

7 April 2022

Te Tūāpapa Kura Kāinga |
Ministry of Housing and Urban Development

By email: propertymanagersreview@hud.govt.nz

Tēnā koe,

The New Zealand Law Society | Te Kāhui Ture o Aotearoa welcomes this opportunity to comment on *Proposals for the Regulation of Residential Property Managers*. This submission has been prepared with the assistance of the Law Society's Property Law Section.

Please find **enclosed** the Law Society's submission, on the form provided by Te Tūāpapa Kura Kāinga.

The Law Society is available to discuss further if required. Please contact aimee.bryant@lawsociety.org.nz.

Naku noā, nā



Frazer Barton
Vice President



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Submission form

Regulation of Residential Property Managers



How to submit this form

Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (HUD), would like your feedback on the proposals contained in the discussion paper *Residential Property Management – Regulatory Options*. Please provide your feedback by **5pm, Tuesday, 19 April 2022**.

Please complete this submission form and submit it to us by email to:
propertymanagersreview@hud.govt.nz

When completing this form, please provide comments and supporting explanations for your reasoning where relevant. Your feedback provides valuable information and informs decisions about the proposals.

We appreciate the time and effort you are taking to respond to this consultation.

Submitter information

Te Tūāpapa Kura Kāinga would appreciate it if you would provide some information about yourself. If you choose to complete the section below it will be used to help us understand how different sectors view the proposals and options for the regulation of residential property managers. Any information you provide will be stored securely.

Your name, email address, phone number and organisation

Name:

Email address:

Phone number:

Organisation:

New Zealand Law Society | Te Kāhui Ture o Aotearoa

Are you making this submission on behalf of a business or organisation?

Yes

No

If yes, please provide a brief description of your organisation and its aims.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa is the national regulator and representative organisation for the legal profession. This submission has been prepared with assistance from the Law Society's Property Law Section, a specialist representative group which supports over 1,500 property practitioners in their work, and is active in property-related law reform activities.

A. The best way to describe you or your organisation is:

Property Owner and/or Landlord

Tenant

Property Manager

Other (please specify below)

Property Management Company

Prefer not to say

Please specify here.

B. If you are a property manager, are you a member of an industry body?

Yes

No

If you are, what industry body are you a member of?

Real Estate Institute of New Zealand (REINZ)

- Property Managers Institute of New Zealand (PROMINZ)
- Residential Property Managers Association (RPMA)
- Other (please specify)

Privacy & Official Information

Privacy Act 2020

The Privacy Act 2020 establishes principles about the collection, use and disclosure of personal information. Te Tūāpapa Kura Kainga adheres to these principles thus any personal information you supply to us will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in the discussion paper.

Please tick the box if you do not wish to have your name or other personal information to be included in any information about submissions we may publish.

Official Information Act 1982

While we are not proposing to publish the individual submissions we receive, they may be requested under the Official Information Act 1982. To assist us address any request we may receive under the Official Information Act, please respond to the following:

I consent to my submission being released if requested under the Official Information Act.

I consider my submission, or identifiable parts of my submission, should be withheld from release under the Official Information Act and have stated my reasons and the grounds that apply under section 9 of the Act for consideration by Te Tūāpapa Kura Kainga:

Reasons for Withholding Submission in whole or in part:

We will take any objection you may have into account and will consult with submitters when responding to requests under the Official Information Act.

Follow Up

Are you happy for Te Tūāpapa Kura Kāinga to contact you if we have questions about your submission?

Yes

No

The Preferred Regulatory Model - Overview

The regulatory system should promote public confidence in the delivery of residential property management services and protect the interests of property owners and tenants 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.

The following table depicts the emerging preferred regulatory model's key features which we have assessed against a range of other options and outlined more fully in the discussion paper.

