

Departmental Disclosure Statement

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| Residential Property Managers Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD).

HUD certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

7 August 2023

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Part One: General Policy Statement

Overview

Almost one third of New Zealand households live in rental accommodation, and housing affordability challenges mean that an increasing proportion of households are expected to need to rent long-term. Māori and Pacific peoples are disproportionately represented in those who rent.

Residential property managers are responsible for managing around 42% of the residential tenancy market. Residential property managers are contracted by property owners to manage their residential tenancy or tenancies, which includes managing relationships with tenants and prospective tenants and ensuring compliance with a broad range of legal obligations.

The Residential Property Managers Bill (the Bill) establishes a regulatory regime designed to improve the provision of residential property management services in New Zealand.

The Bill is an omnibus Bill introduced under Standing Order 267(1)(a), which provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The single broad policy of the Bill is to protect the interests of property owners and tenants (including prospective tenants) by creating a comprehensive regulatory regime for residential property managers. The Bill will give effect to this objective by—

- establishing minimum entry requirements for residential property managers:
- ensuring that residential property managers meet professional standards of practice:
- providing accountability by establishing an independent, transparent, and effective complaints and disciplinary process that applies to residential property managers and the delivery of residential property management services.

The new regulatory regime for residential property managers will not apply to landlords, including private landlords, Kāinga Ora, and registered community housing providers.

Regulating the provision of residential property management services

While some residential property managers are members of industry bodies with agreed professional standards, the industry as a whole is not required to meet minimum competency and practice standards. The existing means of protection, including industry self-regulation, have proved insufficient to mitigate the risk of harm to property owners, tenants (including prospective tenants), and regulatory intervention is required to improve outcomes.

The Bill establishes a regulatory regime for the licensing of residential property managers and Residential Property Management Organisations (RPMOs). The Real Estate Agents Authority (the Authority) will be the regulator for the new regime. Key aspects of the new regime are as follows:

- the Authority will appoint a Registrar for the register of licensees. The register will allow the public to access key information about licensees, to establish the currency and class of a licensee's licence, and to establish whether any recent disciplinary action has been taken:
- the Registrar will be responsible for issuing residential property manager licences and RPMO licences. RPMOs will be responsible for the provision of residential property management services through the residential property managers they contract or employ:
- applicants must meet minimum entry criteria before qualifying for a licence, which include meeting a fit and proper person test, and not being a person prohibited from being licensed under the Bill:
- the Authority will establish a code of professional conduct and prescribe continuing professional development requirements:
- complaints of a licensee's unsatisfactory conduct or misconduct may be referred to a Complaints Assessment Committee or the Real Estate Agents Disciplinary Tribunal for consideration and determination:
- the Authority will have powers to require documents both from licensees and any person the Authority has reasonable grounds to suspect is carrying out residential property management

services while unlicensed and not exempt from the Act, in order to effectively enforce the regime:

- a range of offences and penalties will apply, including measures to discourage the provision of unlicensed residential property management services.

Amendments to other Acts

The Bill amends the Real Estate Agents Act 2008 to provide for the updated membership requirements of the Authority, and requires the Minister responsible for this Bill once enacted to act jointly with the Minister responsible for the Real Estate Agents Act 2008 to appoint members to the Authority's board. The Bill also amends the Real Estate Agents Act 2008 to provide for the expanded role of the Real Estate Agents Disciplinary Tribunal, which will include determining allegations of misconduct by residential property manager licensees.

The Bill amends the Residential Tenancies Act 1986 to provide the Tenancy Tribunal with the power to order a landlord to use the services of a residential property manager if they have committed 2 or more of the unlawful acts specified in the Bill within a 5-year period.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | YES |
| <p>REINZ information paper – A Call for Change, Better Property Management; November 2019 – has provided specific examples of some of the ways in which unregulated activities by residential property managers can cause harm. Common issues set out in the paper include:</p> <ul style="list-style-type: none">• 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. <p>This paper is available to REINZ members only. However, much of the evidence from the REINZ information paper was used to inform the discussion document publicly released by HUD: Residential Property Management Regulatory Options - A Discussion Paper. February 2022. The most relevant section is on pages 15-18. Link - https://consult.hud.govt.nz/policy-and-legislation-design/property-managers-review/user_uploads/regulation-of-property-managers-discussion-paper---february-2022-1.pdf</p> | |

Relevant international treaties

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| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
| There is no international treaty relevant to the services of residential property management. | |

Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| <p>Title: Regulatory Impact Statement: Regulation of Residential Property Managers Authoring Agency: Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (HUD) Date: 17 October 2022 Source: https://www.hud.govt.nz/assets/Uploads/Documents/3.-RIS-Regulation-of-Residential-Property-Managers-1_Marked-up_Redacted.pdf</p> | |

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| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
| <p>This RIS did not meet the threshold for Independent Treasury RIA Team assessment. HUD provided the QA panel. Panel Assessment and Comment: "HUD's quality assurance panel has reviewed the Regulatory Impact Assessment (RIA) Regulation of Residential Property Managers. The panel considers the RIA meets the quality assurance criteria."</p> | |

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| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | YES |
| <p>Title: Costs and Benefits of Regulating the Residential Property Management Sector Author: MartinJenkins Authoring agency: Ministry of Housing and Urban Development Date: October 2022 Status: Final report – available from the Ministry of Housing and Urban Development: http://haveyoursay.hud.govt.nz/assets/Uploads/Documents/2.-CBA-Report-Final-Regulation-of-Residential-Property-Managers_Marked-up_Redacted-v2.pdf Scope: The report covers the case for change including the coverage of public policy objectives and the use of intervention logic. The main analytical tool is cost-benefit analysis with net present value and benefit cost ratios generated. Competition impacts, qualitative benefits and distributional impacts are discussed.</p> | |

