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

Member's Bill

Explanatory note

General policy statement

As our cities become larger and people seek to reduce commuting distances to city centres, and the make-up of family groups (and their housing needs) change, town-houses, apartments, and other high-density property arrangements are an increasingly significant part of the mix of housing options for New Zealanders.

The law relating to high-density housing, the Unit Titles Act 2010, therefore requires on-going scrutiny to ensure that it is adequate for its purpose and effective in dealing with the change in circumstances of its use, including to ensure it provides sufficient protection for people buying or already living in a unit title complex.

This Bill is a response to a recent examination of that Act, discussions with professionals from the property sector, and a paper released during the period when the Hon Dr Nick Smith was the Minister for Building and Construction. The Bill includes amendments to—

- improve the information disclosure regime to prospective buyers of units; and
- strengthen the governance arrangements in relation to the body corporate, the (owner) entity responsible for the management and operation of a unit title complex; and
- increase the professionalism and standards of body corporate managers; and
- ensure that planning and funding of long-term maintenance projects is adequate and proportionate to the size of the complex concerned.

The proposals in the Bill aim to strike a balance between the benefits of additional compliance requirements and any costs that these may impose. Prospective home-owners need to consider apartments and other high-density living arrangements as a viable and attractive living alternative to other more traditional forms of property

ownership. Likewise, sector professionals need to have clear rules as to their obligations, which nevertheless allow for flexibility and creativity in their building, operating, and maintenance procedures.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The commencement of the Bill is delayed (but with a backstop mandatory commencement of 2 years after Royal assent) so that sufficient time is given for the sector generally and, in particular, currently operating body corporates, to inform themselves about the changes and be prepared for when the legislation does commence.

Part 1 — Amendments to Unit Titles Act 2010

Clause 3 states that Part 1 of the Bill amends the Unit Titles Act 2010.

Clause 4 amends section 5 of the Act to insert a new signal-post definition for the term "body corporate manager". The substantive definition is found at *new section 114G* and is particularly relevant for the purposes of *new sections 114H, 114I, and 157B* (see *clauses 15 and 20)*.

Clause 5 amends section 39 of the Act, which relates to the assigning of utility interests to each principal unit. The amendment allows for apportioning of utility interests so that costs of particular utilities can be more fairly divided, based on use. For example, if there is a lift installed in a unit development, the interests amongst all the units could be apportioned in a way that results in those on the upper floors being responsible for a larger share of the operating costs than those on the ground floor.

Clauses 6 and 7 amend sections 79(e) and 80(1)(i) of the Act to provide context to the phrase "materially affect" used in both those provisions. The amendments reflect the amendment made to section 65(1) of the Act by section 27 of the Regulatory Systems (Building and Housing) Amendment Act 2017 (2017 No 11).

Clause 8 amends section 95 of the Act to clarify the quorum requirements for a general meeting of the body corporate.

Clause 9 amends section 101 of the Act to clarify how matters at meetings of a body corporate are to be decided. The default position is that a matter is decided by way of ordinary resolution unless the Act provides specifically for a matter to be decided by special resolution or the body corporate has delegated the matter to its body corporate committee to decide.

Clause 10 amends section 102 of the Act, which relates to proxy voting. The amendment inserts limitations on the number of proxy votes any one proxy may hold.

Clause 11 inserts *new section 104A* into the Act. This section authorises members of a body corporate to attend meetings and vote at those meetings using some form of remote access facility, for example, a telephone or audiovisual link. Preconditions, set

out in the section, must be satisfied before a meeting can be held in this manner, including compliance with the relevant regulations.

Clause 12 amends section 112 of the Act, which relates to the establishment of body corporate committees. A *new subsection (3)* is added to better signal the relationship between this provision and the requirements in the regulations (which also have specific requirements relating to the establishing of a body corporate committee).

Clause 13 inserts *new section 112A* into the Act. The section provides for the chairperson of a body corporate to also be the chairperson of the body corporate committee, if any, for the body corporate. This is a default position and applies unless the body corporate decides that the chairperson should be another person elected by the committee.

