Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill

Member's Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill and recommends unanimously that it be passed. We recommend all amendments unanimously, except for three, in clauses 10, 16, and 35, which we recommend by majority.

Introduction

This bill would amend the Unit Titles Act 2010, as well as the Unit Titles Regulations 2011 and the Unit Titles (Unit Title Disputes—Fees) Regulations 2011. It is a Member's bill in the name of Nicola Willis MP.

The Act provides a framework for ownership and management of properties that are divided into unit titles. It stipulates that, together, the unit owners form a "body corporate" which owns the shared property and manages the unit title development on behalf of unit owners. The body corporate must elect a chairperson. It may also elect a committee, or may hire a body corporate manager, to manage the body corporate's affairs.

High-density property arrangements have become increasingly common in New Zealand. In response to this growth, a review of the Act was initiated in 2016, which recommended changes to the unit title regime. This bill seeks to implement recommendations from that review by:

- improving information disclosure to prospective unit buyers
- strengthening body corporate governance arrangements
- increasing the standards of body corporate managers

- ensuring that unit title developments adequately plan for, and fund, long-term maintenance projects
- strengthening dispute resolution processes.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary focuses on the main amendments we recommend to the bill as introduced. We do not discuss in detail minor or technical amendments.

Changes to the pre-purchase disclosure regime

The Act requires sellers to disclose certain information to prospective buyers of unit title properties. Information disclosure is important so that buyers are aware of any issues that may affect them.

The Act recognises that obtaining information about unit title developments can be more difficult than for standalone properties. For example, a buyer cannot reasonably assess an apartment building's ventilation system. However, as a member of the body corporate, they may be liable for shared obligations for repairs and upgrades to this system.

Part 2, subpart 14 of the Act outlines the information disclosure regime. Sellers must disclose certain information, as prescribed in regulations 33 and 34, at the pre-contract and pre-settlement stages. The buyer may also request additional disclosure, as prescribed in regulation 35.

Subpart 14 also details the parties' rights and responsibilities if disclosure is incomplete, inaccurate, or not provided in a timely fashion, including a right for buyers to delay or cancel settlement.

Clauses 18 and 19 of the bill would amend sections 146–149 and 151 of the Act, to simplify the disclosure regime. Clause 37 would amend the corresponding regulations. Clause 28 would replace section 152, an administrative provision. As introduced, the effect of these clauses would be to:

- require a more comprehensive pre-contract disclosure, by adding to the list of information required under regulation 33
- remove the requirement for pre-settlement disclosure, and repeal corresponding regulation 34
- retain the ability for a buyer to request additional disclosure
- require the body corporate (or the "original owner" if the purchase is an "off-the-plans" unit title development) to endorse disclosure documents as complete and correct

- require sellers to discuss with the buyer any issues arising from disclosure statements, and prohibit the seller from delegating their responsibility to provide disclosures
- allow a buyer to delay settlement if disclosure is late, not provided, or incomplete and not substituted with a complete disclosure within the permitted time.

We propose a number of amendments to clauses 18, 19, 28, and 37 which we discuss in detail below. In summary, the effect of our proposed changes would be to:

- retain the requirement for pre-settlement disclosure
- remove the ability for a buyer to request additional disclosure
- remove the requirement for a body corporate to endorse the pre-contract disclosure documents, while retaining this requirement for pre-settlement disclosures
- allow sellers to delegate disclosures, and remove the requirement on them to discuss with the buyer any issues arising from the disclosure
- place reasonable restrictions on a buyer's right to delay or cancel settlement
- further amend the list of documents required by regulations 33 and 34 for pre-contract and pre-settlement disclosures.

Bodies corporate must keep records

The integrity of the disclosure regime relies on the seller being able to access information in order to disclose it to the buyer. We noticed that the bill does not contain a general obligation on bodies corporate to keep records. Without proper record-keeping, it is likely that disclosures would be incomplete, and information would be unavailable. This could create undesirable liabilities for buyers and sellers.

We recommend inserting clause 7B into the bill. This clause would insert section 84A into the Act to require bodies corporate to keep the records necessary to enable unit owners to comply with their disclosure obligations under sections 146 and 147.

Retaining pre-settlement disclosure

All submitters who commented on these provisions recommended retaining pre-settlement disclosure. Many noted that the time between pre-contract disclosure and final settlement can be a year or more. Pre-settlement disclosure requires a seller to provide updated information, which protects buyers' interests and strengthens the overall disclosure regime.

Other submitters commented that pre-settlement disclosures protect the body corporate's interests too. Sellers currently need to request information from the body corporate to meet their pre-settlement disclosure obligations. If the seller owed outstanding levies to the body corporate, it could withhold this information until the levies were paid.

We agree with submitters that pre-settlement disclosure is an important part of the Act, for both reasons outlined above. We propose that the Act retain the pre-settle-

ment disclosure requirements. The information sellers must provide would remain the same as under the Act at present.

We therefore recommend amending clause 18 to retain pre-settlement disclosure in section 147. Clause 37 would be consequentially amended, to retain existing regulation 34.

Removing additional disclosure provisions

Section 148 of the Act allows buyers to request, at their own cost, additional disclosure prescribed by regulation 35. Sellers must provide additional disclosure within five days of the buyer's request.

We are wary that an additional disclosure requirement, alongside the comprehensive pre-contract and pre-settlement disclosures, would create a regime which is overly burdensome to sellers. We also note that the information in additional disclosure requests would be information provided in a pre-contract or pre-settlement disclosure.

We do not believe that the additional disclosure provisions in section 148 are required. We therefore recommend amending the bill by inserting clause 18A which would repeal section 148 of the Act. Consequently, new clause 37B would revoke regulation 35. We believe that this change would appropriately balance the interests of buyers and sellers.

Endorsing disclosure documents

Clause 18 of the bill would create an obligation on bodies corporate to endorse pre-contract disclosure statements, under new section 146. An endorsement would need to state that the body corporate (through its chairperson, committee, or body corporate manager) was satisfied that the information provided in the pre-contract disclosure statement was "complete and correct".

In our view, this is no longer required.

As described above, we propose retaining pre-settlement disclosures. Under section 147, bodies corporate must already certify that information in a pre-settlement disclosure statement is correct. Pre-settlement disclosures focus on current matters, which are more likely to be within the knowledge of the current body corporate management, such as whether the seller has any outstanding levies.

On the other hand, pre-contract disclosures focus on broader matters. For example, under the bill's proposed changes, pre-contract disclosures must include documents such as minutes of body corporate meetings for the previous 3 years. Verifying this information would place a large administrative burden on bodies corporate, noting that many body corporate chairpersons and committee members are volunteers. They may also be concerned about the body corporate's liability if they endorse an incomplete or inaccurate pre-contract disclosure.

We believe that sole responsibility to provide a disclosure statement and ensure that it is accurate should be on the seller.

We recommend amending clause 18 to remove the proposed section 146. Bodies corporate would still need to certify pre-settlement disclosures, but not to endorse pre-contract disclosures.

Delegating disclosure requirements and removing requirement to discuss issues with the buyer

In the bill as introduced, clause 18 would insert subsection 146(3) to stipulate that a seller must not delegate responsibility for providing the disclosure statements. Sellers would also be responsible for discussing with a prospective buyer any issues which arise from the disclosure statements.

Similarly, section 152 of the Act states that disclosure statements must be dated and signed by the seller, or a person authorised by the seller. Clause 28 as introduced would amend this section to require that the seller must sign and date the disclosure statement themselves.

We are concerned that these provisions do not appropriately reflect how properties are usually bought and sold. Most submitters shared similar concerns. They noted that sellers often hire agents to fulfil these requirements. For example, disclosure could be provided by a real estate agent or lawyer. The bill's drafting might prohibit these standard practices, which was not the intention of these provisions.

We have similar concerns about the requirement for a seller to discuss with a prospective buyer issues arising from the disclosure statements. Specifically, we are concerned about the potential level of obligation this puts on a seller in respect of every prospective buyer. This is especially true at the pre-contract disclosure stage.

We note that it is in the seller's interests to engage with prospective buyers, and resolve any issues, to complete the sale. However, we do not believe that the Act should mandate this. Buyers can ask questions during contract negotiations or include a due diligence clause in the sale agreement.

We therefore recommend deleting proposed section 146(3) so that sellers are not prohibited from delegating the responsibility for disclosure statements and are not required to discuss issues with prospective buyers. We also recommend deleting clause 28, so that section 152 continues to allow a seller, or a person authorised by them, to date and sign a disclosure statement.

Delaying or cancelling settlement – pre-contract disclosures

Currently, the Act requires the seller to provide pre-settlement disclosures and additional disclosures at least five working days before the settlement date.

Sections 149 and 150 apply where a pre-settlement or additional disclosure is late, not given, or is updated to correct an error and the update is given less than five working days before the settlement date. Under those sections, a buyer can further extend the settlement date by five working days from the date on which they received the disclosure. The effect of this is to always give the buyer at least five working days to review pre-settlement and additional disclosure documents.

Section 151 also applies where the disclosure is late, or not given, and the buyer does not postpone settlement under section 149. In this situation, a buyer can cancel the purchase agreement by giving 10 days' written notice to the seller. The seller must provide the completed disclosure within this 10-day period. If they do not, the buyer can cancel the contract.

Clauses 18 and 19 of the bill would extend the buyer's right to delay or cancel settlements, if pre-contract disclosures are late or not given. Clause 18 would also create a new right for the buyer to delay or cancel settlement if a pre-contract disclosure statement was defective or incomplete.

Several submitters suggested that a buyer's right to cancel the contract should not apply where:

- the defect in the disclosure is trivial or minor
- the disclosure is defective or incomplete, but the seller has noted this in the disclosure statement
- the disclosure was defective or incomplete but has since been corrected.

Submitters noted that parties will often make decisions based on their presumption that a sale will occur. For example, the seller may have entered into an agreement to buy other property. Cancelling a sale can heavily affect the parties. In the submitters' opinions, the right to delay or cancel settlement should appropriately balance the buyer's and seller's interests.

We agree with these submitters. We propose a number of limitations on a buyer's right to cancel settlement based on late or incomplete disclosure statements. If a defect were so minor that it would not reasonably have affected the buyer's decision to enter into the contract, or it has since been corrected, we do not believe buyers should be able to rely on this as a reason to cancel the contract.

The same reasoning applies where the buyer was expressly told that the disclosure was incomplete. However, in these situations, we consider that the seller should state exactly what information is missing from the disclosure, and why it cannot be provided to the buyer. This would prevent sellers from including a generic disclaimer alongside every disclosure statement to avoid their obligations.

We therefore recommend amending clause 19 to insert section 151(1A) to the effect that the above exceptions would apply to a buyer's right to delay or cancel the contract.

Delaying or cancelling settlement – pre-settlement and additional disclosures

As discussed earlier, we recommend retaining pre-settlement disclosures and removing additional disclosures. Therefore, the delay and cancel provisions in the bill would not apply to additional disclosures.

However, we have considered whether a buyer should be able to delay or cancel settlement if a pre-settlement disclosure was given late, or not given at all. We recommend that the bill should retain the Act's existing delay and cancel provisions in relation to pre-settlement disclosures, under sections 149 and 150 (as discussed above).

We also considered whether the right to delay or cancel due to defective or incomplete disclosures should extend to pre-settlement disclosures. In our opinion, the buyer's rights to delay or cancel are stronger at the pre-contract stage. Pre-contract disclosures contain information that influences a buyer's decision to enter the contract. On the other hand, a pre-settlement disclosure generally only provides updates to information that the buyer has already received. Pre-settlement disclosures are a final step, intended to facilitate settlement. Therefore, we would extend the right to delay settlement, but not to cancel settlement, for incomplete pre-settlement disclosures.

We recommend inserting clause 18B to insert new subsections (3) to (5) in section 149, extending the right to delay or cancel settlement to pre-settlement disclosures, as discussed above.

Delaying or cancelling settlement – administrative matters

We propose several administrative amendments to facilitate the delay or cancel provisions outlined above.

The bill as introduced is not clear about when a buyer must exercise their right to delay or cancel. If the settlement date arrived and the buyer had not formally delayed or cancelled settlement, it could lead to disputes about whether the buyer had breached the contract by not settling on the agreed date.

Through clause 18B we recommend inserting subsections (2) and (4) in section 149. These provisions would require buyers to give notice to delay settlement on or before the scheduled settlement date.

Similarly, we recommend amending clause 19 to amend proposed section 151(2)(a). This subsection would state that buyers must give 10 days' notice of their intention to cancel the agreement, on or before the settlement date.

Clause 19 would also amend section 151(3) and (4) and would apply to buyers who gave notice to cancel the agreement under those provisions. Buyers would be required to give notice to cancel within five working days of receiving an amended pre-contract disclosure statement. Or, if no disclosure was provided, they must give notice within five working days of the end of the 10-day notice period.

We also recommend amending clause 18B to insert section 149(7). If a buyer had already delayed settlement twice because the seller had provided an incomplete disclosure, this section would allow them to apply the cancellation provisions instead.

Similarly, if the buyer continued to delay the settlement date, sellers could be unfairly disadvantaged. Under our proposed clause 18B, if the buyer had delayed settlement twice, because of incomplete or inaccurate pre-contract disclosure, they could only delay further by agreement with the seller. Otherwise, they must choose to either proceed with the contract or cancel the contract by giving 10 days' notice under section 151.

Changes to information required for pre-contract and pre-settlement disclosures

Regulations 33 and 34 list what information a seller must provide in pre-contract or pre-settlement disclosure statements.

The bill as introduced would repeal pre-settlement disclosures and regulation 34. We have recommended retaining these provisions in their entirety, and are not recommending any substantial changes to the information required under regulation 34 for pre-settlement disclosures.

Clause 37 would amend regulation 33 to include a more comprehensive list of requirements for pre-contract disclosures. We heard a diverse range of opinions from submitters about exactly what information should be included in a pre-contract disclosure statement.

Based on these views, and advice received, we recommend that regulation 33 be amended to include or omit several types of information for the purposes of pre-contract disclosures. For example, we would amend regulation 33 to require a seller to include:

- details of any weathertightness issues that have not been remediated
- details of any other known significant defects that may require remediation
- a copy of the body corporate's long-term maintenance plan
- copies of the body corporate's financial statements and audit reports, if any, for the last 3 years (as opposed to 7 years in the bill as introduced).

We consider that these changes are mostly technical in nature and we do not discuss them in detail in this commentary. However, we believe the changes would strengthen the overall disclosure regime, while balancing the rights and obligations of all parties.

Changes to disclosure requirements for "off-the-plans" developments

Currently, regulations do not provide separate disclosure requirements for developers who are selling parts of an off-the-plans development. However, because the development is not yet built, there is no "unit title development" for the purposes of forming a body corporate. A lot of the information needed for pre-contract disclosures, such as information about building quality, does not yet exist. Many of the required documents are not relevant to off-the-plans developments.