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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | YES |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
| <p>The size of the potential costs and benefits are discussed in the MartinJenkins report: Costs and Benefits of Regulating the Residential Property Management Sector (MartinJenkins CBA). Link - http://haveyoursay.hud.govt.nz/assets/Uploads/Documents/2.-CBA-Report-Final-Regulation-of-Residential-Property-Managers_Marked-up_Redacted-v2.pdf</p> <p>The size of the potential costs and benefits are also discussed in the Regulatory Impact Statement: Regulation of Residential Property Managers. Link - https://www.hud.govt.nz/assets/Uploads/Documents/3.-RIS-Regulation-of-Residential-Property-Managers-1_Marked-up_Redacted.pdf</p> <p>The result of the core analysis is that the net present value is \$10.9 million over the forecast period of 10 years (core costs of \$159.9m and core benefits of \$170.8m). The Benefit Cost Ratio (BCR) is 1.07.</p> <p>The most significant cost components are the costs of becoming licensed in the first instance and then the ongoing sector compliance costs. Some of these costs will be borne directly by residential property managers. Other costs will be recovered from residential property managers by the Regulator via cost recovery fees and levies. The costs include gaining a qualification to be licensed, the requirement to have a Trust account, appropriate insurance and the audit requirements. For some existing property management businesses much of this may already exist. Furthermore, HUD and the regulator are considering ways to parent-in or phase-in requirements to reduce the initial cost burden for those already in the sector.</p> <p>Residential property managers are unlikely to suffer an unavoidable loss of income or wealth as a result of the regime. However, the regime does include disciplinary processes, including offence penalties, and a person's behaviour may result in their licence being disqualified. All such impacts are obviously avoidable by complying with regulatory requirements.</p> <p>In terms of benefits, the MartinJenkins CBA identified three incremental benefits:</p> <ul style="list-style-type: none"> • avoided costs for the residential property managers' sector arising from improvements in the overall service levels, reduced conflict, liabilities, disputes and business management costs. • avoided costs for residential property owners through an ability to easily compare services being offered by residential property managers, thereby enhancing competition and market efficiency. • avoided costs for tenants including more rapid and effective repairs, improved housing standards, and being treated better. | |

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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | YES |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | YES |
| <p>The regime will set out practice standards that need to be complied with. These include entry qualifications, continued development, accounting requirements and a sector code of conduct. Licensees are also required to be fit-and-proper persons.</p> <p>Compliance with these standards is important to delivering the purpose of the regulatory regime as well as the quantified benefits that accrue to tenants and landlords from good service.</p> <p>The MartinJenkins CBA speaks to two additional unquantified benefits arising from effective compliance:</p> <ul style="list-style-type: none"> • increase in consumer confidence leads to growth of the residential rental sector managed by licensed residential property managers and hence economies of scale; and • there could be a reduction in the levels of culturally insensitive, discriminatory, or illegal behaviour that may be displayed by residential property managers and experienced by tenants. <p>Should there be significant sector non-compliance, then the level of benefit realisation is reduced, and regulator disciplinary costs would escalate.</p> <p>Regarding regulator effort, budget and implementation, planning has identified how the Regulator can be effective in managing non-compliance. This includes funding of communication, guidance and training material to build awareness of regulatory requirements before they are commenced. All indicators so far are that there is significant willingness in the sector to improve service performance.</p> <p>The MartinJenkins CBA contained a sensitivity analysis including a variation of Regulator costs of +/- 20%. Regulator costs would increase with higher non-compliance than the core assumption. Even with a Regulator cost increase of 20% the BCR remains positive at 1.04.</p> <p>MartinJenkins CBA Link – http://haveyoursay.hud.govt.nz/assets/Uploads/Documents/2.-CBA-Report-Final-Regulation-of-Residential-Property-Managers_Marked-up_Redacted-v2.pdf</p> | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations? |
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HUD considered the Bill's consistency with New Zealand's obligations under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). These obligations include the progressive realisation of the rights to an adequate standard of housing and to the improvement of living conditions. These proposals are consistent with those obligations.

The Ministry of Foreign Affairs and Trade reviewed the Cabinet Legislation Committee paper in light of New Zealand's international trade obligations.

The Climate Implications of Policy Assessment (CIPA) team was consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consistency with the government's Treaty of Waitangi obligations

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| 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi? |
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HUD consulted with Māori stakeholders as part of public consultation and also engaged with the Treaty Provisions Oversight group (TPOG). As a result of this engagement, the Bill contains two clauses related to perspectives of Māori:

- the need for the Regulator's Board to collectively have the knowledge and experience of, and capability in, perspectives of Māori and the Treaty of Waitangi; and
- for the Minister when approving practice rules to have regard to the extent to which Māori perspectives have been considered by the Authority in the development of the practice rules.

Further information on consultation with Māori and engagement with TPOG is provided at Appendix One.

Consistency with the New Zealand Bill of Rights Act 1990

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| 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990? | YES |
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Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website when the Bill is introduced, and can be accessed at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/>

Offences, penalties and court jurisdictions

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| 3.4. Does this Bill create, amend, or remove: | |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | YES |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | YES |
| <p>3.4(a) Offences and penalties</p> <p>The offences creates a number of offences. A brief summary of each offence, and the associated fine, is provided at Appendix One.</p> <p>The Bill empowers regulations to be made to prescribe offences in respect of the contravention of, or non-compliance with any of the regulations. The maximum penalty that may be prescribed in the regulations is \$25,000 for an individual or \$50,000 in any other case.</p> <p>The Bill provides that the Complaints Assessment Committee may order fines not exceeding \$10,000 in the case of an individual and \$20,000 in any other case. The Disciplinary Tribunal may order fines not exceeding \$15,000 in the case of an individual and \$30,000 in any other case.</p> <p>3.4(b) Jurisdiction of a court of tribunal</p> <p>Part 4 of the Bill covers <i>Complaints and discipline</i>. Provisions within this part parallel the Real Estate Agents Act 2008 (REAA) by providing for the appointment of Complaints Assessment Committees and expanding the jurisdiction of the Disciplinary Tribunal to cover the residential property managers regime. Essentially the same powers and procedural requirements that exist under the REAA in relation to Complaints Assessment Committees and the Disciplinary Tribunal are applied to residential property managers under the Bill. Determinations of a Complaints Assessment Committee can be appealed to the Disciplinary Tribunal (clause 88). Further information about the jurisdiction of the Disciplinary Tribunal is provided at Appendix One.</p> | |