Clause 14 replaces section 113 of the Act, which relates to decision-making of body corporate committees. The Act authorises a body corporate to set up a body corporate committee to perform its functions and exercise its duties by way of delegated authority (subject to certain limitations and restrictions). *Replacement section 113* expands on the meeting procedure requirements for these body corporate committees.

Clause 15 inserts *new sections 114A to 114I*. *New sections 114A to 114F* introduce accountability requirements to body corporate committees and their members. *New section 114A* requires members of body corporate committees to comply with the code of conduct prescribed in the regulations (*see clause 35, new regulation 28A*). The code is modelled on that contained in Queensland's Body Corporate and Community Management Act 1997. *New sections 114B to 114F* set out what and how conflicts of interest of members of a body corporate committee are to be dealt with. Currently the Act is silent on this matter. The provisions are based on corporate governance principles and provisions in other New Zealand legislation, including the Companies Act 1993 and the Crown Entities Act 2004. The provisions confer a duty on a member to disclose any conflict of interest to the committee who then is prohibited from voting on any decision that relates to the matter in which the member is interested. *New section 114C* sets out the test for determining whether a member has an interest in a matter (a defined term, for this and the other provisions relating to conflicts of interests). *New section 114F* requires a body corporate to keep a register of disclosures of interests made by members. The register is required to be available for inspection by all committee members and, depending on its operational rules, other members of the body corporate.

New sections 114H and 114I introduce provisions into the Act in relation to body corporate managers (as defined in *new section 114G*). *New section 114H* sets out matters relating to the functions and duties of a manager (who may be the owner of a principal unit). *New section 114I* requires a body corporate manager to act in the best interests of the body corporate and, without limiting the generality of that statement, provides specific requirements as to how a manager must fulfil that duty (for example, by acting in good faith, complying with all relevant legal requirements, and disclosing conflicts of interest). The provision also sets out, to avoid any doubt about the matter, that if a manager is engaged to manage the affairs of more than one body corporate,

the manager must act independently in each case and not mingle funds, property, or any other thing between the body corporates for which the manager is responsible.

Clause 16 amends section 116 of the Act, which relates to the long-term maintenance plan for a body corporate. *New paragraph (aaa)* is inserted and requires the plan to also identify any defects in or repairs required to the unit title development and an estimate of the costs involved in rectifying the situation.

Clause 17 amends section 139 of the Act, which relates to service contracts entered into by an owner before the date that the control period ends (as defined in section 6 of the Act, being, effectively, the period of time during which the original owner of the development retains control of the development). The amendment adds extra safeguards in relation to any service contracts that the owner may enter so as not to unfairly burden or disadvantage the body corporate members once control (and benefit or responsibility, or both) passes from the original owner.

Clause 18 replaces sections 146 to 149 of the Act with a simpler regime. The provisions relate to information required to be disclosed by a seller of a unit to a prospective buyer. *New section 146* requires the information to be disclosed to a buyer to be endorsed by the body corporate as being correct (*see new section 148*). The seller is responsible for providing the information to the buyer and discussing any issues arising from it, however, this does not prevent a body corporate manager from preparing such a statement.

New section 147 provides for an additional disclosure statement to be made to a buyer, if requested.

New section 149 provides a right to a buyer to delay settlement if a seller provides disclosure information later than permitted; if the information is incomplete and not substituted within the permitted timeframe; or if the information is simply not provided at all.

Clause 19 amends section 151, that relates to the cancellation of an agreement for defects in disclosure.

Clause 20 inserts *new Part 2A* into the Act. This Part sets out special provisions relating to two particular types of unit title developments characterised by the number of residential units that are contained within the entire complex. These are developments that—

- include no fewer than 30 principal units that are primarily used as residences (defined in *new section 157A(3)* as large residential developments); or
- include no fewer than 10 but no greater than 29 principal units that are primarily used as residences (defined in *new section 157A(3)* as medium residential developments).