To address this, the bill would introduce separate requirements for pre-contract disclosures for off-the-plans developments. Clause 37 would insert regulation 33(2) to provide a list of information that sellers would have to disclose for off-the-plan developments.

As introduced, clause 37 states that information required under regulation 33(2) "is also prescribed" for off-the-plan developments. Several submitters expressed confusion about whether this means that off-the-plan developments must provide the regular pre-contract disclosure in regulation 33(1) as well as the additional information in regulation 33(2).

We agree with submitters that this could be clearer. We believe that the intention of the bill was to introduce separate, rather than additional, disclosure requirements for off-the-plan developments. We note that proposed regulation 33(3) states that any information required for pre-contract disclosure must be provided to the extent that it applies to the unit or development.

The information required by regulation 33(2) is more relevant to an off-the-plans development. We do not think that requiring these developments to comply with regulation 33(1) would strengthen the disclosure regime. We therefore recommend amending clause 37 to clarify that off-the-plans developments must comply with regulation 33(2), but not regulation 33(1).

We also recommend minor changes to the list of information required in pre-contract disclosures under regulation 33(2). As noted above, we do not discuss these changes in detail.

A consequential amendment to the bill is needed, to account for our recommendation to retain pre-settlement disclosures (discussed earlier in this commentary). We would insert clause 37A(3) to clarify, in regulation 34(2), that an off-the-plans development must comply with the pre-settlement disclosure requirements to the extent it is capable.

Body corporate governance provisions

Body corporate governance refers to the rules that bodies corporate must abide by. The bill would make several changes to the existing body corporate governance provisions. It seeks to create better transparency and accountability for unit holders, while ensuring there is sufficient flexibility and autonomy for bodies corporate to govern their unit title developments. The changes are intended to strike a balance between benefits for unit holders, and additional compliance costs on the body corporate.

We propose some amendments to the bill to further strengthen the changes being made to the governance regime.

Changes to proxy voting

When a body corporate member is unable to attend a body corporate general meeting, they may decide to vote by proxy. This means that they authorise another person to vote on their behalf.

Clause 10 of the bill as introduced would insert section 102(5) to limit the number of proxies that a person can hold and exercise. For small unit title developments, with fewer than 20 units, this would be limited to one proxy vote (they could vote for themselves and one other unit owner). For unit title developments with more than 20 units, this would be limited to 5% of the total number of voters.

The intention behind this provision was to stop “proxy farming”. The Act does not currently allow for a unit title holder to specify how they wish their proxy to vote, on their behalf. This means that a person could collect a large number of proxy vote

authorisations, and then exercise these votes in a way that the owners may not have intended. This would circumvent the democratic process.

Most submitters opposed the bill's proposal to limit the number of proxy votes a person can hold. They suggested that if unit holders could not attend a meeting, but were unable to find a suitable and trustworthy proxy, their views would not be considered in the body corporate vote. It was also unclear how this would apply if one person owned more than 5% of a unit title development. They would not be able to assign all of their voting rights to one proxy.

Most of us agree with these submitters that proxy limits should be removed from the bill. We are not convinced that there is sufficient evidence of widespread "proxy farming" and abuse to justify limiting votes in this way.

We consider that a better solution to this problem would be to allow for voters to indicate their voting preference when they authorise their proxy. We also expect that the use of proxy voting could decrease if remote participation was allowed for (we discuss this below).

Therefore, we recommend deleting clause 10 to remove the proxy limit. We also recommend inserting clause 38B, which would amend the proxy authorisation form in Schedule 2 of the Act to allow an eligible voter to indicate how they wish their proxy to be exercised.

The Green member disagrees with the removal of clause 10. They note that most submitters represented professional bodies or are people deeply involved in the sector. As the member for Auckland Central, they have heard from many constituents about their serious concerns relating to proxy voting. The Green member believes that the experiences and perspectives on "workable rules" that submitters presented may not necessarily reflect the experiences of ordinary unit owners.

The Green member remains concerned about proxy farming, especially for controversial body corporate issues or where the body corporate management holds opposing views to other unit owners. There is an imbalance of power because the body corporate management has access to all unit owners' contact details. Without proxy limits, the body corporate management could farm proxy votes to subvert the democratic process.

We also recommend inserting clause 8A into the bill. Clause 8A would amend section 99 to permit a proxy holder to request a poll of eligible voters at a general meeting. Currently, this power is available to eligible voters, but not their proxies. We believe this clarifying amendment would better allow proxy holders to represent the interests of the eligible voter that they represent.

Allowing electronic and remote participation

One significant proposal in the bill is to improve a body corporate's ability to use electronic tools, and remote participation.

We support this change. However, we believe that the bill could be clearer in promoting remote participation. We note that the bill was drafted prior to the COVID-19

pandemic, and that people have generally become much more familiar with online meetings, accessing information digitally, and remote participation. These tools would allow better attendance and participation in a body corporate's democratic processes.

Clause 11 of the bill, as introduced, would insert section 104A into the Act. It would permit a body corporate to hold a general meeting, including voting, with members participating "by telephone, audiovisual link, or other remote access facility". This power would be limited to situations where the body corporate has previously agreed, by special resolution, to allow remote participation. It is also subject to the body corporate's chairperson agreeing that remote participation is appropriate, given the meeting's agenda, and that "the necessary facilities are available" to enable remote participation.

In our view, there should be as few restrictions as possible on the rights of unit holders to attend body corporate meetings through remote participation.

We recommend removing the limitations in the bill as introduced on a unit holder's right to attend remotely. Unit owners should have the full right to attend and vote at meetings remotely. We also recommend including this right in the same section of the Act that currently gives unit holders the right to attend in person, or via audio or audiovisual link. This would highlight that the right to use "remote access facilities" is as strong as other forms of attendance.

Therefore, we recommend deleting clause 11 and instead inserting clause 7C, which would amend section 88 of the Act. This would permit body corporate members to attend and vote at a general meeting in person, or by audio link, audiovisual link, or other remote access facility.

We also recommend that the bill confirm that a unit owner can vote electronically before, as well as during, a general meeting. This would be equivalent to the ability to cast a postal vote, which the Act already allows. Our proposed change to clause 10 would insert new section 103A to achieve this.

The Green member supports electronic voting. However, they strongly believe that electronic voting does not by itself do enough to mitigate concerns against proxy farming, as discussed above.

Body corporate committees – decision-making powers

Bodies corporate may choose to elect a body corporate committee under section 112 of the Act. A body corporate may delegate its duties or powers to the committee, either generally or specifically, by special resolution and written notice. We make a number of recommendations which would affect how committees operate.

Clause 9 of the bill, as introduced, would amend section 101 of the Act. Section 101 outlines how bodies corporate must make decisions. Usually, bodies corporate must make decisions by ordinary resolution (a simple majority of voters present at a meeting). However, the Act requires certain decisions to be made by special resolution

(75% of the voters present at a meeting). Bodies corporate may also delegate the decision-making power to the body corporate committee.

Clause 9 would amend section 101(1) to simplify its wording. It provides that decisions should be decided by a body corporate, by ordinary resolution. In the bill's drafting, section 101(2)(b) states that section 101(1) applies "unless the body corporate committee has delegated authority to decide the matter".

Although not the provision's intent, we are concerned that it could be interpreted to mean that the body corporate, as a whole, cannot make a decision if it has already delegated responsibility to the committee. We note that the body corporate retains full decision-making powers, including the ability to revoke the committee's delegation.

We recommend clarifying that a body corporate may decide matters within its functions and powers regardless of whether they have been delegated to the body corporate committee.

Body corporate committees – code of conduct

Clause 15 of the bill would require committee members to comply with a code of conduct. The proposed code of conduct is in Schedule 2 of the bill. Clause 38 would insert the code into the Act as new Schedule 1A. The code would include principles such as acting honestly, fairly, and in the body corporate's best interests, and disclosing any conflicts of interest.

Many submitters commented on the proposed inclusion of a code of conduct. Some recommended specific principles which they thought should be included or omitted from the code. We thank those submitters for their views. However, we are only recommending one amendment to the bill as introduced.

The purpose of the code of conduct is to set the standard that is expected of committee members. As introduced, principle 4 of the code states that a member of the committee must "take reasonable steps" to ensure they comply with the Act. We acknowledge that many committee members are volunteers, and not professional body corporate managers. However, we believe that the obligation only to "take reasonable steps" is a lower standard than what the bill should contain.

We recommend amending principle 4 to require committee members to comply with the Act, regulations and any other applicable legislation, rather than simply taking reasonable steps to comply.

Body corporate committees – challenging the committee's decisions

Clause 15 of the bill would insert sections 114A to 114F outlining how body corporate committees should manage and mitigate conflicts of interest. In general terms, if a member has a conflict of interest, they should disclose that interest and should not take part in decision-making on that matter.

Proposed section 114E states that a committee decision would not be invalid because of a failure to comply with the conflict of interest provisions. We agree with this

general position because it may be impractical to set aside the decision. For example, the committee may have signed a contract to implement the decision.

However, we recommend clarifying that this would not limit any other rights a person may have under the Act (to make an application to a court or tribunal, for example) in relation to the decision.

Body corporate committees – reporting to the body corporate

Regulation 28 requires body corporate committees to present a report at each general meeting of the body corporate. The report must contain a description of the duties or powers that have been delegated to the body corporate committee during the period covered by the report and an update on how the committee has fulfilled or exercised them.

Clause 34 would insert an additional requirement for the report to include a summary of the committee's decisions during the reporting period.

We are concerned that these provisions, as drafted, would limit the report to only powers and duties delegated since the last report. We believe that committees should regularly report to the body corporate on all powers and duties that have been delegated to it.

We recommend amending clause 34, to amend regulation 28. Our proposed amendment would state that a committee must report at every general meeting on the performance of all powers and duties delegated to it.

Body corporate committees – administrative matters

We recommend a number of minor amendments to the bill as it relates to body corporate committees. They are briefly described below:

- Clause 29A would amend regulation 6(5). This regulation specifies what the body corporate, or committee, must include when notifying members of an annual general meeting. We would amend this to require that the body corporate committee's interest register, which shows any conflicts of interest, be attached to every notice of meeting.
- Clause 14 would insert section 113 into the Act. That section would require a body corporate committee to keep written records of its meetings, including minutes recording the committee's resolutions. We propose amending clause 14 to insert section 113(1AA) to require committees to produce an agenda for each committee meeting.
- Clause 33A would amend regulation 27A. This would clarify that the body corporate committee may redact information from its minutes if disclosing that information would breach the Privacy Act 2020, or to protect legal privilege or commercial sensitivity.
- Clause 33A would also allow the body corporate committee, under regulation 27A, to provide unit owners with electronic copies of its meeting minutes. Unit

owners would be able to request a physical copy of the minutes, and the committee must provide a physical copy within a reasonable time.

- Clause 31(3A) would amend regulation 24, which sets out who can be elected as a body corporate committee member. Under the Act, bodies corporate may elect a "non-natural person" to the committee, such as a company. We would amend clause 31(3A) to clarify that the non-natural person can nominate one of its directors, or an employee or class of employees, to act as a committee member on its behalf.
- Clause 30(1) would insert new regulation 10(2)(ab). Regulation 10 sets out the process for electing the body corporate chairperson. Under our proposed addition, to be eligible to be nominated as chairperson a unit owner must not have any overdue body corporate levies or amounts payable and owing to the body corporate.

Special provisions relating to size

Clause 20 would insert new Part 2A into the Act. Part 2A, as introduced, would impose additional requirements on medium and large unit title developments. For example, medium and large developments would be required to hire a body corporate manager and elect a body corporate committee. They must also prepare long-term maintenance plans which cover a 30-year period, rather than the 10 years required for smaller developments under section 116 of the Act.

As introduced, Part 2A would only apply to developments where a certain number of principal units are primarily used as places of residence. A medium development is defined as containing between 10 and 29 principal units that are primarily used as places of residence. Large developments would be developments with 30 or more principal units that are primarily used as places of residence.

We recommend expanding Part 2A to also apply to non-residential developments. In our view, all types of bodies corporate would benefit from the improved governance and accountability that Part 2A requires. We consider that this would also reduce confusion, for example amongst unit owners of mixed-use developments, about whether their specific development is captured under these provisions.

We also propose amending the size thresholds. Several submitters commented on these thresholds, and we heard different opinions about whether 10 and 30 principal units were appropriate thresholds for differentiating between development sizes. Many submitters noted that the distinctions seemed arbitrary.

After considering these views, we recommend removing the distinction between medium and large developments. In our view, there is not much to differentiate them. We consider that part 2A should apply to medium and large developments equally.

However, we think it is important that the bill should allow a simpler governance regime for smaller developments. We note that the majority of New Zealand bodies corporate consist of fewer than 10 units and those developments often have simpler building complexes and less communal property. We believe that the current thresh-

old in the bill, of small developments being those with fewer than 10 principal units, is appropriate.

We therefore propose amending clause 20 to remove the definitions in part 2 relating to medium and large developments. Instead, we would amend clause 4 to insert a definition of a "large development" into the Act's interpretation provision in section 5, which would be applied throughout the entire Act. This definition would state that a large development is one with 10 or more principal units. We also recommend amending clause 20, to remove all references to "residential developments" so that new part 2A would apply to all types of unit title developments including commercial and mixed-use developments.

Body corporate managers

Some bodies corporate hire professional managers to run the body corporate on their behalf. Body corporate managers, and the nature and scope of their services, are not regulated by the Act or any other legislation. Generally, managers provide record-keeping, administrative support and financial services to the body corporate. They also may be responsible for preparing any disclosure statements that the Act requires.

These professional services can be especially important for larger unit title developments or developments that hold large amounts of money.

Clause 15 of the bill would insert sections 114G to 114I, which define the role and obligations of a body corporate manager. Clause 35 would insert regulations 28A to 28C, which contain further requirements that body corporate managers must meet before contracting to the body corporate.

Requirements for body corporate managers

The bill as introduced would impose certain obligations on body corporate managers. They are set out in proposed section 114I, to be inserted by clause 15. The body corporate manager must act in good faith, exercise due care and diligence, disclose conflicts of interests, and comply with the Act and regulations.

Regulation 28B would also require body corporate managers to be members of an industry organisation that has, as one of its purposes, to "foster the professional development of body corporate managers". Such a requirement applies to other industry professional bodies, such as lawyers and chartered accountants.

Submitters questioned how these provisions would work. They stated that there are few, if any, industry bodies that would fit the requirements for body corporate managers. Most of us share this concern and note our support for the continued self-regulation of the body corporate management industry. It is a relatively new industry, and we believe it should have time to develop effective self-regulatory processes before any legislation is imposed.

We recommend, by majority, amending clause 35 to remove this requirement from regulation 28B.

