



17 October 2024

HUD2024-005390

s 9(2)(a)

Tēnā koe s 9(2)(a)

Thank you for your email of 12 September 2024 requesting the following information under the Official Information Act 1982 (the Act):

- *the briefing provided to Minister Bishop on 14 August 2024 'Advice on the insurance provisions in the UTA 2010', including any attachments. (MHUD 2024-005051).*
- *information (ie, a summary of activity and outputs) on what work MHUD has undertaken in response to submissions on the UT amendment bill in 2021. Paras 471-473 of the Departmental Report for that Bill outlined submitters concerns about the insurance provisions in the UTA, and para 474 stated that 'The Government will consider this matter further'.*

One document has been found to be within scope of your request and is released to you. Some information has been withheld under the following sections of the Act:

Section of Act	Reason to withhold
9(2)(a)	To protect the privacy of natural persons.
9(2)(ba)(i)	To protect information which is subject to an obligation of confidence where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.
9(2)(f)(iv)	To maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

The document is detailed in the attached document schedule.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the decision to withhold information under section 9 of the Act is not outweighed by other considerations that render it desirable to make the information available in the public interest.

In reference to paragraph 21 of the released document 'HUD2024-005051: Advice on the insurance provisions in the Unit Titles Act 2010', we note that if a minority of unit owners are disputing an insurance decision, they can take action through the Tenancy Tribunal. This paragraph refers to a minority of unit owners disputing a resolution made by a body corporate to take out a certain insurance policy. This is set out in Section 210 of the Unit Titles Act (2010). The order being sought in a situation such as this would be that the resolution is inequitable or unfair for the minority.

Regarding the second part of your request, this part of your request is refused under section 18(g)(i) of the Act, that the requested information is not held by the Ministry.

While officials have recorded the concerns about the insurance provisions as a matter that may be considered in a future Unit Titles Act review, other regulatory matters have been prioritised by Ministers in the interim.

You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

As part of our ongoing commitment to openness and transparency, the Ministry proactively releases information and documents that may be of interest to the public. As such, this response, with your personal details removed, may be published on our website.

Ngā mihi, na

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Claire Leadbetter

**Policy Manager, Housing and Rental Markets**

**Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development**

#### **Annex 1: Document schedule**

<b>Documents released – HUD2024-005390</b>			
	<b>Date</b>	<b>Document</b>	<b>Section of the Act applied</b>
1	14 August 2024	Briefing: HUD2024-005051- Advice on the Insurance Provisions in the Unit Titles Act 2010	9(2)(a), 9(2)(ba)(i) and 9(2)(f)(iv)



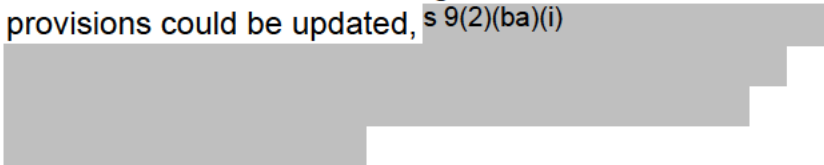

## Briefing

ADVICE ON THE INSURANCE PROVISIONS IN THE UNIT TITLES ACT 2010			
To Minister	Hon Chris Bishop	Portfolio	Minister of Housing
Date	14 August 2024	Priority	Medium
Tracking number	HUD2024-005051		
ACTION SOUGHT			
Action sought	<b>Agree</b> to recommendations on how to proceed with potential changes to the insurance provisions in the Unit Titles Act 2010; and  <b>Agree</b> to forward this advice to Minister Bayly.		
Deadline	20 August 2024		
CONTACT FOR DISCUSSION			
Name	Position	Telephone	1st contact
Claire Leadbetter	Manager, Housing and Rental Markets	s 9(2)(a)	✓
Grace Turner	Senior Policy Advisor, Housing and Rental Markets	04 832 2474	
OTHER AGENCIES CONSULTED			
Ministry of Business, Innovation and Employment; The Treasury			



## RECOMMENDED ACTIONS

It is recommended that you:

