Regulatory Impact Statement: Unit Titles Act 2010- Policy proposals to be included in a Supplementary Order Paper

Coversheet

Purpose of Document	
Decision sought:	Approval for a legislative change to the Unit Titles Act 2010 that clarifies how costs can be awarded in the Tenancy Tribunal.
Advising agencies:	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
Proposing Ministers:	Hon Poto Williams Associate Minister of Housing (Public Housing)
Date finalised:	8 December 2021

Problem Definition

As the Unit Titles Act 2010 (the UTA) has been interpreted by the courts, bodies corporate pursuing levy recovery processes are entitled to seek to recover from the unit owner the entirety of any legal costs incurred as part of the claim. This is out of step with how the Tenancy Tribunal treats other claims, and how legal costs are treated in other courts. We propose making an amendment to the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (the Bill), which is a Member's Bill, to address this issue.

Executive Summary

Why Government intervention is required

The Tenancy Tribunal (the Tribunal) has jurisdiction to hear most unit titles disputes. One of the key benefits of tribunals is that they keep costs low for parties, in part because legal representation is not typically required. However, sometimes parties at the Tribunal can be represented by legal counsel, and the Tribunal does have the power to award costs as part of their ruling.

As a general rule, if awarding legal costs as part of a decision, the Tenancy Tribunal will scale these costs (typically awarding between 40 percent and 70 percent of actual costs incurred).[1] However, an anomaly has arisen in respect of levy recovery processes, allowing bodies corporate to recover the entirety of any legal costs incurred, which is undermining the low-cost nature of the tribunal system. Without Government intervention, this anomaly would continue.

[1] Body Corporate 346799 v Ikeda [2020] NZDC 3669

The proposal in this RIS

This RIS analyses three options: the status quo; amending section 171 to introduce a scale costs regime for unit title disputes at the Tribunal; and amending section 124 to restrict the legal costs that can be awarded for unit title disputes at the Tribunal.

The preferred approach is to introduce a regulation-making power into section 171 of the UTA, allowing a scale costs regime to be developed for unit title disputes at the Tribunal. The scale costs regime would be similar to that currently used in the District Court and the High Court.

Potential impact of the preferred option

The preferred option will bring benefits for unit owners, by improving certainty over what costs may be imposed, reducing the likelihood of excessive legal costs being passed on, and potentially reducing the level of legal costs incurred overall. It will also bring benefits for the wider Justice sector, by improving consistency both across the Tribunal's approach to different disputes, and between processes in the Tribunal and those in higher courts.

The preferred option may have some costs for bodies corporate, who would no longer be able to recover the full costs of legal representation used in Tribunal processes; and potentially for the law firms representing body corporates, who may have reduced demand for their services. It may also have some minor implementation costs for Government.

Views of stakeholders

The issue of costs for levy recovery did not form part of the Bill as released for consultation, but was raised by a submitter who is a Tribunal adjudicator, and who considered that a scale costs regime should be introduced. Officials have subsequently confirmed the points raised in the submission with the Tenancy Tribunal.

Limitations and Constraints on Analysis

Timeframes

The Bill is currently before Parliament's Finance and Expenditure Committee, and this issue has been raised in the submissions process. Consequently the main constraint for consideration of policy options has been the timeframes the proposals have been developed within. As the Bill is before the Committee, there is a time limit by which the Bill must be reported back to Parliament. This has limited the time for developing options, gathering and assessing new evidence, and undertaking the impact analysis.

Data and evidence

Data and evidence in relation to costs awards have been drawn from the submissions on the Bill and other anecdotal evidence from stakeholders. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) has also included some data about the unit title applications at the Tribunal. HUD has had a limited ability to draw on further data sources in the time available, including gathering evidence to quantify the anticipated costs of some options.

Limitations on consultation

The Bill was developed by a working group that included some members of the unit titles sector. As it was not a Government bill, there was no public consultation on the provisions before the Bill was introduced. However, stakeholders and the public have had an

opportunity to submit to the Committee on the proposals in the Bill. Their submissions have informed the development of the proposal recommended in this RIS.

The Bill does not include any proposals around legal cost awards, so the public has not had an opportunity to submit on the options considered in this RIS. However, the matter was raised by a submitter, and officials have subsequently discussed the matter with the Deputy Principal Tenancy Adjudicator. In the event that the preferred option is adopted, consultation with key stakeholders would take place on the regulations that would be required to establish scale costs.