System Features	Preferred Model Description	Rationale/Comment
Regulated Parties	Residential property managers and residential property management organisations	Regulating both individuals and organisations provides better protection to property owners and tenants and allows a wider range of interventions to be applied.
Registration and Licensing	Public register for individuals and organisations. Licensing for individuals only.	Registration requires all individuals providing property management services to list their name and place of business on a public register. Registration provides a means for identifying and contacting a practitioner. Licensing requires individuals to meet the prescribed requirements to become licenced and to retain their licence.
Professional Entry Requirements	<ul style="list-style-type: none"> • 18 years of age • Fit and proper person test • Education/training (<i>"basic" course - 15 hours</i>) 	Entry requirements are complemented by a suite of on-going practice requirements. Entry requirements are less onerous than for real estate agents but are in line with what property management industry bodies are requiring of their members.
Industry Practice Standards	<ul style="list-style-type: none"> • Continuing Professional Development (<i>20 hours per annum</i>) • Code of Conduct • Indemnity and public liability insurance • Trust Accounts (<i>including independent review with periodic audits as required by the regulator</i>) 	Property managers have to comply with the on-going practice requirements to be able to continue to operate as a property manager. These ongoing requirements complement the entry requirements to ensure property managers meet appropriate competency and good practice requirements.
Complaints & Disciplinary	A tiered complaints system that allows for complaints to be escalated depending on their seriousness. The framework allows for mediation, or consideration by either a dedicated complaints committee or a tribunal. Extending the mandate of either: <ul style="list-style-type: none"> • REA Disciplinary Tribunal (<i>Preferred</i>); or Tenancy Tribunal (<i>Under consideration</i>) 	This framework is intended to provide a mechanism for addressing complaints related to the professional conduct of a property manager (or organisation). It will complement established dispute resolution mechanisms such as those provided under the Residential Tenancies Act. The regulator can investigate issues and take disciplinary action in its own right making it easier for vulnerable tenants to raise issues about property managers.
Offenses & Penalties	The details on proposed offences can found in the discussion paper. General maximum penalties: <ul style="list-style-type: none"> • for an individual – a fine not exceeding \$40,000 • a company – a fine not exceeding \$100,000. 	Offences and penalties are required to help ensure parties comply with regulatory system requirements. The proposed offences are consistent with legislative and regulatory good practice requirements. The penalties are aligned with penalties applied in other similar regulatory systems.
Regulatory Management	Real Estate Authority's mandate extended; or MBIE administered regulatory management (<i>Under consideration</i>)	We propose a regulator independent of the property management industry. It will be more cost effective to establish the regulator's functions within an existing organisation. Two options are under consideration.
Cost recovery	A mixed model involving full cost recovery of some services, partial recovery of others and no recovery of 'public good' regulatory stewardship costs / initial establishment costs.	A significant portion 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.
Regulatory Stewardship	Te Tūāpapa Kura Kāing	Regulatory stewardship involves overseeing the performance of the regulatory system. It requires providing policy advice on the system design and development; monitoring and evaluating the system; and monitoring and reporting on the performance of the regulatory authority. Te Tūāpapa Kura Kāinga is expected to fulfil this role.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

On the basis that it has been identified by Te Tūāpapa Kura Kāinga that:

- there is a lack of public confidence in the delivery of residential property management services; and
- there is a lack of protection for property owners and tenants in relation to the activities of residential property managers,

the Law Society agrees with the proposed objectives.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society considers that the emerging regulatory model appears to be a good framework for a proposed regulatory system. The cost of regulation will likely impact tenants and property owners, despite them being the ones the regulatory model is designed to protect. As a tenant can only be charged a market rent and adding administrative or other fees is prohibited, costs will directly be passed on to the property owner. Indirectly, this could impact “market” rent for the tenant. These costs could be outweighed by the benefit of regulation, particularly if the cost of regulation is kept to a minimum by using a regulatory framework already in place (e.g. REA – see response to question 29).

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

N/a

The case for intervention

The residential property management sector plays a significant role in the New Zealand residential tenancies market, which houses nearly one in three New Zealand households.

We estimate that there are between 2,096 and 7,881 residential property managers operating in New Zealand. They are responsible for managing about 42 percent of rental properties.

While many property managers abide by appropriate professional standards, the sector as a whole is not required to meet minimum competency and industry practice standards. A wide range of stakeholders have highlighted the significant risk that a lack of common industry good practice standards, controls and an accessible independent disciplinary and disputes resolution process pose to property owners and tenants.

The Government is committed to ensuring New Zealanders have access to secure, healthy and affordable housing. Towards that end we want 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 and tenants.

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?

Yes No Don't know

Please explain why/comment

The Law Society considers that it is desirable for residential property managers to perform to standards which would reasonably be expected of them by property owners who engage their services and by tenants of managed properties.