1. **Note** that under the Unit Titles Act 2010 bodies corporate must insure buildings and other improvements to their “full insurable value” and indemnity cover is only permitted if full replacement cover is not available on the market; *Noted*
2. **Note** that any changes to the insurance provisions in the Unit Titles Act 2010 could increase the likelihood that bodies corporates become underinsured, and that this could create risks following a catastrophic event including:
  - a. financial loss for mortgagees;
  - b. impacts on overall housing market affordability and availability if damage to stock is at a significant scale; and
  - c. pressure on the Crown from unit owners post disaster to provide financial support.*Noted*
3. **Note** that we engaged with a group of key unit title and insurance stakeholders who agree that the insurance provisions could be updated, s 9(2)(ba)(i) *Noted*  

4. **Note** that broader trends such as natural disasters, higher reinsurance premiums, and escalating construction costs are causing insurance affordability and availability issues for unit-titled properties which are beyond scope of the Unit Titles Act 2010; *Noted*
5. **Note** that we do not recommend changing the insurance requirements now due to a range of complexities, risks, and unknown consequences, including: *Noted*
  - a. s 9(2)(ba)(i) 



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|--|------------------------------|
| <p>b. stakeholders would like improvements made to the insurance provisions but recommend this is informed by a more fulsome consultation process;</p> <p>c. delivering an Amendment Paper to Minister Hon Andrew Bayly's Contracts of Insurance Bill by December 2024 is not feasible; and</p> <p>d. there are a range of wider insurance trends driving affordability and availability issues that will not be resolved by amendments to the Unit Titles Act 2010.</p> |                              |
| <p>6. <b>Agree</b> to not progress with any changes at this time and that officials keep a watching brief on concerns raised with the insurance requirements that could be revisited in any future review of unit titles legislation.</p>  | <p><i>Agree/Disagree</i></p> |

*C.D. Leadbetter*

Claire Leadbetter  
**Manager, Housing and Rental Markets**  
14/08/2024

Hon Chris Bishop  
**Minister of Housing**  
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## Purpose

1. This briefing responds to your request for advice on issues raised with the insurance provisions in the Unit Titles Act 2010 (the Act) and seeks your agreement on how to proceed with any potential changes.

## Executive Summary

2. Concerns about the Act's insurance provisions have been raised by some unit title owners, prompting a request for reform. The Act mandates bodies corporate to insure buildings to their "full insurable value", usually interpreted as full replacement cover. Under the Act, indemnity cover is only permitted if full replacement cover is not available in the market.
3. You received a letter from Russell McVeagh on behalf of an informal group of unit titles owners requesting reform of the Act's insurance provisions. They propose amendments to the Act via the Contracts of Insurance Bill (the Bill) to enable unit owners to choose what kind of insurance is appropriate for their building, and provide processes for individual unit owners and banks to object to proposals they do not agree with.
4. Following the letter we consulted with key unit titles and insurance stakeholders. Many stakeholders consider the benefits of more permissive insurance requirements are unlikely to outweigh the potential risk of bodies corporate being underinsured.
5. Any changes to the insurance requirements carry risk, especially underinsurance. This risk would be exacerbated in a post-disaster context, as it could lead to financial loss for mortgagees, impacts on the overall housing market affordability and availability if damage to stock is at a significant scale, and pressure from unit owners on the Crown to provide financial support post-event.
6. Following feedback regarding the need for more policy work and the complexity of the issue, we do not recommend proceeding with any changes to the insurance provisions in the Act at this time. We will monitor concerns raised by the sector about the insurance requirements and suggest revisiting these issues in a future review of unit titles legislation. Changing the insurance requirements is not a straightforward or relatively minor policy amendment so we would advise that a full consultation process and a considered assessment of the benefits and risks is undertaken prior to any change.
7. If you wish to progress with amendments to the insurance provisions through the Bill we recommend talking to your colleague, Minister Bayly, about progressing an Amendment Paper for the Bill to pass in June 2025. This would enable sufficient time to undertake consultation on any potential changes and provide standard timeframes for Ministerial and party consultation. However, the delay of the Bill may impact stakeholder expectations in the insurance industry. The Bill has been in development



for six years, and insurance contract law reforms have been long awaited. The Bill also contains time-dependent changes that would need to be extended.