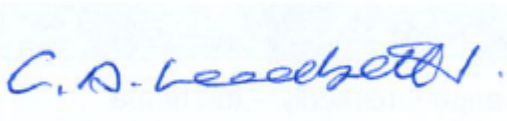
Responsible Manager (completed by relevant manager)

Claire Leadbetter

Manager

Tenures and Housing Quality

Ministry of Housing and Urban Development



8 December 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for Housing and Urban Development
Panel Assessment & Comment:	A Quality Assurance Panel from the Ministry for Housing and Urban Development reviewed the RIA. The Panel considers that the RIA partially meets the quality assurance criteria. It has concluded that the assessment is complete, clear, concise and convincing. The assessment acknowledges that all affected parties have not been consulted on the proposed options as the issue they address was raised in a submission to the Select Committee considering the wider Unit Titles Amendment Bill. The RIA and Quality Assurance Panel both note, however, that in the event that the preferred option is adopted, consultation with key stakeholders would take place during the development of enabling regulations.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The Unit Titles Act 2010 (the UTA) provides a regulatory framework for the ownership and management of land, associated buildings, and facilities by communities of individual owners. A unit title property (known as a unit title development) is created by depositing a unit plan with Land Information New Zealand (LINZ) in accordance with the provisions of the UTA. The unit owners together are the body corporate, which manages the unit title development.

2. The UTA sets out rules for decision-making by the body corporate, and places requirements on both bodies corporate and unit owners. The UTA also provides avenues for unit owners and bodies corporate to resolve disputes, through the Tenancy Tribunal or the courts.

3. As of July 2021, there were around 14,950 unit title developments in New Zealand, and of these 11,560 (77 per cent) are based in the major cities of Auckland, Christchurch, Wellington, Hamilton and Tauranga.[2] We expect the number of unit titles developments to increase as our cities become denser to enable better social, economic and environmental outcomes.

4. There is more information about the current state of the unit titles sector in the Regulatory Impact Statement (RIS) *Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals*.

2016-17 review of the Unit Titles Act and a Member's Bill

5. In 2016, the Unit Title Working Group presented a report of issues with the UTA and proposed solutions to the then Government. In response to this, the Government undertook a review of the UTA. The Ministry of Business, Innovation and Employment (MBIE) held a public consultation process from December 2016 to March 2017.

6. The Government then took a suite of proposals to Cabinet in 2017 and obtained agreement across the topics raised in the public consultation, and also in the area of strengthening enforcement.[3] Work on reforming the UTA was subsequently paused following the 2017 General Election.

7. In 2020, the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (the Bill) was drawn from the members' bill ballot. The Bill proposes a range of changes raised in the Unit Title Working Group's report and the previous government's consultation document. Although the Bill is a Member's Bill, the Government has agreed to support it.

8. The Bill is currently before the Finance and Expenditure Committee (the Committee).

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[2] Information provided by Land Information New Zealand.

[3] EGI-2017-MIN-0211.

9. The Government has further agreed to a range of policy proposals to amend the Bill. These were considered in the RIS *Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals.* These policy proposals were presented to the Committee in the Departmental Report and will be included in the version of the Bill reported back to Parliament.

10. This RIS considers a further policy proposal to address the issue of legal costs at the Tribunal, which was raised in submissions on the Bill. If agreed by Cabinet, this proposal will be included in a supplementary order paper (SOP) to be tabled in Parliament for consideration during the Committee of the Whole House stage.

What is the policy problem or opportunity?

11. Part 4(1) of the UTA provides that the Tenancy Tribunal (the Tribunal) as constituted under section 67 of the Residential Tenancies Act 1986 (the RTA) has jurisdiction to hear and determine all disputes under the UTA, except those that:
    a. would ask the Tribunal to make an order requiring any person or body to pay any sum, or to do any work to a value, or otherwise incur expenditure, in excess of $50,000; or
    b. relates to the application of insurance money under section 136(4); or
    c. relates to a dispute of the title of land.

12. Tribunals are intended to be an efficient and low-cost means of dispute resolution. Part of the reason tribunals are typically lower cost than the courts is because, unlike in the court system, parties usually do not need to (and in many cases cannot be) represented by legal counsel. This means fewer costs to be either worn by the applicants or passed on to the unsuccessful party.

13. Despite this, sometimes parties at the Tribunal can be represented by legal counsel. The RTA allows parties to have legal counsel at the Tribunal where the dispute is for more than $6,000; the other person agrees; or the Tribunal allows it, for example because of the complexity of the case or a particular imbalance between the parties.

14. Consequently, the Tribunal also has the power to award costs as part of their ruling. As a general rule, if awarding legal costs as part of a decision, the Tenancy Tribunal will scale these costs (typically awarding between 40 percent and 70 percent of actual costs incurred).[4] This approach is somewhat analogous to that used in the District and High Courts, where a set scale (set out in the District Court Rules and the High Court Rules) is applied, and sees costs awarded at a typically lower rate than the costs actually incurred. This provides a check and balance on the reasonableness of legal costs, and moderates the level of legal fees a party is willing to incur.