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| 3.4.1. Was the Ministry of Justice consulted about these provisions? | YES |
| <p>The Ministry of Justice was consulted on the Bill. The Ministry of Justice's views were sought on access/entry, the potential use of search warrants, and more generally privacy concerns. The Ministry of Justice was consulted from a search and surveillance perspective in relation to powers for the Authority to obtain documents.</p> <p>The Ministry of Justice's Offence and Penalty Vetting team was consulted on the offence provisions in the Bill. As a result of the feedback, HUD gave consideration to the Bill's offence and penalty provisions. In particular, looking to ensure that there was internal logic to the penalty regime that gives a commensurate and proportional graduation of penalties reflecting the type and seriousness of the offence.</p> | |

Privacy issues

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| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | YES |
| <p>The Bill creates an obligation on the Authority to establish, keep and maintain a register of licensees. Clause 126 empowers the Authority to appoint a Registrar. Clause 127 sets out the functions of the Registrar including to establish, keep, and maintain the register.</p> <p>Part 3, subpart 2 sets out matters pertaining to the Register of licensees. Clause 49 states the purpose for the register and clause 51 lists the matters to be contained in the register. The matters to be included in the register are:</p> <ul style="list-style-type: none">• the licensee's full name and business address and, if the licensee is registered on the NZBN register, the licensee's NZBN reference,• any trading names,• the registration number issued by the Registrar,• the address for communications under the Bill,• a variety of information about the status and history of the person's licence,• whether the licensee has completed their continuing education requirements, and• any other information the Registrar considers necessary for the purposes of the register. <p>The Bill states that if a person searches a register for a purpose not listed as a purpose of the register they are to be treated as having breached an information privacy principle under the Privacy Act 2020.</p> | |

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| 3.5.1. Was the Privacy Commissioner consulted about these provisions? | YES |
| <p>The Office of the Privacy Commissioner (OPC) was consulted on the Bill. The feedback addressed the clauses establishing the register, its purpose and searchability. It was noted that the operation of the register and other actions of the Authority will need to conform with the information privacy principles.</p> <p>Regarding operations, the OPC was interested in the power to gather information from unlicensed property managers as it presents a risk of over-collecting information and so would need to be applied consistently with information privacy principles. More generally, the OPC is interested in how the Authority/Registrar will consider privacy interests as it manages the register and develops both operational policy and continuing education requirements.</p> | |

External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | YES |
| <p>Government sought external feedback on the proposal to regulate residential property managers in the period mid-March to mid-April 2022. The associated press release at the time made it clear that Government was inviting everyone with an interest in the role property managers play in the residential tenancies market to provide their views on the proposals. Further information in external consultation is provided at Appendix One.</p> | |

Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
| <p>HUD tested the Bill's provisions with LDAC and the Real Estate Authority. HUD also consulted with the administrators of a number of other licensing regimes. Further information is provided at Appendix One.</p> | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
| <p>The Bill does not create or amend a power to impose a fee, levy or charge in the nature of a tax. The Bill empowers the Authority to impose on licensees an operational levy for the purpose of funding the costs of its functions, the functions of the Registrar, and any investigation by, or proceeding of, a Complaints Assessment Committee. The Bill empowers the Authority to prescribe a levy on licensees for the purpose of funding the costs arising from any proceeding of the Disciplinary Tribunal. The Bill empowers the Authority to prescribe fees to recover the costs of various services or actions performed by the Registrar, such as a licence application fee.</p> <p>These fees and levies are not of the nature of a tax. They are not to be used to obtain funds greater than cost recovery. They relate to the provision of functions and services provided to those paying the fees and levies. When setting fees and levies for cost recovery, the Authority will be informed by the Office of the Auditor-General's Good practice guide for setting and administering fees and levies for cost recovery, and by The Treasury's cost recovery guidelines.</p> <p>AOG guidelines Link - https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf</p> <p>Treasury guidelines Link - https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector</p> | |

Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | YES |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | YES |
| <p>Strict Liability Offences</p> <p>The Bill creates a number of strict liability offences. These are listed at Appendix Two, with a description of the conduct/act the strict liability offence applies to and explanation of why the strict liability offence is necessary.</p> <p>However, of general relevance to the justifiability of the strict liability offences is the fact that the offences sit within an occupational licensing and regulatory regime that seeks to protect landlords and tenants from the risk of harm that may be created by residential property managers.</p> <p>Reversal or modification of usual burden of proof for an offence or a civil pecuniary penalty proceeding</p> <p>The Bill requires that the defences for the following offences be proved on the balance of probabilities:</p> <ul style="list-style-type: none"> • Offence to employ or contract unlicensed or non-exempt person for certain purposes – Clause 15 • Offence to provide false or misleading information – Clause 16 • Offence to breach a non-publication order of the Disciplinary Tribunal – Clause 86 <p>Further information about the burden of proof is provided at Appendix Two.</p> | |

Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | YES |
| <p>There are six areas of decisions or determinations that have potential to impact on a person's rights, obligations, or interests protected or recognised by law. These are regarding:</p> <ul style="list-style-type: none"> • a decision by Registrar not to issue a licence • a decision by Registrar to cancel a licence • a determination following complaint • a determination by the Disciplinary Tribunal • the power to compel release of information, and • the Disciplinary Tribunal has power to cancel or suspend licence of any other officer. <p>Appendix Two explains these determinations and the safeguards against any misuse of power.</p> | |

Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | YES |
| <p>Clause 129(1)(b) of the Bill provides for the making of regulations exempting any person or class of persons from the requirement to be licensed or from any specified requirements in relation to licensing. If such a regulation is made, the Minister must be satisfied that the exemption could not have any negative impact on property owners or tenants that is material and there are sufficient processes in place to ensure competent and ethical conduct on the part of those exempted and the persons who benefit from the exemption.</p> <p>The key justification for empowering regulations to provide for an exemption from the requirement to be licensed or one or more licensing requirements is to enable a degree of flexibility if that will result in greater efficiency and a reduction in compliance costs, provided there will be no reduction in service quality or compliance requirements.</p> <p>Providing for regulations to exempt persons or classes of person from the requirement to be licensed parallels the approach established in section 156(1)(a) of the Real Estate Agents Act 2008. Under the real estate agent's regime one exemption has been made to exempt registered members of the New Zealand Institute of Forestry performing real estate agency work in the forestry sector.</p> <p>https://www.legislation.govt.nz/regulation/public/2017/0220/latest/DLM7394506.html?search=ts_act%40bill%40regulation%40deemedreg_real+estate+agents_resele_25_a&p=1#DLM7394506</p> | |

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| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | YES |
| <p>Clause 107 empowers the Authority to make practice rules to provide for a code of professional conduct and client care.</p> <p>Clause 108 empowers the Authority to make practice rules to require licensees to undertake continuing professional development.</p> <p>Consultation requirements before making practice rules are prescribed in clause 109 of the Bill. Ministerial approval is required before the Authority may make the rules. The Minister must have regard to the criteria in clause 110 before deciding whether to approve the rules. The practice rules will be secondary legislation drafted by the Authority and published on the Authority's website. The rules are disallowable and must be presented to the House. The Minister may amend practice rules made by the Authority under clauses 107 and 108 by notice. The Minister's notice will be secondary legislation subject to the publication requirements noted in the Bill. The practice rules and notices must not come into force until at least 28-days after their making.</p> <p>Clause 129 of the Bill empowers the making of regulations to provide for the operational and administrative detail required to support the successful operation of the licensing regime. Regulations under clause 129 will be drafted by the Parliamentary Counsel Office, will be subject to Cabinet scrutiny, and will not come into force until at least 28-days after their making.</p> <p>Clauses 130 – 134 empower the Authority to prescribe fees and levies by notice to support the operation of the regime. Under clause 130, the Authority may prescribe fees for the services provided by the Registrar. Under clause 131 the Authority may impose an operational levy to fund the costs of the functions of the Authority, Registrar, and Complaints Assessment Committees. Clause 132 empowers the Authority to impose a disciplinary levy to fund the costs arising from proceedings of the Disciplinary Tribunal.</p> | |

Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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Appendix One: Further Information Relating to Part Three

Consistency with the government's Treaty of Waitangi obligations – question 3.2

Policy consultation

HUD released a discussion paper in February 2022 for a ten-week public consultation process. HUD promoted the consultation process through direct mail to a wide range of stakeholders – including national Māori organisations, Wai 2750 claimants, and Māori housing providers – along with social media promotion.

Our direct mail to WAI 2750 claimants received limited direct response, although groups (or individuals within them) could well have participated in the consultation through other channels. However, two claimant groups did respond indicating interest in discussing the proposals, and ultimately a valuable online discussion was held with representatives from Ngai Tamahaua.

Along with hosting three online stakeholder workshops, HUD also participated in a hui with Māori housing providers and advocates, hosted by Te Matapihi.

HUD is aware that some submitters observed that while the discussion paper on policy for the Bill indicated that Māori were over-represented in the residential tenancy market, it did not describe how the proposed regulatory system addressed Māori needs or how Māori would be involved in the governance, design, or delivery of the system.

The Treaty Provisions Oversight Group, Te Arawhiti

The TPOG was consulted on the appropriate provisions relating to the recognition of Te Tiriti. Our discussions explored a broad provision to recognise Te Tiriti; the need for the Regulator's Board to collectively have the competency and experience to ensure an appropriate understanding of Te Ao Māori and knowledge, experience, and expertise of Te Tiriti, tikanga Māori, and mātauranga Māori; and for the Board to have in place arrangements for ensuring that competency is reflected in its decision-making and actions.

TPOG stated that there is no need for a Treaty clause; but allowing for specific consideration of Māori perspectives in operationalising the regime would be appropriate.

The Bill specifies the need for Māori perspectives in two places

HUD settled on two clauses for the Bill:

- the need for the Regulator's Board to collectively have the knowledge and experience of, and capability in, perspectives of Māori and the Treaty of Waitangi; and
- for the Minister when approving practice rules to have regard to the extent to which Māori perspectives have been considered by the Authority in the development of the practice rules.

HUD is aware that as the Bill progresses through the Parliamentary process, and secondary legislation is made, that engagement with Māori needs to occur in a manner that meets the Crown's obligations under the Treaty of Waitangi.

