

In Confidence

Office of the Minister of Housing

Cabinet Economic Policy Committee

Proposed regulations to support the commencement of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022

Proposal

- 1 This paper seeks agreement to regulatory proposals that are required to give effect to the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (the Amendment Act).

Relation to government priorities

- 2 This Government is committed to building more houses across the housing continuum. A well-functioning unit titles system will help streamline property development processes, enhance legal clarity, and facilitate efficient management of multi-unit developments.

Executive Summary

- 3 The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (the Amendment Act) became law on 9 May 2022. The final stage of the Amendment Act commences on 9 May 2024 when provisions which require implementation by the sector and those which require regulations come into force.
- 4 Regulations need to be in place by 9 May 2024 to ensure the Amendment Act can be fully operational^{s 9(2)(h)}
- 5 I seek agreement to:
 - 5.1 prescribe in regulations:
 - 5.1.1 details of the information which is to be retained for three years by bodies corporate and body corporate managers, which can be requested by the Regulator¹;
 - 5.1.2 the requirements for remote meeting attendance, and for electronic voting during and prior to meetings;
 - 5.2 update existing regulations to clarify:
 - 5.2.1 the requirements on meeting chairpersons in relation to proxy holders;

¹ Regulator refers to the Chief Executive of the administering Ministry – the Ministry of the Housing and Urban Development. This has been delegated to the Chief Executive of the Ministry of Business, Innovation and Employment.

- 5.2.2 the information to be included in a pre-settlement disclosure statement for off-the-plans units; and
- 5.3 make minor and technical fixes to the pre-contract disclosure, pre-settlement disclosure and proxy appointment forms in the Unit Titles Regulations 2011 (the Regulations).
- 6 The regulatory proposals in this paper support the wider objectives of the Amendment Act, including providing greater protection for current and prospective unit title owners, and enabling growth in high-density living. The minor proposals to provide clarity and modernise language help ensure the regulatory framework is fit-for-purpose.
- 7 The original regulatory proposals have been simplified following consultation undertaken by my officials from June to August 2023 (refer to paragraph 45 for more information). The unit titles sector had been seeking reform for some time to address a range of practical challenges, and these regulations complete that process. Sector representatives, including body corporate managers and specialist lawyers, support regulations generally as they give clarity on how to comply.

Background

- 8 The unit titles sector comprises of properties such as apartments or townhouses which have a specific set of ownership rights and responsibilities under the Unit Titles Act 2010 (the Unit Titles Act). The Unit Titles Act provides for the registration of unit titles, guidance on the operation of bodies corporate, a disclosure regime to provide information and transparency for the buying and selling of units, and a system for resolution of disputes.
- 9 On 9 December 2022, the Amendment Act came into force. The purpose of the Amendment Act was to improve the way unit titles are run, giving more transparency for owners, and strengthening the rules around the duties and expectations of bodies corporate.
- 10 The Amendment Act came into force in three stages. The first two stages were completed on 9 December 2022 and 9 May 2023 respectively.² The third and final stage commences on 9 May 2024 when provisions which require implementation by the sector (e.g., long-term maintenance), and those which require regulations, come into effect.
- 11 The Amendment Act includes regulation-making powers to prescribe:
- 11.1 documents that are to be retained for three years by bodies corporate and body corporate managers, which can be requested by the Regulator; and
- 11.2 the procedures for remote attendance and electronic voting during and prior to a body corporate meeting.

² The first stage of the Amendment Act included provisions relating to remote attendance, and the second stage included provisions relating to governance and administration.

- 12 Without regulations, the document request provisions will not be able to be utilised. This means that the law will not be able to operate as intended [REDACTED] s 9(2)(h) [REDACTED]
- 13 The regulations for remote meetings and electronic voting will clarify how the procedures should fit in with current rules for voting under the Unit Titles Act. The proposals are designed to avoid over-investment in expensive IT systems for electronic voting.
- 14 Other provisions in the Amendment Act, relating to proxy voting and pre-purchase disclosure when purchasing a unit off the plans, would benefit from regulations that provide clarity. Sector feedback has indicated minor amendments to these provisions would improve how they operate.
- 15 I am aware that most unit title developments have nine or fewer units, at over 11,000-unit title developments. Many bodies corporate are self-managing. My proposals take this into account and align with existing requirements for similar processes in the Unit Titles Act and the Regulations where appropriate.

