



October 2023

Submission to: **Social Services and Community Committee**
Subject: **Residential Property Managers Bill**

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Residential Property Managers Bill. Please contact us if you have any questions or want any clarification about our submission.

Please note that we wish to appear before the Committee to speak to our submission.

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About the CAB

1. CAB is a nationwide, and locally based, community organisation that provides a free, confidential, and independent service of information, advice, and advocacy. We work to empower people to resolve their problems, and we use the insights gained from our work with clients to advocate for fair policies and services for all New Zealanders.
2. Our service is provided from over 80 locations around Aotearoa New Zealand by our 2,000 trained CAB volunteers. In the past financial year, the CAB helped with around 300,000 client interactions across the range of issues that affect people in their daily lives, including relationship issues, tenancy rights, employment problems, immigration processes, and problems relating to faulty goods or poor service. Our aim is to help people know their rights and feel empowered to act on them.
3. CABs assist with numerous residential tenancy enquiries each year. Enquiries about residential tenancy issues account for around 14,000 in-depth client interactions each year, with the significant majority of these clients being tenants (approximately 90%). We also provide assistance to landlords, generally those who are managing their property directly and not through property managers.

Introduction

4. We support the need for regulation of residential property management services and agree with the overall objectives of the regulatory system as outlined in the Residential Property Managers Bill ('the Bill') that will establish entry requirements, industry practice standards, and greater access to disputes resolution for tenants and property owners.
5. We agree that regulation of property managers is required to address the risks and the identified harms caused by poor practice. People should be able to expect that property managers will treat them professionally and respectfully. There is currently a lack of consistency; with some property managers providing a constructive, respectful and responsive service and others acting in a manner that can cause harm to property owners and tenants. Members of the property management industry and tenant advocates alike have championed the need for regulation for a number of years. It is no longer controversial. It just needs to happen.
6. In our work at the CAB, we see a range of situations where the lack of professionalism from property managers creates difficulties and can diminish the wellbeing and the rights of people. The negative impacts we observe are particularly those for tenants. Problematic behaviour includes disregard for residential tenancy law, poor communication, and a lack of responsiveness to address issues or to communicate with the owner about issues, including health and safety concerns. In the worst cases, this poor behaviour is abusive and discriminatory. Regulation of the property management industry is crucial for ensuring that property managers meet consistent standards and that renters can have confidence that their rights will be upheld.



Client enquiry examples:

The client is having difficulty with a property manager over the terms for renting a particular property. The advertisement stated that the property was suitable for four people. The property manager advised the client that they had 24 hours to make a decision and so the client paid almost \$4,000 to secure the property. When the client requested a copy of the tenancy agreement, it stated that the property is only suitable for two tenants. The client raised this with the property manager who said he would deduct the first week's rent from their deposit if they withdrew from the agreement.

The client's property manager has asked them to sign a bond refund form without the amounts filled in. They have been told that expenses and maintenance will first be paid to the landlord. The property manager has said they are carrying out cleaning and maintenance and will get back to the client about costs. The client is stressed and doesn't want to fill in the form without details of the work or costs. The property manager is not responding to the client's questions.

The client has just moved out of a tenancy. A new property manager is handling the final details and is insisting that the tenant has caused damage to the property. These are the same problems that the previous property manager had agreed and signed off with the client as not caused by the tenant. The client had a good relationship with the previous property manager. The new property manager is insisting that the tenant is responsible for the damage and is ignoring what was agreed.

The client wants to know what they can do about the dampness and mould in the rental property they live in. The house is old, has no fixed heating and a wall panel heater that had been installed is broken. We called the property manager at the real estate company. The property manager said that they have inspected the property and have never found mould and that a wall panel heater had been installed, but it had since broken. The property manager said there were no problems before the client had a baby, but now there are too many people in the home.

Key issues and recommendations

Purpose of the legislation

7. We support the purpose of the legislation in promoting and protecting the interests of residential property owners and tenants, and in promoting public confidence in the delivery of property management services.

