

19 April 2022

Te Tūāpapa Kura Kāinga | Ministry of Housing and Urban Development
PO Box 82
Wellington 6140

By email: propertymanagersreview@hud.govt.nz

ICNZ submission on Residential Property Management Regulatory Options Discussion Paper

Thank you for the opportunity to submit on the *Residential Property Management Regulatory Options Discussion Paper (Discussion Paper)*, which was released by Te Tūāpapa Kura Kāinga / Ministry of Housing and Urban Development (**MHUD**) on 16 February 2022.

The Insurance Council of New Zealand/Te Kāhui Inihua o Aotearoa (**ICNZ**) represents general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, cyber, commercial property and directors and officers insurance).

Please contact Jane Brown (jane@icnz.org.nz) if you have any questions on our submission or require further information.

Submission

Our responses to the questions posed in the Discussion Paper are set out below.

Overview

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

ICNZ agrees with the proposed objectives for the regulatory system set out on page 8 of the Discussion Paper and believes that they are consistent with what is expected of other comparable regulatory regimes. To ensure that the regulatory system is effective, it is essential to promote professionalism, ensure consistent behaviour across the industry, and to be able to remediate any complaints or concerns that arise.

2. Do you agree or disagree with the emerging regulatory model as a whole?

ICNZ supports the emerging regulatory model as a whole and is encouraged by the increased industry standards that are likely to result from implementation of the model. If applied effectively,

the regulatory model should help to improve the management of the residential rental industry and also provide positive flow-on effects for the insurers of rental homes.

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

We do not have any suggested changes that should be made to the overall regulatory model.

Residential tenancy market

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

ICNZ agrees that government regulation of property managers is required to address the risks posed by property managers. While we recognise that there are a number of industry bodies who self-regulate parts of the sector, there are no standard conditions across the whole industry, no one body to which every property manager is accountable, and no regulatory requirements before becoming a property manager which risks allowing poor or harmful behaviour, whether intentionally or due to ignorance.

Government regulation is needed to achieve the standardisation of conduct and best practice complaints and disciplinary processes to lift the overall levels of the sector. At its heart, this proposed regime is about ensuring people are treated fairly and consistently, at a time when large numbers of people are renters, many of whom are vulnerable. The objectives of the regulatory system are unlikely to be achieved using the current ad hoc approach to oversight of the property manager sector.

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

We do not have any additional comments.

Regulated parties

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

ICNZ agrees that the regulatory system should apply to individuals and organisations providing property management services operating in the private, community and public sectors. For completeness, this should include Crown providers such as Kāinga Ora so that the same standards are applied in relation to public housing. We agree that private landlords should not be included in the scheme as there are already sufficient legislative requirements and protections under the Residential Tenancies Act 1986.

Despite the above, we question whether it is intended for the regime to apply to accommodation services such as residential care and university halls of residence. While we would assume that to be the case, the working definition of “residential property” used in the Discussion Paper, taken from the Real Estate Agents Act 2008 does not make it clear. We would appreciate clarity on this point.

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

Given that real estate agents are already licensed under the Real Estate Agents Act 2008, and the requirements for being licensed appear to be consistent with those proposed under this regime, we agree that they should be exempt from holding a property managers' licence. We agree that the qualification to this exemption is that they must still comply with industry entry and practice standards through the complaints and disciplinary process.

Certification, registration and licensing

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

ICNZ agrees that licensing individual property managers should be the preferred approach. While there is also merit in the option to license both individuals and organisations, this could lead to increased cost for low additional benefit. We believe that licensing individuals is the most effective way to ensure that each property manager is complying with their obligations under the new regime.

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

Consistent with our response above, we do not believe that additional cost should be imposed if it can be avoided. As long as the organisation is also subject to industry requirements and the complaints and disciplinary regime, then we are comfortable with not requiring organisations to be licensed.

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

We do not have any further comments.

Occupational entry requirements

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

Requiring property managers to meet a fit and proper person test is consistent with the practice under other comparable regimes. We agree that it offers an appropriate check on standards of personal and professional integrity and support its inclusion as a requirement to being a property manager.

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

While training or education requirements should not be so onerous as to deter people from becoming property managers, we believe that it would be appropriate for there to be a minimum level of education required which covers the likes of relevant legislation, relationship management and guidance on good conduct.

If training is advanced as an entry requirement to the profession, then consideration will need to be given to transitional requirements for, as an example, those people with many years of skills and experience but without formal training. We note that this same point has been an issue with the introduction of competency requirements under the financial advice regime.¹

13. Do you agree that a basic level of training of about 15 hours, along with other requirements, is sufficient to lift the standards of property managers?

We agree that 15 hours of basic training, plus the other proposed requirements, and particularly the continuing professional development requirement below, is sufficient. To ensure that property managers are provided the best training, we believe that the training should only be able to be provided by licensed practitioners.

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

Not applicable.

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

We do not believe that it is necessary for there to be a legislative requirement for property managers to gain some industry experience under the supervision of an experienced practitioner before becoming fully licensed. We are comfortable that property managers should be able to be licensed as long as they meet the necessary requirements.

As noted in the market overview, there are potentially many thousands of property managers working in Aotearoa New Zealand. It is a competitive industry, and for effective property managers, a good reputation will be key to the success of their business. Therefore, even if there is no legislative requirement for a supervision period, in practice, it is likely that new property managers will be under the supervision of another more established manager to ensure their compliance with the necessary obligations.

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

As property managers need to enter into legally binding contracts, which requires them to be at least 18 years of age, we agree that there should be a minimum age requirement of 18 years.

Professional and industry practice standards

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

ICNZ strongly agrees that property managers should be required to undertake continuing professional development. This is a normal requirement of many other regulatory regimes and helps professionals stay up to date with legislative change and best practice.

18. Do you agree that property managers should abide by a Code of Conduct?

¹ Under the Financial Services Legislation Amendment Act 2019, people who were financial advisers prior to the commencement of the new legislation were provided with a two-year “competency safe harbour” during the transitional period of the new regime. This gave those people two years to meet the new competency requirements.

ICNZ supports the development of a Code of Conduct for property managers. Codes can be useful for setting additional more granular obligations, beyond statutory minima, in order to further lift the behaviour and reputation of an industry. They can also be helpful in managing misconduct. However, it is essential that any Code is accompanied by clear enforcement and sanction guidelines in order for it to be relevant.

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

ICNZ agrees that property managers should be required to use trust accounts particularly as they are acting in a fiduciary role. While we appreciate that the introduction of a requirement such as this will be new for property managers, it is essential to ensure that their clients' funds are secure and can be accounted for.

20. Should property managers' trust accounts be subject to independent review with the regulator able to require the periodic audit of accounts?

ICNZ agrees that trust accounts should be subject to independent review in order to be consistent with best practice when holding third party funds.

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

ICNZ agrees that there should be an obligation on property managers to show that they have sufficient measures in place to meet any liabilities they incur, but do not agree with the specific proposal to hold professional indemnity (PI) and public liability (PL) insurance. There may be different financial instruments available that would also cover liabilities, which a property manager should have the freedom to explore.

It is important to note that over recent years, there has been a hardening of the market for PI insurance in particular and there is no guarantee that the appropriate cover would be available and/or at a price point that is affordable. This may be a particular challenge for smaller licensees.

Issues of availability and affordability may be particularly apparent when the regime first comes into force, both for those with existing PI and PL cover and those looking to take out new insurance, simply because the requirements are entirely new and liability insurers will want time to see how effective the laws are in regulating behaviour and whether any liability trends emerge. As this regime introduces new offences and penalties, and with them, uncertainty as to how they will be applied, insurers may need to adjust their pricing to reflect the increased risk presented by property managers. If, however, the regime is successful and is able to root out poor operators and substandard behaviour, insurers are more likely to look on these improvements favourably in terms of the cover that is offered and on what terms.

Complaints and disciplinary framework

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

ICNZ agrees that a well-functioning complaints and disciplinary framework is essential to the operation of a regime such as this. It is also important that information about accessing the complaints and disciplinary procedures is freely available and easily understood.