Offences, penalties and court jurisdictions – question 3.4

Offences and fines created by the Bill

Offence to hold out

Clause 12 provides that it is an offence for an unlicensed person to hold out as a residential property manager or residential property management organisation without reasonable excuse. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to carry on business providing residential property management services unless licensed or exempt

Clause 13 provides that it is an offence to, without reasonable excuse, carry out on a business that provides residential property management services without holding a residential property management organisation licence or being exempt from holding such a licence. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to carry out residential property management services unless licensed or exempt

Clause 14 provides that it is an offence to, without reasonable excuse, carrying out residential property management services without holding a residential property management organisation licence or being exempt from holding such a licence. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to employ or contract unlicensed or non-exempt person for certain purposes

Clause 15 provides that it is an offence for a residential property management organisation to employ or contract a person as a residential property manager when that person is not licensed as a residential property manager and is not exempt from holding such a licence. It is a defence if the residential property management organisation believed on reasonable grounds that the person was licensed as a residential property manager or was exempt from holding such a licence. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to provide false or misleading information

Clause 16 provides that it is an offence to, for the purposes of any application for a licence or for renewal of a licence, supply to the Registrar any false or misleading information. It is a defence if the person did not know that information was false or misleading and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to fail to hold money in trust account

Clause 47 provides that it is an offence for a residential property management organisation to, without reasonable excuse, fail to hold all money received as a consequence of the provision of residential property management services in the organisation's trust account. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Offence to fail to comply with requirement to provide information or document to Complaints Assessment Committee

Clause 68 provides that a person commits an offence who, without reasonable excuse, fails to comply with a requirement to produce any papers, documents, records, or things in accordance with a notice from a Complaints Assessment Committee. Maximum fines are \$10,000 in the case of an individual and \$50,000 in any other case.

Offence to breach a non-publication order of the Disciplinary Tribunal

Clause 86 provides that it is an offence to breach a non-publication order of the Disciplinary Tribunal. It is a defence where the defendant did not know or could not have known the information was suppressed. The maximum fine is \$3,000.

Offence to fail to comply with summons

Clause 98 provides that a person commits an offence who, without sufficient cause:

- fails to attend in accordance with the summons; or
- refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer; or
- fails to produce any such document, information, or thing.

The maximum fine is \$1,000.

Contempt of Tribunal

Clause 99 provides that a person commits an offence if the person:

- wilfully insults or obstructs the Tribunal or any member of it, a witness, or an officer of the Tribunal; or
- wilfully insults or obstructs any person in attendance at a sitting of the Tribunal; or
- wilfully obstructs or hinders the Tribunal or any member of it in any inspection or examination of any document, information, or thing; or
- wilfully interrupts, or otherwise misbehaves at, a sitting of the Tribunal; or
- wilfully and without lawful excuse disobeys any order or direction of the Tribunal in the course of the hearing of any proceedings; or
- without sufficient cause, fails to comply with any other requirement of the Tribunal

The maximum fine is \$1,000.

Failure to comply with the requirement to give Authority documents in accordance with notice an offence

Clause 123 provides that it is an offence if a person, without reasonable excuse, fails to comply with a requirement to give the authority documents in accordance with notice given by the Authority. The Authority may require documents in order to monitor that person's compliance with the Act, regulations, or practice rules; or if the Authority has reasonable grounds to suspect that the person is providing residential property management services while unlicensed and not exempt from being licensed, and the Authority considers the documents are relevant to establishing whether there has been a breach of the Act, regulations, or practice rules. Maximum fines are \$30,000 in the case of an individual and \$80,000 in any other case.

Offence to fail to comply with requirement to supply documents

Clause 124 provides that a person commits an offence if the person, without reasonable excuse, fails to comply with a requirement to supply the authority with documents in accordance with a notice given by the authority. The authority may require the documents where the grounds for intervention are met, largely related to an inability to properly administer a trust account. Maximum fines are \$30,000 in the case of an individual and \$80,000 in any other case.

Offence to fail to permit person to inspect and copy financial records

The Bill provides that a person commits an offence if the person, without reasonable excuse, fails to comply with a requirement stated in a notice to permit a person authorised by the Authority to inspect and copy financial records. Maximum fines are \$30,000 in the case of an individual and \$80,000 in any other case.

Offence to provide false accounts

Clause 135 provides that a person commits an offence if the person provides an account purporting to be an account for any money the person receives in their capacity as a licensee, knowing the account to be false in any material particular. Maximum fines are \$30,000 in the case of an individual and \$80,000 in any other case.

Offence to resist, obstruct, etc

Clause 136 provides that a person commits an offence who, without reasonable excuse, knowingly resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or perform any function under this Act; or gives to any person who is exercising or attempting to exercise any power or perform any function under this Act any particulars knowing those particulars are false or misleading in any material respect. Maximum fines are \$40,000 in the case of an individual and \$100,000 in any other case.

Jurisdiction of court or Tribunal

The matters that may be heard by the Disciplinary Tribunal, set out in its functions at clause 81, include:

- to hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee,
- to hear and determine any charge against a licensee brought by a Complaints Assessment Committee,
- to hear any appeal against a determination by a Complaints Assessment Committee, and
- to conduct any review of a determination of the Registrar:

The orders that may be made by the Disciplinary Tribunal, set out in clause 94, include:

- any orders that may be made by a Complaints Assessment Committee
- cancelling a licence
- suspending a licence for a period not exceeding 24 months
- order that the licensee not perform any supervisory functions unless authorised by the Authority
- order that no residential property management organisation employ or engage a licensee to perform residential property management services (and terminate any existing employment/engagement of that nature)
- payment of a fine not exceeding \$15,000 in the case of an individual or \$30,000 in any other case, and
- compensation to another person not exceeding \$100,000.

Disciplinary Tribunal decisions can be appealed to the High Court (clause 100) and to the Court of Appeal on questions of law (clause 105).

External consultation – question 3.6

Certain key stakeholders were specifically contacted for input, including:

- Renters United
- New Zealand Property Investors Federation (NZPIF)
- Property Institute of New Zealand (PINZ)
- Property Managers Institute of New Zealand (PROMINZ)
- Residential Property Managers Association (RPMA)
- Consumer New Zealand
- Te Matapihi
- Tenants Protection Association (Auckland)
- Tenants Protection Association (Christchurch)
- Real Estate Institute of New Zealand (REINZ).