## **The insurance provisions: overview and policy rationale**

8. Sections 134 to 137 of the Act provide insurance requirements for unit titled buildings that are registered under the Act. The Act requires a body corporate to insure buildings and other improvements to their “full insurable value”. The “full insurable value” test will be satisfied if the body corporate obtains the maximum amount of insurance cover available on the market that will enable the body corporate to rebuild the building following a total constructive loss.
9. The Act stipulates that if full replacement cover<sup>1</sup> is unavailable, bodies corporate can take out indemnity cover. Indemnity is not usually defined in a policy, but it is normally calculated on either the depreciated replacement cost of the insured property or its current market value.
10. Before the Canterbury earthquakes, insurance companies offered full replacement value policies to bodies corporate, which used to satisfy the full insurable value test. However, post-Canterbury policies tend to be capped where insurers generally provide cover up to a specified sum (sum-insured) rather than providing a more open-ended “full replacement” cover. We heard from the Insurance Council of New Zealand that now the types of policies relevant to bodies corporate operate on a ‘reinstatement’ basis rather than a full replacement basis.
11. Under a sum-insured policy the insurer and the client agree the maximum amount the insurer would pay in the event a building is destroyed or badly damaged. In the post-Canterbury context, there has been a shift in the market to sum-insured policies and this is not reflected in the Act. We consider there may be some ambiguity as to how the full insurable requirement can be met particularly for unit titled properties.
12. The policy rationale for the insurance requirements was that it protected unit owners’ interests. If the choice was available to the body corporate to opt out of insurance cover or insure to a lower value based on agreement of unit title holders, this could negatively affect future owners who are not a part of the decision-making process. It could also affect current owners who want or need full insurance but who are in the minority and are outvoted during decision-making. This rationale justified treating unit title owners differently from other property owners (e.g. fee simple) who have more flexibility in determining their level of insurance coverage and own the downside risk.

## **Concerns with the insurance requirements in the Act**

13. In 2021, as part of the select committee process on the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 issues were

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<sup>1</sup> Under full replacement insurance policies building assets are insured on a full reinstatement basis.



raised about insurance but were not considered as they were outside the scope of the review. The concerns raised included:

- a. the terminology in the insurance provisions is confusing and does not reflect the insurance industry's standard terms;
  - b. insurance may be a barrier for owners buying into bodies corporate; and
  - c. some owners were forced to sell their property as they could not meet the insurance premiums.
14. Over recent years, premiums have risen significantly and have rendered insurance unaffordable in some cases. A recent Treasury survey indicated that insurance premiums appear to have risen consistently faster for multi-unit buildings than standalone residential housing over the last five years, and there is limited availability of insurance, especially in areas such as Wellington where higher natural hazard risk makes insurers more cautious.
15. Rising premiums are a result of wider insurance affordability and availability issues including recent natural disasters (Auckland floods, Cyclone Gabrielle), insurers moving to risk-based pricing, rising reinsurance costs globally, and higher construction and repair costs. Pricing changes are also sending signals to the market about long-term costs.

*What we are hearing now about the insurance provisions*

16. Following the letter from Russell McVeagh, we engaged with a key group of unit titles and insurance stakeholders on the insurance requirements in the Act. We spoke to the Insurance Council of New Zealand, body corporate management companies, unit title specialists, unit owners, brokers, and external agencies. Issues raised in our recent engagement aligned with those raised in 2021, including:
- a. **There is concern with the increasing cost of insurance premiums.** We heard that for some unit-titled properties insurance premiums have increased by 20 percent year-on-year.
  - b. **There may not be much difference in premium costs between replacement and indemnity cover.** Some stakeholders had investigated indemnity-type cover and found that it would not result in a lot of savings. The Insurance Council of New Zealand also noted that due to repair costs for partial losses being higher proportional to the sum insured many insurers charge a higher rate for risks insured on an indemnity basis. Therefore, any reduction in cost will not be proportionate to the reduction in sum insured.
  - c. **Many unit-title owners require or want full replacement cover** (e.g. to satisfy mortgage requirements). We understand that some people may struggle to raise a mortgage to buy a unit if it has less than replacement cover, making it difficult for people to buy and sell their homes. However, we have not had time to meet with the main banks about their specific contractual wording or any





appetite to change it. Concerns were also raised that voting on insurance cover could lead to disagreement between unit owners or some owners could pressure or out-vote those who prefer a higher level of insurance cover.