The Part imposes particular obligations on these types of developments, although, in most cases, medium residential developments may opt out of complying with the obligations if the body corporate so decides (by special resolution). The obligations conferred by *new Part 2A* include the following:

- employing or engaging one or more body corporate managers (*new section 157B*):
- complying with additional reporting requirements by the body corporate committee (*new section 157C*):
- complying with additional reporting and planning requirements in relation to the long-term maintenance plan for the development (*see new section 157D*):
- mandatory establishment and auditing of a long-term maintenance fund (*see new sections 157E and 157F*):

Clause 21 amends section 171 of the Act to insert a reference to body corporate managers in subsection (2). The significance of this being the Tenancy Tribunal has jurisdiction to hear and determine all disputes arising between any of the persons falling within the categories listed in subsection (2). This includes, for example, owners and former owners of principal units, body corporates, and prospective buyers.

Clause 22 amends section 217 of the Act, the provision of the Act that confers regulation-making powers on the Governor-General for the purposes of the Act. The clause adds two further powers:

- the power to prescribe professional or expert bodies that may certify matters relating to long-term maintenance plans required under *new Part 2A*; and
- the power to specify matters associated with the functions and duties that a body corporate manager may perform or exercise, including any terms that must be included in a manager's terms of engagement.

The clause also amends the regulation-making powers in paragraphs (f) and (h) (in relation to the use of remote access facilities at meetings) and paragraph (n) to clarify that fees and charges may be imposed in relation to the settling of disputes (for example, mediation or arbitration fees).

Clause 23 inserts *new Part 2* into Schedule 1AA, which contains transitional, savings, and other related provisions for the Act. *New Part 2* inserts a savings provision in relation to service contracts already in force before the commencement of this Bill (as an Act) to the effect that the amendments do not apply to those contracts. The section is for the avoidance of doubt.

Part 2 — Amendments related to Part 1

Part 2 of the Bill (*clauses 24 to 40*) makes consequential amendments to the Unit Titles Act 2010 and related and consequential amendments to regulations made under that Act.

These include the following amendments to the Unit Titles Regulations 2001:

- authorising self-nomination for a chairperson of a body corporate during the control period and at any time that all the principal units in the unit title development are owned by the candidate (*clause 30*):

- requiring candidates for election to a body corporate committee to have no outstanding amounts owing to the body corporate at the time of nomination (*clause 31(3)*):
- authorising self-nomination for a candidate for election as a body corporate committee member (*clause 31(4)*):
- inserting a code of conduct for body corporate committee members into the Unit Titles Regulations 2011 (*clause 35, new regulation 28A*):
- setting out the new information required in a pre-contract disclosure statement (*clause 37, replacement regulation 33*).

And the following amendment to the Unit Titles (Unit Titles Disputes—Fees) Regulations 2011:

- adjusting the fees payable for filing an application about a dispute with the Tenancy Tribunal (*clause 40*).

Hon Judith Collins

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

(1) This Act comes into force—

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

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

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

Part 1
Amendments to Unit Titles Act 2010

3 Principal Act

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

4 Section 5 amended (Interpretation)

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

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

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

After section 39(2A), insert:

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

(a) a single uniform interest; or

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

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

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

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

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

8 Section 95 amended (Quorum)

(1) Replace section 95(1) with:

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

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

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

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

(2) After subsection (2), insert:

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

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

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

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

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

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

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

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

10 Section 102 amended (Voting: proxies)

After section 102(4), insert:

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

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

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

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

After section 104, insert:

104A Attending meetings and voting by remote access

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

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

(b) the chairperson considers that—

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

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

(c) the necessary facilities are available.

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

12 Section 112 amended (Establishment of body corporate committee)

After section 112(2), insert:

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

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

After section 112, insert:

112A Chairperson of body corporate committee

(1) The chairperson of a body corporate is—

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

(b) the chairperson of the body corporate committee.

