In Confidence

Office of the Associate Minister of Housing (Public Housing)

Chair, Cabinet Economic Development Committee

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

Proposal

1. I am seeking Cabinet approval for proposed policy changes to proposals in the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (the Bill). The policy changes will ensure the regulatory framework for the growing unit titles sector is fit for purpose in a growing market.

Executive Summary

2. The Unit Titles Act 2010 (UTA) provides a regulatory framework for the ownership and management of building developments where multiple owners hold a type of property ownership known as a unit title.

3. It is important the legislative framework for unit title developments is flexible and works for both small and large bodies corporate. We need to ensure that prospective owners consider apartments and other high-density developments as viable purchase options, feel secure in their purchase decisions, know their rights and responsibilities, and have a dispute resolution regime available if needed.

4. These proposals support the Government's vision for housing that everyone in Aotearoa New Zealand lives in a healthy, secure and affordable home that meets their needs within a thriving, inclusive and sustainable community. Supporting the Bill aligns with the Labour Party's 2020 manifesto commitment to review and amend the UTA to ensure it is modern and fit for purpose.

5. This Bill, and the amendments proposed in this paper, are necessary to meet New Zealand's changing needs. More and more New Zealanders are living in higher-density housing. A well-functioning UTA encourages more people to live in higher-density housing and supports those already living in higher-density housing. The development of denser cities will be enabled by Government policies such as the National Policy Statement on Urban Development (NPS-UD) and the UTA will play a supporting role. These proposals support the vision for greater housing supply and more affordable housing as well as providing several other co-benefits such as reduced transport emissions, greater access to employment, education and social opportunities.

6. The Bill introduces a range of changes in relation to pre-purchase disclosure, body corporate managers, body corporate governance, long-term maintenance planning, and dispute resolution. While I support many of the proposals in the

Bill, I have some proposals for amendment. These proposals aim to reduce unnecessary or disproportionate compliance in the Bill, and improve the workability of the provisions.

7. This paper sets out my recommendations for amendments to the Bill. It also sets out my recommendations to introduce a new section in the Bill to strengthen the powers given to the Chief Executive of the administering department, the Ministry of Housing and Urban Development (HUD)[1] to investigate alleged breaches of the UTA, and to encourage compliance.

8. The Bill is currently before the Finance and Expenditure Committee (the Committee). If Cabinet agrees to my proposals, my officials will recommend them in a departmental report to the Committee. If agreed, Parliamentary Counsel will draft amendments to the Bill for inclusion in the Revised Track version of the Bill to be reported back to Parliament. The Bill is due to be reported back to Parliament by 8 November 2021. I requested an extension to the original report back date of 10 September 2021 from the Committee, and the Business Committee agreed to this extension with the Committee.

Background

9. The UTA repealed and replaced the Unit Titles Act 1972. The UTA provides a regulatory framework for the ownership and management of building developments where multiple owners hold a type of property ownership known as a unit title. A unit owner owns a defined part of the development, such as an apartment or townhouse, and shared ownership of common property with all the unit owners, such as driveways and lifts. Together the unit owners are members of the body corporate that manages the unit title development.

10. There has been significant growth in the unit title sector since the UTA was introduced, and this growth is continuing. There are nearly 15,000 unit title developments in New Zealand, comprising nearly 160,000 individual unit titles. Forty percent of residential building consents issued in the year ended June 2021 were for multi-unit properties, compared to 21 percent in 2016, and 35 percent in 2020.[2] I expect the number of unit title developments to continue to increase, particularly with the implementation of the NPS-UD and its directive for councils to enable greater height and density, particularly in areas of high demand and access.

11. The unit titles sector has been seeking reform for some time to address a range of practical challenges. In 2016, sector leaders presented a Working Group report of issues with the UTA and proposed solutions to the then Government. The issues were centred on disclosure requirements, body corporate governance, body corporate managers, long term maintenance planning, and dispute resolution.

---

[1] Currently delegated to the Chief Executive of the Ministry of Business, Innovation and Employment.

[2] Multi-unit developments are those in the “apartments” and “townhouses, flats and units” categories. They include properties that are not unit titles. Source: Statistics NZ; https://www.stats.govt.nz/news/new-home-consents-continue-to-break-records.

12. The previous Government undertook a review of the UTA, including a public consultation process led by the Ministry of Business, Innovation and Employment (MBIE) in 2016-2017. 119 submissions were received from a range of stakeholders and workshops were held in three locations. The previous Government then took a suite of proposals to Cabinet in 2017. Work on reforming the UTA was paused following the 2017 General Election so the Government could focus on high priority work in the residential tenancies space.

13. This Government made a pre-election commitment in 2020 to review and reform the UTA. This commitment recognised that more New Zealanders are choosing to live in apartments and townhouses. The proposed focus of the review was on identifying cost-effective ways of managing unit title developments, enabling management systems that are proportional to the development size, ensuring maintenance planning and funding is transparent and proportionate, and improving the disclosure regime. Many of these themes are present in the proposals in the Bill.

14. The Bill proposes a range of changes across the key topic areas raised in the Unit Title Working Group's report and the previous Government's consultation document. The Bill was drafted by key stakeholders in the unit titles sector, and there is strong interest in reform from stakeholders. The Bill amends the UTA and the Unit Titles Regulations 2011 (the Regulations), and the Unit Titles (Unit Titles Disputes – Fees) Regulations 2011 (the Fees Regulations). Although the Bill is a Member's Bill, the Government has agreed to support it. The Bill is currently before the Committee.

Summary of submitters' feedback

15. Eighty-five submissions were received on the Bill. Most of the submitters were individuals, including unit owners. Other submitters were bodies corporate, resident's or owners' groups, body corporate managers, other professionals, local authorities and other organisations.

16. Submitters had a range of views, but were broadly supportive of greater transparency and accountability, and protection for unit title owners. While the direction of the Bill was often supported, in some cases the proposals were seen as too restrictive or burdensome for bodies corporate. Other proposals were seen as disproportionate to the apparent problem. More information about submitters' views is included in the discussion on each reform area.

Proposals for legislative reform

17. My objectives for reform to the UTA are to:

    17.1. provide greater protection for current and prospective unit title owners

    17.2. encourage prospective homeowners to consider apartment and other high-density living as a viable and attractive alternative to free-standing houses

17.3. ensure it is enabling for the growth in high-density living.

18. I am seeking Cabinet agreement to make changes to the Bill to ensure the proposals are proportionate and workable in practice. I am also seeking Cabinet agreement to a proposal to include greater powers for the regulator in the Bill. I consider that the package of proposals outlined in this paper will provide a balance between greater protections for unit owners, without increasing the compliance burden too greatly. The proposals are outlined in **Annex A** to this paper.

19. If Cabinet agrees to my proposals, my officials will recommend them in a departmental report to the Committee. I also seek Cabinet approval to make minor policy decisions in line with the policy framework in this paper.

Pre-purchase disclosure regime

20. Disclosure to a prospective buyer is an integral part of the unit titles regime. For unit title developments managed by bodies corporate, a prospective buyer cannot otherwise access all the relevant information about their future obligations and potential liabilities, because some information is held only by the body corporate.

21. The disclosure amendments in the Bill aim to reduce the administration involved, increase the amount of information disclosed and provide specific disclosure requirements for units bought "off-the-plans". In particular, more information is to be disclosed at the pre-contract stage so that buyers can understand their potential obligations and liabilities before they commit to purchasing a unit. For example, the Bill includes a requirement to disclose:

    21.1. weathertightness issues or earthquake-prone issues

    21.2. financial statements and audit reports

    21.3. notices, minutes and supporting documents from general meetings, and body corporate committee meetings.

