time the legislation comes into force. Arrangements for enabling the recognition of prior learning and experience by the regulator would be included in regulation and designed to ensure managers that already meet appropriate competency standards are not required to undertake additional training to be recognised as a licenced residential property manager. This may include transitional provisions that enable existing property managers with a certain number of years' experience and a verifiable record of CPD to be exempt from entry level qualification requirements.

Professional and industry practice standards

19. Residential property managers and residential property management organisations will need to comply with professional and industry practice standards. These standards will include:
 - meeting the continuing professional development (CPD) requirement of 10 hours verifiable training each year. CPD requirements will be established by the regulator in rules. CPD training modules are expected to include:
 - changes to legislative requirements that impact the delivery of property management services
 - developments in residential property management good practice
 - relationship management and conflict resolution
 - cultural awareness and competency, including an understanding of Te Ao Māori
 - ethics and human rights, including addressing conscious and unconscious bias and discrimination
 - disability awareness, and
 - privacy and personal information.

- operating in accordance with a Code of Conduct, which will be developed by the regulator in consultation with representatives of affected parties, including industry, property owners, tenants, and tangata whenua. It is anticipated that the code will include commitments to:
 - adhering to and promoting industry standards that reflect good practice, including standards that foster cultural competence and address discrimination
 - ethical conduct that recognises the rights, obligations and interests of property owners, landlords and tenants and fosters consumer wellbeing.
 - Any other standards established by the regulator following appropriate consultation with affected parties and approval by the responsible Minister that determined to be necessary to meet the purpose of the regulatory system.
20. Residential property management organisations will also be required to:
- hold professional indemnity and public liability insurance that covers their employees and contractors
 - operate trust accounts that are subject to an annual audit
 - provide information as required by the regulatory authority to support:
 - compliance monitoring and enforcement
 - monitoring and evaluation of the residential property management sector
 - monitoring and evaluation of the residential property management system.

Complaints and disciplinary framework

21. The regulatory system will incorporate an independent complaints and disciplinary framework. It is modelled on the framework that applies to real estate agents.
22. The framework provides a process for the regulator to triage complaints. This involves determining whether a complaint involves a breach of the property management legislation or should be referred to another organisation.
23. The regulator can also proactively identify, investigate, and initiate disciplinary proceedings in its own right, using the Complaints Committee and Tribunal hearing process to address cases where the regulator considers disciplinary action is warranted. Complaints covered by the legislation can be resolved through mediation, a Complaints Committee for cases that may involve ‘unsatisfactory conduct’, or a Disciplinary Tribunal for more serious cases that may involve ‘misconduct’.
24. The Real Estate Agents Disciplinary Tribunal (REA Disciplinary Tribunal), which is overseen by the Ministry of Justice, will have its mandate extended to provide an independent disputes and disciplinary service.
25. All parties would have the right to appeal a Complaints Committee decision to the REA Disciplinary Tribunal and retain a further right of appeal to the High Court and to the Court of Appeal on questions of law. Complaints Committee and Disciplinary Tribunal decisions would be published in a publicly accessible ‘decisions’ database.

Offences and penalties

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

27. The proposed offences and penalties framework is designed to be an effective compliance management mechanism proportionate to the form of non-compliance being addressed. The proposed offences and penalties are aligned with those included in similar occupational regulatory systems, including the Real Estate Agents Act 2008.
28. The offences and associated penalty maxima are as follows:
- i. Providing false or misleading information to obtain a licence or register as a residential property manager. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - ii. Practicing as a residential property manager when unregistered or unlicensed (unless exempt from these requirements). Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - iii. Trading as a residential property manager or residential property management organisation and employing or contracting an unregistered or unlicensed person as a residential property manager to provide residential property management services. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - iv. Failing, without reasonable excuse, to produce financial records or other documents that may be requested by the regulator as prescribed in regulation. Maximum fine for an individual: \$10,000. Maximum fine for a company: \$50,000.
 - v. Failing to meet obligations in relation to property management transactions that may be specified in primary or secondary legislation such as:
 1. Failing to hold money in audited trust accounts. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 2. Knowingly rendering false financial accounts as a residential property manager while employed or contracted by a residential property management organisation. Maximum fine for an individual: Imprisonment for a term not exceeding 2 years or a fine not exceeding \$40,000, or both. Maximum fine for a company: \$100,000.
 - vi. Failing to disclose a conflict of interest that results in a licensee or their family member benefitting financially from the licensee's actions. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - vii. Resisting, obstructing, or providing false or misleading information to the regulatory authority when they are investigating a potential breach of the Act. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - viii. Failing to comply with a lawful summons of the Tribunal. Maximum fine for an individual: \$40,000. Maximum fine for a company: \$100,000.
 - ix. Acting in contempt of the Tribunal by, for example, wilfully insulting or obstructing a witness or an officer of the Tribunal, interrupting or misbehaving at a sitting of the Tribunal or disobeying any order or direction of the Tribunal in the course of its proceedings. A fine not exceeding \$1,000.