HUD released a discussion paper in February 2022 for a ten-week public consultation process. Officials promoted the consultation process through direct mail to a wide range of stakeholders – including national Māori organisations, Wai 2750 claimants, and Māori housing providers – along with social media promotion.

Along with hosting three online stakeholder workshops (a national peak body workshop, a regional focus group in Gisborne, and a New Zealand-wide focus group) we also participated in a hui with Māori housing providers and advocates, hosted by Te Matapihi.

Along with the direct responses received at the meetings, 456 submissions were received from a range of individuals and organisations with an interest in the residential property management sector and the wider residential tenancy market.

Nature of feedback received

The public consultation showed a broad recognition of the need for regulation. Most submissions supported the proposed regulatory model outlined in the discussion paper, although there were differing views on particular features of the model and a number of suggested refinements. These suggestions were considered in the development of policy and legislation drafting as appropriate.

Some submitters observed that while the discussion paper indicated that Māori were over-represented in the residential tenancy market, it did not describe how the proposed regulatory system addressed Māori needs or how Māori would be involved in the governance, design, or delivery of the system. It was raised that engagement with Māori needs to occur in a manner that meets the Crown's obligations under the Treaty of Waitangi.

Some stakeholders raised concern that potential inclusion of some Māori housing models, for example the provision of papakāinga for whānau, hapū or iwi, might impose an outsized regulatory burden on these services. The residential property managers regime is not intended to cover situations where landlords (or their

employees) manage their own properties, or where property management-type services are provided free of charge.

The Bill was consulted on with the Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Health; Ministry of Social Development, including the Office for Disability Issues – Whaikaha; Ministry for Pacific Peoples; Ministry for Ethnic Communities; Ministry for Women; Te Puni Kōkiri; Te Arawhiti; Te Puna Aonui; Department of the Prime Minister and Cabinet; and Treasury before being introduced into Parliament. The following Crown agencies were consulted: Real Estate Authority, Kāinga Ora and the Office of the Privacy Commissioner. Any specific comments on the Bill made by departments were considered and amendments made where appropriate.

Other testing of proposals – question 3.7

Legislation Design and Advisory Committee (LDAC)

HUD met with LDAC on 4 May 2023. The discussion focused on authorising the charging of fees and levies, the proposed approach for developing practice rules, information gathering (particularly relating to non-licensed persons), and providing for exemption from the residential property managers regime. Written advice received from LDAC on 18 May was used to inform the design and content of the Bill.

Real Estate Authority (REA)

The licensing regime for residential property managers has been designed to parallel (where appropriate) the existing licensing regime for real estate agents. REA is the regulator of the real estate agents licensing regime and will have its jurisdiction expanded to cover residential property managers.

HUD was able to draw on the experiences of REA to learn about the practical workability of components of the real estate agent licensing regime and adapt and improve the regime for residential property managers. As a result, there are provisions throughout the Bill that provide a tailor-made solution appropriate for residential property management based on the known practical workability and weaknesses of the real estate agents licensing regime.

Occupational Licensing Regulators

In addition, HUD investigated a number of licensing regimes and consulted with the administrators of some to test the workability of certain provisions, such as powers and offences. Regimes investigated included medical practitioners, electrical workers, plumbers/gasfitters and drainlayers, cadastral surveyors, lawyers, architects, veterinarians, immigration advisers, real estate agents, and financial advisors. We also obtained material on the proposed engineers' regulatory regime from MBIE. One of the matters assessed in reference to these regimes was the nature of offences and the level of the penalties.

Appendix Two: Further Information Relating to Part Four

Strict liability or reversal of the usual burden of proof for offences – question 4.4

Strict liability offences

The Bill creates the following strict liability offences:

Offence to hold out – Clause 12

The Bill provides that a person that does not hold a residential property manager licence or residential property management organisation licence must not, without reasonable excuse, hold out that they are a licensed residential property manager or residential property management organisation, respectively. Contravention of this provision is an offence.

The strict liability offence is necessary as it involves the protection of landlords and tenants from unlicensed residential property managers who voluntarily undertake risk-creating activities. There is a need to provide an incentive for residential property managers to be licensed in accordance with the requirements of the regulatory regime.

Offence to carry on business providing residential property management services unless licensed or exempt – Clause 13

The Bill provides that a person commits an offence if the person, without reasonable excuse, carries on a business that provides residential property management services without holding a residential property management organisation licence or being exempt from holding such a licence.

The strict liability offence is necessary as it involves the protection of landlords and tenants from unlicensed residential property management organisations who voluntarily undertake risk-creating activities. There is a need to provide an incentive for residential property management organisations to be licensed in accordance with the requirements of the regulatory regime. The licensing of residential property management organisations is a fundamental part of the regime which brings them into the broader regulatory framework, with requirements in relation to the use of trust accounts and the ability to employ residential property managers, and ensure that any provisional residential property managers employed by the organisation are properly supervised.

Offence to carry out residential property management services unless licensed or exempt – Clause 14

The Bill provides that a person commits an offence if the person, without reasonable excuse, carries out residential property management services without holding a residential property manager licence or being exempt from holding such a licence.

The strict liability offence is necessary as it involves the protection of landlords and tenants from unlicensed residential property managers who voluntarily undertake risk-creating activities. There is a need to provide an incentive for residential property managers to be licensed in accordance with the requirements of the regulatory regime. The licensing of residential property managers is a fundamental part of the regime which brings them into the broader regulatory framework, with requirements related to qualifications, ongoing training, and a code of conduct.

Offence to employ or contract unlicensed or non-exempt person for certain purposes – Clause 15

The Bill provides that a residential property management organisation commits an offence if it employs or contracts a person as a residential property manager when that person is not licensed as a residential property manager, and not exempt from the requirement to hold a residential property manager licence. The Bill provides that it is a defence if the residential property management organisation believed on reasonable grounds that the person was licensed as a residential property manager, or was exempt from the requirement to hold a residential property manager licence.