22. There was strong support from submitters for the disclosure proposals, in particular, to include greater information at the pre-contract stage. I support this approach in the Bill. Submitters were engaged on what information should be disclosed. I intend to make decisions on the details of what information is disclosed as part of the minor policy decisions. For example, the Bill does not include some of the current requirements for pre-contract disclosure. I consider that some of the current requirements should be carried over into the new requirements, such as providing details of any maintenance the body corporate proposes to carry out in the year ahead, and how the body corporate will meet that cost.

23. Submitters had varying views on other proposals in relation to disclosure, which reflected their experiences as lawyers, body corporate managers, Chairs/committee members or developers.

When information should be disclosed

24. Currently, a prospective buyer has an opportunity to access information through the pre-contract, pre-settlement and additional disclosure statements. The Bill provides for pre-contract disclosure and additional disclosure. It removes the pre-settlement disclosure.

25. The main issue raised by submitters on the Bill in relation to disclosure was how many disclosure statements there should be. A number of submitters, many of them lawyers, indicated the pre-settlement disclosure statement should be retained.

26. The pre-settlement statement allows information to be updated since the contract stage – for an ordinary sale, this could be several months, and a number of changes could have occurred in the unit title development in that time. For sales off-the-plans, there could be a year or more before settlement. The pre-settlement statement also allows for a final calculation of the levies due, and the statement can be withheld by the body corporate if levies are overdue.

27. I propose that the Bill is amended to provide for both pre-contract disclosure and pre-settlement disclosure. I also propose removing the ability of a buyer to request additional disclosure to make the requirements on bodies corporate more proportional. The additional disclosure statement should not be required, as more information is provided at the pre-contract stage.

When a buyer can delay settlement or cancel a contract because of faults in disclosure

28. The UTA provides that a buyer can delay settlement of a purchase or cancel the contract altogether in certain situations where the disclosure statement is late or not provided. The Bill provides that the contract can be cancelled if the disclosure is incomplete or defective. The Bill also provides that settlement can be delayed where the disclosure is incomplete. If settlement is delayed and another statement is provided, but that statement is incomplete, settlement can be delayed again.

29. Submitters had varying degrees of support for this proposal. In particular, they were concerned about the ability of the buyer to cancel a contract after an unconditional contract had been reached. There was concern about the ability of sellers to rely on the settlement taking place, and arranging their affairs accordingly.

30. I propose the ability to cancel contracts does not apply where:

    30.1. The disclosure is incomplete, but this was noted in the pre-contract disclosure statement. The buyer chose to enter into the contract with the knowledge that the disclosure was incomplete, so should not be able to rely on that as a reason to cancel the contract.

30.2. The matter that was not disclosed is not significant. The buyer should only be able to cancel a contract for a significant reason – one that would have influenced a reasonable person's decision to enter into the contract. A significant reason could lead to increased and unexpected costs for a buyer, for example, an undisclosed building defect in the unit title development that requires correction.

30.3. The disclosure was defective or incomplete, but has already been corrected before the buyer gives notice to cancel the contract. This would be included for the avoidance of doubt.

31. I also propose some amendments to clarify the process where a settlement is delayed more than once, but the disclosure statement is still incomplete. I propose the buyer can choose to cancel the contract by giving notice, or complete the settlement.

Body corporate governance

32. The UTA and the Regulations set out the rules for how general meetings and committee meetings are run, and how voting works. These provisions are designed to balance having protections for unit owners with giving bodies corporate the flexibility and autonomy to govern their own units and developments.

33. The Bill includes a number of changes to improve body corporate and committee decision-making. It also aims to improve committee transparency and accountability to the body corporate.

Ability of unit owners to appoint proxies

34. The Bill places a limit on how many proxy votes someone can hold – up to five percent of the units (or one unit, if there are fewer than 20 units). Submitters have raised concerns that having no proxy limits may lead to "proxy farming". This term is used when a number of proxy votes are gathered to ensure a decision is passed. However, there does not appear to be strong evidence of proxy farming occurring. Some submitters who have experience across a wide number of unit title developments, such as body corporate managers and lawyers, did not consider proxy farming was an issue.

35. I propose to remove the limits on proxies as it amounts to a substantial limit on the voting rights of unit owners. Under the Bill, unit owners who cannot access a proxy (because that person has reached their proxy limit) would not be represented at a meeting. Instead, I propose to clarify in the proxy voting form that a unit owner can direct how a proxy will vote on their behalf.

Providing for remote attendance at meetings and electronic voting

36. The Bill provides that general meetings and committee meetings can be attended remotely (electronically). The Bill places restrictions on when this can occur, including requiring a special resolution to allow remote attendance. Submitters on this issue were strongly in favour of remote attendance, and

concerned about the barriers to use. They noted that the UTA currently has a temporary amendment under the COVID-19 Response (Further Management Measures) Legislation Act 2020, which does not have these restrictions on when remote attendance can occur. Submitters also suggested that attendees be able to vote electronically in advance of a meeting (as for a postal vote).

37. I propose that remote attendance at general meetings and committee meetings be able to occur as of right, to reflect that remote attendance at meetings is more common now than when the Bill was drafted in 2018. I also propose that the UTA includes the ability to vote electronically in advance of a meeting. I propose to include a regulation-making power to set rules to verify attendees at meetings and for procedures for electronic voting.

Supporting non-natural entities' representation on body corporate committees

38. The UTA provides that unit owners that are non-natural entities (e.g. companies and incorporated societies) can only appoint directors (or people in an equivalent position) to represent them on the body corporate committee. The Bill makes some minor amendments to how a candidate for a body corporate committee can be nominated. Some submitters suggested that a non-natural entity should be allowed to appoint any person.

39. This provision in the UTA is limiting, particularly to Crown entities that own unit titles. For example, Kāinga Ora-Homes and Communities owns approximately 757 units in 118 unit title developments. If Kāinga Ora wished to be represented on a body corporate committee, it would need to be a Director of the Board. This would be inappropriate, inefficient and costly. I propose that the UTA should allow a non-natural entity to be represented on a body corporate committee by a director, or by an employee (or class of employee) that is authorised by a director to undertake this role.

How the body corporate committee should report on delegated powers and provide information to body corporate

40. The UTA and the Regulations require body corporate committees to report to the body corporate on the exercise of their delegated powers and duties at each AGM. The Regulations also require a body corporate committee to provide meeting minutes to unit owners upon request. The Bill has additional requirements for medium and large residential developments to report on the performance of delegated powers at each AGM. The Bill also amends the provision of meeting minutes, requiring them to be proactively provided to all unit owners, with redacted information where appropriate.

41. Submitters have indicated that the new requirements for reporting on delegated powers duplicate to some extent the existing requirements. I propose to consolidate these requirements, and apply them to all unit title developments. Regarding where minutes can be redacted, I propose providing more detail to avoid misuse, allowing redactions for reasons of legal privilege, commercial sensitivity or to comply with other statutory requirements.

Body corporate managers

42. Body corporate managers are not defined in the UTA or by any other legislation. However, body corporate managers play an important role in the effective operation of unit title developments. Given the continued increase in the number of multi-unit buildings, the number of unit title developments managed by body corporate managers will continue to grow. The Bill aims to increase the professionalism and standards of body corporate managers.