I propose that documents to be retained by bodies corporate and body corporate managers be prescribed in regulations

- 16 From 9 May 2024 the Amendment Act allows for relevant information to be requested by the Regulator from bodies corporate or body corporate managers to investigate and consider complaints about bodies corporate, and support compliance with the Unit Titles Act. The Amendment Act provides for this relevant information to be prescribed by regulations.
- 17 The Amendment Act gives authority to the Regulator to request information. However, regulations are needed to specify which information bodies corporate should retain, so that the Regulator can then request those documents to undertake compliance and enforcement work.
- 18 The list of documents that I propose bodies corporate and body corporate managers must retain is attached in **Appendix A**. These documents relate to financial, maintenance, governance, and operational information of a body corporate. I propose that the regulations confirm these documents can be retained in hard copy or electronic form.
- 19 The making of these regulations will also ensure that the Regulator can exercise its wider enforcement powers from 9 May 2024.³
- 20 The proposed regulations should only add a minor additional compliance burden. Most of the documents I propose are retained would be retained regardless for taxation purposes or for pre-purchase disclosure. Furthermore, existing information management systems run by bodies corporate and body corporate managers to keep records should be sufficient.

³ For example, for the Regulator to issue improvement notices or take proceedings on behalf of another, it requires the power to request information in the first instance (for the purposes of an investigation).

I propose that procedures for electronic voting and remote attendance are prescribed by regulations

- 21 The Amendment Act includes a provision that enables a member of a body corporate to attend and vote at meetings remotely. On 9 December 2022, this permanent provision replaced a temporary provision in force since May 2020 and is operational.
- 22 The Amendment Act also introduces a provision to enable a unit owner to vote electronically prior to a meeting. Under this provision the electronic vote must be cast in accordance with regulations. This provision will come into force on 9 May 2024.
- 23 I propose that regulations are made that set out the procedures for remote attendance and electronic voting during and prior to meetings. There are already regulations that set out procedures for meeting attendance and voting in person, proxy or postal, so new regulations will ensure the procedures for remote attendance and electronic voting are consistent.
- 24 Regulations will ensure consistent practices across bodies corporate and clarify minimum requirements for the sector. Some bodies corporate may use voting platforms and processes that go beyond the regime we will propose in regulations. This could mean stricter processes or spending on unnecessarily expensive options. Alternatively, unit owners could be concerned about whether their body corporate has adequate processes for pre-meeting electronic voting, as a new form of voting.
- 25 The proposed regulations are designed to enable accessibility and participation, support voting security, and allow for a sufficient degree of flexibility to accommodate bodies corporate of different sizes and capabilities.
- 26 I propose that regulations provide:
 - 26.1 a definition for electronic voting, which will include a postal vote sent by electronic means;
 - 26.2 that the information about remote attendance and electronic voting in **Appendix B** must be provided to unit owners;
 - 26.3 for unit owners to have access to electronic voting from at least the minimum required time for a notice of Annual General Meeting (AGM)/Extraordinary General Meeting (EGM) to be sent out (usually 2 weeks for an AGM and 1 week for an EGM);
 - 26.4 that bodies corporate must have reasonable measures for verifying the identity of unit owners using electronic voting (but these measures will not be prescribed in regulations);
 - 26.5 that pre-meeting electronic votes are not counted where a motion is materially changed at the general meeting;

- 26.6 that a pre-meeting electronic vote is valid if the general meeting is adjourned, unless the unit owner attends the reconvened meeting;
- 26.7 that bodies corporate must take reasonable steps to ensure the electronic facilities are sufficient that remote attendees could participate and vote at the meeting both via audio and visual inputs; and
- 26.8 that voting records and proxy appointment forms be kept for 28 days following a general meeting.

I propose a regulation to clarify the role of the meeting chairperson in relation to proxy holders

- 27 The Amendment Act changed the proxy appointment form to enable a unit owner to direct their proxy how to vote on each motion. The Amendment Act did not state whether the chairperson of the meeting has a role to ensure that direction is followed.
- 28 I propose a regulation to clarify the chairperson does not need to ensure the proxy holder follows directions on the form. The regulation will avoid confusion and differing practices implemented by bodies corporate. It avoids potential legal challenges to the body corporate over voting practices if a vote relates to a contentious issue. If a unit owner is concerned that a proxy holder may not follow their directions, the unit owner can choose to attend the meeting remotely or to make a postal or electronic vote before the meeting.

Pre-settlement disclosure statements

- 29 The Amendment Act amended the Regulations to specify what information must be disclosed for pre-contract disclosure and pre-settlement disclosure when a unit is being sold off-the-plans. Disclosure by the vendor provides transparency where developers have made arrangements that bind the body corporate or unit owners into the future. Vendors only have to provide those documents if they exist.
- 30 I consider that increasing the requirements for the pre-settlement disclosure statement for off-the-plans units is necessary. If these changes are not made, a buyer who bought off-the-plans may be in a less informed position than a buyer of an existing unit completing their purchase at the same time. I propose the pre-settlement disclosure statement should include the following documents (if they exist at the time):
 - 30.1 details of any contracts or obligations entered into that will bind the body corporate and/or the unit owner after the settlement date;
 - 30.2 a copy of the opening minutes of the body corporate;
 - 30.3 a copy of the long-term maintenance plan;
 - 30.4 copies of the body corporate managers' and building managers' contracts; and

30.5 a copy of body corporate operational rules as registered or approved by the body corporate to be registered.