The strict liability offence is necessary as it involves the protection of landlords and tenants from residential property management organisations hiring unlicensed residential property managers who voluntarily undertake risk-creating activities. There is a need to provide an incentive for residential property management organisations to adopt appropriate precautions to prevent breaches (for example, checking that a potential employee is listed in the register as being licensed). The publicly searchable register will provide a free and easy way for residential property management organisations to check the licence status of potential employees/contractors.

Offence to provide false or misleading information – Clause 16

The Bill provides that a person commits an offence who, for the purposes of any application for a licence or renewal of a licence, provides the Registrar with false or misleading information. The Bill provides it is a defence if the person did not know that the information was false or misleading and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading.

The strict liability offence is justified as the defendant is best placed to establish absence of fault because of matters primarily within their knowledge. The defendant is best placed to know whether their personal application information is misleading or false, whether they knew it was false or misleading when they provided it, and whether they took due care to ensure it would not be. Licensing is a fundamental part of the regime to ensure the protection of landlords and tenants and can only be effective in doing so if applicants are incentivised not to provide false or misleading information.

Offence to fail to hold money in trust account – Clause 47

The Bill provides that it is an offence for a residential property management organisation to, without reasonable excuse, fail to hold money in trust accounts as required by the relevant section of the Act.

The strict liability offence is justified as the offence involves the protection of landlords and tenants from residential property management organisations who voluntarily undertake risk-creating activities in relation to residential property management transactions. Holding money in trust accounts is a key requirement under the regime to prevent the misuse of landlord or tenant money.

Offence to fail to comply with requirement to provide information or document to Complaints Assessment Committee – Clause 68

The Bill provides that a person commits an offence who, without reasonable excuse, fails to comply with a requirement to produce any papers, documents, records, or things in accordance with a notice from a Complaints Assessment Committee. The Complaints Assessment Committee made such a requirement where the members of the Committee believe, on reasonable grounds, that it is necessary to enable the Committee to carry out its inquiry, and the person who is to be given a notice has previously failed to comply with a request of the Committee to provide paper, documents, records or things within a reasonable time. The members of the Committee must also believe, on reasonable grounds, that it is not reasonably practicable to obtain the information required by the Committee from another source, or, for the purposes of the investigation, it is necessary to obtain the papers, documents, records or things to verify or refute information from another source.

The strict liability offence is necessary because the defendant is best placed to establish absence of fault because of matters primarily within their knowledge – the defendant is best placed to know whether the documents exist, whether they have possession of them, and whether they have a reasonable excuse for failing to provide them. The production of such documents and other things is important to enable the Committee to effectively undertake its investigation, to uphold the complaints regime and protect landlords and tenants.

Offence to breach a non-publication order of the Disciplinary Tribunal – Clause 86

Clause 86 provides that it is an offence to breach a non-publication order of the Disciplinary Tribunal. It is a defence where the defendant did not know or could not have known the information was suppressed.

The strict liability offence is necessary as the defendant is best placed to establish absence of fault because of matters primarily in their knowledge.

Offence to fail to comply with summons – Clause 98

The Bill provides that a person commits an offence if the person, after being summoned to give evidence before the Tribunal or to produce any document information or thing, without sufficient cause:

- fails to attend in accordance with the summons; or
- refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer; or
- fails to produce any such document information or thing.

No person summoned to attend a hearing may be convicted of an offence unless at the time of the service of the summons, or at some other reasonable time before the date of which that person was required to attend, they have been paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011.

The Bill provides that a person commits an offence if the person, without sufficient cause, fails to comply with any requirement of the Tribunal.

The strict liability offence is necessary as the defendant is best placed to establish absence of fault because of matters primarily within their knowledge. Complying with summons is important for the Tribunal to be able to adequately make determinations. The maximum fine is relatively low for this offence at \$1,000.

Failure to comply with requirement to give Authority documents in accordance with notice an offence – Clause 123

A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement to give the Authority documents in accordance with notice given by the Authority. The Authority may require documents in order to monitor that person's compliance with the Act, regulations, or practice rules; or if the Authority has reasonable grounds to suspect that the person is providing residential property management services while unlicensed and not exempt from being licensed, and the Authority considers the documents are relevant to establishing whether there has been a breach of the Act, regulations, or practice rules.

The strict liability offence is necessary as the defendant is best placed to establish absence of fault because of matters primarily within their knowledge – they are best placed to know the relevant documents, whether they have possession of them, and whether they have a reasonable excuse for failing to produce them. The offence involves the protection of landlords and tenants from residential property managers who are unlicensed or who are not complying with the regulatory regime, by enabling the Authority to effectively investigate residential property managers.

Offence to fail to comply with requirement to supply documents – Clause 124

The Bill provides that a person commits an offence if the person, without reasonable excuse, fails to comply with a requirement to supply the Authority with documents in accordance with a notice given by the Authority. The Authority may require the documents where the grounds for intervention are met, largely related to an inability to properly administer a trust account.

The strict liability offence is necessary because the defendant is best placed to establish absence of fault because of matters primarily within their knowledge – they are best placed to know the relevant documents, whether they have possession of them, and whether they have a reasonable excuse for failing to produce them. The offence involves the protection of landlords and tenants from improper administration of a trust account, as the production of these documents are important to ensure the Authority is able to intervene where the grounds for intervention are met.

Offence to fail to permit person to inspect and copy financial records – Clause 125

The Bill provides that a person commits an offence if the person, without reasonable excuse, fails to comply with a requirement stated in a notice to permit a person authorised by the Authority to inspect and copy financial records.