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

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

Replace section 113 with:

113 Decision-making of body corporate committee

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

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

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

15 New sections 114A to 114I inserted

After section 114, insert:

114A Body corporate committee to comply with code of conduct

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

114B Conflicts of interest of members of body corporate committee

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

114C Duty to disclose conflicts of interest

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

(a) to the committee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114D Consequences of being interested in matter

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

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

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

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

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

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

114E Consequences of failure to disclose interest

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

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

114F Interests register

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

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

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

Body corporate managers

114G Definition of body corporate manager

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

(2) The services are:

(a) record-keeping and other administrative services:

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

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

114H Functions and duties of body corporate manager

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

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

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

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

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

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

114I Body corporate manager must act in interests of body corporate

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

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

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

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

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

(d) as soon as practicable after becoming aware of any conflict of interest, disclose it to the body corporate committee or, if there is no committee,

to the body corporate chairperson, and the committee or the chairperson (as the case may be) must decide whether, and on what terms, the manager may continue to act in the matter concerned.

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

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

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

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

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

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

(b) with any other necessary modifications.

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

(6) The register must be available for inspection—

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

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

16 Section 116 amended (Long-term maintenance plan)

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

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

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

After section 139(2), insert:

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

(a) a term providing for the contract to be varied by the body corporate after the control period ends (by negotiation with the contractor and including a right for either party to cancel, without penalty, if agreement cannot be reached); and

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

18 Sections 146 to 149 replaced

Replace sections 146 to 149 with:

146 Pre-contract disclosure statement to buyer

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

(2) The disclosure statement must—

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

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

(3) The seller—

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

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

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

147 Additional disclosure statement to buyer

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

(2) The additional disclosure statement must—

(a) be in the prescribed form; and

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

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

(3) The seller—

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

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

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

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

148 Body corporate or original owner must endorse disclosure statements

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

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

(a) the chairperson of the body corporate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Section 151 replaced (Cancellation by buyer)

Replace section 151 with:

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

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

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

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

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

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

(a) the buyer must give the seller notice in writing that they intend to cancel the agreement; and

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

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

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

(5) If **subsection (1)(b)** applies, and the seller has fully complied with their obligations at the conclusion of the period provided by **subsection (2)(b)**, the

buyer may not cancel the agreement for sale and purchase in accordance with this section.

20 New Part 2A inserted

After Part 2, insert:

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

157A Application of Part

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

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

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

(4) In this Part,—

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

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

157B Employment or engagement of body corporate manager or managers

(1) The body corporate of a large residential development must employ or engage 1 or more body corporate managers.

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

157C Additional reporting requirements regarding delegations

(1) This section applies to—

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

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

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

(3) A report must include the following information:

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

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

157D Additional requirements regarding long-term maintenance plans

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

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

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

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

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

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

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

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

(a) the New Zealand Institute of Building Surveyors:

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

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

(d) any other body prescribed in the regulations.

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

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

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

157E Mandatory long-term maintenance funds

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

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

157F Mandatory auditing of long-term maintenance funds

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

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

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

21 Section 171 amended (Jurisdiction of Tenancy Tribunal)

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

(da) a body corporate manager:

22 Section 217 amended (Regulations)

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

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

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

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

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

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

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

23 Schedule 1AA amended

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

Part 2
Amendments related to Part 1

Subpart 1—Consequential amendments to Unit Titles Act 2010

24 Amendments to Unit Titles Act 2010

This subpart consequentially amends the Unit Titles Act 2010.

25 Section 4 amended (Overview)

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

Special provisions for certain medium and large unit title developments

(fa) **Part 2A** applies to particular types of unit title developments, characterised by the number of residential units that are contained within the entire complex. The Part imposes extra or more specific obligations, or both, on these types of developments over and above the general obligations in the rest of the Act and the regulations, although, in most cases, developments that include no fewer than 10 but no more than 29 residential units may opt out of the requirements if its body corporate decides to do so.

26 Section 5 amended (Interpretation)

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

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

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

28 Section 152 replaced (Further requirements concerning disclosure statements)

Replace section 152 with:

152 Further requirements concerning disclosure statements

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

Subpart 2—Amendments to Unit Titles Regulations 2011

29 Amendments to Unit Titles Regulations 2011

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

30 Regulation 10 amended (Election of chairperson)

After regulation 10(2), insert:

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

(a) during the control period; and

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

31 Regulation 24 amended (Election of body corporate committee)

(1) In regulation 24(1)(a),—

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

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

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

(3) Replace regulation 24(3)with:

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

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

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

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

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

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

(b) nominate themself.