Scope of regulation

8. Clause 5 defines the term 'residential property management services'. It includes listed services provided, in trade, by a person acting on behalf of a landlord. We agree with the broad range of activities covered in the definition of residential property management services. We are concerned however, that there is a lack of clarity about what being "in trade" means in this context and how this intersects with the exemptions in Clause 8. There are a number of factors that can be relevant in determining whether someone is in



trade, but most commonly it is about someone who regularly or habitually offers to sell goods or services.¹

9. Clause 8 sets out a number of exemptions to the scope of regulation, including that it does not include Kāinga Ora, registered Community Housing Providers, or landlords and their employees. We are concerned about these exclusions and recommend that all people and organisations who are managing residential tenancies are held to the same standards so that tenants have the same protections and range of remedies regardless of who is responsible for managing the property. There are two specific issues with these exemptions we want to address.

Distinction made between property manager and employee of landlord causes inequity for tenants

10. Regulation of property management needs to address all the issues that arise for parties that interact with and are impacted by the conduct of those who manage residential tenancies. The contractual relationship between property managers and property owners is only one part of this. It is critical that regulation reflects the direct relationship between property managers and tenants, noting that this is where significant harm can occur.
11. Under current definitions, landlords, including large housing companies, and their employees who carry out property management services, would be exempt from regulation. This is regardless of the fact that there is little difference between the role and the risks associated with a self-employed property manager and an employee who carries out the same duties. The primary difference between these two classes of providers is their relationship with the landlord / owner. In one case the landlord has a remedy under the proposed regulatory system and in the other the landlord can use the mechanisms provided by employment law for dealing with the conduct of an employee who acts irresponsibly, inappropriately, or unlawfully.
12. However, for a tenant the remedies under the new regulatory system are only available to them if the landlord engages the services of someone who is in trade as a property manager. No regard is given to the fact that for a tenant, the relationship is the same. The person they are dealing with is acting for the landlord to manage the tenant's home. In order to ensure the tenant has consistent rights and remedies available to them, an employee who is carrying out property management duties on behalf of the landlord should be held to the same standards as a person providing these services in trade as a property manager.

Recommendation 1: *A landlord's employee who is managing a residential property on behalf of the landlord should be regulated. This is to ensure that tenants have equitable remedies available to them regardless of who delivers property management services on the landlord's behalf.*

¹ <https://comcom.govt.nz/business/your-obligations-as-a-business/what-is-being-in-trade>



Current regulations under the RTA do not provide sufficient or comparable protections for tenants

13. Further to the point raised above, we consider it necessary that all people who are in the business of managing residential properties are held to consistent standards of behaviour. The problems we see are present across the scope of property management arrangements, including with private landlords who can be ill-equipped to fulfil their legal responsibilities. They may lack knowledge of the law and can be conflicted about things like property maintenance, because of their focus on the rental property as an investment.
14. Contrary to the advice in the Regulatory Impact Statement on this Bill,² we do not consider the current regulations under the Residential Tenancies Act 1986 ('the RTA') adequate to protect the rights of tenants. The legal framework provided by the RTA does not address things like entry standards, practice standards, education requirements, or mechanisms for complaining about poor conduct that falls outside the scope of breaches of the RTA.
15. The omission of landlords or 'owner-property managers' (and their employees) creates a two-tier system where renters' rights and options for redress are determined by who is responsible for the management of their home. As noted above, the range of harms experienced by tenants can occur no matter who is managing the property.
16. The types of situations we see involving private landlords who are directly managing residential properties demonstrate a lack of awareness of tenants' rights and of residential tenancy law, a lack of commitment to maintenance of the property, poor communication, discriminatory behaviour, and a lack of boundaries around the tenant's enjoyment of their home – particularly when the landlord lives upstairs / downstairs or next door. Exclusion of landlords from property management regulation will lead to inequitable outcomes for tenants and will create significant confusion for tenants in attempting to enforce their rights.

Client enquiry examples:

The client's landlord is coming onto the property without notice and threatening to evict her for anti-social behaviour. The landlord described the anti-social behaviour as bad parking. The client says this happened only once and was because it was too dark to see the edge of the driveway. The client would like the harassment from the landlord to cease.