However, it is important that body corporate managers are held to a high standard, to protect bodies corporate and unit owners. We believe that, rather than creating new industry professional bodies, regulation 28 could protect bodies corporate by instead creating a code of conduct for body corporate managers. Several submitters also suggested this idea. We are aware that a similar code of conduct exists in Queensland and propose adopting provisions similar to that legislation. We also recommend moving the obligations on body corporate managers that are currently in clause 15 (for example to act in good faith, and exercise due care and diligence) to this code of conduct. Doing so would consolidate the body corporate manager's obligations in one location.

We will not discuss here the exact items that we propose including in the code of conduct, as they are technical in nature. However, we note that there is broad consensus among our members for our proposed code of conduct.

We recommend two consequential amendments to give effect to the code of conduct. Clause 15 would be amended to insert new section 114J, stating that body corporate managers must comply with the code of conduct. Clause 35 would be amended to insert new regulation 28C(ab). This would require any agreement for body corporate manager services to contain a clause stating that the manager must comply with the code of conduct.

The Green member welcomes a code of conduct for body corporate managers but opposes removing the requirement for managers to belong to an industry organisation. The committee received advice that there had not been sizeable enough issues reported within this sector to warrant required professional membership. However, the Green member strongly believes that enforcing professional standards and registration, like those required for real estate agents, is the best possible way to avoid potential future problems.

Large bodies corporate can opt out of hiring a body corporate manager

New part 2A, to be inserted by clause 20 of the bill, would require medium and large unit title developments to hire a body corporate manager. Medium developments would be able to opt out of this requirement by special resolution.

Given that we are proposing to remove the distinction between medium and large developments, we also recommend amending the requirement to hire a body corporate manager. Under our proposed changes to clause 20, all developments with more than 10 principal units must hire a body corporate manager unless they opt out of this requirement by special resolution.

We strongly encourage bodies corporate, especially larger bodies corporate, to employ a body corporate manager. However, we believe this change would allow flexibility for bodies corporate to manage their own affairs as they see fit.

Long-term maintenance plans

Bodies corporate are responsible for maintaining common property as well as any building elements and infrastructure, such as exterior walls and the roof.

Currently, section 116 of the Act requires that they prepare a "long-term maintenance plan" (LTM plan) covering at least a 10-year period. The plan's purpose is to:

- identify future maintenance needs and estimate the costs involved
- support the establishment of a long-term maintenance fund
- provide a basis for levying fees on unit owners
- guide the body corporate in making its annual maintenance decisions.

The Act also states that bodies corporate must establish a long-term maintenance fund but can opt out of this requirement by special resolution. Money in a long-term maintenance fund can only be used for spending related to the LTM plan.

LTM plans – term length

Clause 20 of the bill as introduced would insert section 157D to extend the term that an LTM plan must cover, from 10 years to 30 years. Medium and large bodies corporate would be required to prepare an LTM plan.

As discussed above, we are recommending removing the distinction between medium and large bodies corporate. This would mean the opt-out provisions were no longer available for medium-sized bodies corporate.

Many submitters commented on the bill's change to LTM plan terms. They were concerned that the 30-year period was too long. In their opinion, it would require bodies corporate to make significant assumptions about the durability of the buildings and land. Others suggested that imposing a 30-year term would be inappropriate for unit title developments that have standalone units, or minimal shared property. They also mentioned reluctance, with such a long term, to set money aside for future owners.

We empathise with submitters' concerns and agree it would be difficult to account for future unknowns, such as inflation or new technologies. We also acknowledge that the number of units in a development is not the only factor that influences its governance and funding requirements.

However, we believe that long-term forecasting is necessary. Unit title developments with more units will generally have complex building systems, such as lifts and air conditioning. LTM plans ensure that these maintenance and repair costs are accounted for properly across years of unit ownership.

To address submitters' concerns about the burden that a 30-year term might place on bodies corporate, we recommend amending clause 20, to amend section 157D. Bodies corporate would be required to produce an LTM that includes detailed cost estimations for the first 10 years, and high-level projections for the following 20 years. The detailed costings for the first 10 years would mirror the current requirements under the Act. High-level projections could be revised when the LTM plan was reviewed.

In our opinion, this would strike an appropriate balance between reducing compliance costs on bodies corporate and promoting forward planning.

LTM plans – Identifying "defects" in the LTM plan

Clause 16 would amend section 116 to add a requirement that LTM plans must "identify any defects in, or repairs required to, the unit title development" and estimated repair costs.

Most us do not agree with this provision and note that the majority of submitters opposed it too.

The term "defect", in building law, does not fit within a "maintenance" plan. Defect reports are prepared by building surveyors or engineers, and usually highlight unexpected issues that need urgent repairs. For example, earthquake-affected buildings may be defective and require seismic strengthening. On the other hand, long-term maintenance plans account for regular and planned upkeep.

We believe that including in the LTM plan a requirement to identify defects would confound these concepts and would place too high a burden on bodies corporate. We therefore recommend deleting clause 16 of the bill as introduced, to remove this provision.

The Green member is concerned that removing clause 16 of the bill would negatively affect prospective buyers by reducing the information available to them. They believe that, without a transparent log of known defects, maintenance requirements, potential liabilities, and issues that require investigation, buyers and current owners would not have a thorough understanding of the property.

In the Green member's opinion, the committee's majority view does not preclude some form of register for upcoming and known defects, to be investigated or budgeted for. In their experience, constituents are concerned that some bodies corporate prefer to delay investigating or confronting defects, which only serves to shift the financial burden to future owners.

The Green member recommends that the bill should retain clause 16 and suggests that further work is needed on the LTM plan provisions.

LTM plans – peer reviewed by industry professionals

As introduced, clause 20, new section 157D would require LTM plans to be reviewed every 3 years. At each review, they would need to be peer reviewed by a member of either the New Zealand Institute of Building Surveyors, the Royal Institute of Chartered Surveyors, the Institute of Professional Engineers New Zealand, or any other body prescribed in the regulations.

We disagree with this requirement. We believe that the list of professional organisations in the bill is too prescriptive. There are also matters in an LTM plans that many members of these organisations would not be expert in, such as paint and floor coverings. Peer review of LTM plans is of limited benefit to unit owners.

Some submitters also commented on the cost involved with hiring professionals from these organisations. We are concerned that prohibitive costs could incentivise bodies corporate to opt out of preparing a LTM plan.

Instead, we believe it would be more beneficial for a body corporate to consult with any building professionals, or other suitably qualified professionals, that it considers necessary or appropriate. We recommend that this be required when the body corporate prepares its LTM plan, and at each subsequent review. However, we also believe that bodies corporate should be permitted to opt out of the requirement to consult with building professionals, or other suitably qualified professionals, by special resolution.

To implement our changes, we recommend deleting proposed section 157D(6) from clause 20 of the bill and inserting new section 157D(5A) into clause 20.

LTM plans – Must be signed off by the chairperson

Clause 20 would insert section 157D(9) to require the body corporate chairperson to sign the LTM plan at each body corporate annual general meeting. The chairperson would certify that, to the best of their knowledge, the LTM plan contained a complete record of known defects and repairs required.

We disagree with this provision. It is important that the LTM plan is accurate and complete. However, many body corporate chairpersons are volunteers, nominated from the pool of unit holders. Chairpersons may not have any specialist knowledge, or experience in maintenance planning and funding. We are concerned that this could lead to body corporate chairpersons being liable for incorrect LTM plans. It could also discourage unit holders from volunteering as a body corporate chairperson.

We therefore recommend amending clause 20 to remove proposed section 157D(9) from the bill.

LTM plans – Establishing an LTM fund

Clause 20 would insert new section 157E, which requires large and medium bodies corporate to establish a long-term maintenance fund. The fund contains all the money set aside from levies for maintenance that is accounted for in the LTM plan. The Act currently allows all bodies corporate to opt out of establishing LTM funds. Under proposed section 157E, medium and large bodies corporate would no longer be able to opt out.

We recommend that the compulsory requirement in the bill be removed. Our proposed amendment would revert the bill to the current requirements under the Act. Bodies corporate would be able to opt out of establishing LTM funds, via special resolution.

We consider that the LTM fund is a useful way for the body corporate, regardless of size, to effectively manage its budget and reduce the risk of increased levies to cover unbudgeted maintenance. However, the benefits of an LTM fund must be balanced against the right of unit owners to manage their body corporate as they see fit.

We note that neither the Act nor the bill details how a body corporate may review its decision to establish, or not establish, an LTM fund. In our view, bodies corporate should continue to turn their mind to whether they need an LTM fund and how one might be introduced. We also believe that, if the decision to opt out has been made by

special resolution, any subsequent decision to opt in should require a special resolution.

We recommend amending clause 20 to delete section 157E, thereby allowing medium and large bodies corporate to opt out of establishing an LTM fund. We also recommend amending clause 16 to amend section 117 so that bodies corporate that have opted out of having an LTM fund must review their decision at each annual general meeting. They may only overturn that decision by special resolution.

LTM plans – LTM funds, administrative provisions

We recommend several amendments to administrative provisions relating to LTM funds. We list them below:

- Clause 36 of the bill would amend regulation 30, which outlines what bodies corporate must include in their LTM. We recommend inserting clause 36(2) to require bodies corporate to specify, in the LTM plan, how the LTM plan will be funded.
- We also recommend amending clause 36(3), to insert regulation 30(1A). This regulation would require that, on an annual basis, bodies corporate must apply the amount they have determined to maintain the LTM fund.
- Clause 20 would insert section 157F to require that LTM funds must be audited annually by an independent auditor. We note that section 132 of the Act already requires the body corporate to keep financial records. Bodies corporate can choose whether to have these records independently audited. We do not believe that new section 157F is required and recommend deleting it from clause 20.

Reassessment of utility interest

Bodies corporate collect levies from unit owners. If the body corporate chooses to, it can collect different amounts of levies from different units. This is based off the "utility interest". In general terms, units that use more of the unit title development's utilities, such as plumbing and lifts for top storey apartments, will have a larger utility interest and pay more in levies. They would also receive a larger share of any money paid back, proportional to their utility interest.

Under the Act, the assignment of different utility interests must be fair and equitable. However, each unit can only have one utility interest.

Clause 5 of the bill would allow new unit title developments, when establishing their body corporate, to apportion utility interest as a set of multiple interests. This means that each unit's levies could be calculated by summing the utility interest for each utility type.

We recommend one change in relation to utility interests. We would extend the above power, to reapportion utility interest as a set of interests, to existing bodies corporate too. We recommend inserting clause 5A into the bill to this effect.

We note that clauses 5 and 5A are not requirements. They allow unit title developments, if they choose, to take the approach of apportioning utility interests as a set of

interests. We would expect bodies corporate to only do this if it were beneficial to their circumstances.

Dispute resolution processes

We propose four minor amendments to clauses 40 and 21, which relate to dispute resolution processes.

Clause 40 would amend regulation 5 of the Unit Titles (Unit Title Disputes—Fees) Regulations 2011, which outline the fees process for when parties make applications to the Tenancy Tribunal relating to unit title disputes.

We recommend amending clause 40 to:

- reduce Tribunal fees for unit title disputes to $250 for mediation, and $500 for adjudication
- clarify that if the applicant pays the $250 fee for a dispute referred to mediation, and the dispute is subsequently referred to adjudication, the applicant must only pay a further $250 fee for adjudication
- replace the fee categorisation of unit title disputes from a “complex” and “non-complex” system, to one that is categorised based on whether a proceeding is referred to mediation, or adjudication.

Clause 21 would be amended to increase the thresholds for unit title disputes that can be heard by the Tribunal from $50,000 to $100,000. This would also increase the corresponding thresholds for applications to the District Court.

Enforcement powers of the chief executive

We believe it is important that the bill empowers the chief executive to enable them to administer the Act effectively.

To this end, we recommend inserting clause 21D, new section 202(1)(ca). This would add a new function for the chief executive to monitor and assess whether bodies corporate and body corporate managers have complied with the Act.

We propose several amendments to the bill’s enforcement powers to improve the chief executive’s ability to perform this function. Many of these powers would reflect the chief executive’s equivalent powers under the Residential Tenancies Act 1986. We believe these provisions would strengthen the unit titles regime, and facilitate transparent and effective body corporate governance.

Chief executive can request documents

Section 133 of the Act permits the chief executive to monitor and report on the financial and LTM planning regimes of bodies corporate. On receiving notice from the chief executive, bodies corporate must permit them access to the unit title development and “all relevant information” that is in the body corporate’s possession.

However, the Act does not grant the chief executive power to specify a timeframe for bodies corporate to supply this information. There is also no ability to request docu-

ments for the purposes of investigating breaches of the Act, as these may be only indirectly linked to the body corporate's financial and maintenance planning.

Clause 16A of the bill would repeal section 133. In its place, clause 21E would insert new section 202A the Act. This provision would:

- require bodies corporate and body corporate managers to retain certain prescribed documents for at least 3 years
- empower the chief executive to require the body corporate, or body corporate manager, to produce copies of documents within 10 working days, where these documents are reasonably necessary for the chief executive's functions under the Act
- permit bodies corporate to withhold any documents or parts of documents that are subject to legal privilege.

To improve administration of these powers, clause 22 of the bill would insert section 217(1)(ea) to allow regulations to specify which documents must be retained.

Some submitters suggested that the bill should require bodies corporate to routinely submit their LTM plans to the chief executive every five years. However, we do not believe this is necessary given that the chief executive can use the powers in clause 16 to direct specific bodies corporate to submit these documents, as they see fit.

Power of entry

Section 133 of the Act requires a body corporate, on receiving written notice, to permit the chief executive access to the unit title development. Currently, this power is only available for the chief executive to monitor and report on body corporate financial and maintenance planning regimes.

As discussed above, our proposed section 212(1)(ca) would insert a new function for the chief executive to monitor and assess whether bodies corporate, and body corporate managers, have complied with the Act. Given this, we believe it is important to provide the chief executive with a power to enter and inspect body corporate developments. This would allow them to investigate alleged breaches of the Act.

We recommend inserting clause 21E, which would insert new sections 202B to 202D, to implement this new power.

These provisions would grant a similar power to those provided under the Residential Tenancies Act. However, due to the difference between residential properties and body corporate developments, modifications are needed to maintain the right to be secure against unreasonable search or seizure.

Proposed section 202B would permit a person, authorised by the chief executive, to enter the unit title development and investigate alleged breaches of the Act. They can do so only by consent of the body corporate or relevant unit title occupier under section 202C, or by order of the Tenancy Tribunal and with 24 hours' written notice under 202D. Power of entry would be limited to situations where the chief executive has reasonable grounds to believe that a breach of the Act occurred, and an inspection is necessary to their functions in relation to that breach.

These provisions expressly prohibit the authorised person entering principal units (or accessory units such as individual garages), except with consent of the unit occupier.

