

Auckland Property Investors Association Incorporated
Submissions on the Residential Property Managers Bill

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1. Recommendations

1.1. The Auckland Property Investors Association Incorporated ("APIA") welcomes the opportunity to submit feedback on behalf of our members on the Residential Property Managers Bill ("the Bill").

1.2. Our comments relate to clauses 8, 130 and 146. We make the following recommendations to this committee:

- For clause 8: That subclauses (a) and (b) be struck out to the effect that Kāinga Ora, including its employees and agents and registered community housing providers, including their employees, are captured by the definitions of a 'residential property management organisations' ("RPMOs") and 'residential property managers' ("RPMs") under clause 4.
- For clause 130: That the clause enables regulations to be set, following public and industry consultation, requiring the Authority to incorporate principles of cost-effectiveness and commercial viability in its determination of fees and levies;
- For clause 146:
 - That sections 109AA(5) and (6) under clause 146 of the Bill be struck out to the effect that Kāinga Ora, registered community housing providers and their respective employees and agents be subject to the two-strike rule that would result in the Tenancy Tribunal, in limited circumstances, order these agencies, their employees and agents to use the services of licensed RPMs.
 - That section 109AA under clause 146 of the Bill enables regulations to be made over ancillary matters associated with the two-strike rule.
 - That section 109AA under clause 146 is amended to require the Tribunal to consider the interests of the parties to any proceedings and the public interest before ordering a private landlord to use the services of a licensed RPM.

2. Introduction

- 2.1. APIA is a non-profit membership organisation with approximately 1,000 members. Our members broadly identify as private residential property investors. 42% of our members manage all of their tenancies, whereas 35% have all of theirs under professional management.
- 2.2. APIA has long been steadfast in our support for a well-regulated and trusted residential tenancies market, given the high proportion of New Zealanders living in rented accommodation.
- 2.3. A meaningful and effective regulation regime ensures industry professionalism, service excellence and sets the standard for agency relationships within the residential tenancies context.
- 2.4. APIA recognises that while the Residential Tenancies Act (“the RTA”) adequately regulates the relationship between a landlord and a tenant, there are presently no rules governing the standard of service provision and level of professionalism landlords and tenants can expect from residential property managers.
- 2.5. APIA strongly supports the Bill and its single broad policy “to protect the interests of property owners and tenants (including prospective tenants) by creating a comprehensive regulatory regime for residential property managers”.
- 2.6. Our members have also expressed significant interest in the proposed regulatory regime. 252 have shared their feedback with us, and their views are captured in these submissions.

3. General Comments and Specific Recommendations

3.1. Kāinga Ora and registered community housing providers to be captured as RPMOs, and their employees and agents as RPMs under the Bill or are subject to the same two-strike rules as private landlords

- 3.1.1. Kāinga Ora is the largest residential landlord in New Zealand and owns or manages more than 60,000 properties¹. There are currently 75 registered community housing providers managing 16,200 properties².
- 3.1.2. APIA, with the support of 84% of our members, strongly favours regulating Kāinga Ora, registered community housing providers, their respective employees and agents as RPMOs and RPMs under the Bill.
- 3.1.3. Our position is formed based on these agencies' respective portfolio sizes, the inherent vulnerability of their tenants and, therefore, their potential to cause harm.
- 3.1.4. Holding these agencies, their employees and agents to the same standards as the Bill would RPMOs and RPMs would, in our opinion, promote public trust and confidence in our social housing provision and service delivery to the most vulnerable tenant cohort among us.
- 3.1.5. If the proposed exclusion for Kāinga Ora, registered community housing providers, their respective employees and agents persists, then we are firmly in favour of holding these agencies, their respective employees and agents to the same service delivery standard as private landlords under Subpart 2, which is to allow the Tenancy Tribunal, in limited circumstances, order these agencies to use the services of licensed RPMs.

3.1.6. Specific recommendations:

3.1.6.1. In the first instance, we recommend that clauses 8(a) and (b) be struck out.

3.1.6.2. In the alternative, we recommend that sections 109AA(5) and (6) under clause 146 of the Bill be struck out.

¹ Kāinga Ora. 'Housing statistics', <https://kaingaora.govt.nz/publications/oia-and-proactive-releases/housing-statistics/>. Accessed 10 October 2023.

² Community Housing Regulatory Authority. 'Welcome to CHRA', <https://chra.hud.govt.nz/>. Accessed 10 October 2023.

3.2. The Authority to consider principles of cost-effectiveness and commercial viability when setting fees and levies

3.2.1. APIA recognises that a portion of the costs associated with the regulatory regime will be on-charged through the licensing system.