The client has been renting a property for several years without having a written tenancy agreement. When he has asked for an agreement, the landlord has said that they can just trust each other. The landlord did take a bond, but the client does not know if it has been

² https://www.hud.govt.nz/assets/Uploads/Documents/3.-RIS-Regulation-of-Residential-Property-Managers-1_Marked-up_Redacted.pdf page 20, para 56.



lodged. There are several issues at the property such as a faulty toilet and shower. The landlord says the client should pay for the repairs.

The client is renting a house and does not have a tenancy agreement. The rent is low but there are several issues with the house that the landlord wouldn't do anything about, such as the taps not working and the front door not being able to be locked. The client ended up fixing these things and so asked for the expenses to be deducted from his rent. The landlord won't agree to this.

Recommendation 2: *The exemptions set out in [Clause 8](#) should be removed from the Bill so that all people managing residential tenancies are subject to the same standards and tenants have the same remedies available to them regardless of who manages their home.*

A middle-ground approach

17. If wholesale regulation of all landlords is not acceptable at this stage, then we encourage consideration of options such as:

- Extend the scope of regulation to include landlords who have 6 or more tenancies or are the landlord of a boarding house. (This would be consistent with the higher penalties, and presumably higher standards applied to these classes of landlords under the RTA – refer *s 109B Tribunal may make pecuniary penalty orders and Schedule 1B Fines and fees for infringement offences*)
- Create an additional class of licence under [Clause 11](#) – a ‘residential property owner-manager licence’ with minimum requirements of being:
 - recorded on the register of property managers
 - subject to a code of conduct
 - required to meet [Clause 17](#) eligibility criteria, including being a fit and proper person to hold a licence, and not be otherwise ineligible under [Clause 18](#)
 - required to meet minimum education requirements.

Recommendation 3: *If wholesale regulation of all people managing residential properties is not accepted, then consider other mechanisms for improving the practice of residential property owner-managers, such as regulation of certain classes of landlords (those who own 6 or more residential tenancies and boarding house landlords), and a lighter-touch approach that still provides some minimum standards.*

People prohibited from holding a licence

18. [Clause 18](#) sets out a list of people who are not eligible to hold a licence as a residential property manager. The grounds for not permitting a person to be licensed include convictions for specified serious offences, a range of disciplinary actions taken under the residential property managers’ regulatory regime, offences against the Fair Trading Act, and bankruptcy.

19. The purpose of [Clause 18](#) is to ensure inappropriate people are not permitted to be property managers. It is logical therefore that those who have already shown themselves



to knowingly breach their legal obligations as a landlord, should then be prevented from being able to secure a licence as a property manager.

20. On this basis, we think it is important to exclude from eligibility any person who, as a landlord, is subject to a sanction under the proposed section 109AA of the RTA. This section allows the Tenancy Tribunal to make an order requiring a landlord to use a licensed residential property manager because the landlord has repeatedly committed certain categories of unlawful acts. It would also make sense to prohibit people who have intentionally committed unlawful acts in breach of the RTA, such that they have incurred a pecuniary penalty under s109B of the RTA, and those who commit an offence of intentionally breaching an order restraining them from committing any further unlawful acts (refer s 109A(4) RTA).

Recommendation 4: *Include people who, as landlords, are sanctioned under the new section 109AA of the RTA, or who have been found to have intentionally committed unlawful acts in breach of the RTA, in the categories of people who are prohibited from holding a licence as a residential property manager.*

The register of licensees

21. The purpose of the register of licensees as set out in Clause 49 is to enable the public to know who they are dealing with and choose a suitable person based on details like whether the person has been subject to any disciplinary actions. It seems reasonable then, to think that landlords who are residential property owner-managers, should also be on that register. This would empower the public more generally in being able to make good choices about who they are willing to rent a property from.
22. There is no requirement for a register of landlords under the RTA or readily accessible mechanism for identifying landlords who have failed to uphold their duties. Keeping a comprehensive register of all residential property managers – whether they are working for the owner or are the owner – would provide greater visibility of what is happening in the rental market as well as give more power to consumers of residential property management services.