Data supplied shows that the numbers of people residing in rental accommodation is rising and may continue to do so while housing affordability is an issue in New Zealand. The majority of rental accommodation is provided by the private sector, with the greater proportion of owners holding one rental property only.

Property owners with only one rental property may lack the experience and knowledge of rental practices and rely on the work of property managers, making them also vulnerable to the risk posed by an unregulated property manager industry.

Tenants include certain vulnerable groups in society and are also impacted by demand exceeding supply in the rental market. There is a risk of power imbalance between tenant and property manager.

The Law Society takes the view that there are risks posed by property managers to both tenants and owners of residential property. Having said that, whether government regulation is required, and the level to which regulation is required, depends on the extent to which there is quantitative evidence of residential property managers failing to meet the standards that would reasonably be expected of them.

We are aware of considerable anecdotal evidence of failure to meet standards from property owners and, perhaps to a lesser extent, from tenants who considered they were harassed or bullied by property managers, but the absence of recent or ongoing detailed information is unfortunate

and makes an objective analysis of the need for regulation difficult. We are also aware of cases where property owners have had to engage in expensive litigation to recover funds from failed or misappropriating property managers.

It would be beneficial to property owners, tenants, and the residential property industry itself to have consistent occupational regulatory requirements that apply to all residential property managers.

It would also be beneficial for property owners to have a more accessible, independent disciplinary and dispute resolution process than is currently available to them.

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

While it is clear that an unregulated residential property management sector poses risks to property owners and tenants, the information provided does not appear to contain any quantitative information regarding the extent to which residential property managers may be failing to meet the standards reasonably expected of them. This information would assist to create areas of focus if and when regulation of the sector occurs.

The Law Society understands that as part of the cost benefit analysis of a new regulatory regime, Te Tūāpapa Kura Kāinga will commission further research on harm to test the current largely qualitative evidence. The Law Society considers that research into what additional costs regulation would pose to property owners and tenants would be useful.

The extent to which existing remedies may be available to and utilised by property owners and tenants also does not appear to have been explored.

Establishing a new occupational regulatory system

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

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?

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society notes that it is proposed that landlords who manage their own properties be excluded from the ambit of the proposed legislation. The Law Society agrees with this approach, but notes that there will be many landlords who manage properties which are owned by related entities. For example, a landlord may personally manage a property which is owned by a company that the landlord holds shares in, or as a trustee of a property-owning trust. There are also many private landlords who have properties managed by related people, such as family members. It will be important to carefully consider this aspect at the legislative drafting stage and to exclude specific parties as appropriate.

Similarly, the position of those entities which manage 'public housing' such as Councils operating aged care housing, should be considered. Those circumstances differ from those for which regulation is being promoted. Consideration would also need to be given as to whether staff from private companies contracted by such Councils need to be regulated.

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

The Law Society considers this is a finely balanced issue.

Some factors against an exemption are:

- Public confidence in the register of property managers is maintained (as there is no need for the public to look beyond the register and determine whether a real estate agent is authorised to carry out property management duties).
- Registration, licencing, and industry practice standards may differ between the real estate agents and residential property managers' regimes.
- If the licencing fee is intended to assist with the funding of the regulatory system, then it seems appropriate for real estate agents who perform property management services to also hold a license as a property manager (and contribute to the funding of the regulatory system).
- It would help to limit confusion about which regulatory system applies to the real estate agent when the real estate agent is carrying out property management activities.

Some factors in favour of exemption are:

- To the extent that there may be overlap between the licencing requirements for real estate agents and the licencing requirements for property managers, it may be perceived as unduly onerous and costly to require a property management licence to be held in addition to a real estate agent licence.
- If the licencing requirements for real estate agents will be stricter or more stringent than the licencing requirements for property managers, it is arguable that there should be no need to hold a property management licence, if a real estate agent's licence is held.

Certification, Registration and Licensing

To be employed or trade as a residential property manager individuals would need to hold a licence issued by a regulatory authority that determines they meet specified licensing requirements. While residential property management organisations would not need to hold a licence to trade and employ property managers, they would be subject to industry practice standards and complaints and disciplinary arrangements. The regulator would maintain a public register of residential property management organisations and licensed property managers.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

On the basis that it has been identified by Te Tūāpapa Kura Kāinga that:

- there is a lack of public confidence in the delivery of residential property management services; and
- there is a lack of protection for property owners and tenants in relation to the activities of residential property managers,

the Law Society agrees that property managers should be required to hold a licence. This is because the Law Society expects that licensing will assist to address those concerns.