The Ministry of Justice commented on the proposed power of entry provisions. They recommended that we consider whether the Tribunal would have the necessary expertise, and operational capacity, to authorise inspection orders under this Act. As an alternative to the Tribunal, they suggested that inspection orders could be issued by an issuing officer authorised under the Search and Surveillance Act 2012.

On balance, we are convinced that the Tribunal is an appropriate body to authorise inspection orders. It already authorises orders of entry under the Residential Tenancies Act and we are convinced that the Tribunal has the necessary expertise to do so under the Unit Titles Act. We also do not expect this power to be used often and have received advice that it would have operational capacity to administer this power.

Chief executive can issue improvement notices

"Improvement notices" are a tool available under other regulatory regimes, including the Residential Tenancies Act. Under that Act, the chief executive can issue improvement notices to people that they reasonably believe are breaching, or are likely to breach, a provision of that Act.

We believe that an ability to issue improvement notices would benefit the unit titles regime. Improvement notices encourage the person to remedy the breach, rather than requiring the chief executive to, for example, commence legal action.

We recommend inserting clause 21C to allow for improvement notices to be issued. This clause would insert sections 176E to 176I into Part 4 of the Act, as new subpart 1A.

This would grant the chief executive the power to issue improvement notices, where they reasonably believe that a person is contravening, or is likely to contravene, the Act or regulations. An improvement notice would require the person to remedy the contravention, prevent the likely contravention from occurring, or remedy the things or activities causing the contravention or likely contravention.

In line with the Residential Tenancies Act, an improvement notice must state how the Act or regulation is being, or is likely to be, contravened. It must also provide a reasonable period within which the person must remedy the situation. The improvement notice may include recommendations about how to remedy the situation.

In line with principles of natural justice, clause 21C also contains a right to dispute an improvement notice. New section 176I would allow the recipient of an improvement notice to object to the notice, and sets out the process for an application to the Tribunal. This provision would empower the Tribunal to confirm, vary, or rescind the improvement notice as the Tribunal sees fit.

Chief executive taking proceedings on behalf of others

We believe the chief executive should be empowered to act in legal proceedings on behalf of others, where necessary. Allowing them to take action would protect the

interests of vulnerable parties who may be unable, or unwilling, to seek legal redress. It also incentivises voluntary compliance from all parties.

We think this is a vital tool, given the chief executive's role in overseeing and administering the Act, and allows them to enforce the Act effectively. We therefore recommend inserting clause 21E, which would insert sections 202D and 202E into the Act.

Section 202E would allow the chief executive to initiate, assume conduct of, or defend unit title disputes on behalf of another party and with their consent. The chief executive must only do so if they are satisfied that it is in the public interest to do so.

New section 202E(2) lists the factors that the chief executive must consider when determining whether taking an action would be in the public interest. They must be satisfied of one of the following:

- there are allegations of conduct that has caused, or is likely to cause, significant risk to any person's health or safety
- there have been serious or persistent breaches of the Act or regulations
- that a person's actions risk undermining public confidence in the administration of the Act.

We note that these provisions are relatively broad. However, we believe they appropriately limit the chief executive's powers to matters within the Act.

Some of us were concerned that express mention of proceedings being "in the public interest" could exclude any proceedings that were also "private interests". For example, we wondered if the chief executive could take proceedings on behalf of a specific group of unit owners, which could be in the unit holders' private interest as well as the general public's interest. Our intention was that the bill would permit this.

We received advice that these provisions would allow the chief executive to take proceedings in relation to private interests, where they consider that those matters also satisfy the public interest test in new section 202E(2). We are satisfied that the proposed drafting allows for this interpretation.

Section 202F would permit the chief executive to initiate a single case against a party where the alleged breach relates to multiple bodies corporate, and one body corporate manager is acting for each of the bodies corporate. This would allow flexibility for the chief executive to address body corporate managers' conduct where necessary.

Pecuniary penalties

Several submitters noted that the Act does not contain financial penalties for bodies corporate and body corporate managers who, intentionally or without reasonable excuse, breach the Act. They suggested that, if penalties could be imposed, bodies corporate and body corporate managers would be more likely to comply with the Act's requirements.

We agree with these submitters. We also note that body corporate managers wield significant power and, as professionals, should be maintaining high standards of conduct.

We therefore recommend inserting clause 21B, which would insert sections 176A to 176D into the Act. These provisions would mirror those in the Residential Tenancies Act. They would allow the chief executive to apply to the Tribunal to impose pecuniary penalties, payable to the Crown, on bodies corporate or body corporate managers for certain breaches of the Act.

New section 176C would contain matters that the Tribunal must have regard to when deciding an appropriate penalty. Section 176D would state that only one pecuniary penalty order may be made for the same conduct. New section 176B would state the maximum amount of pecuniary penalty that can be imposed for specific breaches.

Appendix

Committee process

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill was referred to the committee on 10 March 2021.

The closing date for submissions on the bill was 29 April 2021. We received and considered 85 submissions from interested groups and individuals. We heard oral evidence from 39 submitters.

We received advice on the bill from the Ministry of Housing and Urban Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Dr Duncan Webb (Chairperson)

Andrew Bayly

Barbara Edmonds

Ingrid Leary

Anna Lorck

Christopher Luxon

Greg O'Connor

Damien Smith

Stuart Smith

Chlöe Swarbrick

Helen White

Nicola Willis participated in this item of business

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99361/unit-titles-strengthening-body-corporate-governance-and.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Nicola Willis

Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act **2020**.

2 Commencement

(1) This Act comes into force—

(a) on 1 or more dates set by Order in Council; or

(b) to the extent not brought into force earlier, on the second anniversary of the date of Royal assent.

(2) One or more Orders in Council may set different dates for different provisions (and, for that purpose, may commence a provision only for the purpose of giving effect to some, but not other, parts of this Act).

Part 1
Amendments to Unit Titles Act 2010

3 Principal Act

This Part amends the Unit Titles Act 2010 (the **principal Act**).

4 Section 5 amended (Interpretation)

In section 5(1), insert in ~~its~~ their appropriate alphabetical order:

body corporate manager has the meaning given by **section 114G**

large development means a unit title development that includes 10 or more principal units

5 Section 39 amended (Utility interest (other than for future development units))

After section 39(2A), insert:

(2B) A utility interest ~~apportionment~~ assignment for the purposes of subsection (2A) may be—

(a) a single uniform interest; or

(b) a multiple set of interests, each targeted at a particular service or amenity.

5A Section 41 amended (Reassessment of ownership interest and utility interest)

(1) In section 41(5A), replace "interest" with "interests".

(2) After section 41(5A), insert:

(5B) A reassessment of the utility interests made by a body corporate created prior to the commencement of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act **2020** may be of—

(a) a single uniform interest; or

(b) a multiple set of interests, each targeted at a particular service or amenity.

(3) In section 41(6),—

(a) replace "a utility interest is" with "utility interests are"; and

(b) replace "of the utility interest" with "of the utility interests".

6 Section 79 amended (Rights of owners of principal units)

In section 79(e), after "do not materially affect", insert "the use, enjoyment, or ownership interest of ".

7 Section 80 amended (Responsibilities of owners of principal units)

In section 80(1)(i), after "materially affect", insert, "the use, enjoyment, or ownership interest of".

7A Section 84 amended (Powers and duties of bodies corporate)

After section 84(1)(b), insert: 5

(ba) **section 84A** (which requires the body corporate to keep records to enable information disclosure obligations to be met):

7B New section 84A inserted (Records to be kept)

After section 84, insert:

84A Records to be kept 10

A body corporate must keep the records necessary to enable unit owners to comply with their obligations under sections 146 and 147 to provide disclosure statements containing the prescribed information.

7C Section 88 amended (Meetings)

Replace section 88(3) to (5) with: 15

(3) Members of a body corporate may attend and vote at a general meeting (and members of a body corporate committee may attend and vote at a committee meeting) in person or by audio link, audiovisual link, or other remote access facility despite any limitation or condition on the use of an audio link, audiovisual link, or remote access facility that is contained in the body corporate operational rules. 20

(4) A meeting conducted under this section must comply with any procedures or other matters prescribed in the regulations, including those relating to electronic voting.

8 Section 95 amended (Quorum) 25

(1) Replace section 95(1) with:

(1) A quorum for a general meeting of a body corporate is the number of persons (including proxies)—

(a) who are entitled to exercise the voting power in respect of not less than 25% of the total number of principal units; and 30

(b) who also satisfy the eligibility requirements to exercise that voting power (for example, have no outstanding levy amounts owing to the body corporate).

(1A) However, if a body corporate comprises 2 or more members, a quorum must be at least 2 persons who satisfy the requirements of **subsection (1)**. 35

(2) After subsection (2), insert:

(3) To avoid doubt, nothing in this section prevents those who are entitled but not eligible to vote from attending meetings and taking part in any discussions.

(4) For entitlement to vote, *see* section 79(c). For eligibility to vote, *see* section 79(c), section 96, and the regulations.

8A Section 99 amended (Request for poll) 5

(1) In section 99(1), replace "eligible voter voting" with "eligible voter or their proxy who votes".

(2) In section 99(2), after "eligible voter", insert "or their proxy".

9 Section 101 amended (How matters at general meeting of body corporate decided) 10

Replace section 101(1) and (2) with:

(1) A matter to be decided by a body corporate must be decided by ordinary resolution at a general meeting.

(2) **Subsection (1)** applies unless—

(a) the Act provides for the matter to be decided by the body corporate by special resolution; or 15

(b) the body corporate committee has delegated authority to decide the matter.

(2A) **Subsection (2)(b)** does not have the effect of requiring the body corporate to decide the matter by special resolution. 20

(2B) A body corporate may decide matters within its functions and powers regardless of whether they have been delegated to the body corporate committee (*see also* section 110 concerning the effect of delegation on the body corporate).

~~**10 Section 102 amended (Voting: proxies)**~~

~~After section 102(4), insert:~~ 25

~~(5) A proxy cannot act as a proxy for the eligible voter or voters of—~~

~~(a) more than 1 principal unit, if the unit title development comprises fewer than 20 principal units~~

~~(b) more than 5% of the total number of principal units, for any other unit title development.~~ 30

~~**11 New section 104A inserted (Attending meetings and voting by remote access)**~~

~~After section 104, insert:~~

~~**104A Attending meetings and voting by remote access**~~

~~(1) A general meeting of a body corporate may be conducted, and voting undertaken, by 1 or more members participating by telephone, audiovisual link, or other remote access facility if—~~

~~(a) the body corporate has, by special resolution, previously authorised its members to participate at general meetings by remote access (whether in all cases or in specified circumstances); and~~ 5

~~(b) the chairperson considers that—~~

~~(i) it is appropriate to conduct the meeting with members participating by remote access, given the agenda for the meeting; and~~ 10

~~(ii) the specified circumstances (if any) of the special resolution authorising remote access are met; and~~

~~(c) the necessary facilities are available.~~

~~(2) A meeting conducted under this section must comply with any procedures or other matters prescribed in the regulations, including those relating to electronic voting.~~ 15

10 New section 103A inserted (Voting: electronic)

After section 103, insert:

103A Voting: electronic

(1) An eligible voter may exercise the right to vote at a body corporate meeting by casting a vote electronically before or during a meeting. 20

(2) An electronic vote must be cast in accordance with the regulations.

12 Section 112 amended (Establishment of body corporate committee)

(1) In section 112(2), replace "a unit title development of 10 or more principal units" with "a large development". 25

(2) After section 112(2), insert:

~~(3) A body corporate committee must be formed and conduct its business in accordance with this Act and the regulations.~~

(3) A body corporate committee (if the body corporate decides to form one) must be formed and conduct its business in accordance with this Act and the regulations. 30

13 New section 112A inserted (Chairperson of body corporate committee)

After section 112, insert:

112A Chairperson of body corporate committee

(1) The chairperson of a body corporate is— 35

(a) a member of its body corporate committee; and

(b) the chairperson of the body corporate committee.

(2) **Subsection (1)(b)** applies unless, at its annual general meeting, the body corporate decides by ordinary resolution that the chairperson of the committee should instead be a person that is elected to the committee (by the process prescribed in the regulations).

14 Section 113 replaced (Decision-making of body corporate committee)

Replace section 113 with:

113 Decision-making of body corporate committee

(1AA) A body corporate committee must produce an agenda for each body corporate committee meeting.

(1) A body corporate committee must keep written records of its meetings.

(2) Matters must be decided by a simple majority of votes and each resolution must be recorded and included in the written records for the meeting.

(3) The committee must promptly report to the body corporate on the meetings it holds in the manner prescribed in the regulations.

15 New sections 114A to 114~~I~~J inserted

After section 114, insert:

114A Body corporate committee to comply with code of conduct

The members of a body corporate committee must comply with the code of conduct for committee members prescribed in the regulations.

114B Conflicts of interest of members of body corporate committee

The members of a body corporate committee must comply with the conflict of interest rules contained in **sections 114C to 114F**.

114C Duty to disclose conflicts of interest

(1) A member of a body corporate committee who is interested in a matter must disclose details of the nature and extent of the interest (including any monetary value of the interest, if it can be quantified)—

(a) to the committee; and

(b) in an interests register kept by the committee (*see* **section 114F**).

(2) Disclosure under **subsection (1)** must be made as soon as practicable after the member becomes aware of being interested in the matter.

(3) A person is **interested** in a matter if the person—

(a) may derive a financial benefit from the matter; or

(b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or

(c) may have a financial interest in a person to whom the matter relates; or

(d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

(e) may be interested in the matter because the body corporate's operational rules say so. 5

(4) However, a person is not interested in a matter—

(a) merely because they receive an indemnity, insurance cover, remuneration, or other benefit authorised by the body corporate; or

(b) if the interest is due to their membership of the body corporate and it is the same or substantially the same as the interest of all or most other 10 members of the body corporate; or

(c) their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the person in carrying out their responsibilities under this Act, the regulations, or the body corporate's operational rules. 15

(5) In this section, and **sections 114D to 114F**, **matter** means—

(a) the body corporate committee's performance of its functions or exercise of its powers; and

(b) an arrangement, agreement, or contract (a **transaction**) made or entered into, or proposed to be entered into, by the body corporate committee 20 (whether on behalf of the body corporate or otherwise).

114D Consequences of being interested in matter

(1) A member who is interested in a matter—

(a) must not vote or take part in any decision of the body corporate committee that relates to the matter; and 25

(b) must not sign any document relating to the entry into a transaction or the initiation of the matter; but

(c) may take part in any committee discussion relating to the matter and be present at the time the decision of the committee is made (unless the committee decides otherwise). 30

(2) A member who is prohibited from voting under **subsection (1)** may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered, with one exception, as set out in **subsection (3)**.

(3) If 50% or more of the members of the committee are prohibited from voting 35 under **subsection (1)**, an extraordinary general meeting of the body corporate must be called to consider and determine the matter.