The proposed framework appears to be comprehensive but given the various pathways and possible points of resolution, we question whether this model will be easily understood by users such as

“mum and dad”-type landlords. We urge MHUD to apply a consumer lens to the model and re-evaluate whether this is the simplest framework possible to achieve the desired outcome.

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

We agree with the proposal to extend the REA Disciplinary Tribunal’s mandate to cover property management services. This would likely be the most cost-effective method and would mean that the property management disciplinary portion can benefit from the existing expertise of the REA Disciplinary Tribunal.

Offences and penalties

24. Do you agree with the proposed offences framework?

ICNZ agrees with the proposed offences framework as it is necessary for there to be a robust system of offences and penalties to ensure compliance with regulatory requirements. The proposed offences on page 42 the Discussion Paper appear to be consistent with those in other comparable regulatory regimes such as the Real Estate Agents Act 2008. Despite these points, we reiterate the comments made in response to question 21 above that the addition of new obligations and penalties may have an impact on liability insurance premiums. This is particularly true until there is greater understanding of how the regime will be applied, enforced, and interpreted by the courts.

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

We have not identified any additional offences that should be included in the framework.

26. Do you agree with the proposed maximum penalties?

We agree that alignment with the Real Estate Agents Act is an appropriate level to also set the maximum penalties under this regime.

Regulatory stewardship and management

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

ICNZ agrees that the proposed model appears to be appropriate. It seems to be sensible for there to be one body that oversees the performance of the entire regulatory system while another is responsible for the operational side of the regime.

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

We do not have any issues or concerns with the regulatory authority’s proposed functions and believe that they look appropriate to fulfil the objectives of this regime.

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

While an industry body can offer an effective additional measure of self-regulation, we agree that the legislative functions should sit with an independent body.

30. Which entity is best placed to perform the regulator’s functions?

ICNZ's preference would be for the Real Estate Authority's mandate to be extended to include regulatory management of property managers. The REA will already have some expertise in this space, although we recognise that it will take time for them to be as proficient in property management law as they are in real estate law. However, it makes more sense to leverage an existing body than to create something wholly new. We also hold concerns about having MBIE as the regulatory body as we believe that there is a greater risk of conflict where there are two different ministries involved in delivery of the regime.

We do not agree with Table 7 on page 48 of the Discussion Paper which states that property management regulation could be 'lost' or given lower priority in relation to the larger real estate sector if the REA becomes the regulatory authority in this space. Given the intense interest in the development of this regulatory regime by the Government and desire for improvements in this space by the public, we believe that there will be sufficient scrutiny to ensure that property management is not side-lined in favour of other interests.

Cost recovery

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

ICNZ agrees with the concept of a "user pays"-type system such as this where those who benefit, i.e. the property managers, pay the majority of the costs via a levy. However, we point out that it is inevitable that any increased costs on property managers will be passed onto clients via increased service costs.

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

We do not have any suggested to the framework and agree that it is appropriate for the costs of regulatory stewardship to be funded by the Crown.

Delivery and next steps

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

In the proposed development process plan we would encourage MHUD to give specific thought to the workplan that will be needed to develop the Code of Conduct. ICNZ is aware of previous experience with its own Fair Insurance Code, as well as contributing to other industry codes, that it can be a time-consuming process. Best practice for the drafting of a code requires opportunities to raise preliminary issues, workshops and several rounds of feedback. We therefore suggest that MHUD is clear about the process they will follow for development of the code and the timeframes for doing it.

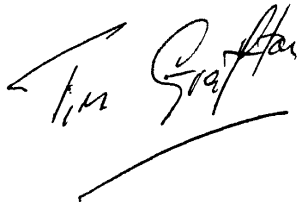
34. Do you have any final comments you wish to make?

There are no further comments.

Conclusion

Thank you again for the opportunity to submit on the Discussion Paper. If you have any questions, please contact our General Counsel on (04) 475 8008 or by emailing jane@icnz.org.nz.

Yours sincerely,

A handwritten signature in black ink that reads "Tim Grafton". The signature is written in a cursive style with a long horizontal stroke underneath.

Tim Grafton
Chief Executive

A handwritten signature in blue ink that reads "Jane Brown". The signature is written in a cursive style.

Jane Brown
General Counsel