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

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

32 Regulation 26 amended (Body corporate committee chairperson)

Before regulation 26(1), insert:

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

33 Regulation 27 amended (Body corporate committee business)

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

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

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

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

(b) the necessary facilities are available.

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

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

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

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

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

(4) Repeal regulation 27(4).

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

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

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

34 Regulation 28 amended (Body corporate committee reports)

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

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

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

35 New heading and regulations 28A to 28C inserted

After regulation 28, insert:

28A Body corporate committee code of conduct

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

Body corporate managers

28B Body corporate manager must be member of industry organisation

(1) A body corporate manager must—

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

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

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

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

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

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

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

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

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

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

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

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

36 Regulation 30 amended (Long-term maintenance plans)

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

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

37 Regulations 33 to 35 replaced

Replace regulations 33 to 35 with:

33 Disclosure statement

(1) The following information is prescribed for **section 146(2)(a)** of the Act (which requires a pre-contract disclosure statement to contain prescribed information):

(a) whether any part of the unit development has—

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

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

(iii) earthquake-prone issues:

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

(c) financial statements and audit reports for the previous 7 years or (as the case may be) audit reports for those of the previous 7 years for which an audit was carried out and a statement of the years in that time period for which no audit was carried out:

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

(i) including all supporting documentation; but

(ii) excluding any "in committee" items if privacy or other issues require that the items be redacted:

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

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

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

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

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

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

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

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

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

(iii) any specific exclusions from cover; and

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

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

(a) a summary of the financial budget for the unit title development:

(b) the proposed ownership interest for the unit:

(c) the proposed utility interest for the unit:

(d) the body corporate operational rules that will first apply:

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

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

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

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

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

38 New Schedule 1A inserted

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

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

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

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

40 Regulation 5 replaced

Replace regulation 5 with:

5 Fees

(1) The fee payable for filing an application with the Tenancy Tribunal under section 86 of the 1986 Act in relation to a unit title dispute is $100.

(2) The following fees are also payable:

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

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

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

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

(i) $1,000 for category 1 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee); and

(ii) $600 for category 2 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee).

(3) To avoid doubt, a fee is payable under both clause (2)(a) and (2)(b) for a dispute that, in the course of resolution, is referred to both a Tenancy Mediator and for adjudication before the Tenancy Tribunal.

Schedule 1
New Part 2 inserted in Schedule 1AA of Unit Titles Act 2010

s 23

Part 2
Provisions relating to Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill

1 Definitions

In this Part,—

2020 Act means the **Unit Titles (Strengthening Body Corporate Governance and Other Matters) Act 2020**

principal Act means the Unit Titles Act 2010.

2 Savings provision for existing service contracts

(1) This clause applies to a service contract entered into before the commencement of **section 17** of the **2020 Act** (which relates to section 139 of the principal Act).

(2) The amendments made to section 139 of the principal Act by **section 17** of the **2020 Act** do not apply to any service contract entered into before the commencement of **section 17**.

(3) This section is to avoid doubt.

Schedule 2
New Schedule 1A inserted in Unit Title Regulations 2011

s 38

Schedule 1A
Code of conduct for body corporate committee members

r 28A

1 Commitment to acquiring understanding of Act, including this code

A member must have a commitment to acquiring an understanding of so much of this Act and the regulations, including this code of conduct, as is relevant to the member's role on the committee.

2 Honesty, fairness, and confidentiality

(1) A member must act honestly and fairly in performing the member's duties as a committee member.

(2) A member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a unit, unless authorised or required to do so by law.

3 Acting in body corporate's best interests.

A member must act in the best interests of the body corporate in performing the member's duties as a committee member, unless it is unlawful to do so.

4 Complying with Act and this code

A member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member's duties as a committee member.

6 Conflict of interest

A committee member who is eligible to vote must disclose to the committee any conflict of interest the member may have in a matter before the committee.

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