I propose minor technical changes to regulated forms

- 31 There are several minor and technical changes that will improve existing wording in the following regulated forms: pre-contract disclosure statement, pre-settlement disclosure statement, and the proxy appointment form.
- 32 The object of these changes is to remove errors and prevent confusion in the sector. I seek authorisation to make minor policy decisions on these, and other issues that may arise through the drafting process.

There are other regulation-making powers under the Amendment Act that I am not seeking proposals for

- 33 The Amendment Act also includes a regulation-making power for establishing the rules for determining legal costs for unit titles disputes at the Tenancy Tribunal (Tribunal).⁴ The intention of the regulation-making power was to provide a fair approach to the determination of reasonable legal costs for unit title claims in the Tribunal.
- 34 Following feedback from consultation and advice from my officials, I have decided not to make regulations to set out the principles and rules for deciding legal costs in unit title disputes in the Tribunal. The submitters considered that the Tribunal is best placed to determine what costs are reasonable and did not consider that having a limit on legal costs would reduce the costs charged by lawyers to bodies corporate. While the Unit Titles Act enables regulations to be made, it does not require it. The Tribunal can continue to make decisions as it does currently.

Cost-of-living implications

- 35 The proposals in this paper will have some cost impact on bodies corporate; however, the cost impact has been assessed as very minor. Much of the information is held for tax and disclosure purposes, and many will have arrangements in place for hybrid meetings following COVID-19. Any minor additional costs on bodies corporate will be borne by the unit owners as members of the body corporate.
- 36 There are no cost impacts on any person wanting to purchase a unit title development; these persons will only benefit from better information disclosure.
- 37 There are no cost impacts on tenants living in unit titles.

⁴ Under the Unit Titles Act, bodies corporate can recover reasonable costs of recovering unpaid levies through the Tribunal, and the High Court decided that legal costs are part of the reasonable costs of recovering unpaid levies. This has resulted in awards of full legal costs in the Tribunal which can be significant in comparison to the levies owed.

Financial Implications

38 There are no financial implications arising from the proposals in this paper.

Legislative Implications

39 I am seeking approval to issue drafting instructions to the Parliamentary Counsel Office. I intend to report back to the Cabinet Legislation Committee in late April 2024 for final approval of the regulations. ^{s 9(2)(f)(iv)}

Impact Analysis

Regulatory Impact Statement

40 The Treasury's Regulatory Impact Analysis team has determined that the proposals to make changes to the unit titles regulations are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

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

Population Implications

42 There are no population implications associated with the proposals in this paper. Population data on who lives in or owns unit titles is not readily available.

43 My officials have informed me that Māori interests are not limited or affected in any particular way.

Human Rights

44 This proposal is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of External Resources

45 No external resources were used throughout the policy development process for these proposals.

Consultation

46 HUD consulted publicly on proposals for regulations over the period June-August 2023. Fifteen written submissions were received: two-thirds were on

behalf of an organisation and one-third were from individuals, all of whom were sector participants.⁵

- 47 There was broad agreement from the sector for the making of regulations to set out the documents that must be kept and provided to the Regulator on request, and for regulations that support electronic voting and remote attendance at meetings.
- 48 Some of the feedback from consultation indicated that the proposals did not balance the regulatory burden as they were too complex and prescriptive. It was emphasised that many bodies corporate are small, self-managing and not always well-resourced. I am mindful of this feedback, and the policy approvals being sought have been simplified to better balance compliance costs.
- 49 Kāinga Ora – Homes and Communities, the Ministry of Business, Innovation and Employment, the Ministry of Justice, Land Information New Zealand, the Parliamentary Counsel Office, the Tenancy Adjudicator, the Treasury, and Te Puni Kōkiri were consulted on the proposals in this paper. The Department of Prime Minister and Cabinet was informed.

Communications

- 50 Industry stakeholders are keen to see progress on the regulations and are interested in information as soon as practicable to ensure they are prepared to comply. s 9(2)(f)(iv) [REDACTED]
My officials plan to engage with key stakeholders to inform them of Cabinet's decision on the regulatory policy proposals.

Proactive Release

- 51 This Cabinet paper will be proactively released within the prescribed 30 days of these decisions being confirmed by Cabinet. Proactive release will be subject to redactions as appropriate under the Official Information Act 1982.

⁵ The organisations included sector bodies such as the Body Corporate Chairs' Group and the Strata Community Association (New Zealand), which represent unit owners, chairs and committee members, and sector professionals. It also included legal bodies, such as the New Zealand Law Society and Auckland District Law Society Property Law Division.