*Regarding paragraph 28(v)(2)
 – please note that later decisions were made to remove imprisonment as a possible penalty for knowingly rendering false financial accounts

Management and stewardship

29. The REA would be responsible for the regulatory service design and delivery. Its functions would include:
- i. education and professional development
 - ii. registration and licensing
 - iii. standard setting
 - iv. information management

- v. compliance management
- vi. disputes resolution.

30. The membership of the REA's Board will need to change to ensure it is able to discharge the organisation's extended mandate, incorporate appropriate industry and consumer perspectives, and has the competencies required to address the Crown's Te Tiriti obligations.
31. Te Tūāpapa Kura Kāinga would act as the steward of proposed legislation and the new regulatory system. The Ministry of Justice would be responsible for monitoring the performance of the REA under the Crown Entities Act. The existing accountability arrangements for the oversight of courts and tribunals would be unchanged.

Cost recovery

32. A significant proportion of the costs associated with the delivery of the regulatory systems should be met by the property management sector through fees and levies rather than being funded by the Crown. Principles based on equity, efficiency, justifiability, and transparency would be incorporated in primary legislation to frame the establishment of cost recovery arrangements.
33. The cost recovery requirements, including levels of charges, will be established in regulations subject to Ministerial approval. Before seeking to recover costs, the regulator will 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.
34. s 9(2)(f)(iv)
[REDACTED]
35. Further details on cost recovery are included in Appendix D.

Table C1: Residential property management licensing class requirements

Residential Property Management Licensing Class Requirements				
	Provisional Residential Property Manager (RPM)	Licensed Residential Property Manager	Licensed Master Residential Property Manager	Licensed Residential Property Management Organisation
Conditions	Licensed to provide prescribed RPM services under supervision of a Licensed Master RPM	Licensed to provide RPM services as a residential property manager while employed or contracted by a residential property management organisation)	Licensed to provide RPM services, supervise provisional RPMs and manage, or operate as, a Residential Property Management Organisation	Licensed to operate as a Residential Property Management Organisation, employ RPMs and deliver RPM services.
Entry Standards	18 Years of Age Completion of Basic Training (2 days) Satisfies Fit & Proper Person Test	18 Years of Age Completion of Intermediate Training (5 days) 6-month vocational experience Satisfies Fit & Proper Person Test	18 Years of Age Completion of National Certification in Property Management (Level 4) or equivalent 18 months vocational experience Satisfies Fit & Proper Person Test	The Chief Executive, General Manager or equivalent office holder satisfy Fit & Proper Person Test. All officers be proper persons and include a Licensed Master Residential Property Manager
Practice Requirements	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator Meets Continuing Professional Development requirements Renews licence annually	Abides by Code of Conduct Meets Trust Account & Annual Audit requirements Meets Indemnity & Public Liability Insurance requirements for all staff Abides by Industry Practice Standards, including use of Trust Accounts & provision of information required by the regulator

APPENDIX D: Stage 1 Cost Recovery

Impact Statement: Regulation of Residential Property Managers

Introduction

This statement addresses the cost recovery elements of the proposed regulation of residential property managers set out in the substantive Regulatory Impact Assessment (RIA).

The RIA sets out the rationale for government intervention, the policy outcomes regulation is intended to achieve, the key elements of the regulatory model, its impact on affected parties and the implementation and evaluation requirements in the event the government agrees to introduce new legislation.

The new legislation required to enable the regulation residential property managers would include the power to cost recover.