The strict liability offence is necessary because the defendant is best placed to establish absence of fault because of matters primarily within their knowledge – they are best placed to know the relevant financial records, whether they have possession of them, and whether they have a reasonable excuse for failing to permit a person to inspect and copy them. The offence protects landlords and tenants from improper administration of a trust account, as these financial records are important to ensure the Authority is able to intervene where the grounds for intervention are met.

Reversal or modification of usual burden of proof for an offence or a civil pecuniary penalty proceeding

Offence to employ or contract unlicensed or non-exempt person for certain purposes – Clause 15

The prosecution must prove beyond all reasonable doubt that the residential property management organisation employed or engaged a person as a residential property manager when that person was not licensed as residential property manager or exempt from the requirement to hold such a licence.

Once the prosecution has established this beyond all reasonable doubt, the defendant has a burden of proving a defence on the balance of probabilities that they believed, on reasonable grounds, that the person was licensed as a residential property manager, or exempt from the requirement to hold such a licence. The burden of proof lying on the defendant is justifiable as proving what they believed lies within the knowledge of the defendant. The defendant is participating in a regulated area and should have to show why they are not at fault.

Offence to provide false or misleading information – Clause 16

The prosecution must prove beyond all reasonable doubt that the defendant supplied false or misleading information to the registrar for the purposes of application for or renewal of a licence.

Once the prosecution has established this beyond all reasonable doubt, the defendant has a burden of proving the defence on the balance of probabilities that they did not know the information was false or misleading and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading. The burden of proof lying on the defendant is justifiable as proving the reasonable care and due diligence they took lies within the knowledge of the defendant. The defendant is participating in a regulated area and should have to show why they are not at fault.

Offence to breach a non-publication order of the Disciplinary Tribunal – Clause 86

The prosecution must prove beyond all reasonable doubt that the defendant breached a non-publication order of the Disciplinary Tribunal.

Once the prosecution has established this beyond all reasonable doubt, the defendant has a burden of proving a defence on the balance of probabilities that they did not know or could not have known the information was suppressed. The burden of proof lying on the defendant is justifiable as proving what they knew lies within the knowledge of the defendant. The penalties for this offence are relatively low, not exceeding \$3,000.

Significant decision-making powers – question 4.6

Decision by Registrar not to issue a licence

Clause 18 establishes the grounds for which a person is prohibited from holding a licence. Clause 23 identifies that it is the Registrar who makes this decision following the process in clause 26. The Registrar can decide on the papers if a hearing has not been requested.

A decision to decline a licence application impacts a person's right to a livelihood.

Safeguards are provided:

- Registrar makes the decision according to the specific criteria and process identified in clauses 18 and 26.
- Clause 88 provides the ability to appeal to the Disciplinary Tribunal (Tribunal) against determinations of the Complaints Assessment Committee.
- Clause 90 confers on a person who is adversely affected by a determination of the Registrar the ability to apply to the Disciplinary Tribunal for a review of a decision of the Registrar.

Decision by Registrar to cancel a licence

Clause 34 sets out that the Registrar must cancel a licence in specified circumstances.

Safeguards are provided:

- The cancellation process under clause 35 provides the licensee the ability to make written representations to the Registrar as to why the licence should not be cancelled, and the Registrar must take these into account.
- Clause 88 provides the ability to appeal to the Disciplinary Tribunal (Tribunal) against determinations of the Complaints Assessment Committee.
- Clause 90 confers on a person who is adversely affected by a determination of the Registrar the ability to apply to the Disciplinary Tribunal for a review of a decision of the Registrar.

Determination following complaint

Complaints Assessment Committees (CAC) have the power to make final determinations in relation to complaints, inquiries, or investigations, and to issue a number of orders about a residential property manager. None of the orders significantly impact on a right, obligation or interest protected in law, other than the reputation of a residential property manager.

There are safeguards provided in clause 58(3) which enables the Registrar to first consider if the complaint should or should not be pursued before referring it on to the CAC, and in clause 62 under which a CAC can also decide that a complaint should not be pursued.

In addition, clause 73 empowers a CAC to take no action where there has been a lapse of time, or the subject matter of the complaint is insufficiently serious to justify disciplinary action. Clause 88 provides for appeals to the Disciplinary Tribunal against a determination of the CAC.

Determination by Disciplinary Tribunal

A Disciplinary Tribunal has the power to suspend or cancel a licence and determine other matters and issue orders that will impact on rights. Clause 85 empowers the Tribunal to determine a proceeding under this Bill on the papers. Clauses 92 and 94 empower the Tribunal to suspend the licence of a licensee.

Safeguards include that the licensee has the right under clause 100 to appeal to the High Court against decisions of the Tribunal.

Power to compel release of information

Clause 67(1) brings across the power in section 85 of the Real Estate Agents Act 2008 for a CAC to compel provision of information. This power to decide to demand information affects an individual's right to privacy.

The use of this information is safeguarded by the Privacy Act 2020 if it is in relation to an individual (not a business).

Additional safeguards are provided in clause 85 through the specific conditions that must be met before this action can be taken. These include that there must be reasonable grounds to believe that the action is necessary to enable an enquiry, lack of other sources, and that there have been previous failures to comply with information requests.

Further, clause 88 provides the right of appeal to the Disciplinary Tribunal against determinations of CACs.

Disciplinary Tribunal has power to cancel or suspend licence of any other officer

Clause 94 - The Disciplinary Tribunal may, if satisfied on the balance of probabilities that the licensee is guilty of misconduct, if the licensee is an entity, suspend the licence of any officer of the entity and in the case that an entity's licence is cancelled, cancel the licence of any officer of the entity.

Further, the Tribunal may issue an order requiring termination of current employment or engagement as a contractor of a person found guilty of misconduct. The Tribunal may also order that no RPMO employ or engage that person.

Safeguards include that the criteria for determination of misconduct apply and that the licensee has the right under clause 100 to appeal to the High Court against decisions of the Tribunal.