



Cabinet Social Wellbeing Committee

Minute of Decision

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Proposed Legislation to Regulate the Property Management Industry

Portfolio Housing

On 26 October 2022, the Cabinet Social Wellbeing Committee:

Background

- 1 **noted** that in November 2021, the Cabinet Social Wellbeing Committee approved the release of *Residential Property Management Regulatory Options: A Discussion Paper* and noted that responsible Minister would report back on the outcome of consultation and to seek agreement to policy decisions [SWC-21-MIN-0189];
- 2 **agreed** that new legislation is required to promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers;

Outcomes and objectives

- 3 **agreed** that the new legislation will establish a compulsory system for licensing that improves the transparency and integrity of the residential property management sector in New Zealand;
- 4 **agreed** that the new legislation should seek to promote public confidence in the delivery of residential property management services and protect the interests of property owners, tenants, and other consumers;
- 5 **agreed** that the objectives of the regulatory system are to:
 - 5.1 regulate those parties providing property management services to residential property owners;
 - 5.2 promote public confidence in the delivery of residential property management services;
 - 5.3 protect the interests of property owners, tenants, and other consumers by:
 - 5.3.1 establishing professional entry standards;
 - 5.3.2 establishing industry practice standards;
 - 5.3.3 providing accountability through a complaints resolution and disciplinary process;

Scope

- 6 **agreed** that the regime will apply to people who deliver property management services to an owner or other person, in relation to one or more residential tenancies, in the course of business;
- 7 **agreed** that the regime will not apply to commercial property managers, property owners (or their employees) acting as landlords for properties that they own or lease, Kāinga Ora, or registered Community Housing Providers (CHPs) as the system is not intended to further regulate the activities of landlords in either the public or private sector;

Provision to require serially non-compliant landlords to use a licensed residential property manager

- 8 **agreed** that an amendment should be made to the Residential Tenancies Act 1986 (RTA) that provides the Tenancy Tribunal with the power to order landlords to use a licensed residential property manager for a designated period if the landlord has been found to be in breach of any of the following sections of the RTA twice or more within a five-year period:
 - 8.1 sections 45(1A) or 66I(4) (relating to landlord's responsibilities: cleanliness, maintenance, smoke alarms, healthy homes standards, and buildings, health, and safety requirements);
 - 8.2 sections 45(1AB) or 66I(5) (relating to landlord's responsibilities: contaminated premises);
 - 8.3 section 54(3) (relating to retaliatory notice of termination);
 - 8.4 section 60AA (relating to acting to terminate without grounds);
 - 8.5 section 137(2) (relating to contracting to contravene or evade the provisions of the RTA);

Regulatory Authority

- 9 **agreed** that the Bill require the Real Estate Agents Authority (REA) to perform the functions of the regulatory authority for property managers;
- 10 **agreed** that the Bill mandate the functions and responsibilities of the regulatory authority and enable the regulatory authority to:
 - 10.1 establish, maintain, and administer the licensing regime for residential property managers and residential property management organisations, including the granting and renewal of licence applications;
 - 10.2 recognise licensed residential property managers under equivalent schemes;
 - 10.3 have the discretion to grant the right to practice under a provisional licence, subject to agreed conditions being met;
 - 10.4 appoint a Registrar of the register of licensees;
 - 10.5 ensure the establishment and maintenance of the public register of licensees;
 - 10.6 develop practice rules for the Minister of Housing's approval that will apply to licensees, including a code of professional conduct and client care and ongoing CPD requirements;