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?

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society is mindful that:

- If licensing fees will assist with the funding of the regulatory system, then arguably organisations who are subject to the industry practice standards and the complaints and disciplinary arrangements ought to be obliged to hold a licence.
- If the owners and controlling personnel of the organisation offering residential property management services are not themselves providing licensed property management services, then there is a risk that by exempting the organisation from having to hold a licence, the organisation may be owned / operated by people who would not pass the fit and proper person test.
- The Real Estate Agents Act 2021 provides for the licensing of organisations, so taking a different position in relation to property management organisations may cause confusion

for the public.

- If the register is to include residential property management organisations then in order for that register to remain current, it would make sense for organisations to have to hold a licence. In addition, it would also make sense for organisations to contribute towards the cost of maintaining that register (which the organisation has the benefit of being noted on).

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

Yes No

If yes, please comment.

A licence renewal is beneficial from a certification perspective. It gives the public confidence that the property manager is keeping their licence current, has completed the required CPD etc. The proposed conditions, suspension, and revocation of licence arrangements appear reasonable.

Occupational Entry Requirements

To obtain a residential property management licence, applicants will need to be at least 18 years of age, meet a fit and proper person test, and provide evidence that they meet the minimum training and education requirements. Those requirements are expected to include satisfactory completion of a training course involving approximately 15 hours study and cover:

- Legislative and regulatory requirements related to residential property management
- Knowledge about maintaining a property
- Managing relationships with tenants
- Conduct expected from a property manager.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

It would conform with other regulatory models and allow regulatory bodies to exclude those it knows to be inappropriate, though they may have passed the necessary skill requirements.

This is especially important as property managers are handling third party funds and as discussed above there may be a power imbalance between the property manager and the tenant, and also the property owners.

The Law Society agrees that introducing a fit and proper test will provide assurance to property owners and tenants and enhance the reputation of the residential property management sector.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

Trading without minimum training or educational requirements may enable any person to establish themselves in this role without any check on their:

- Suitability to handle funds belonging to others
- Ability to determine issues raised by/with tenants and/or owners
- Understanding of the relevant law
- Ability to manage relationships
- Ability to behave in an appropriate way to those they work with and for.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society queries whether 15 hours of initial training is sufficient time to cover the core proposed topics of:

- Legal requirements
- Property maintenance knowledge
- Managing relationships with tenants
- Conduct expected from a property manager.

This is especially so given the proposed requirement of at least 20 CPD hours each year following. The Law Society considers that adequate initial training is preferred to reliance on greater ongoing CPD to lift and maintain the standards of property managers.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

If the property manager will be working by themselves (without the support of other property managers), then the Law Society considers it is appropriate to require that the property manager gain industry experience before becoming fully licensed.

However, if a property manager will be working for an organisation (alongside other property managers), then the Law Society considers that industry experience is less important if adequate supervision of staff is a requirement of the organisation's registration.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

As 18 is the youngest age at which a person can be registered as a land owner, it would seem a suitable minimum age. Though the Law Society is concerned that, setting the minimum age at 18 could result in those with insufficient life experience handling significant funds and responsibilities for others, perhaps without sufficient supervision, particularly if they were self-employed.

Professional and Industry Practice Standards

Residential property managers and residential property management organisations will need to comply with professional and industry practice standards. These will include:

- Meeting Continuing Professional Development requirements, anticipated to involve a commitment of around 20 hours each year
- Operating in accord with a Code of Conduct
- Holding professional indemnity and public liability insurance
- Operating trust accounts
- Ensuring trust accounts are subject to independent review annually and periodic audit as may be required by the regulator from time to time.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society agrees that property managers should undertake continuing professional development activities, which is consistent with modern regulatory frameworks.

The Law Society considers research ought to be carried out in order to determine how many hours of continuing professional development each year might be appropriate. As part of that, the Law Society considers that it is important to review what continuing professional development courses/activities are likely to be available.

17. Do you agree that property manager should abide by a Code of Conduct?

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society supports the introduction of a Code of Conduct. As other regulated roles require such, it is logical that it forms a basis of the regulatory regime. The Code of Conduct will establish the standards expected of residential property managers and provide a basis for holding individuals and organisations to account.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

If property managers are handling client funds, then yes, the Law Society considers that a trust account should be used to ensure the funds are held safely and independently from their own funds.