Policy Rationale

A significant proportion 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.

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

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

We propose that the cost of services that provide direct ('private good')⁵ benefits to individual property managers – such as completing a training course or qualification that is a prerequisite to obtaining a licence, or obtaining a licence to provide property management services – should be paid by individual property managers in the form of a fee. Services that provide benefits to property managers collectively (club goods)⁶ such as the provision of professional and industry standard setting services and a range of compliance management services - should be met through an annual operating levy paid by all licensed residential

⁵ According to NZ Treasury guidelines, a private good is one where people can be excluded from its benefits at a lower cost and use by one person conflicts with use by another. Examples of private goods include passports, birth certificates and licences. There is a strong case for recovering the costs of a private good from those who benefit from it, usually through a fee.

⁶ According to NZ Treasury guidelines a club good is one where people can be excluded from its benefits at a low cost but its use by one person does not detract from its use by another, at least until the point where congestion occurs. Examples of club goods provided by the public sector include toll roads and nature parks. A common way to charge for the use of a club good is a levy applied to a group of users, such as members of an industry group.

property managers and residential property management organisations together with a licensing application and renewal fees.

The approach to funding complaints and dispute resolution services recognises that cost should not act as a barrier to holding property managers to account and the need for the service arises from the activities of property managers. Ensuring property managers meet agreed professional standards through a complaints based disciplinary process also has club and some merit good aspects to it.⁷ We propose, therefore, that it is primarily funded via a levy on the property management sector. In addition to a levy contribution from industry, a modest fee should also be paid by the complainant for filing an appeal with the Disciplinary Tribunal.

The costs associated with the regulatory stewardship responsibilities for Te Tūāpapa Kura Kāinga would be met from core government funding. The service is provided primarily to the responsible Minister and to Parliament and has wider public good benefits.⁸

High level cost recovery model

The cost recovery framework

Table D1 outlines more fully the relationship between regulatory system outputs, service users and the proposed cost recovery arrangements and the rationale for them.

Checks and Balances

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

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

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

⁷ According to NZ Treasury guidelines a merit good is one that is likely to be produced at a lower level than the community desires in a free market situation. This may be because the public benefit of the good is greater than the private benefit, and consumers only take into account the private benefit when making decisions.

⁸ According to NZ Treasury guidelines a good is considered to be a public good when excluding people from its benefits is either difficult or costly and its use by one person does not detract from its use by another. There is a good case for recovering the costs of a public good through general taxation or, if the benefits are localised, from local government revenue. Examples include national security and street lighting. Many Government-provided outputs share the characteristics of public goods to some extent. Although such goods and services might have some elements of a public good, there still might be justifications for recovering costs.

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

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

Implementation issues – establishment phase

s 9(2)(f)(iv)

The uncertainty around the actual number of residential property managers and residential property management organisations that will be subject to regulation creates challenges in establishing fees and levies at a level that will cover the regulatory system's costs.

Further work will also need to be undertaken by HUD and the establishment manager for the regulator to refine the indicative direct and indirect cost estimates that have been prepared to date to inform the regulatory impact assessment and advice to Ministers to date.

Indicative Costs

The following section outlines indicative preliminary estimates of charge levels relating to the delivery of services to regulated parties.

These are indicative estimates only. Actual charge levels will be determined after:

- further analysis can be undertaken to refine the estimated number of residential property managers and residential property management organisations
- further analysis of estimated costs for the delivery of regulatory services
- the new legislation enabling cost recovery is enacted; and
- appropriate engagement and consultation have taken place with affected stakeholders.

Vocational training

A prescribed fee will not be established under the proposed legislation for education and training programmes a property manager is required to complete to be licensed.

Vocational education and training providers will establish the fees they charge for the provision of training courses or qualifications. By way of benchmark example, we note:

- *Provisional Licence Pre-requisite:* The 2-day residential property management course training programme currently offered by REINZ costs \$239 (including GST) per person
- *Full Licence Pre-requisite:* We anticipate the proposed intermediate training course would cost between \$600-\$1,000 (including GST) per person depending on its final content and mode of delivery
- *Master Licence Pre-requisite:* The Level 4 Certificate in Property Management from SkillsNZ costs between \$994.95 (including GST) for the online module to \$1,950 (including GST) per person for an integrated in-person and online module

Continuing Professional Development

Likewise, the fees for continuing professional development modules will depend on final content and mode of delivery. By way of benchmark example, we note that REINZ offers the following verifiable training packages that meet the REA requirements for real estate agents:

- 10-hours over 2 days face to face - \$163.30+GST per person
- 10-hours in four sessions over four days live online - \$139.95+GST per person
- 2-hour self-paced online modules - \$36.74 per module per person

Disputes resolution

We propose that the application fee for lodging an appeal aligned with that charged by the Real Estate Agents Disciplinary Tribunal. That fee is currently \$30.