Recommendation 5: *Require all residential property managers, including owner-managers, to be on the register, so that there is a single comprehensive source of information about those who are managing rental properties in Aotearoa New Zealand.*

Unsatisfactory conduct and misconduct

23. Clause 56 and Clause 57 respectively outline the circumstances that could mean a property manager is guilty of “unsatisfactory conduct” or the more serious behaviour of “misconduct”. The definitions relate to the way a property manager carries out their work and can more broadly include conduct outside the scope of their work, but that reflects on their fitness to carry out their role.



24. The issues that a tenant might raise about their property manager would fall under these clauses and yet there is no direct reference to the RTA, the primary piece of legislation that protects tenants' rights. *Clause 57(c)(ii)* states that misconduct includes conduct that “constitutes a wilful or reckless contravention of— other Acts that apply to the conduct of licensees”, but it is unclear what the scope of this is. The *Regulatory Impact Statement: Regulation of Residential Property Managers* refers to fourteen different pieces of legislation that “residential property managers also need to take into account.”³ While it appears that the scope of what is meant by “other Acts” could be wide, this intention could be lost if there is a lack of clarity in the Bill. We recommend that an additional sub clause is added that specifically acknowledges the critical and direct relevance of the RTA.

Recommendation 6: Add to the definition of misconduct in *Clause 57(c)* “a wilful or reckless contravention of the Residential Tenancies Act 1986”.

Form of complaints

25. *Clause 58(1)* states that “Any person may, in accordance with the requirements (if any) in the regulations, complain **in writing** to the Authority about the conduct of a licensee” (emphasis added). We suggest that the required form for making a complaint should be more inclusive and accessible, ie, that it may be made verbally or in writing, using different methods of communication. This would be consistent with the *Office of the Ombudsman’s Effective Complaint Handling Guide*,⁴ and the *Government Centre for Dispute Resolution’s best practice principles*.⁵ It is an important way of recognising the diverse needs of potential complainants.

Recommendation 7: Amend *Clause 58(1)* to allow complaints to be made verbally or in writing, through multiple channels.

Client enquiry examples:

The client wanted to end their fixed-term tenancy early. The property manager initially agreed that they could leave early if they forfeit their bond money as compensation for the early termination. The property manager now has new tenants moving in a month after the agreed termination date and so has said that the client must also pay for the period that the property is untenanted. The client feels that, if this is to be the case, then the property manager should no longer be able to claim the bond as compensation. The client is not sure

³ https://www.hud.govt.nz/assets/Uploads/Documents/3.-RIS-Regulation-of-Residential-Property-Managers-1_Marked-up_Redacted.pdf paras 17-23.

⁴ <https://www.ombudsman.parliament.nz/sites/default/files/2023-02/Effective%20complaint%20handling.pdf> page 20.

⁵ <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/best-practice-guidance-on-dispute-resolution/assessing-a-dispute-resolution-scheme/>, Principle 1 – User focussed and accessible.



what to do next as the property manager is also the owner of the property management agency and so they can't elevate the dispute within the agency.

The client came to us distressed and annoyed that she has been unable to get repairs done in her home. She advised the property manager of a number of issues that needed fixing when a property inspection was carried out several months ago. Despite following up with the property manager about the repairs, none of the issues have been addressed. The property manager is now refusing to take her calls. The client wants to know where she can make a complaint. She was frustrated there was no complaint body for property managers like there is for real estate agents.

The client is having an issue with getting their bond returned. They have contacted the property manager several times, who just says 'there is a problem'. The property manager won't provide any further information and the client wants to know how they can get their bond back?