3.2.2. Disproportionally high fees and levies that cannot be comfortably absorbed by the operational costs of RPMOs and RPMs will be on-charged to landlords and hurt tenants through rent hikes.

3.2.3. These fees and levies should not be a barrier to entry for new or would-be RPMs and RPMOs capable of otherwise achieving a licence.

3.2.4. Given the number of small RPMOs, sole practising RPMs and their respective earning capacities, we strongly favour the Authority being required to consider principles of cost-effectiveness and commercial viability when setting licensing fees and levies.

3.2.5. **Specific recommendation:** That clause 130 enables regulations to be set, following public and industry consultation, requiring the Authority to incorporate principles of cost-effectiveness and commercial viability in its determination of fees and levies.

3.3. Ancillary matters associated with the two-strike rule, which gives the Tenancy Tribunal the ability to, in limited circumstances, order a private landlord to use the services of a registered RPM, to be clarified

3.3.1. Given the absence of a principal-agent relationship in owner-managed tenancies, APIA strongly supports clause 8(c), which excludes private landlords from the proposed regulatory regime.

3.3.2. We consider the RTA as the apropos legislation governing the relationship between landlords and tenants and accept that it is the legislative repository that will capture any new rights and obligations arising in the future.

3.3.3. We recognise that clause 146 of the Bill, which amends the RTA to give the Tenancy Tribunal the power to, in limited circumstances, order a private

landlord to use the services of a registered RPM (“the two strike rule”) is a necessary trade-off to have private landlords excluded from the Bill.

3.3.4. 83% of our members consider clause 146 a fair trade-off to have private landlords excluded from the Bill. We share their view and are, in general, supportive of the two-strike rule as a way to ensure public confidence in the owner-managed segment of the residential tenancies market.

3.3.5. We particularly favour the two-strike rule applying only to gross offences, and not all offences, under the RTA.

3.3.6. However, we are concerned by the Bill’s silence on ancillary matters associated with the two-strike rule and the unintended consequences this lack of legislative specificity will have on the residential tenancies market.

3.3.7. Some examples of the ancillary matters we refer to include:

3.3.7.1. Who will record the history of offences and details of probationary landlords?

3.3.7.2. Who will have access to that record?

3.3.7.3. How will the two-strike rule apply to landlords operating under different entitlements across multiple properties or tenancies?

3.3.7.4. How will the two-strike rule apply to offending employees who commit multiple unlawful acts within five years while working for different landlords?

3.3.8. **Specific recommendation:** We propose that the proposed s109AA of the RTA under clause 146 of this Bill allow for regulations to be made to provide clarity on ancillary matters associated with the two-strike rule.

3.4. Tenancy Tribunal must consider the interests of parties and public interest before ordering a private landlord to use the services of a licensed RPM.

3.4.1. APIA recognises that tenancy disputes are often nuanced and circumstantial, and similar intent and conduct by landlords or tenants across multiple relationships can result in different outcomes.

3.4.2. We support a flexible two-strike rule that specifically targets and deters those landlords who wilfully flaunt the RTA and have no qualms about profiting from causing tenants significant harm.

3.4.3. Whilst the Tenancy Tribunal's power to order a private landlord to use the services of a licensed RPM is a discretionary one, we are nevertheless in favour of the Tribunal being required to consider the interests of the parties and the public interest before making an order specified in s109AA(2) under clause 146.

3.4.4. **Specific recommendation:** That a subsection be inserted under s109AA per clause 146 requiring the Tribunal, either on the application of the landlord or on its own initiatives, to consider the interests of the parties to a proceeding and the public interest before making an order specified in s109AA(2).

4. Conclusion

4.1. APIA is grateful for the opportunity to provide feedback on the Residential Property Managers Bill.

4.2. While we support the Bill's overall objective "to protect the interests of property owners and tenants (including prospective tenants) by creating a comprehensive regulatory regime for residential property managers", we urge this committee to

- include Kāinga Ora, registered community housing providers, their respective employees and agents in the proposed regulatory regime,
- redesign the two-strike rule to require the Tenancy Tribunal to consider the interests of the parties and public interest before requiring a private landlord to use the services of a registered RPM,
- subject Kāinga Ora, registered community housing providers, their respective employees and agents to the same two-strike rule as private landlords,
- enable regulations to be made to address ancillary matters associated with the two-strike rule and
- require the Authority to consider cost-effectiveness and commercial viability principles before setting fees and levies.

4.3. We would like to speak to our submission and look forward to interacting with this committee.

Yours sincerely,

Sarina Gibbon, General Manager

Auckland Property Investors Association