Having a trust account can be onerous and administratively costly (compliance, audits etc), particularly for small operators. An exemption system could be used, similar to the approach under the Lawyers and Conveyancers Act, where they would have to certify that they will not operate a trust account or manage funds for the coming year in order to opt out of this aspect of the regulation. Many real estate agents outsource their trust account function to third party providers. A similar trend is likely to follow in a regulated property manager industry, and it would be up to policy makers to consider whether this is desirable or not.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

Without reviews and/or audit requirements, a requirement for property managers to use trust accounts is unlikely to provide sufficient protection for those parties that the funds are held on behalf of.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

These insurances are a significant aspect of protection for those using the services of property managers.

Complaints and Disciplinary Framework

The regulatory system will incorporate an independent complaints and disciplinary framework. It will be modelled on the framework that applies to real estate agents.

The regulator would triage complaints, which includes determining whether a complaint involves a breach of the property management legislation or should be referred to another organisation. The regulator could also proactively identify, investigate and initiate disciplinary proceedings in its own right. For complaints that are covered by the legislation, resolution can take place through mediation, a Complaints Committee appointed by the regulator (for cases that may involve 'unsatisfactory conduct') and through a Disciplinary Tribunal (for more serious cases that may involve 'misconduct').

Either the Real Estate Agents Disciplinary Tribunal (REA Disciplinary Tribunal) or the Tenancy Tribunal could have their mandates extended to provide Tribunal-related services. On balance, however, we propose extending the mandate of the REA Disciplinary Tribunal to cover property management issues.

All parties would have the right to appeal a Complaints Committee decision to the 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.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society agrees with the proposed complaints and disciplinary framework. Without such the regulatory framework would lack important aspects of enforceability.

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

The Law Society supports the appointment of an organisation or body to deliver the disciplinary tribunal services and sees that it is essential the organisation appointed is sufficiently resourced and qualified to properly deliver the service. The Law Society supports the REA Disciplinary Tribunal having its mandate extended to provide Tribunal-related services for the industry (see response to question 29).

Offences and Penalties

A number of offences with appropriate penalties will be included in legislation to ensure 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, where necessary, address non-compliance.

Offences

The proposed offences include:

- Providing false or misleading information to obtain a licence or register as a residential property manager
- Failing to notify the regulatory authority of a change in circumstances that would have a material impact on eligibility to gain or retain registration or a licence
- Practising as a residential property manager when unregistered or unlicensed (unless exempt from these requirements)
- Employing or contracting an unregistered or unlicensed person as a residential property manager to provide residential property management services
- Failing, without reasonable excuse, to comply with a lawful requirement of the regulatory authority established in primary or secondary legislation such as, for example producing financial records or other documents specified in regulation
- Failure to meet obligations in relation to property management transactions that may be specified in primary or secondary legislation such as:
 - Failure to hold money in audited trust accounts
 - Failure to pay a person lawfully entitled to money received
 - Rendering false financial accounts
 - Failing to disclose a conflict of interest
- Resisting, obstructing or providing false or misleading information to any person undertaking a lawful function provided for in legislation
- Failing to comply with a lawful summons or acting in contempt of a Tribunal or other Court hearing proceedings established under the legislation.

Unless a lesser penalty maxima is provided for specific offences, the maximum penalties should be:

- in the case of an individual a fine not exceeding \$40,000
- in the case of a company or other organisation, a fine not exceeding \$100,000.

The proposed offences and penalties are aligned with those included in similar occupational regulatory systems – in particular the Real Estate Agents Act 2008.

23. Do you agree with the proposed offences framework?

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The proposed offences framework focuses on practising when unlicensed, financial record keeping and provision of correct information. The risks identified to tenants and property owners extend beyond these aspects into general practice, for example failing to inspect properties in accordance with insurance requirements, mistreating tenants, or misusing personal information.

The Law Society suggests that to minimise potential harms, the offences framework should extend to good practice requirements. The Law Society anticipates that the proposed offences will need to be reconsidered once the proposed Code of Conduct is established to ensure specific breaches of the Code of Conduct equate to an offence, where appropriate.

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

The Law Society suggests the framework should extend to good practice and competency requirements to align with other regulated industries, including the legal profession. Again, the Law Society anticipates that the proposed Code of Conduct will inform what additional offences need to be included in the framework.