- 10.7 support the establishment of appropriate training and education standards to meet competency requirements;
- 10.8 ensure the provision of ongoing professional development services;
- 10.9 set fees and levies;
- 10.10 provide information and advice on regulatory requirements to regulated parties;
- 10.11 develop and provide consumer information on matters relating to the provision of residential property management services;
- 10.12 establish and oversee a process for dealing with complaints relating to the conduct of regulated parties;
- 10.13 appoint Complaints Assessment Committees and maintain a panel of persons suitable to serve as members of Complaints Assessment Committees;
- 10.14 investigate and initiate proceedings in relation to offences under the proposed Act;
- 10.15 investigate of its own motion any act, omission, allegation, practice, or other matter which indicates or appears to indicate unsatisfactory conduct or misconduct on the part of a licensee;
- 10.16 require residential property managers to provide the regulatory authority with the relevant information to enable compliance monitoring and enforcement, including information required for the monitoring and evaluation of the residential property management sector and of the residential property management regulatory system;
- 10.17 provide investigation and audit services to monitor the activities of regulated parties and intervene where appropriate;
- 10.18 issue warnings and require remedial actions to meet regulatory requirements;
- 11 **agreed** that the functions of the Registrar in the REA regime are extended to incorporate carrying out the same functions for the residential property management regime;
- 12 **agreed** that the REA's functions and powers with respect to property managers are aligned with the functions and powers granted to the REA under section 12 and 25 – 32 of the Real Estate Agents Act 2008, including the powers to audit trust accounts;
- 13 **agreed** that the Minister of Housing and Minister of Justice be jointly responsible for appointing the REA Board;
- 14 **agreed** that the Bill specify that up to three members appointed to the REA Board be drawn from the real estate and wider property management industries;
- 15 **agreed** that when appointing members, the Minister of Housing and Minister of Justice must be satisfied that the board, collectively, has knowledge of and experience and expertise in relation to te Tiriti o Waitangi / the Treaty of Waitangi and Māori perspectives;
- 16 **agreed** that the Bill include consequential amendments to the Real Estate Agents Act 2008 in order to give effect to the above decisions;

Licensing arrangements

- 17 **agreed** that to be employed or trade as a residential property manager or residential property management organisation in New Zealand, individuals will need to hold a licence issued by a regulatory authority that determines the licensee meets specified licensing requirements;
- 18 **agreed** to establish a tiered licensing structure that includes organisations as well as individuals and will allow the regulatory authority to issue different classes of licence that require different prerequisite qualifications, experience, and other requirements;
- 19 **agreed** that prospective licensees should be a minimum age of 18 in order to qualify for any of the licensing tiers;
- 20 **agreed** that the obligations associated with each licensing class will be established in regulation, and should include:
 - 20.1 qualification and other entry requirements;
 - 20.2 meeting a fit and proper person test;
 - 20.3 insurance, trust account and audit requirements;

Complaints and discipline

- 21 **agreed** that the Bill provide for a complaints and disciplinary system to address complaints relating to the professional conduct of a residential property manager or residential property management organisation;
- 22 **agreed** that Complaints Assessment Committees (CACs) be empowered to consider civil cases that may involve a breach of the proposed Act or associated regulations or rules, or could result in unsatisfactory conduct or misconduct by licensed property managers or property management organisations;
- 23 **agreed** that CACs must consist of a minimum of three members, drawn from a panel maintained by the regulatory authority, and that one of the members has a minimum of seven years' legal experience, and that a chairperson and deputy chairperson are appointed by the regulatory authority;
- 24 **agreed** that the level of fines that CACs can order licensees to pay to the regulatory authority should be the same as real estate agents, namely a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a corporate body;
- 25 **agreed** that the sections of the Real Estate Agents Act 2008 that set out the functions and powers of the CACs be mirrored for the purposes of the residential property management regime with the necessary minor amendments where required to reflect the differences in the regimes;
- 26 **agreed** that the Bill empower an expanded Real Estate Agents Disciplinary Tribunal to perform the functions of the independent disciplinary tribunal, and have the ability to impose a range of penalties, including suspending or cancelling a licence, imposing fines, or ordering the licensee to meet a complainant's costs and/or pay compensation;
- 27 **agreed** that the level of fines that can be awarded should be the same as for real estate agents, namely \$15,000 for an individual, and \$30,000 for a corporate body;

- 28 **agreed** that the level of compensation that can be ordered will be the same as for real estate agents, namely up to \$100,000;
- 29 **agreed** that the sections of the Real Estate Agents Act 2008 that set out the powers and functions of the Real Estate Agents Disciplinary Tribunal be mirrored for the purposes of the property management regime with any necessary minor amendments where required to reflect the differences in the regimes;