114E Consequences of failure to disclose interest

(1) A body corporate committee must notify the members of the body corporate of a failure to comply with **section 114C or section 114D**, and of any transactions affected, as soon as practicable after becoming aware of the failure.

(2) A failure to comply with **section 114C or section 114D** does not affect the validity of the committee's decision on the matter concerned or the matter itself (but the member's behaviour may be censured under Part 4).

(3) **Subsection (2)** does not affect any right a person may have to make an application under this Act in relation to the decision on the matter.

114F Interests register

(1) The body corporate committee must keep a register of disclosures made by committee members under **section 114C** (an interests register).

(2) The interests register must be available for inspection by the members of the committee.

(3) The operational rules of the body corporate may provide for whether (and, if so, the extent to which) the interests register is to be made available for inspection by other members of the body corporate or any other person.

Body corporate managers

114G Definition of body corporate manager

(1) In this Act, **body corporate manager** means a person who is employed or engaged by a body corporate (whether itself or through its body corporate committee) to provide (or manage the provision of) 1 or more of the services specified in **subsection (2)**.

(2) The services are as follows:

(a) record-keeping and other administrative services:

(b) financial services, including the handling of money belonging to the body corporate or members of the body corporate:

(c) regulatory compliance services, including~~ the making or preparing of statutory disclosures.~~—

(i) the making or preparing of statutory disclosures; and

(ii) regulatory compliance services performed on behalf of the body corporate (including the body corporate committee and the body corporate chairperson).

114H Functions and duties of body corporate manager

(1) A body corporate manager must exercise or perform the functions and duties—

(a) that the body corporate may lawfully authorise the body corporate manager to exercise or perform; and

(b) that are specified in a written agreement setting out the manager's terms of employment/engagement.

(2) The agreement must also provide for any matter prescribed by the regulations.

(3) **Subsection (4)** applies if a body corporate intends to employ or engage a body corporate manager that is the owner of a principal unit within the unit title development.

(4) The person or a proxy for the person is not entitled to vote on any resolution relating to the person's employment or engagement as the manager.

114I ~~Body corporate manager must act in interests of body corporate~~Conflicts of interest of body corporate managers

~~(1) A body corporate manager must always act in the best interests of the body corporate.~~

~~(2) Without limiting **subsection (1)**, a body corporate manager must—~~

~~(a) act in good faith, exercise due care and diligence, and not make improper use of the position; and~~

~~(b) comply with all relevant requirements of this Act and the regulations applicable to the body corporate for which the manager has responsibility (including financial management and reporting responsibilities); and~~

~~(c) comply with the requirements of this Act and the regulations applicable to body corporate managers; and~~

~~(d) as soon as practicable after becoming aware of any conflict of interest, disclose it to the body corporate committee or, if there is no committee, to the body corporate chairperson, and the committee or the chairperson (as the case may be) must decide whether, and on what terms, the manager may continue to act in the matter concerned.~~

(1) A body corporate manager must, as soon as practicable after becoming aware of any conflict of interest, disclose it to the body corporate committee or, if there is no committee, to the body corporate chairperson, and the committee or the chairperson (as the case may be) must decide whether, and on what terms, the manager may continue to act in the matter concerned.

(3) To avoid doubt, if a person is engaged as a body corporate manager by more than ~~one~~ 1 body corporate,—

(a) the manager must act independently in relation to each body corporate; and

(b) all matters for which the manager is responsible in relation to each body corporate must be independently satisfied; and

(c) the manager must not intermix the funds, records, or any other things of any of the body corporates with 1 or more of the other body corporates.

(4) For the purposes of determining whether there is a conflict of interest in relation to a matter, **section 114C(3) to (5)** applies—

(a) as if a reference to a body corporate committee were a reference to a body corporate manager; and

(b) with any other necessary modifications. 5

(5) The chairperson of a body corporate must keep a register of disclosures made by its body corporate managers (an interests register).

(6) The register must be available for inspection—

(a) by members of the body corporate committee (if any); and

(b) if the operational rules of the body corporate allow, by any other members of the body corporate or any other person to the extent that the rules provide. 10

114J Body corporate manager to comply with code of conduct

A body corporate manager must comply with the code of conduct for body corporate managers prescribed in the regulations. 15

~~16 Section 116 amended (Long-term maintenance plan)~~

~~In section 116(3), before paragraph (a), insert:~~

~~(aaa) identify any defects in or repairs required to the unit title development and estimate the costs involved in resolving the issue; and~~

16 Section 117 amended (Long-term maintenance fund) 20

After section 117(1), insert:

(1A) The body corporate may determine the level of funding to be held in the fund.

(1B) If a body corporate has decided not to establish a fund, the body corporate—

(a) must review the decision annually; and

(b) may, by special resolution, decide to establish a fund. 25

16A Section 133 repealed (Special powers of chief executive for monitoring and reporting on long-term financial and maintenance planning regime)

Repeal section 133.

17 Section 139 amended (Original owner's obligation in relation to service contracts) 30

After section 139(2), insert:

(3) Despite subsection (2), the body corporate must not enter into a service contract that has effect for longer than 24 months after the date that the control period ends, unless the contract also includes—

(a) a term providing for the contract to be varied by the body corporate after the control period ends (by negotiation with the contractor and including 35

a right for either party to cancel, without penalty, if agreement cannot be reached); and

(b) a term providing that any rights of renewal under the contract exercisable after the control period ends are exercisable only if the body corporate agrees (by ordinary resolution) to each renewal as it arises. 5

17A Section 141 amended (Appointment of administrator)

In section 141(1), after "a creditor of the body corporate,", insert "the chief executive,".

18 Sections 146 to 149 replaced

Replace sections 146 to 149 with: 10

146 Pre-contract disclosure statement to buyer

(1) Before a buyer enters into an agreement for sale and purchase of a unit, the seller must provide a disclosure statement to the buyer (a **pre-contract disclosure statement**).

(2) The disclosure statement must— 15

(a) be in the prescribed form and contain the prescribed information (to the extent that it is applicable to the unit and the development concerned); and

(b) be endorsed by the body corporate (or the original owner if there is not yet a body corporate) in accordance with section 148. 20

(3) The seller—

(a) must not delegate responsibility for providing the statement to the buyer to any other person; and

(b) is responsible for discussing any issues arising from the statement with the buyer. 25

(4) **Subsection (3)** does not prevent a body corporate manager from preparing a statement to be provided under this section (so long as the manager is authorised by the body corporate to do so).

147 Additional disclosure statement to buyer

(1) A buyer may request an **additional disclosure statement** from the seller at any time after an agreement for sale and purchase of a unit has been entered into and before the settlement date. 30

(2) The additional disclosure statement must—

(a) be in the prescribed form; and

(b) be endorsed by the body corporate (or the original owner if there is not yet a body corporate) in accordance with **section 148**; and 35

(c) be provided to the buyer no later than the fifth working day after the request is made.

(3) The seller—

(a) must not delegate responsibility for providing the statement to the buyer to any other person; and 5

(b) is responsible for discussing any issues arising from the statement with the buyer.

(4) **Subsection (3)** does not prevent a body corporate manager from preparing a statement to be provided under this section (so long as the manager is authorised by the body corporate to do so). 10

(5) The buyer must pay to the seller all reasonable costs incurred by the seller in providing the additional disclosure statement, but the non-payment of these costs does not justify the seller withholding disclosure.

148 Body corporate or original owner must endorse disclosure statements

(1) A body corporate or the original owner (as the case may be) must endorse a disclosure statement to be given under **section 146 or section 147** to the effect that the body corporate or original owner, taking account of all of the information that it has in its possession, is satisfied that the information in the statement is complete and correct. 15

(2) For the purposes of this section, the following persons may endorse a certificate on behalf of a body corporate: 20

(a) the chairperson of the body corporate:

(b) if there is a body corporate committee for the body corporate, the chairperson of the committee:

(c) if there is 1 or more body corporate managers for the body corporate, a manager that is authorised by the body corporate to do so. 25

149 Buyer may delay settlement if disclosure late, incomplete, or not made at all

(1) A buyer may delay settlement of an agreement for sale and purchase in accordance with this section if any of the following circumstances apply: 30

(a) the seller provides an additional disclosure statement to the buyer on a date that is later than the fifth working day before settlement date; or

(b) the seller has not provided a complete statement on a date that is earlier than the fifth working day before settlement date, when any of the following circumstances apply: 35

(i) the seller has not provided a pre-contract disclosure statement to the buyer:

(ii) the seller has provided an incomplete pre-contract disclosure statement to the buyer

(iii) ~~the seller has provided an incomplete additional disclosure statement to the buyer:~~

(c) ~~the seller does not provide an additional disclosure statement to the buyer before the close of business on the last working day before the settlement date.~~ 5

(2) ~~The buyer may, by notice in writing, delay the settlement until the fifth working day after the date on which the seller provides a complying statement.~~

(3) ~~However, if another statement is required to be provided (for example, because the statement provided during the delay period is incomplete), the buyer may, by notice in writing, extend the delay date until the fifth working day after the date on which the seller provides the last complying statement.~~ 10

(4) ~~In each case, notice in writing must be given by the buyer no later than the fifth working day after the date of the triggering event for postponement arises.~~

(5) ~~Nothing in this section limits or affects any other remedy available to a buyer for the disclosure or accuracy of information supplied by a seller in relation to an agreement for sale and purchase.~~ 15

18 Section 146 amended (Pre-contract disclosure to prospective buyer)

Replace section 146(2) with:

(2) The pre-contract disclosure statement must contain the prescribed information (to the extent that it is capable of being provided in relation to the unit and the development concerned). 20

18A Section 148 repealed (Buyer may request additional disclosure)

Repeal section 148.

18B Section 149 replaced (Buyer may delay settlement if disclosure late or not made) 25

Replace section 149 with:

149 Buyer may delay settlement if disclosure late, incomplete, or not made at all

(1) **Subsection (2)** applies if the seller has not provided a complete and accurate pre-contract disclosure statement to the buyer on a date that is earlier than 5 working days before the settlement date. 30

(2) The buyer may, by notice in writing given on or before the settlement date, delay the settlement date,—

(a) in the case where the seller has provided a complete and accurate pre-contract disclosure statement on a date that is later than 5 working days before the settlement date, until the fifth working day after the date on which the disclosure statement was provided; and 35

(b) in the case where the seller has provided an incomplete or inaccurate pre-contract disclosure statement or has not provided a pre-contract disclosure statement at all, until the fifth working day after the date on which the seller provides a complying statement.

(3) **Subsection (4)** applies if— 5

(a) the seller provides a pre-settlement disclosure statement on a date that is later than 5 working days before the settlement date; or

(b) at the close of business on the last working day before the settlement date, the seller has provided an incomplete or inaccurate pre-settlement disclosure statement or has not provided a pre-settlement disclosure statement at all. 10

(4) The buyer may, by notice in writing given on or before the settlement date, delay the settlement date,—

(a) in the case referred to in **subsection (3)(a)**, until the fifth working day after the date on which the pre-settlement statement was provided; and 15

(b) in the case referred to in **subsection (3)(b)**, until the fifth working day after the date on which the seller provides a complying statement.

(5) However, a buyer who delays the settlement date under **subsection (2) or (4)** may, by notice in writing, extend the delay date until the fifth working day after the date on which the seller provides a complying statement if either of the following circumstances applies: 20

(a) another statement is required to be provided because the statement provided in the delay period was incomplete or inaccurate; or

(b) the seller has not provided a complying statement within 5 working days after the date on which the notice under **subsection (2) or (4)** was given. 25

(6) A notice in writing under **subsection (5)** must be given by the buyer no later than the fifth working day after the date of the triggering event for postponement.

149A Limitation on buyer delaying settlement for incomplete or inaccurate pre-contract disclosure 30

(1) The buyer must elect to either cancel the agreement for sale and purchase or proceed with the agreement if—

(a) the buyer has delayed the settlement under **section 149(2)(b)** because the seller has provided an incomplete or inaccurate pre-contract disclosure statement; and 35

(b) the buyer has given notice under **section 149(5)** extending the delay date; and

(c) the seller has not provided a complying pre-contract disclosure statement within 5 working days after the date on which the buyer gave the notice under **section 149(5)**.

(2) However, **subsection (1)** does not apply if the buyer and the seller agree otherwise. 5

19 Section 151 replaced (Cancellation by buyer)

Replace section 151 with:

151 Buyer may cancel agreement for sale and purchase if disclosure late, incomplete, or not made at all

(1) The buyer may cancel the agreement for sale and purchase if— 10

(a) the seller has not provided ~~a pre-contract disclosure statement to the buyer in accordance with **section 146**, or the pre-contract disclosure statement provided by the seller is defective or incomplete; or~~—

(i) a pre-contract disclosure statement to the buyer in accordance with section 146, or, subject to **subsection (1A)**, the pre-contract disclosure statement provided by the seller is incomplete or inaccurate; or 15

(ii) a pre-settlement disclosure statement within the time required in section 147; and

~~(b) the seller has not provided an additional disclosure statement to the buyer in accordance with **section 147**, or the additional disclosure statement provided by the seller is defective or incomplete; and~~ 20

(c) the buyer chooses not to delay the settlement in accordance with **section 149**.

(1A) The buyer may not cancel an agreement for sale and purchase for incomplete or inaccurate pre-contract disclosure if— 25

(a) the disclosure is incomplete or inaccurate but—

(i) this was noted in the disclosure statement by reference to the specific information not provided or the manner in which it was inaccurate; and 30

(ii) the seller confirmed in the disclosure statement that the reason for the incomplete disclosure or inaccuracy was that the information (or document containing the information) required to complete or correct the disclosure statement did not exist or, despite reasonable efforts, could not be found; or 35

(b) the incomplete or inaccurate disclosure would not have had the effect of—

(i) substantially reducing the benefit to the buyer, of the contract or as a unit owner; or

(ii) substantially increasing the burden of the buyer under the contract or as a unit owner; or

(iii) in relation to the buyer, making the benefit of the contract or the burden of the buyer under the contract or as a unit owner substantially different from that represented or contracted for; or 5

(c) the seller has provided the missing information or corrected the inaccuracy in the disclosure statement before the buyer gives notice to cancel the contract.

(2) Before cancelling an agreement for sale and purchase under this section—

(a) the buyer must, on or before the settlement date, give the seller notice in writing that they intend to cancel the agreement; and 10

(b) the seller has 10 working days from the notice being given to fully comply with the seller's obligations under ~~**section 146 or section 147**~~ section 146 or section 147, or both.

(3) The buyer may cancel the agreement for sale and purchase by notice in writing if the seller has not fully complied with their obligations at the conclusion of the period provided by **subsection (2)(b)**. 15

(4) If **subsection (1)(a)** applies, and the seller has fully complied with their obligations at the conclusion of the period provided by **subsection (2)(b)**, the buyer may still cancel the agreement for sale and purchase by giving 10 days' notice in writing to the seller. 20

(4A) A buyer giving notice to cancel the agreement for sale and purchase under **subsection (3) or (4)** must give that notice within 5 working days after—

(a) receiving an amended disclosure statement provided under **subsection (2)(b)**; or 25

(b) the end of the 10-working-day period set out in **subsection (2)(b)**, if no disclosure statement is provided.

(5) If **subsection (1)(b)** applies, and the seller has fully complied with their obligations at the conclusion of the period provided by **subsection (2)(b)**, the buyer may not cancel the agreement for sale and purchase in accordance with this section. 30

20 New Part 2A inserted

After Part 2, insert:

Part 2A
Special provisions for ~~certain medium and~~ large unit title developments

157A Application of Part

(1) This Part applies to ~~large residential developments and medium residential developments as those terms are defined in **subsection (4)**~~ a large development.

(2) If there is an inconsistency between a provision in this Part and a provision in the rest of the Act (or any regulations made under the Act), the provision in this Part prevails, but only to the extent of the inconsistency.

(3) To avoid doubt, except to the extent expressly provided in this Part or as set out in **subsection (2)**, unit title developments to which this Part applies must also comply with all the relevant provisions of the rest of this Act and the regulations.

~~(4) In this Part,—~~

~~**large residential development** means a unit title development that includes no fewer than 30 principal units that are primarily used as places of residence~~

~~**medium residential development** means a unit title development that includes no fewer than 10 and no greater than 29 principal units that are primarily used as places of residence~~

157B Employment or engagement of body corporate manager or managers

(1) The body corporate of a large ~~residential~~ development must employ or engage 1 or more body corporate managers, unless the body corporate, by special resolution, decides not to do so.

~~(2) The body corporate of a medium residential development must employ or engage 1 or more body corporate managers, unless the body corporate (by special resolution) votes against doing so.~~

~~**157C Additional reporting requirements regarding delegations**~~

~~(1) This section applies to—~~

~~(a) the body corporate committee of a large residential development; and~~

~~(b) the body corporate committee of a medium residential development, unless the body corporate (by special resolution) has excused the committee from complying with the section.~~

~~(2) The committee must report to the body corporate at every general meeting on the performance of the duties or the exercise of the powers delegated to it under section 108(1).~~

~~(3) A report must include the following information:~~

~~(a) a description of the duties and powers delegated to the committee in the period since it last reported on its delegations (whether reporting under this section or as otherwise required by this Act or the regulations); and~~

~~(b) an update on the fulfilment of any duties or the exercise of any powers by the committee for all delegated functions and duties, if performed or exercised during the period since it last reported on its delegations (whether reporting under this section or as otherwise required by this Act or the regulations).~~

157D Additional requirements regarding long-term maintenance plans

(1) The body corporate of a large ~~residential~~ development must comply with all the requirements of this section.

~~(2) The body corporate of a medium residential development must comply with—~~

~~(a) the requirements of **subsection (3)** and **subsection (5)**; and~~

~~(b) the other requirements of this section, unless the body corporate votes (by special resolution) to not do so.~~

(3) The long-term maintenance plan for the body corporate must ~~cover a period of at least 30 years from the date of the plan or the last review of the plan.~~—

(a) cover a period of at least 30 years from the date of the plan or the last review of the plan; and

(b) comply with the requirements and include the matters prescribed by regulations.

(3A) Regulations may prescribe different requirements and matters to be included in a long-term plan for different parts of the period described in **subsection (3)(a)**.

(4) The long-term maintenance plan for the body corporate must be reviewed in accordance with this section every 3 years.

(5) However, if the body corporate becomes aware of any matter that may have a material impact on the long-term maintenance plan, it must review the plan in accordance with this section as soon as practicable (and the date on which the review is conducted becomes the start date from which the next review cycle is calculated).

(5A) The body corporate must, unless it decides by special resolution not to do so, consult with the building professional or professionals, or other suitably qualified professional or professionals, it considers necessary or appropriate—

(a) when it develops the long-term maintenance plan; and

(b) when it reviews the plan.

~~(6) At each review, the long-term maintenance plan of the body corporate must be peer reviewed by a member of one of the following:~~

~~(a) the New Zealand Institute of Building Surveyors:~~

~~(b) the Royal Institute of Chartered Surveyors (also known as RICS):~~

~~(c) the Institute of Professional Engineers New Zealand (also known as IPENZ):~~

~~(d) any other body prescribed in the regulations.~~

~~(7) For the purposes of the peer review, the body corporate must provide the reviewer with a written statement that to the best of the body corporate's knowledge, having made all reasonable investigations, the known or suspected building defects listed in the statement is a complete list.~~

~~(8) The peer reviewer, on completion of the review, must provide a written statement to the body corporate as to whether the plan, in the reviewer's opinion, having made all reasonable investigations, is as accurate and complete as possible and identifies any defects in or repairs required to the unit title development.~~

~~(9) The current plan for a body corporate must be signed by the chairperson at each annual general meeting to the effect that to the best of the body corporate's knowledge, the plan records as accurately and completely as possible all defects in or repairs required to the unit title development.~~

~~157E Mandatory long-term maintenance funds~~

~~(1) The body corporate of a large residential development or a medium residential development must establish and maintain a long-term maintenance fund.~~

~~(2) To avoid doubt, section 117 applies to the fund, other than the ability of the body corporate to opt out of establishing a fund.~~

~~157F Mandatory auditing of long-term maintenance funds~~

~~(1) The body corporate of a large residential development or a medium residential development must, annually, submit its records, statements, and other relevant information in relation to its long-term maintenance fund for audit to an independent auditor.~~

~~(2) The body corporate must provide each owner of a principal unit with a summary of the auditor's findings as soon as practicable after the audit is completed.~~

~~(3) For the purposes of this section, section 132(4), (6), and (7) apply with any necessary modification.~~

21 Section 171 amended (Jurisdiction of Tenancy Tribunals)

(1) After section 171(2)(d), insert:

(da) a body corporate manager:

(2) After section 171(3A)(b), insert:

(ba) make orders for a person to pay a pecuniary penalty under **sections 176A to 176D**:

(3) After section 171(3A)(c), insert:

(d) determine objections to improvement notices under **section 176I**.

(4) In section 171(4)(a), replace "$50,000" with "$100,000".

(5) In section 171(7), replace "$50,000" with "$100,000".

(6) In section 171(8), replace "$50,000" with "$100,000". 5

21A Section 172 amended (Jurisdiction of District Court)

In section 172(1), replace "$50,000" with "$100,000".

21B New sections 176A to 176D inserted

After section 176, insert:

176A Tribunal may make pecuniary penalty orders 10

(1) The Tribunal may, on the application of the chief executive, order a body corporate manager to pay to the Crown the pecuniary penalty that the Tribunal determines to be appropriate if the Tribunal is satisfied that—

(a) the body corporate manager has intentionally and without reasonable excuse breached their duty— 15

(i) under **section 114I(1)** (disclosure of conflict of interest to a body corporate); or

(ii) under **section 114I(3)** (duties when engaged as a body corporate manager by more than 1 body corporate); and

(b) the breach of duty has materially and negatively impacted on 1 or more individual unit owners or the body corporate as a whole. 20

(2) The Tribunal may, on the application of the chief executive, order a body corporate or a body corporate manager to pay to the Crown the pecuniary penalty that the Tribunal determines to be appropriate if the Tribunal is satisfied that the body corporate, the body corporate manager, or both have intentionally and without reasonable excuse— 25

(a) failed to comply with the requirement to produce documents under **section 202A(3)**; or

(b) obstructed or hindered an authorised person in exercising the power of entry to a unit title development under **section 202B(1)(b)**; or 30

(c) failed to comply with an improvement notice issued under **section 176E**.

(3) The chief executive may not make an application under **subsection (1) or (2)** later than 12 months from the date on which the chief executive first became aware of the breach of this Act. 35

Compare: 1986 No 120 s 109B

176B Maximum amount of pecuniary penalty

The maximum amount of pecuniary penalty for a breach of this Act is,—

(a) for a breach referred to in **section 176A(1)**, $5,000:

(b) for a breach referred to in **section 176A(2)(a)**, $1,500:

(c) for a breach referred to in **section 176A(2)(b) or (c)**, $3,000. 5

Compare: 1986 No 120 s 109C

176C Considerations for Tribunal in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the Tribunal must have regard to all relevant matters, including—

(a) the nature and extent of the breach of this Act; and 10

(b) the nature and extent of any loss or damage suffered as a result of the breach; and

(c) any gains made or losses avoided by the body corporate or the body corporate manager as a result of the breach; and

(d) the circumstances in which the breach took place. 15

Compare: 1986 No 120 s 109D

176D Only 1 pecuniary penalty order may be made for same conduct

(1) If conduct by a body corporate constitutes a breach of 2 or more provisions of this Act, proceedings may be brought against that body corporate for the conduct under any 1 or more of the provisions, but no body corporate is liable to 20 more than 1 pecuniary penalty order for the same conduct.

(2) If conduct by a body corporate manager constitutes a breach of 2 or more provisions of this Act, proceedings may be brought against that body corporate manager for the conduct under any 1 or more of the provisions, but no body corporate manager is liable to more than 1 pecuniary penalty order for the same 25 conduct.

Compare: 1986 No 120 s 109E

21C New subpart 1A of Part 4 inserted

In Part 4, after subpart 1, insert:

Subpart 1A—Improvement notices 30

176E Power to issue improvement notices

(1) This section applies if the chief executive reasonably believes that a person—

(a) is contravening a provision of this Act or of regulations made under this Act; or

(b) is likely to contravene a provision of this Act or of regulations made 35 under this Act.

(2) The chief executive may issue an improvement notice requiring the person to—

(a) remedy the contravention; or

(b) prevent a likely contravention from occurring; or

(c) remedy the things or activities causing the contravention or likely to cause a contravention.

Compare: 1986 No 120 s 126H

176F Content of improvement notices

(1) An improvement notice must state—

(a) that the chief executive believes the person—

(i) is contravening a provision of this Act or of regulations made under this Act; or

(ii) is likely to contravene a provision of this Act or of regulations made under this Act; and

(b) the provision the chief executive believes is being, or is likely to be, contravened; and

(c) briefly, how the provision is being, or is likely to be, contravened; and

(d) a reasonable period within which the person is required to remedy—

(i) the contravention or likely contravention; or

(ii) the things or activities causing the contravention or likely to cause a contravention.

(2) An improvement notice may include recommendations concerning—

(a) the measures that could be taken to remedy the contravention, or prevent the likely contravention, to which the notice relates:

(b) the things or activities causing the contravention, or likely to cause a contravention, to which the notice relates.

Compare: 1986 No 120 s 126I

176G Extension of time for compliance with improvement notices

(1) This section applies if a person has been issued with an improvement notice.

(2) The chief executive may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the chief executive may extend the compliance period only if the period has not ended.

(4) In this section, **compliance period**—

(a) means the period stated in the improvement notice under **section 176F(1)(d)**; and

(b) includes any extension of that period under this section.

Compare: 1986 No 120 s 126K

176H Chief executive may withdraw improvement notice

(1) The chief executive may withdraw an improvement notice.

(2) The withdrawal of an improvement notice does not prevent another improvement notice from being served in relation to the same matter. 5

Compare: 1986 No 120 s 126L

176I Objection to improvement notice

(1) A person who has been issued with an improvement notice may file an objection with the Tribunal. 10

(2) An objection must be filed with the Tribunal within 28 days after the date on which the improvement notice was served on the person.

(3) In determining the objection, the Tribunal must consider—

(a) whether the person has failed, or is likely to fail, to comply with the specified provision of this Act or of regulations made under this Act; and 15

(b) the nature and extent of the failure or likely failure to comply with the provision; and

(c) the nature and extent of any loss suffered by any other person specified in section 171(2) in respect of the unit title development to which the failure or likely failure to comply relates. 20

(4) The Tribunal may confirm, vary, or rescind the improvement notice as the Tribunal thinks fit.

Compare: 1986 No 120 s 126M

21D Section 202 amended (General functions and powers of chief executive)

After section 202(1)(c), insert: 25

(ca) the monitoring and assessing of compliance by bodies corporate and body corporate managers with this Act:

Compare: 1986 No 120 s 123(1)(cb)

21E New sections 202A to 202F inserted

After section 202, insert: 30

202A Documents to be retained by body corporate and body corporate manager and produced to chief executive if required

(1) A body corporate and a body corporate manager must retain any prescribed documents (or copies of them) for at least 3 years.

(2) The chief executive may, by notice in writing, require a body corporate or body corporate manager to produce to the chief executive any prescribed document, or class of prescribed documents, that— 35

(a) the body corporate or body corporate manager is required to retain under **subsection (1)**; and

(b) the chief executive reasonably requires for the purposes of the chief executive's functions or powers under this Act.

(3) A body corporate or body corporate manager who receives a notice under **subsection (2)** must, within 10 working days after receiving the notice, produce the documents to the chief executive in the way specified in the notice. 5

(4) **Subsection (3)** does not apply to a document or part of a document that is protected by legal professional privilege.

(5) If a document is produced to the chief executive, the chief executive may— 10

(a) inspect and make records of the document; and

(b) take copies of the document or extracts from it.

Compare: 1986 No 120 ss 123A, 123C

202B Power of entry to inspect unit title development

(1) An authorised person may, at any reasonable time, enter a unit title development to inspect it— 15

(a) with the consent of the body corporate given in accordance with **section 202C**; or

(b) if—

(i) the inspection is authorised by an order of the Tribunal under **section 202D** and is carried out in accordance with any conditions set out in that order; and 20

(ii) the authorised person gives the body corporate at least 24 hours' written notice of their intention to enter the unit title development.

(2) The power of entry does not authorise the authorised person to enter any principal unit without the consent of the occupier of that unit given in accordance with **section 202C**. 25

(3) A notice under **subsection (1)(b)(ii)** must—

(a) state that it is given under this section; and

(b) state the address of the unit title development to which it relates; and 30

(c) state the time at which, and the date on which, the authorised person proposes to inspect the unit title development; and

(d) include a copy, sealed with the Tribunal's seal, of the Tribunal's order under **section 202D**.

(4) The authorised person's power to inspect includes the power to do any of the following: 35

(a) to bring into, and operate at, the unit title development any equipment (and to use electricity from the electricity supply at the unit title development for the purpose of operating the equipment):

(b) to take or make photographs, sound or video recordings, measurements, or drawings: 5

(c) to take samples of things for analysis:

(d) to test things.

(5) The body corporate must provide the authorised person with all assistance that the authorised person reasonably requests from the body corporate in relation to the inspection, including (for example) assistance reasonably requested for 10 the purpose of enabling the authorised person to enter the unit title development or to access any part of the unit title development (excluding a principal unit).