- d. **Indemnity cover may result in owners having to contribute to the repair costs** if they want the property reinstated to the condition (or better) prior to the loss.<sup>2</sup> Given there are a mix of owners in all bodies corporate and every owner has varying financial interests and desires, there may be disputes and difficulties in getting all owners to agree a claims settlement. It is also worth noting that indemnity cover may not provide for loss of rent or alternative accommodation cover. s 9(2)(ba)(i)

- e. **Changing the insurance requirements may not necessarily mean insurance companies will offer different levels of cover to bodies corporate.** We heard from some stakeholders that allowing bodies corporate to seek other types of cover could drive innovation in the insurance industry by encouraging the development of more diverse, cost-effective, and customizable insurance products. However, the types of insurance products currently offered by insurance companies is limited and varies between companies, locations, building condition and renewal periods. Allowing greater flexibility will not necessarily result in greater availability of options. s 9(2)(ba)(i)

- f. **Changes to the insurance provisions are likely to change insurer appetites towards unit-titled property risks.** We heard from bodies corporate chairs, brokers and insurers that following the Christchurch and Kaikōura earthquakes and other events, there is an increased awareness of the potential for damage and for large multi-storey buildings (including some modern buildings) to suffer significant damage or become total losses. This has been reflected in the prices charged for insurance in higher natural hazard risk areas and has impacted the willingness of some insurers to provide capacity in areas such as Wellington.

- g. s 9(2)(ba)(i)  
Russell McVeagh's proposal would like the insurance provisions updated to enable unit owners to choose what kind of insurance is appropriate for their building, but also provide individual processes for individual unit owners and banks to object

<sup>2</sup> Under indemnity-type cover, for partial losses, insuring will normally be the cost incurred to repair the loss to the damaged part of the insured property, as close as possible, to the condition it was in immediately prior to the loss. It is not to a standard that is equivalent to its condition and relative quality when new.



to insurance proposals they do not agree with. We heard alternative proposals from other stakeholders that include higher protections from the potential risk of underinsurance, including; s 9(2)(f)(iv)

We would need more time to further analyse and consult on these ideas with the sector if we were to proceed with any of these options.

17. Overall, we heard that determining the appropriate level of insurance to regulate for, needs to be carefully considered. We consider that changing the requirement for bodies corporate to obtain full replacement cover has merit, as the provisions may have some impact on affordability, but it is not a simple undertaking.

*There are risks associated with any changes to the insurance requirements*

18. Changing the insurance requirements in the Act has the potential to increase instances of underinsurance. With indemnity cover, the insured value is usually the depreciated replacement cost of the insured property or its current “market value”. This could create significant issues post-disaster as it could result in very little or no cover. For example, where the cost of repair or replacement exceeds the insured value and each owner’s contribution for the shortfall cannot be funded, the repair or replacement of the building may not happen.
19. Instances of underinsurance could lead to wider challenges following a natural disaster if multiple properties in a community cannot be rebuilt or there are long delays. If the disaster and damage to stock is at a significant scale, impacts to the overall housing market affordability and availability could result. Furthermore, there could be pressure from unit-owners on the Crown to provide financial support post-event.
20. There is also potential that if there is an insurable loss and it transpires that the unit-title development is under-insured, unit title owners could take civil action against the body corporate through the courts. Unit owners and bodies corporate could also take civil action against third parties who may have been negligent in their insurance advice. If there is a minority of unit owners disputing an insurance decision, they could take action through the Tenancy Tribunal.
21. These risks have not yet been well canvassed and there are likely others that we have not yet identified. We recommend broader consultation with the sector to understand the necessity and feasibility of the insurance requirement in the Act.

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<sup>3</sup> Functional replacement cover is a type of insurance coverage that provides for the repair or replacement of a property with a functionally equivalent item rather than a replica of the original (e.g. a smaller building).



## Options for changing the insurance requirements in the Act

*We recommend progressing change through a future review of unit titles legislation*

22. We recommend keeping a watching brief on insurance affordability and availability issues for unit-titled properties but to not progress with any changes to the insurance requirements at this time.