25. Do you agree with the proposed maximum penalties?

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society does not take any position on the maximum penalty but suggests it should be consider whether the penalties would act as a deterrent to property managers.

Regulatory Management and Stewardship

An independent regulator would be responsible for the regulatory service design and delivery. Its functions would include:

- Education and professional development
- Registration and licensing
- Standard setting
- Compliance management
- Disputes resolution.

We propose that the regulator's powers and functions be vested in a body independent of the property management industry. This could involve either extending the Real Estate Authority's (REA) mandate or having the Ministry of Business, Innovation and Employment (MBIE) provide regulatory management services. Further analysis is required to assess the implementation issues and costs associated with these two options.

Te Tūāpapa Kura Kāinga would act as the steward of the new regulatory system, however, further consideration will need to be given to the implications for the current accountability arrangements for Courts and Tribunals, the REA and Tenancy Services, which are performed by the Ministry of Justice and MBIE.

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

The Law Society endorses a system which facilitates appropriate regulatory stewardship but does not take a position on which organisation is best suited to assume this role.

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

N/a

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society endorses the approach that the regulatory authority's functions be vested in a body independent of industry.

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

Real Estate Authority (REA)

MBIE

Other

Please explain why/comment

The REA is an independent government regulator so would be well-positioned to assume the additional role of regulating property managers. The Law Society also observes that the REA would have the frameworks and systems in place for disciplinary processes, and so the cost of regulation would presumably be less than setting up an entirely new framework under MBIE.

Cost Recovery

A significant proportion of the costs associated with the delivery of the regulatory system 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.

The cost recovery requirements, including the charge levels, will be established in regulations which will be subject to Ministerial approval. Before seeking to recover costs, the regulatory authority would 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.

An initial government appropriation to cover the regulatory authority's establishment and first year operating costs may be required.

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

Strongly Agree Agree Not sure Disagree Strongly disagree

Please explain why/comment

The Law Society sees that the proposed cost recovery framework aligns with frameworks already used by other regulatory bodies.

The Law Society also endorses any cost approach in the disciplinary process that does not create a barrier to holding property managers to account. It is an important aspect that access to justice is maintained in the process and the imposition of only a modest application fee for a complaint against a property manager appears to be a mechanism to support this.

It is assumed that the costs of the framework will be passed on to and ultimately borne by property owners. The costs levied should be sufficient to ensure effective delivery of the regulatory system, but this must be balanced against having fees so high that it disincentivises the use of licensed property managers by property owners.

If residential property managers are passing costs on to property owners, much of the cost will ultimately be passed on to tenants through increased rental amounts. Given the vulnerabilities and cost challenges tenants already experience in the residential tenancy market, the Law Society recommends particular care be applied regarding the assessment of costs and the impact of costs on property owners and tenants.

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

The Law Society suggests it would assist that guidance is provided to property managers as to their ability to pass on the charges to the property owners.

Delivery and Next Steps

When the submissions period closes, we will analyse the submissions and report to the Associate Minister of Housing (Public Housing).

If agreed by Cabinet, the regulation of residential property managers will require new legislation. This will provide another opportunity for public input when the Government's draft Bill is being considered by a Parliamentary Select Committee. Consultation will also take place during the development of regulations required to give effect to the primary legislation.

To enable the establishment of the regulatory authority and the promulgation of enabling regulations, we anticipate the primary legislation would not come into force until approximately 12 months following it being passed by Parliament.

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 meet the legislation's regulatory requirements; and,
- The regulator to complete the initial registration and licensing of all regulated parties (with phased renewal dates to smooth the administrative burden associated with this process).

Te Tūāpapa Kura Kāinga will also implement monitoring and evaluation arrangements.

Indicative Implementation Timeframes	
Milestone	Target Date
Cabinet agrees to develop draft Bill	September 2022
Cabinet approves introduction of the draft Bill to Parliament	April 2023
Draft Bill's receives First Reading & referred to Select Committee	May 2023
Select Committee report back	Late 2023
Passage completed and Royal Assent	Mid 2024
Regulations gazetted	Mid-late 2024
Commencement	Mid 2025
All provisions in force	Mid 2026

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

The Law Society does not have concerns about the proposed timetable provided sufficient publicity and time for consultation and submissions is allowed.

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