(6) A person authorised by the body corporate may accompany the authorised person while the authorised person is inspecting the unit title development. 15

(7) An authorised person who enters any unit title development under this section must,—

(a) on initial entry, produce evidence of the authorised person's identity; and

(b) while subsequently at the unit title development, produce that evidence to any person who reasonably requests to see it. 20

(8) Sections 166 and 167 of the Search and Surveillance Act 2012 apply (with any necessary modifications) in relation to the powers of an authorised person under this section.

(9) In this section and in **section 202C**, **authorised person** means the chief executive or a person authorised by the chief executive. 25

Compare: 1986 No 120 s 123D

202C Inspection by consent

(1) An authorised person may, for the purpose of investigating whether a breach of this Act has occurred, ask—

(a) a body corporate to consent to an inspection being made of its unit title 30 development (excluding a principal unit or an accessory unit); or

(b) a unit title occupier to consent to an inspection being made of their principal unit or their accessory unit.

(2) Before conducting an inspection by consent, the authorised person who proposes to conduct it must— 35

(a) determine that the inspection is for the purpose authorised by **subsection (1)**; and

(b) advise in writing the person from whom consent is sought—

(i) of the reason for the proposed inspection; and

(ii) that they may either consent to the inspection or refuse to consent to the inspection.

Compare: 2012 No 24 ss 92(c), 93

202D Tribunal may authorise inspection

(1) The chief executive may, in relation to a unit title development, apply to the Tribunal for an order authorising an inspection under **section 202B**. 5

(2) The Tribunal may make an order authorising the inspection if it is satisfied that the chief executive has reasonable grounds for believing—

(a) that there has been a breach of this Act in relation to unit title development; and 10

(b) that the inspection is reasonably necessary for the purposes of the chief executive's functions or powers under this Act in relation to the breach.

(3) The Tribunal's authorisation under **subsection (2)** may be given subject to conditions, which must be set out in the order.

Compare: 1986 No 120 s 123E 15

202E Chief executive may take proceedings in place of specified person

(1) The chief executive may, if satisfied that it is in the public interest to do so on any of the grounds listed in **subsection (2)**, do any of the following in relation to 1 or more unit title developments:

(a) initiate any proceedings in the Tribunal or a court that could be brought by a person specified in section 171(2) (a **specified person**): 20

(b) defend any proceedings in the Tribunal or a court that are brought against a specified person:

(c) assume the conduct of any proceedings in the Tribunal or a court brought by or against a specified person: 25

(d) take any steps that are necessary to enforce or protect the rights of the specified person under this Act in relation to any infringement or suspected infringement of any of those rights.

(2) The grounds referred to in **subsection (1)** are as follows:

(a) in the chief executive's opinion, there are allegations of conduct that is likely to cause or have caused a significant risk to the health or safety of any person: 30

(b) in the chief executive's opinion, a person has committed a serious breach of this Act, or has persistently breached this Act:

(c) in the chief executive's opinion, actions of a person risk undermining public confidence in the administration of this Act. 35

(3) The chief executive must not exercise the powers conferred by **subsection (1)** unless the written consent of the specified person concerned has first been

obtained, which, once given, may be revoked only with the written consent of the chief executive.

Compare: 1986 No 120 s 124A

202F Supplementary provision to section 202E

(1) The chief executive may not initiate any proceedings under **section 202E(1)** any later than 12 months after the date on which the chief executive becomes aware of the matters on which the proceedings are based.

(2) If the chief executive acts in the place of a person (**A**) under **section 202E(1)**, the following provisions apply in relation to the proceedings in question:

(a) the chief executive has the same rights and remedies as A, including the right to settle the proceedings:

(b) the chief executive may do anything in relation to the proceedings that A could do and, as between the chief executive and A, has control of the proceedings:

(c) if the proceedings have already commenced, the Tribunal or court must substitute the chief executive for A as a party to the proceedings:

(d) the Tribunal must, on the chief executive's application, order that any other claim by or against A be dealt with in separate proceedings brought by the claimant against A (and not against the chief executive):

(e) any order or judgment may be enforced by the chief executive as if the chief executive were A:

(f) any money (excluding costs) recovered by the chief executive must, without any deduction, be paid by the chief executive to A:

(g) A must reasonably co-operate with the chief executive.

(3) The chief executive may, if acting under **section 202E**, file an application to commence a proceeding that relates to 2 or more unit title developments if 1 person is the body corporate manager of each of the developments.

(4) If a person is the body corporate manager of 2 or more unit title developments and the chief executive acts under **section 202E** in relation to 2 or more of those developments, the Tribunal or any court may allow any of the proceedings in question that are before it to be consolidated with 1 or more of any of the other proceedings in question that are before it.

(5) Any certificate given by the chief executive relating to the chief executive's powers under **section 202E** or this section is, in the absence of proof to the contrary, sufficient evidence of the matters referred to in the certificate.

Compare: 1986 No 120 s 124B

22 Section 217 amended (Regulations)

~~(1) After section 217(c), insert:~~

~~(ea) prescribing any professional or expert body for the purposes of peer reviewing a long-term maintenance plan under **section 157D(6)(d)**:~~

(1A) After section 217(1)(e), insert:

(ea) specifying the documents or classes of documents to be retained by a body corporate or body corporate manager for the purposes of **section 202A**:

(2) In section 217(1)(f), after "committee", insert ", including in relation to meeting requirements and procedures for participation by remote access".

(3) After section 217(1)(f), insert:

(fa) specifying matters associated with the functions and duties that a body corporate manager may perform or exercise, including any terms that must be included in a manager's terms of employment~~/~~ or engagement:

(3A) In section 217(1)(h), after "relating to voting", insert ", including in relation to electronic voting".

(4) In section 217(1)(n), after "this Act", insert ", including in relation to the settling of disputes".

~~(5) In section 217(h), after "voting", add ", including in relation to electronic voting".~~

(6) After section 217(1)(p), insert:

(pa) prescribing codes of conduct for—

(i) body corporate committee members; and

(ii) body corporate managers:

23 Schedule 1AA amended

After Part 1 of Schedule 1AA, insert the ~~Part 2~~ **Part 2** set out in **Schedule 1** of this Act.

Part 2
Amendments related to Part 1

Subpart 1—Consequential amendments to Unit Titles Act 2010

24 Amendments to Unit Titles Act 2010

This subpart consequentially amends the Unit Titles Act 2010.

25 Section 4 amended (Overview)

After section 4(1)(f), insert:

Special provisions for ~~certain medium and~~ large unit title developments

(fa) **Part 2A** applies to ~~particular types of unit title developments, characterised by the number of residential units~~ large developments that are con-

tained within the entire complex. The Part imposes extra or more specific obligations, or both, on these types of developments over and above the general obligations in the rest of the Act and the regulations, although, in most cases,~~ developments that include no fewer than 10 but no more than 29 residential units~~ a development may opt out of the requirements if its body corporate decides to do so:~~.~~

26 Section 5 amended (Interpretation)

In section 5(1), definition of **unit title development**, after "**development**" insert "or **development**".

27 Section 150 amended (Seller must rectify inaccuracies in disclosure statement)

In section 150(1), replace "any of sections 146, 147, and 148" with "section 146 or section 147".

~~28 Section 152 replaced (Further requirements concerning disclosure statements)~~

~~Replace section 152 with:~~

~~152 Further requirements concerning disclosure statements~~

~~A disclosure statement provided under any of sections **146, 147**, or 150 must be dated and signed by the seller.~~

28A Schedule 2 amended

In Schedule 2, item relating to section 95, replace new section 95(1) and (2) with:

(1) A quorum for a general meeting of a body corporate is the number of timeshare owners (including proxies) who are entitled to exercise not less than 5% of the timeshare entitlements and also satisfy the eligibility requirements to exercise that voting power (for example, have no outstanding levy amounts owing to the body corporate).

(2) However, in the case of a timeshare resort comprising both timeshare units and non-timeshare units, a quorum for a general meeting of the body corporate is—

(a) the number of non-timeshare owners (including proxies) who are entitled to exercise not less than 25% of the votes able to be exercised in respect of non-timeshare units and who also satisfy the eligibility requirements to exercise that voting power; and

(b) the number of persons (including proxies) who are entitled to exercise not less than 5% of the votes able to be exercised in respect of timeshare unit entitlements and who also satisfy the eligibility requirements to exercise that voting power.

Subpart 2—Amendments to Unit Titles Regulations 2011

29 Amendments to Unit Titles Regulations 2011

This subpart amends the Unit Titles Regulations 2011 ~~(SR 2011/122)~~ (consequentially or otherwise in relation to **Part 1** of this Act).

29A Regulation 6 amended (Notice of annual general meeting) 5

After regulation 6(5)(c), insert:

(ca) a copy of the body corporate committee interests register; and

30 Regulation 10 amended (Election of chairperson)

(1) After regulation 10(2)(a), insert:

(ab) at the time of nomination, have no overdue body corporate levies or other amounts payable and owing to the body corporate; and 10

(2) After regulation 10(2), insert:

(2A) Despite subclause (2), a candidate for election as chairperson may nominate themself—

(a) during the control period; and 15

(b) at any time that all the principal units in the unit title development are owned by the candidate.

31 Regulation 24 amended (Election of body corporate committee)

(1) In regulation 24(1)(a),—

(a) after "how many", insert "elected"; and 20

(b) after "have and the", insert "total"; and

(2) In regulation 24(1)(b), after "elect the", insert "elected".

(3) Replace regulation 24(3) with:

(3) A candidate for election as a committee member must—

(a) be the owner of a principal unit in the unit title development; and 25

(b) at the time of nomination, have no overdue body corporate levies or other amounts payable and owing to the body corporate ~~in respect of the owner's unit~~.

(3A) A candidate for election who is nominated by another unit owner must consent to the nomination. 30

(3A) In regulation 24(4), replace "must nominate a director" with "may nominate a director of the candidate, or an employee or class of employee authorised by the directors of the candidate,".

(4) Replace regulation 24(5) and (6) with:

(5) A candidate for election as a committee member may— 35

(a) be nominated by another unit owner in the unit title development; or

(b) nominate themself.

(5) After regulation 24(8), insert:

(9) *See* **section 112A** of the Act that confers automatic membership of the body corporate committee on the chairperson of the body corporate.

32 Regulation 26 amended (Body corporate committee chairperson)

Before regulation 26(1), insert:

(1AA) This regulation applies only if a body corporate has decided (in accordance with **section 112A** of the Act) that the chairperson of the body corporate committee is to be a person other than the chairperson of the body corporate.

33 Regulation 27 amended (Body corporate committee business)

(1) In regulation 27(2), after "considers necessary", insert "(so long as it has a quorum)"

(2) After regulation 27(2), insert:

(2A) A meeting may be conducted by ~~telephone~~ audio link, audiovisual link, or other remote access facility ~~if—~~.

~~(a) the chairperson considers that it is appropriate for 1 or more members to participate by remote access, given the agenda for the meeting; and~~

~~(b) the necessary facilities are available.~~

(3) After regulation 27(3), insert:

(3A) A committee member who, at a committee meeting, does not satisfy the eligibility requirements to exercise a vote as if the meeting were a general meeting of the body corporate (for example, because the member has outstanding levy amounts owing to the body corporate)—

(a) must not be counted when determining whether there is a quorum for the meeting; and

(b) must not vote on any resolution put at the meeting; but

(c) may remain at the meeting and take part in any discussions.

(4) ~~Repeal~~ Revoke regulation 27(4) and (5).

~~(5) In regulation 27(5), replace "a unit owner in the unit title development if the unit owner requests them" with ", excluding any "in committee" items if privacy or other issues require that items be redacted, to all unit owners promptly but no later than 1 month after the meeting date".~~

(6) After regulation 27(5), insert:

(6) *See* regulation 24 for how the quorum number is determined. *See* section 79(c) and section 96 of the Act for eligibility to vote at a general meeting.

33A New regulation 27A inserted (Body corporate committee minutes)

After regulation 27, insert:

> **27A Body corporate committee minutes**
>
> (1) A body corporate committee must provide copies of the minutes of its meetings to all unit owners promptly, but no later than 1 month after the meeting date.
>
> (2) Information in the minutes may be redacted from the copies provided to unit owners if—
>
> (a) disclosing the information would be a breach of the Privacy Act 2020 or any other enactment; or
>
> (b) the information is subject to legal professional privilege; or
>
> (c) confidentiality of the information must be protected on grounds of commercial sensitivity.
>
> (3) The copies of the minutes may be provided to unit owners electronically, including through an online portal.
>
> (4) A unit owner may request the body corporate committee to provide a physical copy of the minutes.
>
> (5) If a unit owner requests a physical copy of the minutes, the body corporate committee must provide the copy within a reasonable time.

34 Regulation 28 amended (Body corporate committee reports)

~~(1) In regulation 28(3)(b), replace "committee." with "committee; and".~~

~~(2) After regulation 28(3)(b), insert:~~

> ~~(c) a summary of the committee's decisions during the period covered by the report.~~

(1) In regulation 28(3)(a), delete "during the period covered by the report".

(2) Replace regulation 28(3)(b) with:

> (b) an account of how those duties have been performed or those powers have been exercised by the committee.

35 New heading and regulations 28A to 28C inserted

After regulation 28, insert:

> **28A Body corporate committee code of conduct**
>
> The code of conduct set out in **Schedule 1A** is the code prescribed for the purposes of **section 114A** of the Act.

Body corporate managers

28AA Body corporate manager code of conduct

The code of conduct set out in **Schedule 1B** is the code prescribed for the purposes of **section 114J** of the Act.

~~**28B Body corporate manager must be member of industry organisation**~~ 5

~~(1) A body corporate manager must—~~

~~(a) be a member of an organisation whose purpose, or one of its purposes, is to foster the professional development of body corporate managers; and~~

~~(b) abide by the code of conduct for members of the organisation (if any, and to the extent that it is relevant).~~ 10

~~(2) A body corporate manager must annually provide to the body corporate details of the organisation to which the manager belongs and a summary of any dealings that the manager has had with the organisation in that year (for example, continuing education courses attended).~~

~~(3) However, if the dealings with the organisation relates to a breach or alleged breach of its code of conduct, the manager must provide details of the matter to the body corporate as soon as it is raised and at such other times as the chairperson of the body corporate requires until the matter is resolved.~~ 15

28C Terms that must be included in agreement engaging body corporate manager 20

The agreement setting out the terms of engagement for a body corporate manager must include the following terms:

(a) the manager's reporting requirements to the body corporate on the performance of the manager's functions and duties; and

(aa) the requirement to comply with the code of conduct set out in **Schedule 1B**; and 25

(b) the requirement for reviews of the manager's performance at specified intervals and the key performance targets and other measures by which the manager's performance is to be judged; and

(c) the grounds for termination and the process for doing so, if met; and 30

(d) the role, if any, of the manager at general meetings of the body corporate; and

(e) the records, funds, or other things of or relating to the body corporate that must be returned by the manager to the body corporate if the agreement is terminated or the term of the agreement ends; and 35

(f) the latest date, whether specified or able to be calculated, by which the things must be returned.