43. The Bill:

    43.1. introduces a requirement for medium and large residential developments to employ a body corporate manager (with the ability for medium residential developments to opt out of this requirement by special resolution)

    43.2. defines a body corporate manager as a person who is employed or engaged by a body corporate to provide a listed set of services

    43.3. sets out the functions and duties of a body corporate manager and specifies in the Regulations the mandatory requirements that must be included in the term of engagement

    43.4. sets out the requirements for body corporate managers in the Regulations. This includes the requirement to be a member of an industry association which has a purpose of fostering professional development of body corporate managers

    43.5. requires body corporate managers to act in the best interests of the body corporate.

44. Most submitters supported bringing body corporate managers into the UTA. However, there were varying views about the size threshold for requiring a unit title development to employ a body corporate manager. Submitters also expressed concerns about the requirement for body corporate managers to be a member of an industry organisation with a purpose of fostering professional development of body corporate managers.

45. The Bill defines a medium residential development as a development that includes between 10 to 29 principal units that are primarily used as places of residence. Similarly, the Bill defines a large residential development as a development that includes 30 or more principal units that are primarily used as places of residence.

Requirement to employ a body corporate manager

46. I propose introducing a requirement for the bodies corporate of medium and large developments to employ a body corporate manager. Under this requirement, bodies corporate can opt out by special resolution. This requirement differs from the current requirement in the Bill as it allows large residential developments to also opt out of the requirement to employ a body corporate manager.

47. This proposal strikes the right balance between the perceived risks associated with the size of the unit title development, and not imposing costs on bodies corporate that are comfortable with managing their own affairs. While there are some exceptions, large developments usually have greater management requirements. The quantum of annual body corporate levies is also usually higher for larger developments.

48. By requiring a special resolution to opt out of this requirement for medium and large sized developments, it will mean larger bodies corporate must turn their mind to whether a body corporate manager is suitable for the needs of their development.

Code of conduct for body corporate managers

49. I note that the Bill requires body corporate managers to be a member of an industry association which has a purpose of fostering professional development of body corporate managers. The Bill also requires body corporate managers to abide by the industry association's code of conduct.

50. I propose removing the requirement for body corporate managers to be a member of an industry association. Instead, I recommend that a code of conduct for body corporate managers should be inserted in the Regulations. This will ensure that all body corporate managers will follow a consistent set of standards.

51. I propose that the code of conduct should contain the following requirements for body corporate managers to:

    51.1. always act in the best interest of the body corporate

    51.2. act in good faith, exercise due care and diligence, and not make improper use of their position

    51.3. comply with the requirements of the UTA, Regulations, and other legislation applicable to the body corporate for which the manager has responsibility (including financial management and reporting responsibilities)

    51.4. have a good working knowledge and understanding of the UTA, Regulations, and other legislation, or issues on which they are advising or acting on behalf of the body corporate

    51.5. comply with the requirements of the UTA and Regulations applicable to body corporate managers

    51.6. disclose conflicts of interest to the committee, or, if there is no body corporate committee, to the chairperson

    51.7. keep the body corporate informed of any significant development or issue about an activity performed for the body corporate

51.8. take reasonable steps to ensure an employee of the body corporate manager's complies with the UTA

51.9. ensure that goods and services provided are supplied at competitive prices

51.10. to demonstrate keeping of records as required under the UTA.

52. The proposed code of conduct contains requirements from the Bill and requirements outlined in the code of conduct for body corporate managers in Queensland's Body Corporate and Community Management Act 1997.

53. I consider that the code of conduct is better placed in the Regulations than the UTA because the requirements are largely operational in nature. It will be consistent with the treatment of the proposed code of conduct for body corporate committees, which is outlined in the regulations to the Bill. Amending the Regulations will also be easier than amending the UTA if changes to the code of conduct are required in the future.

54. Whilst it has been considered, I do not recommend occupational regulation of body corporate managers. While this approach would likely improve standards in the sector, it is important to recognise that this is a developing and progressively self-regulating sector. I consider that it is appropriate to give industry bodies time to establish self-regulatory frameworks before these options are considered, particularly given the likely costs associated with occupational regulation.

55. Instead, I consider that the recommended proposals above will help to improve standards in the industry, while recognising that this a developing and progressively self-regulating sector and allowing bodies corporate the flexibility to manage their own affairs and minimise costs.

Long-term maintenance plans and funds

56. Bodies corporate are responsible for maintaining common property and any building elements and infrastructure that serve more than one unit within a building development. Maintenance is set out in a long-term maintenance plan (LTM Plan), which is required by the UTA to cover at least 10 years.

57. The UTA requires a body corporate to establish and maintain a long-term maintenance fund (LTM Fund) unless the body corporate opts out by special resolution. The LTM Plan must state the amount determined by the body corporate to be applied to maintain the fund each year, and the fund may only be applied towards spending relating to the LTM Plan.

58. Submitters to the Bill had varying views on the changes to LTM Plans. Submitters raised the question of whether the additional requirements for medium and large residential developments should apply to commercial developments and mixed use developments. There was also varied support for the requirement for bodies corporate of medium and large residential developments to have a LTM Plan that covers a period of 30 years. Submitters

expressed concerns about the requirement for LTM Plans to be reviewed by a member of a professional body, as well as the new purpose for LTM Plans to identify defects.

The applicability of new Part 2A, special provisions for certain medium and large unit title developments, to mixed-use and commercial developments

59. The UTA does not draw a distinction between residential, commercial, or mixed-use developments. However, new Part 2A of the Bill introduces special provisions for medium and large residential developments, relating to body corporate managers, body corporate governance, and long term maintenance and funding.

60. I propose that Part 2A of the Bill should apply to all developments including mixed-use and commercial developments. I consider that having a distinction between residential and commercial developments will cause unit owners unnecessary confusion.

The requirement to have a LTM Plan that covers at least 30 years

61. The Bill introduces a requirement for the body corporate of medium and large residential developments to have a LTM Plan that covers at least 30 years. The Bill does not change the duration for the LTM plan for small developments. Unlike other provisions related to size, there is no ability for medium sized developments to opt out by special resolution.

62. I propose introducing a requirement for bodies corporate of medium and large developments to have a 30 year LTM Plan comprising detailed cost estimations for the first 10 years and a high level projection for the following years. This option differs from the current requirement in the Bill because it specifies the level of detail that needs to be in the LTM Plan.

The requirement for LTM Plans to identify defects

63. The UTA lists the following purposes of LTM Plans:

    63.1. identify future maintenance requirements and estimate the costs involved

    63.2. support the establishment and management of funds

    63.3. provide a basis for the levying of owners of principal units

    63.4. provide ongoing guidance to the body corporate to assist in making its annual maintenance decisions.

64. The Bill inserts an additional purpose for LTM Plans to identify defects in or repairs required to unit title developments and estimate the cost.

65. I propose removing the requirement for LTM Plans to identify defects. I note that LTM Plans are not defects reports. Including the additional purpose for LTM Plans to identify defects would impose too great an onus on bodies

corporate, unit owners, and potential buyers to predict what falls under the definition of “defects”.

66. As noted previously, a key purpose of LTM Plans is to identify future maintenance requirements and estimate the costs involved. This means that LTM Plans will account for the normal maintenance costs for unit title developments. Planned maintenance might include the maintenance of lifts, repainting the exterior, and roofing or cladding repairs. LTM Plans do not usually cover earthquake strengthening or weather-tightness type defects. These issues require special consideration by bodies corporate. In most cases, bodies corporate will need to create a separate plan to manage the potentially significant costs related to them. I note that these plans are likely to operate on a different timeframe to LTM Plans.

The requirement for LTM Plans to be peer reviewed by a member of a specified organisation

67. The Bill requires the LTM Plan of medium and large residential developments to be peer reviewed by a member of 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, at each review. Medium residential developments may opt out of this requirement by special resolution.

68. I recommend removing the requirement for medium and large developments to be reviewed by a member of a specified body. Instead, I propose including a requirement for medium and large bodies corporate to consult with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary. This will ensure that the bodies corporate of medium and large residential developments actively consider whether they need professional support when drafting their LTM Plans, but will not impose additional costs on bodies corporate that are comfortable with managing their own affairs.

The requirement to establish a LTM Fund

69. The UTA requires all bodies corporate to establish a LTM Fund with the ability to opt out by special resolution. The UTA also specifies that the LTM Fund may only be applied to spending relating to the LTM Plan.

70. The Bill requires all bodies corporate of medium and large residential developments to establish and maintain a LTM Fund without the ability to opt out of establishing such funds. As the Bill does not make a provision for small developments, these developments can still opt out of the requirement to establish a LTM Fund by special resolution.

71. There were varied levels of support for the requirement for bodies corporate of medium and large developments to establish and maintain a LTM Fund (without the ability to opt out). Numerous submitters also requested clarity on the amount of funding which should be contained in the LTM Fund. Submitters noted that there needed to be clarity about whether the LTM Plan is fully funded

by the LTM Fund, or whether the LTM Plan is partially by the LTM Fund, and the remainder by special levies.

72. I propose the following changes to address the concerns raised by submitters:

    72.1. retaining the current approach under the UTA, which allows all bodies corporate to opt out of establishing a LTM Fund by special resolution

    72.2. clarifying in the UTA that bodies corporate can decide on the level of funding contained in their LTM Fund

    72.3. requiring bodies corporate to specify how their LTM Plans will be funded.

73. I consider that these changes strike the right balance between recognising that there are other ways for bodies corporate to fund their LTM Plans and ensuring transparency around how a LTM Plan will be funded.

Dispute resolution

74. Currently the UTA provides a dispute resolution mechanism for claims up to $50,000 in the Tenancy Tribunal (Tribunal). The fees, paid by the applicant only, are $3,300 for complex (Category 1) and $850 for non-complex (Category 2) proceedings, regardless of whether the parties go to mediation or adjudication.

75. The Bill reduces the application fee to $100 plus:

    75.1. for Category 1 applications, $600 for mediation and/or $1,000 for adjudication.

    75.2. for Category 2 applications, $300 for mediation and/or $600 for adjudication, $300 for mediation and/or $600 for adjudication

76. The Bill also:

    76.1. requires all parties to the dispute to equally contribute to paying the application fees, except parties who refuse mediation who are liable to pay the whole adjudication fee

    76.2. requires both fees to be paid if a dispute goes to both mediation and adjudication.

77. Submitters agreed with the principle of reducing application fees for unit title proceedings in the Tribunal. Submitters also had suggestions for other improvements to the Bill, including:

    77.1. reducing application fees to a level closer to the Residential Tenancies Act 1986 (RTA)

    77.2. removing the Category 1 and Category 2 distinction

77.3. not requiring parties to share the costs of applying to the Tribunal

77.4. increasing the Tribunal's jurisdiction so that it can hear claims of up to $100,000.

Increasing the jurisdiction of the Tribunal so it can hear claims of up to $100,000

78. The Bill does not change the jurisdiction of the Tribunal to consider unit titles claims over $50,000. However, an amendment to the RTA in February 2021 increased the jurisdiction of the Tribunal in residential tenancy claims from $50,000 to $100,000.

79. Several submitters considered that the jurisdiction of the Tribunal to hear unit titles claims of up to $50,000 was too low. Submitters noted that the $50,000 threshold is inconsistent with the Tribunal's jurisdiction to hear residential tenancy claims of up to $100,000.

80. I propose increasing the jurisdiction of the Tribunal to consider claims of up to $100,000. This will increase the number of applications which can be made to the Tribunal, which is a faster and cheaper alternative than the District Court. The proposed change will also align the Tribunal's jurisdiction to consider disputes under the UTA with disputes under the RTA.

Classification of unit title disputes

81. The Bill continues to determine application fees for the Tribunal by reference to whether the dispute is:

81.1. Category 1: of average or high complexity, which is likely to involve a hearing before the Tribunal to resolve it, e.g., the repair or maintenance of common property and the governance or decisions and procedures of a body corporate.

81.2. Category 2: of a straightforward nature which is likely to involve mediation to resolve it, e.g., the day to day management of the development, the effect of the behaviour of unit owners on others, and non-compliance with operational rules.

82. I propose removing the categorisation of disputes into Category 1 and Category 2. Instead, I propose that fees should be charged based on whether the parties initially wish to try to resolve their dispute through either mediation or adjudication. This approach removes the need for parties to decide on the complexity of their dispute at an early stage. Instead, the focus is placed on the most appropriate procedure the parties want to use to resolve their dispute.

Reducing the Tribunal's unit title application fees

83. Taking into account the proposed removal of the Category 1 and 2 classification, I also propose reducing the application fees to $250 for mediation and $500 for adjudication. I consider that reducing the application fees would improve the accessibility and cost-effectiveness of the UTA's dispute resolution

regime. A comparison of the application fees for unit title disputes in the Bill and my proposal is set out in the table below.

The Bill		**Proposed Fees**	
Category 1	$600 for mediation $1000 for adjudication	**Mediation**	$250
Category 2	$300 for mediation $600 for adjudication	**Adjudication**	$500

84. I recommend that the fee should be paid by the applicant. I consider that dividing application fees equally between the parties, as currently proposed in the Bill, would create opportunities for respondents in proceedings to frustrate the process by refusing to pay the application fee.

85. I also propose that where a proceeding starts in mediation but then progresses to adjudication, the applicant must pay a top up of $250, taking the total application fees paid to $500. This matches the fee paid where a proceeding goes directly to adjudication.

s 9(2)(f)(iv)

Strengthening the Chief Executive's powers under the Unit Titles Act

Current limits of the Chief Executive powers in the UTA

89. Currently, the UTA contains limited powers for the Chief Executive of the administering department. The administering department is HUD, and the Chief Executive's power are currently delegated to MBIE.

90. The current powers of the Chief Executive are to:

    90.1. require information from bodies corporate and access unit title developments but only to monitor and report on body corporates' long-term financial and maintenance planning regime

    90.2. initiate or defend legal proceedings where the Chief Executive is directly involved in a dispute, but not on behalf of unit title stakeholders

    90.3. investigate an alleged breach of the UTA but without powers to require information or to enter the unit title development for this purpose.

91. The Chief Executive's investigation powers in the UTA are similar to powers set out in the RTA. However, unlike the RTA, the powers in the UTA rely on the cooperation of the parties. There is no way to compel people to provide information for investigation purposes or to enter premises outside of the existing powers to monitor and report on a body corporate's long-term financial and maintenance planning regime. If the Chief Executive discovers a breach, there is no way to compel compliance with the UTA, short of commencing legal proceedings. The UTA provides no express powers for the Chief Executive to initiate, defend or assume the conduct of unit title disputes in the Tribunal or courts where they are not directly involved in those disputes.

92. For the most part, the Tribunal will continue to be the appropriate place to resolve disputes between unit owners, bodies corporate and body corporate managers. My proposals to reduce the application fee to the Tribunal will encourage parties to self-resolve in this manner.

93. However, as I have noted, I expect the number of unit title developments to increase. We are likely to see more people entering the market who lack the financial advantages of unit-owner occupiers in higher income brackets, who do not properly understand their rights and responsibilities or who do not wish to take their body corporate or body corporate manager to the Tribunal for fear of retaliatory action or jeopardised relationships with other unit owners.

94. In these circumstances it is important that the Chief Executive is able to effectively intervene, when it is in the public interest to do so, to:

    94.1. incentivise compliance with the UTA

    94.2. protect the interests of vulnerable unit owners

    94.3. ensure public confidence in the administration of the UTA.

Submissions on new powers for the Chief Executive

95. The Bill contains no proposals on the Chief Executive's enforcement powers. However, some submitters on the Bill commented on this issue. Most of these submitters called for the powers of the Chief Executive in the UTA to be enhanced and better resourced, while some proposed that bodies corporate should have these powers. Some submitters supported better auditing powers, better oversight of body corporate managers, or introducing penalties or infringement notices.

96. I consider it is worth strengthening the Chief Executive's powers so that, should it be in the public interest to take action, such action may be carried out effectively. The Bill provides a good opportunity to strengthen these powers and future-proof the UTA. I propose that the grounds for the Chief Executive to use new powers mirror those for the equivalent powers in the RTA, as appropriate. This acknowledges some similarities between the RTA and UTA regulatory regimes and also facilitates the easier enforcement of both regimes by MBIE.

General power and function to proactively monitor compliance with the UTA

97. I propose that the Chief Executive's general powers and functions under the UTA be amended to include the monitoring and assessing of compliance by bodies corporate and body corporate managers with the UTA. This is consistent with a new general power included in the RTA in February 2021 to allow the Chief Executive to take a more proactive approach to investigation without requiring an alleged breach.

Powers of investigation and entry

98. The Chief Executive currently has a limited power to require documents from bodies corporate, to report on and monitor a body corporate's financial and long-term maintenance planning. I propose the following to support the Chief Executive's investigatory powers:

    98.1. A new duty on bodies corporate and body corporate managers to retain prescribed documents for a period of three years.

    98.2. A new power for the Chief Executive to require production of these prescribed documents by written notice to the body corporate or body corporate manager. The Chief Executive may inspect and make records of the document; and take copies of the document or extracts from it.

99. Both of these new proposals are similar to the Chief Executive's powers and the duties of landlords already established in the RTA.[3] In line with the equivalent power in the RTA, I propose that the Chief Executive only have power to require documents which are reasonably required for the purposes of their functions and powers under the UTA. This power to require documents will exclude documents (or parts of documents) that are legally privileged. I propose that the list of documents be prescribed in regulations developed after

[3] See RTA s.123A.

the Bill is passed. The regulations will set out the appropriate documents to specify and those which should be excluded.

100. Currently under the UTA, the Chief Executive has a right to enter a unit title development, including the common property, but not a principal unit (i.e. a place of residence) without the occupier's permission. This right of entry only applies to monitor and report on the long term financial and maintenance planning regimes of bodies corporate. This would not empower the Chief Executive to enter common property to inspect issues such as leaky buildings or other defects.

101. I propose that the Chief Executive be given a broader power to enter a unit title development (including the common property, but not a principal unit (i.e. a place of residence) without the occupier's permission) to better enable them to investigate alleged breaches of the UTA. I propose that that this power be exercised by written notice giving at least 24 hours' notice of the intention to enter to the body corporate. In line with the RTA, the power to inspect the unit title development would include a power to bring and operate equipment, take photographs, sound or video recordings, measurements or drawings, take samples or test things. This gives flexibility in how the powers can be used, and the types of issues that could be investigated.

102. I propose that this power of entry only be exercised when the Chief Executive has reasonable grounds to believe:

    102.1. there has been a breach of the UTA, and

    102.2. inspection is reasonably necessary for the purposes of the Chief Executive's functions or powers under the UTA in relation to the breach.

103. My officials have considered the Legislative Design and Advisory Committee (LDAC) Guidelines on search powers, which state the starting point is for new search powers to apply Part 4 of the Search and Surveillance Act 2012 (SSA). My officials consider the scope of the search powers in Part 4 of the SSA may be broader than what is required in the proposed power of entry, and required for a UTA search power. Unlike the SSA, the proposed power does not propose entry to a private residence without permission.

104. The RTA power of entry to rented premises sets a useful precedent for the UTA. The RTA does not apply Part 4 of the SSA, but does reflect the SSA requirements, such as the need to provide notice of a search. I do not propose that the Tribunal be required to authorise the proposed power of entry, as is required under the RTA. This approach is consistent with the existing UTA power of entry and reflects that (unlike the RTA), the proposed power does not include a right of entry to a place of residence without permission.

105. As noted earlier, the Chief Executive has the ability to request documents to audit a body corporate financial and long-term maintenance planning regime. It is unclear whether this existing power would allow the Chief Executive to access this information where it is in the possession of the body corporate

manager. I propose that this provision is expressly extended to body corporate managers.

Powers to initiate certain proceedings

106. Currently, a body corporate, a creditor of the body corporate, or any person having a registered interest in a unit may apply to the High Court for the appointment of an administrator. This power does not extend to the Chief Executive.[4] Following an investigation, the Chef Executive may consider that a court-appointed administrator may be the best way to resolve serious issues at a body corporate. I propose that the Chief Executive should have the ability to apply to the High Court to appoint an administrator of a body corporate.

107. Currently the Chief Executive may only commence legal proceedings against another party in respect of a unit title dispute in which they are directly involved. Otherwise, it is left to the parties themselves to initiate proceedings. I consider that a power to initiate, assume conduct of, and defend civil legal proceedings on behalf of others is a vital tool in empowering the Chief Executive to effectively enforce the UTA, incentivise voluntary compliance and protect the interests of vulnerable parties who may be otherwise unable or unwilling to seek legal redress.

108. I also propose the Chief Executive may initiate a single case against a party where the alleged breach relates to multiple bodies corporate. This is likely to be most relevant if a body corporate manager has breached the UTA in respect of different bodies corporate.

109. I want the Chief Executive to be limited to using these proposed powers only in situations which assist with serving the public interest. Therefore, I propose that the Chief Executive has the power to initiate, assume or defend legal proceeding if satisfied that it is in the public interest to do so on any of the following grounds, which mirror those for using equivalent powers in the RTA:

    109.1. where there are allegations of conduct that is likely to cause or has caused significant risk to the health and safety of any person

    109.2. where there are serious or persistent breaches of the UTA

    109.3. where the actions of a party or parties risk undermining public confidence in the administration of the UTA, or

    109.4. any other ground that the chief executive considers appropriate.

Powers to support compliance with the UTA

110. I propose giving the Chief Executive a power to issue improvement notices alerting a party to a breach of the UTA and providing them with the opportunity to rectify it within a specified time frame without penalty. This power would be exercised where the Chief Executive reasonably believes a person is breaching, or is likely to breach, the UTA. This power would be used where a

[4] UTA s.141.

breach can be easily remedied and is low risk to the unit title development. A party receiving an improvement notice would have the ability to challenge it at the Tribunal.

111. To ensure compliance with the powers outlined above, I propose that the Chief Executive has the ability to apply to the Tribunal to impose a pecuniary penalty for the following breaches of the UTA where committed intentionally and without reasonable excuse:

    111.1. a body corporate manager has breached one of the following duties:

        111.1.1. disclose a conflict of interest to the body corporate or

        111.1.2. certain requirements where a body corporate manager acts for more than one body corporate, and

        that action has materially negatively impacted individual unit owners or the body corporate as whole

    111.2. a body corporate or body corporate manager has failed to comply with the Chief Executive's request for information under the UTA

    111.3. a body corporate or body corporate manager has obstructed or hindered the Chief Executive or a person they authorise, in exercising their power of entry to a unit title development

    111.4. a body corporate or body corporate manager has failed to comply with an improvement notice.

112. The proposed maximum penalties are set out in **Annex B**. In deciding the appropriate pecuniary penalty, and in line with similar considerations under the RTA, the Tribunal would be required to have regard to all relevant matters including:

    112.1. the nature and extent of the breach of the UTA

    112.2. the nature and extent of any loss or damage suffered by any person because of the breach

    112.3. any gains made or losses avoided by the body corporate or body corporate manager in the breach, and

    112.4. the circumstances in which the breach took place.

113. I consider that having a punitive sanction for these breaches will help address and change behaviour which may either impact on vulnerable unit owners or impede an investigation by the Chief Executive. It will also hold those who deliberately breach to account. In line with the RTA, whether to apply for a pecuniary penalty would be left to the discretion of the Chief Executive, who would only seek a penalty when it was in the public interest. I also consider the proposed maximum penalties are at an appropriate level. I note that where a

body corporate faces any cost, including a pecuniary penalty, that cost is borne by the unit owners.

114. I propose that only one pecuniary penalty order may be made for the same conduct in order to avoid a person being punished more than once for the same conduct (double jeopardy).

115. I note that some submitters called for bodies corporate to be given powers to issue "infringement notices" (a form of low-level criminal offence) on those not complying with operational rules. I do not agree that compliance with the UTA or body corporate operational rules is best met by making breaches criminal offences.

116. Another option is to introduce a right for UTA duty-holders to bring "exemplary damages" claims for breaches of the UTA, in a similar way to that allowed for landlords, tenants and the Chief Executive under the RTA. Again, I do not agree with this approach, as the costs of exemplary damages found against bodies corporate are borne by the unit owners. I note that parties have the opportunity to apply to the Tribunal for the resolution of disputes, which includes compensation for costs incurred as a result of a breach.

117. My officials have considered the LDAC guidelines on pecuniary penalties in the development of these proposals. They consider the proposals are consistent with the LDAC guidelines.

s 9(2)(f)(iv)

Increasing information and education on unit titles

121. I consider that informing and educating unit title stakeholders about their rights and responsibilities under the UTA is an important component of the regulatory system. I note that increased information and education will support increased compliance of the UTA by bodies corporate, body corporate managers and unit owners.

122. Currently, information and education about the unit titles sector is provided by MBIE's unit titles website. This website provides basic information on unit owner's responsibilities as well as information on the dispute resolution process. Some information on unit titles is also provided by MBIE's call centre staff, through MBIE's unit titles helpline. However, visits to the unit titles website and calls to the unit titles helpline are comparatively few compared to the residential tenancy website and helpline.

123. I propose a significant focus be placed on raising awareness of rights and responsibilities amongst unit titles stakeholders, including body corporate managers. This will support the sector to understand and comply with the law changes once the Bill is passed.

s 9(2)(f)(iv)

[redacted]

[5] s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Legislative Implications

132. Should these proposals proceed, amendments will be required to the UTA, the Regulations and the Fees Regulations. My officials will propose amendments in the departmental report to the Committee. If accepted, the proposed changes will be drafted into the Bill at the select committee stage.

133. A wide range of proposals made by submitters mean that my officials have not had an opportunity to consider them all for inclusion at the select committee stage. I may bring further proposals to Cabinet, for inclusion in a Supplementary Order Paper at the committee of the whole House stage.

134. I note that several regulations will need to be developed after the Bill is passed.

Regulatory Impact Statement

135. A Regulatory Impact Statement (RIS) has been completed and is attached in **Annex C**.

136. A Quality Assurance Panel from HUD reviewed the RIS. The Panel considers that the RIS partially meets the quality assurance criteria. It concludes that the assessment is complete, clear and convincing. The analysis of costs, benefits and other impacts is framed by assessment criteria based on the intended outcomes of the policy interventions. While there are some gaps in the evidence base and not all costs and benefits are quantified, the assumptions underpinning the qualitative assessments are stated and appear reasonable. On balance, based on the analysis presented, the preferred options and the approach to their delivery appear to be appropriate. While the document is comprehensive and clearly written, it is longer than comparable assessments and would benefit from a more concise approach to the issues, particularly those that are more minor in nature.

137. The policy proposals that are the subject of the RIS respond to stakeholder submissions to the Committee from affected parties and have also been the subject of consultation with other government agencies. The RIS outlines how the policy proposals have been informed by stakeholder submissions to the Committee from affected parties, while acknowledging the limitations on consultation, particularly in relation to the enforcement options, arising from the policy development process.

Climate Implications of Policy Assessment

138. 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

139. There are no population implications associated with the proposals in this paper.

Human Rights

140. The proposals in this paper are consistent with New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

141. The current application fees for the Tribunal are significantly higher than other tribunals, and may limit access to justice for some applicants. The proposals to reduce the application fees have a positive impact on human rights in supporting access to justice.

Consultation

142. The following agencies have been consulted on this Cabinet paper: Land Information New Zealand, MBIE (Housing and Tenancy; Building and Construction), Kāinga Ora-Homes and Communities, the Ministry of Justice, the Treasury and the Department of the Prime Minister and Cabinet. Parliamentary Counsel Office has also been consulted.

143. The public has had an opportunity to submit on the proposals in the Bill. Their submissions have informed the development of the proposals recommended in this paper.

144. The Bill does not include proposals in relation to enforcement, so the public has not had an opportunity to submit on those proposals. The enforcement proposals place a number of obligations on particular regulated parties and in limited cases, include new penalties. However, a number of submitters made submissions on enforcement matters, and those submissions have informed the development of the proposal in this paper.

Communications

145. As the Bill is currently before the Committee, I do not propose any publicity at this time. I will make a media release when the Committee reports the Bill back to Parliament.

Proactive Release

146. I intend to proactively release this Cabinet paper once the Committee has reported the Bill back to Parliament, with redactions in relation to the financial implications of the proposals. This means the release of the Cabinet paper is likely to be delayed beyond 30 business days.

Recommendations

The Associate Minister of Housing (Public Housing) recommends that the Committee:

1. **Note** that since 2015, there has been strong interest in reform from key stakeholders in the unit titles sector;

2. **Note** that the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill, a Member's Bill, is being considered by the Finance and Expenditure Committee;

3. **Agree** that the Government continue to support the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill through the Parliamentary process;

4. **Note** that the submissions on the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill have raised issues which impact on the proportionality and the effectiveness of the Bill;

5. **Note** the Business Committee agreed to an extension of the timeframe for reporting back the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill to Parliament, following my request to the Finance and Expenditure Committee;

Pre-purchase disclosure

6. **Agree** with the approach in the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill to provide greater information at the pre-contract disclosure stage;

7. **Agree** to amend the Unit Titles Act to require pre-contract disclosure and pre-settlement disclosure, but not additional disclosure;

8. **Agree** to amend the Unit Titles Act so that a buyer can cancel a contract where pre-contract disclosure is defective or incomplete, but not if:

    8.1. the disclosure is incomplete, but this was noted in the pre-contract disclosure statement;

    8.2. the matter that was not disclosed is not significant;

    8.3. the disclosure was defective or incomplete, but has already been corrected before the buyer gives notice to cancel the contract;

9. **Agree** that after the buyer has delayed settlement twice because of an incomplete pre-contract disclosure, the buyer must decide whether to cancel the contract or complete settlement;

Body corporate governance

10. **Agree** to remove the limits on how many proxies a person can hold;

11. **Agree** to amend the proxy form in the Unit Titles Regulations 2011 to allow a unit owner to specify how they wish their proxy to vote;

12. **Agree** to allow remote attendance at general meetings and body corporate committee meetings to occur as of right, removing the restrictions in the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill;

13. **Agree** to allow for electronic voting prior to a meeting, as well as postal voting;

14. **Agree** to include a regulation-making power in the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill to make regulations for the verification processes for remote attendance and electronic voting;

15. **Agree** that the Unit Titles Regulations 2011 are amended to allow non-natural entities that are nominated for election as a body corporate committee member to be represented by a director, or by an employee or class of employee authorised by a director;

16. **Agree** to consolidate the requirements for reporting on delegated powers in the existing regulations which applies to all body corporate committees;

17. **Agree** the Unit Titles Regulations 2011 are amended to clarify that information can be redacted from body corporate committee minutes because of legal privilege, commercial sensitivity and to comply with other statutory requirements, in addition to privacy;

Body corporate managers

18. **Agree** that the Bill should require medium and large developments to employ a body corporate manager, with the ability for both medium and large developments to opt out by special resolution;

19. **Agree** to remove the requirement for body corporate managers to be a member of an industry association which has a purpose of fostering professional development of body corporate managers from the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill;

20. **Agree** that a code of conduct for body corporate managers should be included in the Unit Titles Regulations 2011;

21. **Agree** that the code of conduct should contain requirements that are currently in the Bill, as well as aspects of the code of conduct for body corporate managers contained in Queensland's Body Corporate and Community Management Act 1997;

Long term maintenance plans and long term maintenance funds

22. **Agree** that Part 2A of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill should apply to all developments;

23. **Agree** that the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill should require medium and large developments to have a 30 year long term maintenance plan comprising detailed cost estimations for the first 10 years and a high level projection for the following 20 years;

24. **Agree** to remove the requirement for long term maintenance plans to be peer reviewed by a member of a specified association from the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill;

25. **Agree** to introduce a requirement for medium and large bodies corporate to consult with suitably qualified professionals when drafting a long term maintenance plan, and from then on when necessary;

26. **Agree** to remove the purpose for long term maintenance plans to identify defects from the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill;

27. **Agree** to retain the current approach under the Unit Titles Act 2010, which allows all bodies corporate to opt out of establishing a long term maintenance fund by special resolution;

28. **Agree** that it should be made clear that bodies corporate can decide on the level of funding contained in the long term maintenance fund and that it does not need to contain sufficient funds to pay for all of the items in the long term maintenance plan;

29. **Agree** that there should be a requirement for bodies corporate to specify how their long term maintenance plans will be funded;

Dispute resolution

30. **Agree** that the fee categorisation of unit title disputes into Category 1 (complex) and Category 2 (non-complex) be replaced by fees based on whether a proceeding initially goes to mediation or adjudication;

31. **Agree** that s 9(2)(f)(iv) Tenancy Tribunal fees for unit title disputes be reduced to $250 for mediation and $500 for adjudication with the fee paid by the applicant rather than being divided between the parties;

32. **Agree** that applicants who pay $250 for mediation should pay a ‘top up’ of an additional $250 if the proceeding then goes to adjudication;

33. **Agree** that the jurisdiction of the Tenancy Tribunal be increased so that it can hear unit titles claims of up to $100,000;

Strengthening the Chief Executive’s powers under the Unit Titles Act

34. **Note** that the Unit Titles Act 2010 provides the Chief Executive of the administering department with a limited ability to investigate alleged breaches

of the Unit Titles Act, but the powers are limited as they rely on the voluntary cooperation of parties;

35. **Agree** to allow the Chief Executive to exercise powers under the Unit Titles Act 2010 to investigate breaches of the Act, take enforcement action against these breaches and protect the interests of unit owners and bodies corporate;

36. **Agree** that the Chief Executive be given a new general function and power to monitor and assess compliance by bodies corporate and body corporate managers with the Unit Titles Act 2010;

37. **Agree** that bodies corporate and body corporate managers be required under the Unit Titles Act 2010 to retain specified documents;

38. **Agree** to include a regulation-making power in the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill which will set out the specified documents;

39. **Agree** that the Chief Executive be empowered under the Unit Titles Act 2010 to require production of these documents by written notice where they are reasonably required for the purposes of the Chief Executive's functions or powers under the Act, excluding documents (or parts of documents) that are legally privileged;

40. **Agree** that the Chief Executive, or a person they authorise, be empowered under the Unit Titles Act 2010 by 24 hours' written notice to enter a unit title development (but not a place of residence without the occupier's permission) and inspect, photograph and take samples from it;

41. **Agree** that the power of entry applies where the Chief Executive (or authorised person) has reasonable grounds to believe a breach of the Unit Titles Act 2010 has occurred and inspection is necessary to their functions or powers under the Act in relation to the breach;

42. **Agree** the Chief Executive be empowered under the Unit Titles Act 2010 to require all relevant information in the possession of a body corporate manager for the purposes of monitoring and reporting on a body corporate's long-term financial and maintenance planning regime;

43. **Agree** that the Chief Executive be empowered under the Unit Titles Act 2010 to issue improvement notices where they reasonably believe a breach of the UTA has or will occur, setting out the breach, a reasonable time for it to be remedied and, at their discretion, recommending how to comply;

44. **Agree** that the person subject to the improvement notice be given the right to object to the notice at the Tribunal;

45. **Agree** that the Chief Executive be empowered under the Unit Titles Act 2010 to apply to the High Court for the appointment of an administrator for a body corporate, its subsidiaries or parents;

46. **Agree** that the Chief Executive be empowered under the Unit Titles Act 2010 to initiate, assume conduct of, or defend unit title disputes on behalf of, or in place of any party;

47. **Agree** that the Chief Executive's power includes the ability to initiate a single case against a party where the alleged Unit Titles Act 2010 breach relates to multiple bodies corporate;

48. **Agree** that the Chief Executive's proposed powers with respect to initiating, assuming conduct of, and defending unit title proceedings may be used only if satisfied it is in the public interest to use them and:

    48.1. there are allegations of conduct that is likely to cause or has caused significant risk to the health and safety of any person

    48.2. there are serious or persistent breaches of the Unit Titles Act 2010

    48.3. the actions of a party or parties risk undermining public confidence in the administration of the Act, or

    48.4. there is any other ground that the Chief Executive considers appropriate;

49. **Agree** that the Chief Executive be empowered under the Unit Titles Act 2010 to apply to the Tribunal to impose pecuniary penalties in the situations set out in **Annex B**;

50. **Agree** that only one pecuniary penalty order may be made for the same conduct to avoid a person being punished more than once for the same conduct;

51. **Agree** that in deciding the appropriate penalty the Tribunal must have regard to all relevant matters including the nature and extent of the Unit Titles Act 2010 breach; any loss suffered due to the breach; any gains or losses by the body corporate or the body corporate manager and the circumstances of the breach;

s 9(2)(f)(iv) [redacted]

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

Next steps

56. **Agree** that officials prepare a departmental report for the Finance and Expenditure Committee based on these proposals in this paper;

57. **Note** that the Finance and Expenditure Committee will consider the departmental report and if it agrees with the recommendations, will instruct Parliamentary Counsel to draft amendments to the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill to give effect to those recommendations;

58. **Note** that the policy for the regulations for verification processes for remote attendance and electronic voting, and for the documents that may be required by the Chief Executive will be developed after the Bill is passed, and the Associate Minister of Housing (Public Housing) will seek policy decisions at that time;

59. **Authorise** the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising throughout the select committee process;

60. **Note** that the Associate Minister of Housing (Public Housing) may bring further policy decisions to Cabinet, if it is determined appropriate.

Authorised for lodgement

Hon Poto Williams

Associate Minister of Housing (Public Housing)

Annex A: Summary of proposed changes

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

The Unit Titles System

The Unit Titles Act 2010 (the UTA) provides a regulatory framework for the ownership and management of land, associated buildings, and facilities with communities of individual owners e.g. apartment buildings.

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill is a Member's Bill to reform the UTA.

History of the Bill

In 2016, sector leaders presented a Working Group's report on the issues with the UTA and possible solutions to the Government. In response, the previous Government undertook a review of the UTA, which included public consultation. Submitters were broadly supportive of the reform but had mixed views on how to achieve the reform's objectives. The previous Government took a suite of proposals to Cabinet in 2017.

The review was paused following the 2017 general election, to focus on the Government's other priority work. This Government made a pre-election commitment in 2020 to reform the UTA.

The Member's Bill in the name of Nicola Willis was drafted by sector leaders from the Working Group and was drawn from the ballot in 2020. The Government has decided to support the Member's Bill. The Member's Bill is before the Finance and Expenditure Committee.

Disclosure Regime

Disclosure provides prospective buyers with information about their future obligations and potential liabilities.

The Member's Bill

Broadens matters to be disclosed at the pre-contract stage. For example, sellers must disclose the body corporate's financial statements and minutes of general meetings.

Consolidates the pre-contract and pre-settlement statements into one statement pre-contract.

Includes bespoke disclosure for off-the-plan sales.

Retains the ability to seek additional disclosure.

Allows a buyer to delay a settlement or cancel a contract where disclosure is incomplete.

Changes I propose

Improve the list of documents for disclosure at the pre-contract stage. For example, disclosing any significant defects in the unit title development that may require remediation.

Provide for a pre-contract disclosure and pre-settlement disclosure. The pre-settlement statement allows information to be updated since the contract stage and facilitates the settlement process.

Remove the ability to seek additional disclosure, as the relevant information will be disclosed in the pre-contract disclosure.

Body Corporate Governance

Good governance allows for good decision-making, transparency and accountability

The Member's Bill

Includes additional responsibilities for body corporate committees, including a code of conduct, a requirement to declare conflicts of interest, and requirements to provide minutes and other information to unit owners.

Includes new rules for body corporate meetings and voting, including: limits to proxy voting, and providing for remote attendance of meetings, subject to certain rules.

Includes new rules for electing chairpersons or committee members.

Changes I propose

Remove the limits to proxy voting. Clarify the proxy voting form.

Simplify the ability to have remote attendance of meetings, based on the temporary provisions in the UTA for remote attendance (which were added in response to COVID-19). Include rules around remote attendance to be developed in regulations.

Body Corporate Managers

The Bill aims to increase the professionalism and standards of body corporate managers.

The Member's Bill

Provides a definition of body corporate manager and sets out their functions and duties.

Requires medium (10-29 units) and large (30 or more units) developments to employ a body corporate manager (medium developments can opt out by special resolution).

Requires body corporate managers to be a member of an industry association which has a purpose of fostering professional development of body corporate managers.

Require body corporate managers to abide by the industry association's code of conduct (if any).

Changes I propose

Enable **both** medium and large developments to opt out of employing a body corporate manager by special resolution. This allows bodies corporate flexibility in how to manage the unit title development.

Remove the requirement for body corporate managers to be a member of an industry association which has a purpose of fostering professional development of body corporate managers.

Include a code of conduct in the Regulations, combining existing aspects of the Member's Bill with Queensland's code of conduct for body corporate managers.

Long-Term Maintenance Plans and Funds

LTM plans identify future maintenance requirements and estimate cost.

The Member's Bill

Requires the bodies corporate of medium and large developments to have a long-term maintenance (LTM) plan that covers at least 30 years. They must also have a LTM fund.

Requires the bodies corporate of medium and large developments to review their LTM plan every three years (with the ability for medium developments to opt out by special resolution).

Requires the LTM plan of medium and large developments to be reviewed by a member of a specified organisation at each review.

Inserts an additional purpose for LTM plans to identify defects.

Changes I propose

Specify the level of detail for LTM plans; require detailed cost estimations for the first 10 years and a high level of projection for the following years.

Enable the bodies corporate of medium and large developments to opt out of having an LTM fund by special resolution. Those that choose to opt out should review their decision annually.

Remove the requirement for the LTM plan to be reviewed by a member of a specified organisation and instead requires bodies corporate to consult with suitably qualified professionals when drafting a LTM plan, and from then on when necessary. Also remove the requirement for LTM plans to identify defects.

Require bodies corporate to specify how their LTM plans will be funded.

Dispute Resolution

Unit titles disputes are heard by the Tenancy Tribunal.

The Member's Bill

Reduces the application fee for claims in the Tenancy Tribunal. Fee classification is based on whether the claim is Category 1 (complex) or Category 2 (non-complex), and whether mediation or adjudication is sought.

Total fees range from $400 to $1,100.

Changes I propose

Remove the Category 1 and Category 2 fee classification and replace this with a fee classification based on whether the proceedings are initially referred to mediation or adjudication.

Based on this new classification, reduce application fees to $250 for a mediation and $500 for an adjudication s 9(2)(f)(iv)

Increase the jurisdiction of the Tribunal so it can hear claims of up to $100,000 (the current threshold is $50,000).

Enforcement

Incentivising UTA compliance and protecting the interests of unit owners.

The Member's Bill

Does not include any provisions to broaden the regulator's powers in the UTA.

The UTA gives the regulator a general function to investigate an alleged breach of the UTA, but does not give sufficient powers to support this function.

Changes I will propose to Cabinet

Clarify powers to request information from body corporate or body corporate manager as well as powers of entry.

Regulator can issue improvement notices to body corporate to comply with the UTA.

Regulator able to apply to High Court to appoint an administrator of the body corporate.

Give regulator ability to take or defend proceedings on behalf of another party.

Tenancy Tribunal able to impose civil penalties in certain situations.

Information & Education

Educating stakeholders on their rights and responsibilities will enable them to voluntarily comply with the UTA.

s 9(2)(f)(iv)

Next steps

Subject to Cabinet approval, the Ministry of Housing and Urban Development will include the proposals in a Departmental Report to the Committee.

Subject to Committee agreement to the proposals, Parliamentary Counsel will draft amendments to the Bill.

s 9(2)(f)(iv)

Issues not addressing in this Bill

Submitters raised a broad range of matters in relation to the UTA or high-density living in general:

- Support and processes for buildings undertaking earthquake strengthening.
- Structuring the legislation so that developments with different levels of complexity or use have different requirements in regulations.
- Providing for tenants to have a role in body corporate decision-making.
- Reviewing the default operational rules for a body corporate.

Annex B: Table of proposed pecuniary penalties

That the body corporate or body corporate manager has intentionally and without reasonable excuse…	Maximum civil penalty awardable against:	
	Bodies corporate	Body corporate managers
A body corporate manager has breached their duty under the UTA to: a) disclose a conflict of interest to the body corporate; or b) if engaged as a body corporate manager by more than one body corporate, to • act independently in relation to each body corporate • independently satisfy all matters for which the body corporate manager is responsible in relation to each body corporate or • not intermix the funds, records, or any other things of any of the bodies corporate with one or more of the other bodies corporate, and that action has materially negatively impacted on individual unit owners or the body corporate as whole	N/A	$5,000
Fails to comply with the Chief Executive's request for information under the UTA	$1,500	$1,500
Obstructs or hinders the Chief Executive or a person they authorise, in exercising their power of entry to a unit title development	$3,000	$3,000
Fails to comply with an improvement notice	$3,000	$3,000

Annex C: Regulatory impact statement