By way of comparative benchmark, we note it costs \$20.44 to lodge a claim with the Tenancy Tribunal, and between \$45 - \$180 to lodge a claim with the Disputes Tribunal. The amount depends on the claim's size.

In addition, a levy would be paid by residential property managers and residential property management organisations to cover the cost of REA Disciplinary Tribunal services. We estimate that levy would be in the order of \$197 per annum assuming 5,000 residential property managers and 430 Residential property management organisations.⁹

Licensing fee & levy

The cost recovery regulations setting fees may provide for variation on fees between different license classes including the fee charged to individuals and property management organisations. The regulations may also vary license application and renewal fees.

A preliminary cost-estimate prepared to support the Cost Benefit Analysis of the proposed regulatory model suggested the average annual levy and licensing fee of \$620 would be sufficient to cover annual operating costs, assuming 5,000 individual property managers and 430 residential property management organisations.

Comparative Licensing fees and operating levies

The actual cost of the licensing fee, together with the regulator and tribunal operating levies to be established in regulation, will depend on the number of regulated parties covered by the scheme, final scheme design features and refined annual operating costs.

Our preliminary estimates suggest the annual licensing fee including regulator and disciplinary tribunal operating levies will be around \$820 per annum which is similar to our less than other New Zealand occupational regulatory schemes.

By way of comparative benchmark, we note the following:

- The application fee to register as a valuer in New Zealand is \$820.
- A Real Estate Agent's licence in New Zealand costs \$939.55. This includes the application fee, operational levy, and disciplinary levy. To retain a licence, agents pay \$724.50 per annum to cover the annual operational and disciplinary tribunal levies.
- The Property Institute of New Zealand's fees vary by membership class. The senior member application fee is \$125 with an annual subscription fee of \$1,033.50.

⁹ Assuming total operating costs of \$1.039 per annum and one-off capital costs of \$32,000 as outlined in preliminary estimates by the Ministry of Justice. The levy could be as low as \$153 per annum if there are 6,500 RPMs and 500 RPMOs or as high as \$376 if there are only 2,500 RPMs and 350 RPMOs.

- In Victoria (Australia) property managers pay AUD\$392 (about NZ\$400) to obtain a licence, and in New South Wales (Australia) it costs AUD\$755 (about NZ\$769).

Table D1: Cost recovery arrangements

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

Consultation

The proposed approach to cost recovery was included in a discussion paper that was used as the basis for a 10-week public consultation period in February-April 2022. Further details on the public consultation process, the submissions received and our response to them are summarised in the Regulatory Impact Statement and outlined more fully in HUD's submissions analysis paper.

There was broad support for the cost recovery model. Of the 400 responses, 70 percent supported the proposed cost recovery framework. Some property managers were concerned that the cost of regulation could drive small businesses out of the industry due to an inability to meet increasing costs. The majority of submissions from tenants and tenants' advocacy groups considered that tenants should not have to pay an application fee in order to make a complaint.

In the discussion paper we proposed having an application fee for any party wishing to utilise the system's disputes resolution process. Feedback from submissions pointed out that a fee is only required when complaints are escalated to the Disciplinary Tribunal, not for when applicants wish to access the initial stages of the complaints' resolution process. On reflection we agree that complainants should not have to pay an application fee to access the complaints and disciplinary service.

Further work is required to ensure the levies and fees are set at a level that is consistent with the principles of equity, efficiency, justifiability and transparency outlined earlier in this paper.

The establishment of levies and fees through the development of cost recovery regulations will require further engagement and consultation with affected parties including residential property managers, consumer and tenants' advocacy organisations, and iwi and Māori organisations with an interest in the residential property management system.