36 Regulation 30 amended (Long-term maintenance plans)

(1) ~~In~~ After regulation 30(1)(a), insert~~ after paragraph (a)~~:

(aa) summarise the current state of the common property; and

(2) After regulation 30(1)(f), insert:

(fa) state the sources of funding for the plan; and

(3) After regulation 30(1), insert:

(1A) A body corporate must apply the amount each year to maintain the fund that it has determined under subclause (1)(g), less any amount that has been applied to maintain any item in that year.

36A New regulation 30A inserted (Long-term maintenance plans for large developments)

After regulation 30, insert:

30A Long-term maintenance plans for large developments

(1) This regulation applies to a long-term maintenance plan for a large development.

(2) Regulation 30(1)(d), (e), and (g) does not apply to a large development's long-term maintenance plan in respect of the period that is more than 10 years from the date of the plan or the last review of the plan (**years 11 to 30**).

(3) A large development's long-term maintenance plan must provide a high-level indication of the expected cost of maintenance and replacement of the items covered by the plan in respect of years 11 to 30.

37 Regulation~~s~~ 33 ~~to 35~~ replaced

Replace regulation~~s~~ 33 ~~to 35~~ with:

33 ~~Disclosure statement~~Pre-contract disclosure statement

(1) The following information is prescribed for **section 146(2)~~(a)~~** of the Act (which requires a pre-contract disclosure statement to contain prescribed information) if the pre-contract disclosure is provided in relation to a sale and purchase of a unit other than an "off-the-plan" unit:

(a) whether the body corporate or body corporate committee has actual knowledge that any part of the unit title development has—

(i) weather tightness issues for which a claim has been made under the Weathertight Homes Resolution Act 2006; or

(ii) weather tightness issues that have been remediated without a claim under that Act or other proceedings before a court or tribunal; or

(iia) weather tightness issues that have not been remediated; or

(iii) earthquake-prone issues~~:~~; or

(iv) any other significant defects in the land (including the unit title development and the land on which it is situated) that may require remediation:

(b) whether the body corporate is involved in any proceedings in any court or tribunal and, if so, details of the proceedings: 5

(c) financial statements and audit reports for the previous 73 years or (as the case may be) audit reports for those of the previous 73 years for which an audit was carried out and a statement of the years in that time period for which no audit was carried out:

(d) notices and minutes of general meetings of the body corporate and the body corporate committee for the previous 3 years— 10

(i) including all supporting documentation; but

(ii) excluding any "in committee" items if privacy or other issues require that the items be redacted information that may be redacted for the reasons specified in **regulation 27A(2)**: 15

(e) the name and contact details of the body corporate manager or managers:

(ea) the 12-month period comprising the current financial year for the purposes of the financial statements of the body corporate:

(f) the body corporate levies payable for the unit for the current financial year and the amounts that have been paid or are owing: 20

(g) any outstanding amounts of body corporate levies payable for the unit from previous financial years:

(ga) details of maintenance that the body corporate proposes to carry out on the unit title development in the year following the date of the disclosure statement and how the body corporate proposes to meet the cost of that maintenance: 25

(gb) the balance of every fund or bank account held or operated by or on behalf of the body corporate at the date of the last financial statement:

(h) any amounts being held in credit by the body corporate for the unit for the purposes of any long-term maintenance fund, contingency fund, or capital improvement fund of the body corporate: 30

(ha) a copy of the long-term maintenance plan:

(i) any proposed works under the long-term maintenance plan for the unit title development to be carried out or begun within the next 3 years and the estimated costs of the works: 35

(j) the next review date for the long-term maintenance plan for the unit title development:

(k) a summary of the insurance cover the body corporate maintains for the unit title development, including— 40

(i) the insurer's name and contact details; and

(ii) the type and amount of cover, the annual amount payable for it, and the excess payable on any claim under it; and

(iii) any specific exclusions from cover; and

(iv) a statement of where and how the insurance policy can be viewed.: 5

(l) an explanation of the following:

(i) unit title property ownership:

(ii) unit plans:

(iii) ownership and utility interests: 10

(iv) body corporate operational rules:

(v) the information required to be contained in a pre-settlement disclosure statement:

(vi) records of title:

(vii) the land information memorandum issued under section 44A of the Local Government Official Information and Meetings Act 1987: 15

(viii) easements and covenants.

(2) The following information is also prescribed for **section 146(2)(a)** of the Act if the pre-contract disclosure statement is provided in relation to the sale and purchase of an "off-the-plan" unit: 20

(a) a summary of the draft financial budget for the unit title development, including an estimate of the cost of operating the body corporate in an average 12 months:

(b) an estimate of the proposed ownership interest for the unit based on the sales value (or, in a case where an actual sales value is not available at the time the pre-contract disclosure is provided, based on an estimated sales value at that time): 25

(c) an estimate of the proposed utility interest for the unit:

(d) the draft (if any) of the body corporate operational rules that will first apply: 30

(e) what, if any, service contracts that have been or are proposed to be entered into that will continue in force after the unit purchase is settled:, including—

(i) any contracts for utilities (for example, telecommunications, water, or electricity); and 35

(ii) any contract appointing a body corporate manager.

~~(f) whether the original owner has been involved in any capacity in any previous unit title development or other building-related work that has resulted in weather tightness issues—~~

~~(i) for which a claim has been made under the Weathertight Homes Resolution Act 2006; or~~

~~(ii) that have been remediated without a claim under that Act or other proceedings before a court or tribunal:~~

(2A) For the purposes of **subclause (1)(a)**, a unit title development has a **weather tightness issue** if—

(a) water has penetrated it, because of some aspect of its design, construction, or alteration, or of materials used in its construction or alteration; and

(b) the penetration of water is likely to cause or has caused damage to it.

(3) The information required by this regulation must be provided to the extent that it is ~~applicable~~capable of being provided in relation to the unit and the development concerned (*see* **section 146(2)~~(a)~~** of the Act).

37A Regulation 34 amended (Pre-settlement disclosure statement)

(1) In regulation 34, after "(which requires a pre-settlement disclosure statement to contain the prescribed information)", insert ", subject to **subclause (2)**".

(2) After regulation 34(l), insert:

(la) whether there are any proceedings—

(i) initiated by the body corporate and pending in any court or tribunal; or

(ii) intended to be initiated by the body corporate in any court or tribunal; and

(lb) whether there is any written claim by the body corporate against a third party that is yet to be resolved; and

(3) In regulation 34, insert as subclause (2):

(2) If the pre-settlement disclosure statement is provided for an "off-the-plan" unit, the seller is required to—

(a) provide the information specified in **subclause (1)** to the extent that it is capable of being provided at the date the statement is provided; and

(b) provide the following additional information:

(i) the name and contact details of the body corporate manager, if there is one; and

(ii) the insurance information specified in **regulation 33(1)(k)**.

37B Regulation 35 revoked (Additional disclosure statement)

Revoke regulation 35.

38 New Schedule 1A inserted

After Schedule 1, insert the **Schedule 1A** set out in **Schedule 2** of this Act.

38A New Schedule 1B inserted

After Schedule 1, insert the **Schedule 1B** set out in **Schedule 3** of this Act.

38B Schedule 2 amended 5

(1) In Schedule 2, form 11, replace the table under the heading "**Motions**" with:

Motion	**Type of resolution**	**Direction on resolution**
[*Summarise the motion*]	[*State whether the motion requires an ordinary or special resolution and whether, if passed, the resolution would be a designated resolution.*]	[*State if the eligible voter wishes to direct how the proxy votes on the resolution.*]

(2) In Schedule 2, revoke form 18.

Subpart 3—Amendments to Unit Titles (Unit Title Disputes——Fees) Regulations 2011

39 Amendments to Unit Titles (Unit Title Disputes——Fees) Regulations 2011 10

This subpart amends the Unit Titles (Unit Title Disputes——Fees) Regulations 2011 ~~(SR 2002/123)~~.

39A Regulation 3 amended (Interpretation)

In regulation 3(1), revoke the definitions of **category 1 proceedings**, **category 2 proceedings**, and **chief executive**. 15

40 Regulation 5 replaced

Replace regulation 5 with:

5 Fees

(1) The ~~fee~~ following fees are payable by the applicant for filing an application with the Tenancy Tribunal under section 86 of the 1986 Act in relation to a unit title dispute ~~is $100.~~: 20

(a) $250 for an application for a dispute to be referred to a Tenancy Mediator:

(b) $500 for an application for a dispute to be referred to adjudication (whether directly or because 1 or more of the parties refuses to have the matter considered by a Tenancy Mediator). 25

(1A) If the fee payable under **clause (1)(a)** has been paid and the dispute is then referred to adjudication, the fee payable under **clause (1)(b)** is $250.

(1B) To avoid doubt, the maximum total fee payable for a dispute is $500.

~~(2) The following fees are also payable:~~ 30

~~(a) for a dispute that is referred to mediation with a Tenancy Mediator—~~

~~(i) $600 for category 1 proceedings (divided equally between the parties); and~~

~~(ii) $300 for category 2 proceedings (divided equally between the parties):~~ 5

~~(b) for a dispute that is referred to adjudication (whether directly or because 1 or more of the parties refuses to have the matter considered by a Tenancy Mediator or because mediation has failed to resolve the dispute)—~~

~~(i) $1,000 for category 1 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee); and~~ 10

~~(ii) $600 for category 2 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee).~~

~~(3) To avoid doubt, a fee is payable under both clause (2)(a) and (2)(b) for a dispute that, in the course of resolution, is referred to both a Tenancy Mediator and for adjudication before the Tenancy Tribunal.~~ 15

41 Regulation 6 revoked (Categorisation of proceedings)

Revoke regulation 6.

42 Regulation 7 revoked (Determining categorisation of proceedings) 20

Revoke regulation 7.

Schedule 1
New Part 2 inserted in Schedule 1AA of Unit Titles Act 2010

s 23

Part 2
Provisions relating to Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment ~~Bill~~ Act 2020

~~1~~4 Definitions

In this Part,—

2020 Act means the **Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2020**

amendment means an amendment to this Act made by a provision of the **2020 Act**

commencement date, in relation to an amendment, means the date on which the provision of the **2020 Act** that makes the amendment comes into force

principal Act means the Unit Titles Act 2010.

~~2~~5 Savings provision for existing service contracts

(1) This clause applies to a service contract entered into before the commencement of **section 17** of the **2020 Act** (which relates to section 139 of the principal Act).

(2) The amendments made to section 139 of the principal Act by **section 17** of the **2020 Act** do not apply to any service contract entered into before the commencement of **section 17**.

(3) This section is to avoid doubt.

6 Pecuniary penalties

Sections 176A to 176D do not apply to acts or omissions before the commencement of **section 21B** of the **2020 Act**.

7 Proceedings that have commenced

An amendment does not apply to proceedings commenced before a court or the Tribunal before the commencement date.

8 Documents to be retained and produced by body corporate or body corporate manager

Section 202A applies to any documents (or copies of them) in the possession or control of a body corporate or a body corporate manager on or after the commencement of regulations that specify any prescribed document or class of

prescribed document for the purpose of **section 202A**, whether the documents (or copies) were created before, on, or after that date.

9 Only 1 penalty order for same conduct

Section 176D applies to conduct whether the conduct is engaged in before, on, or after the commencement of **section 21B** of the **2020 Act**. 5

10 Power to issue improvement notices

Section 176E applies to a contravention of a provision of this Act or of regulations made under this Act that occurs on or after the commencement of **section 21C** of the **2020 Act**.

11 Tribunal may authorise inspections 10

The Tribunal may make an order under **section 202D(2)** whether the breach of this Act is believed on reasonable grounds to have occurred before, on, or after the commencement of **section 21E** of the **2020 Act**.

12 Chief executive may take proceedings in place of specified person

The chief executive may act under **section 202E** in respect of proceedings 15 that were brought or could have been brought on or after the commencement of **section 21E** of the **2020 Act**.

Schedule 2
New Schedule 1A inserted in Unit Title Regulations 2011

s 38

Schedule 1A
Code of conduct for body corporate committee members

r 28A

1 Commitment to acquiring understanding of Act, including this code

A member must have a commitment to acquiring an understanding of so much of this Act and the regulations, including this code of conduct, as is relevant to the member's role on the committee.

2 Honesty, fairness, and confidentiality

(1) A member must act honestly and fairly in performing the member's duties as a committee member.

(2) A member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a unit, unless authorised or required to do so by law.

3 Acting in body corporate's best interests.

A member must act in the best interests of the body corporate in performing the member's duties as a committee member, unless it is unlawful to do so.

4 Complying with Act and this code

A member must ~~take reasonable steps to ensure the member complies~~ comply with ~~this~~ the Act, ~~including this code,~~ these regulations, including this code, and any other applicable legislation relating to matters for which the committee has responsibility in performing the member's duties as a committee member.

6 Conflict of interest

A committee member who is eligible to vote must disclose to the committee any conflict of interest the member may have in a matter before the committee.

Schedule 3
New Schedule 1B inserted in Unit Title Regulations 2011

s 38A

Schedule 1B
Code of conduct for body corporate managers

r 28AA

1 Acting in body corporate's best interests

A body corporate manager must always act in the best interests of the body corporate.

2 Good faith and due care and diligence

A body corporate manager must act in good faith, exercise due care and diligence, and not make improper use of the position.

3 Complying with Act and this code

A body corporate manager must comply with—

(a) all relevant requirements of the Act, these regulations, including this code, and other legislation applicable to the body corporate for which the manager has responsibility (including financial management and reporting responsibilities); and

(b) the requirements of the Act and these regulations, including this code, applicable to body corporate managers.

4 Acquiring understanding of Act and this code

A body corporate manager must acquire a good understanding of the Act, these regulations, including this code of conduct, and other legislation and issues on which they are advising, or in relation to which they are acting on behalf of, the body corporate.

5 Conflicts of interest

A body corporate manager must, as soon as practicable after becoming aware of any conflict of interest, disclose the conflict of interest to the body corporate committee or, if there is no committee, to the chairperson.

6 Significant developments and issues

A body corporate manager must keep the body corporate informed of any significant development or issue relating to an activity that the manager performs for the body corporate.

7 Employees of body corporate managers

A body corporate manager must take reasonable steps to ensure that any person they employ, contract, or engage complies with the Act and these regulations.

8 Competitive prices

A body corporate manager must ensure that the goods and services they provide are supplied at competitive prices. 5

9 Record keeping

A body corporate manager must keep records in accordance with the requirements of the Act and these regulations applicable to—

(a) the body corporate for which the manager has responsibility; and 10

(b) the body corporate committee for which the manager has responsibility; and

(c) body corporate managers.

Legislative history

2 July 2020	Introduction (Bill 306–1)
10 March 2021	First reading and referral to Finance and Expenditure Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2021