Ensure tenants' voices are heard

Tenant representation on regulatory body

26. During the earlier stages of consultation on the regulation of residential property managers it was proposed that the regulatory functions could be integrated into an existing regulatory body. Initially the Real Estate Agents Authority and the Tenancy Tribunal were both being considered. Our preference from a tenant's point of view, was for incorporation into the jurisdiction and function of the Tenancy Tribunal.
27. With the decision that the Real Estate Agents Authority ('the Authority') will be the regulator for the new framework, we think it is important that make-up and role of the Authority (and related bodies) reflects knowledge and understanding of the experiences and challenges faced by tenants. We think the legislation already gives the impression that the relationship between property owners and property managers is the primary focus. Tenants should be able to see that the rights and protections provided by regulation of property managers are also for them.
28. The Bill amends the Real Estate Agents Act 2008 to provide for the updated membership requirements of the Authority and expanded role of the Real Estate Agents Disciplinary Tribunal. In terms of the membership of the Authority, the new section 13(4) of the Real Estate Agents Act 2008 will require that the joint Ministers "*must appoint at least 3 members who have experience in the real estate and wider residential property management industries*". For the Real Estate Agents Disciplinary Tribunal the requirement under the new section 100(2)(b) will be that at least one of the members "*must hold a current licence as a residential property manager*".
29. While we acknowledge that these changes reflect the wider role of the Authority and Tribunal in relation to residential property managers, we are concerned that these changes are not sufficient to ensure that tenants concerns are heard and understood. We would like to see tenant representation incorporated at all levels of the regulatory system. This representation is also important so that the Authority has the appropriate skills and



knowledge to make a code of professional conduct and client care under Clause 107 and to set practice rules about continuing education under Clause 108.

30. In addition, the Complaints Assessment Committees that are described in Clauses 59 – 80 will receive complaints and allegations against residential property managers. It is essential that tenants' voices are reflected in these Committees, especially in cases where the alleged conduct of the residential property manager has impacted directly on tenants.

31. In Clause 60 the Authority is required to maintain a panel of up to 20 people who are suitable to serve as members of Complaints Assessment Committees. We recommend that the factors the Authority should have regard to in determining suitability should include knowledge and experience of issues faced by tenants. We further recommend that the makeup of the panel should at all times include a proportion of people who are currently renting.

Recommendation 8: *Tenant representation should be incorporated at all levels of the regulatory system – on the Real Estates Agents Authority, Real Estate Agents Disciplinary Tribunal and Complaints Assessment Committees. Specifically, we recommend amendment of Clause 60 to ensure that members of Complaints Assessment Committees include people who can bring knowledge and experience of issues faced by tenants, and that a proportion of the people on the panel are current tenants.*

Consult with tenants before making practice rules

32. In addition to ensuring there is appropriate tenant representation at the Authority and Tribunal levels, we recommend that the code of professional conduct and client care, and practice rules about continuing education, be developed in partnership with tenants and their advocates to ensure these adequately reflect the interests of tenants. Currently Clause 109 requires consultation with:

*“all significantly affected parties, including RPMOs and residential property managers that the Authority considers to be representative of the residential property management industry; and
any other persons or groups that the Minister may direct”.*

33. It does not seem unreasonable here to be explicit about who the significantly affected parties are and to specifically refer to the need to consult with tenants and their advocates, as well as with property owners.

Recommendation 9: *Amend Clause 109 to explicitly require consultation with tenants and their advocates and with property owners, in the development of practice rules.*

Change name of Real Estates Agents Authority and Real Estates Agents Disciplinary Tribunal

34. We strongly recommend that the name of the bodies that deal with complaints and disputes related to residential property managers should be changed to reflect their wider



scope. With the names referring only to 'Real Estate Agents', it is possible that potential complainants, particularly tenants, will not see these bodies as relevant or available for them to use.

Recommendation 10: *Change the name of the Real Estates Agents Authority and Real Estate Agents Disciplinary Tribunal to reflect the wider scope of these bodies.*

Strengthen commitment to honour te Tiriti o Waitangi

35. Clause 142 which amends section 13 of the Real Estate Agents Act 2008, adds the requirement that:

“The joint Ministers must appoint members to the board who, collectively, have knowledge and experience of, and capability in, perspectives of Māori and te Tiriti o Waitangi/ the Treaty of Waitangi”.