23. s 9(2)(f)(iv)

24. s 9(2)(f)(iv)

*Progressing change through an Amendment Paper*

25. If you do wish to proceed with changing the insurance requirements through an Amendment Paper to the Bill we recommend working to a timeframe for the Bill to be passed in June 2025. This is because there are a number of risks with progressing the work by the end of this year.

26. We understand that Minister Bayly prefers the Bill to be passed by December 2024. Progressing an Amendment Paper this year comes with considerable timing and consultation challenges including:

- a. a full policy briefing would be needed and Cabinet approval would be required twice before December – for policy approval and for approval of the legislative amendments. The policy briefing and Cabinet policy decisions would be needed by 30 September to allow the Bill to pass in December;
- b. policy advice would not be robust and well tested on this timeframe and there are unknown risks; and
- c. due to the complexity of potential changes to the insurance provisions that have not been fully considered or consulted on yet, and limited timeframes for Ministerial consultation and legislative drafting, there is a risk that this work could be escalated by the Parliamentary Counsel Office and the Legislation Design and Advisory Committee, to the Attorney-General (Cabinet Circular (24) 2 refers).

27. Extending the timeframe to June 2025 would provide sufficient time to undertake all required processes as part of preparing an Amendment Paper. We recommend that any proposals to change the insurance requirements should undergo a full engagement process as it would affect the approximately 185,000 units in unit title developments in New Zealand.

*There may be further issues, such as with the purpose of the Bill*

28. The purpose of the Bill is to ensure that insurance contract law facilitates well-functioning markets for both insurers and policyholders. It seeks to enable consumers and businesses to effectively protect themselves against risk, while minimising costs and impacts on insurers' willingness to provide insurance in New Zealand.
29. The purpose of the Bill may be broad enough that amendments to the insurance provisions in the Act could be considered in scope; however, this would need to be confirmed with the Office of the Clerk as it is the decision-maker on scope.
30. While an extension of the Bill will enable an Amendment Paper to be developed the Bill is already at an advanced parliamentary stage, and its passage by the end of the year has already been communicated to stakeholders and the industry. Additionally, the Bill contains time-critical changes, particularly those needed to adjust the current 1 April 2025 rollout of the unfair contract term arrangements for small trade insurance contracts. Considering this, you would need to have a discussion with Minister Bayly about extending the commencement date for his Bill.

## **Risks and sensitivities**

31. Removing the requirement in the Act for bodies corporate to obtain full replacement cover is not going to resolve broader insurance affordability and availability issues for unit-title properties. These are influenced by multiple factors such as increased risk from natural disasters, higher reinsurance premiums, and escalating construction costs—issues that extend beyond the scope of the Act's provisions. The Treasury is the lead advisor to the Government on insurance and any potential work to address these wider issues are subject to the priorities and capacity of the Minister of Finance.
32. Not doing anything about the insurance requirements in the Act could disappoint some unit title stakeholders. It is likely that the sector will continue to advocate for reform of the insurance provisions. There is also a possibility of unit-titled properties unwilling or unable to fully insure their buildings (in breach of the Act) due to the high cost of premiums. In this context, risk of underinsurance in a post-disaster event and non-compliance with the Act requirements may increase in the future.

## **Consultation**

33. As part of preparing this advice we met with representatives from the Insurance Council of New Zealand, body corporate management companies, New Zealand Banking Association, the informal group that wrote to you, lawyers with specialist knowledge of unit titles, and an insurance broker firm.
34. The Treasury and the Ministry of Business, Innovation and Employment were consulted.



## Next steps

35. If you decide to progress with the Amendment Paper, we will provide you with a paper that seeks your approval to policy changes in early September 2024.
36. If you prefer to keep a watching brief on insurance issues or would like to revisit the insurance provisions in a future review of unit titles legislation, we can provide you with further advice in 2025.
37. We have been asked to provide advice to the Finance and Expenditure Committee (the Committee) on the issues with the insurance requirements in the Act by 20 August 2024. We may be asked to appear in person to speak to our advice on 21 August 2024.
38. The Committee are considering the Bill and are due to report back on 3 September 2024. We have provided you with our final advice to the Committee for your information.
39. We recommend you forward this advice to Minister Bayly. You may also wish to discuss this with HUD officials.