Recommendations

The Minister for Housing recommends that the Committee:

- 1 **note** that the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act received Royal Assent on 9 May 2022 and that regulations are needed to give full effect to the Amendment Act;
- 2 **note** that regulations must be in place by 9 May 2024 to align with the date when the remaining provisions in the Amendment Act come into effect;
- 3 **note** that the proposals in this paper have been informed by feedback from consultation with relevant stakeholders;
- 4 **agree** to prescribe in regulations the list of documents in **Appendix A** that bodies corporate and body corporate managers are required to retain and provide to the Regulator on request;
- 5 **agree** to prescribe in regulations that electronic voting can be provided by a postal vote sent by electronic means;
- 6 **agree** to prescribe in regulations that the information about remote attendance and electronic voting set out in **Appendix B** must be provided to unit owners;
- 7 **agree** to prescribe in regulations that bodies corporate must provide access to electronic voting from at least the minimum required time for a notice of AGM/EGM to be sent out;
- 8 **agree** that bodies corporate must have reasonable measures for verifying the identity of unit owners using electronic voting;
- 9 **agree** to prescribe in regulations that pre-meeting electronic votes are not counted where a motion is materially changed at the AGM/EGM;
- 10 **agree** to prescribe in regulations that a pre-meeting electronic vote is valid if the general meeting is adjourned unless the unit owner attends the reconvened meeting;
- 11 **agree** to prescribe in regulations that bodies corporate must take reasonable steps to ensure the electronic facilities are sufficient that remote attendees can participate and vote at the meeting both via audio and visual inputs;
- 12 **agree** to prescribe in regulations that bodies corporate must keep voting records and proxy appointment forms for 28 days following a general meeting;
- 13 **agree** to prescribe in regulations that a chairperson of an AGM/EGM is not required to ensure a direction on a proxy form is followed;
- 14 **agree** that the pre-settlement disclosure statement for off-the-plans units must include:

I N C O N F I D E N C E

- 14.1 details of any contracts or obligations entered into that will bind the body corporate and/or the unit owner after the settlement date;
 - 14.2 a copy of the opening minutes of the body corporate;
 - 14.3 a copy of the long-term maintenance plan;
 - 14.4 copies of the body corporate managers' and building managers' contracts; and
 - 14.5 a copy of the operational rules as registered or approved by the body corporate to be registered.
- 15 **agree** that a number of minor and technical fixes are made to the pre-contract disclosure, pre-settlement disclosure and proxy appointment forms;
- 16 **invite** the Minister of Housing to issue instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper;
- 17 **note** that the Ministry of Housing and Urban Development will contact key stakeholders post Cabinet-decisions on the regulatory proposals;
- 18 **authorise** the Minister of Housing to make final decisions on minor and technical changes not inconsistent with the policy intent of the proposals in this paper; and
- 19 **note** that it is expected that regulations will be submitted to the Cabinet Legislation Committee for approval in April 2024.

Authorised for lodgement

Hon Chris Bishop

Minister of Housing

Appendix A: List of documents bodies corporate and body corporate managers need to retain for three years

- Details of all body corporate funds and bank accounts*
- Financial statements and audits*
- Assessment of ownership interest*
- Documents relating to utility interest decisions
- Levy information*
- Long-term maintenance plan and the next review date*
- Remediation, earthquake prone and land defect reports*
- Notices from body corporate to owners regarding entering a unit
- Register of all unit owners*
- Notices, agendas and minutes of body corporate and committee meetings*
- Contact details for any current body corporate or committee chairperson or current or past body corporate manager (current body corporate manager*)
- Notice of designated resolution
- Notices of delegation from the body corporate to the body corporate committee
- Report from the body corporate committee to the body corporate on the exercise of the duties and powers delegated to it
- Details of all current insurance policies, including annual insurance certificate*
- Details of any proceedings in any court or tribunal that the body corporate is involved in*
- Written agreement of body corporate managers' terms of employment/engagement
- Body corporate operating rules and any amendments
- Records related to any current warranties from third parties for common property, assets owned by the body corporate, or building elements and infrastructure
- Notice of resolution to be decided without general meeting
- Notice requiring an owner to sign any document to carry out a resolution
- Conflict of interest register for the body corporate committee
- Conflict of interest register for the body corporate manager
- Service contracts

*Already included in the pre-purchase disclosure statement

Appendix B: Procedural information for unit owners

Information about remote attendance and electronic voting provided to unit owners must contain:

- how to attend remotely;
- how to cast a pre-meeting vote electronically;
- the date/time of return for electronic pre-meeting votes;
- how to cast a vote electronically during the meeting; and
- a statement on the validity of an electronic pre-meeting vote if the general meeting is adjourned, or if the motion is materially altered at the meeting.