36. We would like to see this strengthened so that there is a clearer commitment to honour te Tiriti o Waitangi.

37. In the Accessibility of New Zealanders Bill, under clause 11(2)(b)(i) the relevant Minister must ensure that the Accessibility Committee as a whole—

“has knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, te ao Māori, and tikanga Māori;”

38. The Climate Change Response Act 2002 states in section 5H(1)(d)(ii) that the Minister must have regard to the need for the Commission to have members who, collectively, have—

*“technical and professional skills, experience, and expertise in, and an understanding of innovative approaches relevant to,—
the Treaty of Waitangi (Te Tiriti o Waitangi) and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity);”*

39. In section 11 of the Integrity Sport and Recreation Act 2023, the relevant Minister must ensure members of the Commission collectively have knowledge and experience in te Tiriti o Waitangi/the Treaty of Waitangi; and

“at least 2 members of the board have experience and expertise in te ao Māori and tikanga Māori”.

40. There are also a range of other pieces of legislation that have equivalent sections. It would be good to see a consistent approach taken, so that in Clause 142 members are required to have knowledge, understanding and experience of te Tiriti o Waitangi, and also of te ao Māori, and tikanga Māori.



Recommendation 11: *Strengthen the requirement that Members of the Authority have knowledge, understanding and experience of te Tiriti o Waitangi, and also of te ao Māori, and tikanga Māori.*

Requiring a landlord to use a licensed residential property manager

41. We strongly support the amendment made by Clause 146, which inserts the new section 109AA into the Residential Tenancies Act 1986, empowering the Tenancy Tribunal, in certain circumstances where the landlord has committed unlawful acts, to order that a landlord must use the services of a licensed residential property manager. Given our preference, as set out above, is for all people managing residential tenancies to be licensed, we are pleased there is at least this mechanism to require landlords to use a licensed property manager when the landlord has shown they are unfit to manage the property themselves.
42. We note however, that there does not appear to be an offence created or penalty defined for contravening this order. It is also unclear who can seek this order and how it would be monitored and enforced. It is essential that there is a clear penalty if a landlord fails to follow through on a requirement to use a licensed property manager and that there is a system in place to monitor compliance and take steps to enforce breaches.
43. To ensure that tenants are aware of which landlords have had a section 109AA order made against them, such landlords should also have their names published on a public register, along with the period they are required to use a licensed property manager.

Recommendation 12:

- *Clarify who can apply for an order under section 109AA.*
- *Establish an offence for contravention of an order made under section 109AA.*
- *Ensure there are effective mechanisms in place for monitoring and enforcement of orders made under section 109AA.*
- *Establish a public register of landlords that have a section 109AA order made against them.*



Summary of recommendations

Recommendation 1: A landlord's employee who is managing a residential property on behalf of the landlord should be regulated. This is to ensure that tenants have equitable remedies available to them regardless of who delivers property management services on the landlord's behalf.

Recommendation 2: The exemptions set out in [Clause 8](#) should be removed from the Bill so that all people managing residential tenancies are subject to the same standards and tenants have the same remedies available to them regardless of who manages their home.

Recommendation 3: If wholesale regulation of all people managing residential properties is not accepted, then consider other mechanisms for improving the practice of residential property owner-managers, such as regulation of certain classes of landlords (those who own 6 or more residential tenancies and boarding house landlords), and a lighter-touch approach that still provides some minimum standards.

Recommendation 4: Include people who, as landlords, are sanctioned under the new section 109AA of the RTA, or who have been found to have intentionally committed unlawful acts in breach of the RTA, in the categories of people who are prohibited from holding a licence as a residential property manager.

Recommendation 5: Require all residential property managers, including owner-managers, to be on the register, so that there is a single comprehensive source of information about those who are managing rental properties in Aotearoa New Zealand.

Recommendation 6: Add to the definition of misconduct in [Clause 57\(c\)](#) "a wilful or reckless contravention of the Residential Tenancies Act 1986".

Recommendation 7: Amend [Clause 58\(1\)](#) to allow complaints to be made verbally or in writing, through multiple channels.

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- Clarify who can apply for an order under section 109AA.
- Establish an offence for contravention of an order made under section 109AA.
- Ensure there are effective mechanisms in place for monitoring and enforcement of orders made under section 109AA.
- Establish a public register of landlords that have a section 109AA order made against them.

Thank you for the opportunity to provide a submission on the Residential Property Managers Bill.