Offences and penalties

- 30 **agreed** that the Bill provide for the criminal offences and penalties set out in Appendix B of the submission under SWC-22-SUB-0183;
- 31 **agreed** that the regulatory authority be responsible for prosecuting offences under the legislation;

Stewardship

- 32 **agreed** that Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (the Ministry) will perform the role of regulatory steward for the residential property management system;
- 33 **agreed** that the Ministry of Justice will be responsible for monitoring and reporting on the performance of the REA as the regulatory authority for the residential property management system;

Cost recovery

- 34 **agreed** that the Bill establish a principles-based framework to enable cost-recovery using a range of methods including levies and fees, with the details to be established in regulations;

Regulation-making powers

- 35 **agreed** that the Bill provide regulation making powers in order to develop an occupational regulatory system that includes:
- 35.1 licensing arrangements and the establishment of a public register, including tiered minimum qualification and training requirements for different licence classes and how prior learning and experience can be recognised and factors to be consider when exercising discretion to issue a licence where the usual requirements are not met;
 - 35.2 the form and content of relevant documentation;
 - 35.3 exempting persons or classes of persons from the requirement to be licensed under the regime;
 - 35.4 the search criteria for the register;
 - 35.5 prescribing the changes of circumstance to be notified to the Registrar;
 - 35.6 how complaints may be made to the regulator;
 - 35.7 supporting an effective Disciplinary Tribunal and prescribing any fees in relation to the functions of the Disciplinary Tribunal;

- 35.8 trust account and auditing requirements;
- 35.9 prescribed insurance requirements;
- 35.10 cost recovery through fees and levies in accordance with the Bill's cost recovery provisions;
- 35.11 setting a disciplinary levy;
- 35.12 the form that a client's consent must be given in;
- 35.13 time periods for giving notice, making submission and other matters;
- 35.14 any other matters necessary for the administration of this Act, or necessary for giving it full effect;

Authority to be empowered to establish rules following the Minister's approval


- 36 **agreed** that the Bill also enable the regulatory authority to establish rules, following the Minister of Housing's approval of the proposed rules, in accordance with the specifications in the Bill and regulations that cover:
 - 36.1 professional and industry practice standards, including a code of professional conduct and client care;
 - 36.2 Continuing Professional Development requirements;
- 37 agree that the Bill and associated regulations provide for a staged approach to implementation;

Regulatory development

- 38 **agreed** that the Minister of Housing must be satisfied that there has been satisfactory consultation with significantly affected parties prior to any regulations or rules being made;
- 39 **agreed** that the Minister of Housing may recommend minor and technical amendments to regulations or rules without consultation with stakeholders;

Financial implications

s 9(2)(f)(iv)



Legislative implications

- 44 **noted** that the Residential Property Managers Bill holds a category 5 priority on the 2022 Legislation Programme (Instructions to the Parliamentary Counsel Office in 2022);
- 45 **authorised** the Minister of Housing, in consultation with the Minister of Justice where appropriate, to make any further detailed policy decisions that are consistent with the decisions sought above and required to implement the new regime;
- 46 **authorised** the Ministry to work with Parliamentary Counsel Office to develop provisions approved by the Minister of Housing under the above authority;
- 47 **invited** the Minister of Housing to issue drafting instructions to Parliamentary Counsel Office to give effect to the decisions in paragraphs 2 to 39 above;
- 48 **directed** the Ministry to review the effectiveness of legislation relating to the establishment of an occupation regulatory system five years after the related regulations come into effect;

Next steps

- 49 **invited** the Minister of Housing to submit a Bill to the Cabinet Legislation Committee in May 2023 seeking approval for introduction;
- 50 **agreed** that a Bill to regulate the residential property management sector be introduced to Parliament no later than June 2023.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Kelvin Davis
Hon Poto Williams
Hon Peeni Henare
Hon Hon Jan Tinetti
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC