



Cabinet Economic Development Committee

Minute of Decision

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

Portfolio Housing

On 11 August 2021, the Cabinet Economic Development Committee:

Background

- 1 **noted** that since 2015, there has been strong interest in reform from key stakeholders in the unit titles sector;
- 2 **noted** 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 **agreed** that the government continue to support the Bill through the Parliamentary process;
- 4 **noted** that the submissions on the Bill have raised issues which impact on the proportionality and the effectiveness of the Bill;
- 5 **noted** that the Business Committee has agreed to an extension of the timeframe for reporting back the Bill to Parliament, following the Associate Minister of Housing's request to the Finance and Expenditure Committee;

Pre-purchase disclosure

- 6 **agreed** with the approach in the Bill to provide greater information at the pre-contract disclosure stage;
- 7 **agreed** to amend the Unit Titles Act 2010 (the Act) to require pre-contract disclosure and pre-settlement disclosure, but not additional disclosure;
- 8 **agreed** to amend the 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 **agreed** 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 **agreed** to remove the limits on how many proxies a person can hold;
- 11 **agreed** 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 **agreed** to allow remote attendance at general meetings and body corporate committee meetings to occur as of right, removing the restrictions in the Bill;
- 13 **agreed** to allow for electronic voting prior to a meeting, as well as postal voting;
- 14 **agreed** to include a regulation-making power in the Bill to make regulations for the verification processes for remote attendance and electronic voting;
- 15 **agreed** that the Unit Titles Regulations 2011 be 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 **agreed** to consolidate the requirements for reporting on delegated powers in the existing regulations, which apply to all body corporate committees;
- 17 **agreed** that the Unit Titles Regulations 2011 be 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 **agreed** 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 **agreed** to remove from the Bill the requirement for body corporate managers to be a member of an industry association that has a purpose of fostering professional development of body corporate managers;
- 20 **agreed** that a code of conduct for body corporate managers be included in the Unit Titles Regulations 2011;
- 21 **agreed** 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 **agreed** that Part 2A of the Bill should apply to all developments;
- 23 **agreed** that the 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 **agreed** to remove from the Bill the requirement for long-term maintenance plans to be peer reviewed by a member of a specified association;

- 25 **agreed** 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 **agreed** to remove from the Bill the purpose for long-term maintenance plans to identify defects;
- 27 **agreed** to retain the current approach under the Act, which allows all bodies corporate to opt out of establishing a long-term maintenance fund by special resolution;
- 28 **agreed** 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 **agreed** that there should be a requirement for bodies corporate to specify how their long-term maintenance plans will be funded;

Dispute resolution

- 30 **agreed** 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 **agreed** that, **§ 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 **agreed** that applicants who pay \$250 for mediation should pay a 'top up' of an additional \$250 if the proceeding then goes to adjudication;
- 33 **agreed** 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 **noted** that the Act provides the Chief Executive of the administering department with a limited ability to investigate alleged breaches of the Act, but that the powers are limited as they rely on the voluntary cooperation of parties;
- 35 **agreed** to allow the Chief Executive to exercise powers under the Act to investigate breaches of the Act, take enforcement action against these breaches, and protect the interests of unit owners and bodies corporate;
- 36 **agreed** 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 Act;
- 37 **agreed** that bodies corporate and body corporate managers be required under the Act to retain specified documents;
- 38 **agreed** to include a regulation-making power in the Bill that will set out the specified documents;

- 39 **agreed** that the Chief Executive be empowered under the Act 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 **agreed** that the Chief Executive, or a person they authorise, be empowered under the Act 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 **agreed** that the power of entry applies where the Chief Executive (or authorised person) has reasonable grounds to believe a breach of the Act has occurred and inspection is necessary to their functions or powers under the Act in relation to the breach;
- 42 **agreed** that the Chief Executive be empowered under the Act to request 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 **agreed** that the Chief Executive be empowered under the Act to issue improvement notices where they reasonably believe a breach of the Act 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 **agreed** that the person subject to the improvement notice be given the right to object to the notice at the Tribunal;
- 45 **agreed** that the Chief Executive be empowered under the Act to apply to the High Court for the appointment of an administrator for a body corporate, its subsidiaries or parents;
- 46 **agreed** that the Chief Executive be empowered under the Act to initiate, assume conduct of, or defend unit title disputes on behalf of, or in place of any party;
- 47 **agreed** that the Chief Executive's power includes the ability to initiate a single case against a party where the alleged breach of the Act relates to multiple bodies corporate;
- 48 **agreed** 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 Act;
 - 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 **agreed** that the Chief Executive be empowered under the Act to apply to the Tribunal to impose pecuniary penalties in the situations set out in Annex B to the paper under DEV-21-SUB-0172;
- 50 **agreed** 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 **agreed** that in deciding the appropriate penalty, the Tribunal must have regard to all relevant matters, including:


51.1 the nature and extent of the breach of the Act;

51.2 any loss suffered due to the breach;

51.3 any gains or losses by the body corporate or the body corporate manager;

51.4 the circumstances of the breach;

s 9(2)(f)(iv)



Next steps

56 **agreed** that officials prepare a departmental report for the Finance and Expenditure Committee based on the above proposals;

57 **noted** 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 Bill to give effect to those recommendations;

- 58 **noted** 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 that the Associate Minister of Housing (Public Housing) will seek policy decisions at that time;
- 59 **authorised** the Associate Minister of Housing (Public Housing) to make minor policy decisions on issues arising throughout the select committee process;
- 60 **noted** that the Associate Minister of Housing (Public Housing) may bring further policy decisions to Cabinet, if it is determined appropriate.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene MP
Dr Deborah Russell MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV
Ministry of Business, Innovation and Employment
Ministry of Housing and Urban Development