15. An anomaly has, however, arisen in regard to levy recovery disputes at the Tribunal, which is undermining the low-cost nature of the tribunals system. Section 124 of the UTA states that the amount of any unpaid levy, together with any reasonable costs incurred in collecting the levy, may be recoverable as a debt due to the body corporate. As section 124 has been interpreted by the higher courts[5], a body corporate is entitled

[4] Body Corporate 346799 v Ikeda [2020] NZDC 3669

[5] *Body Corporate 162791 v Gilbert* [2015] NZCA 185.

to seek to recover its legal costs (as one of the reasonable costs incurred in collecting the levy) if it is successful in a claim.

16. As a lower authority, the Tribunal is bound to follow this approach, and consequently may award full legal costs to the body corporate if successful. A submitter on this issue has suggested that these costs sometimes substantially exceed the value of the levies being recovered. These costs also sometimes include charges for solicitors to carry out tasks (such as drafting and sending demand letters) that would not typically require legal counsel.

17. This is further compounded by section 171 of the UTA, which allows parties to be represented before the Tribunal by an agent. According to a submitter, lawyers appearing for parties where counsel would not otherwise be permitted under the RTA's criteria have argued they are appearing as agent, not as legal representation. This means that lawyers in practice appear in the Tribunal (and consequently have their costs passed on in full) even where the levies sought are less than the current $6000 threshold for legal representation.

18. Analysis of the last twelve months of Tribunal decisions on levy recovery applications provides indicative data on the scale of the problem. From December 2020 to November 2021 inclusive, the Tribunal considered 67 such applications. Levies owed ranged from $1495 to $30,000, and costs awarded (legal and body corporate costs, not including the filing fee)[6] ranged from $460 to over $13,000, with the highest costs award made in a case relating to $16,000 in unpaid levies.

19. Sixteen applications (24 percent of applications) related to the recovery of less than $6000 in levies. In 12 of these 16 cases, the order makes it clear that the costs awarded include legal costs. In six of the cases, the total legal and body corporate costs awarded were greater than the sum of levies owed; in one case, the legal fees were more than twice the levies owed. The average costs charged for the cases relating to less than $6000 in levies was $2575.

20. The issue of costs for levy recovery did not form part of the Bill as released for consultation, but was raised by a submitter who is a Tribunal adjudicator, and who considered that a scale costs regime should be introduced. Officials have subsequently confirmed the points raised in the submission with the Tribunal.

What objectives are sought in relation to the policy problem?

21. As with the recent proposals to amend the original Bill, we have adopted the three main objectives in the Cabinet paper considered by the previous Government in 2017:
    a. Provide greater protection for current and prospective unit title owners
    b. Encourage prospective homeowners to consider apartment and other high-density living as a viable and attractive alternative to free-standing houses
    c. Ensure that the UTA is enabling for the growth in high-density living.

[6] Tribunal orders do not always separate out legal costs and body corporate costs. For consistency, "costs" in this analysis refers to the total collection costs, including any charges for appearances etc but not including the filing fee.

22. The specific issue addressed in this RIS also raises questions of fairness. As such, we have added two further objectives:
    a. Enabling affordable and accessible dispute resolution
    b. Ensuring equity within the dispute resolution system.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

23. The following criteria will be applied across the options considered for the legal costs issue:

- Effectiveness: The option delivers a net benefit in accordance with the policy objectives
- Certainty: Processes and decisions will be transparent, predictable, and consistent with other policy settings and provide certainty to regulated parties/claimants
- Flexibility: The Tribunal has the flexibility to award costs in a manner that takes account of the circumstances associated with the claims it considers and is consistent with the policy objectives
- Proportionality: The regulatory burden associated with the option is proportionate to the benefits the option is expected to deliver.
- Implementation Risk: The option reflects an established and proven approach rather than novel or untested solutions, and can be implemented within acceptable timeframe and cost parameters.

24. For the purposes of assessing the options against the criteria, we have assigned the criteria equal weighting. We consider this appropriate as the assessment is qualitative, rather than quantitative.

What scope will options be considered within?

25. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government.

26. However, we consider that this does not constrain the range of options available in relation to the dispute resolution process in the UTA.

27. We do not consider that non-regulatory options are appropriate to address this issue.

What options are being considered?

28. The three options explored in the RIS for preventing excessive legal costs in the Tribunal are:
    a. Option One: status quo
    b. Option Two: introducing a power to set scale costs in the Tribunal for unit title disputes
    c. Option Three: amending section 124 to place limits on legal costs that may be passed on in levy recovery disputes.

Option One – Status Quo

29. Under the status quo, the Tribunal would continue to apply discretion in the proportion of legal costs awarded to parties - except in the case of levy recovery, where the Tribunal is bound to pass on legal costs incurred in the recovery of the debt.

30. The main downside of leaving the status quo in place is that it creates a disparity between the Tribunal's approach to levy recovery disputes, and their approach to other matters. It also creates a disparity between the approach applied in the Tribunal and that applied in the higher courts, where scale costs do apply.

Option Two – Scale costs

31. This option would set a cost scale regime through regulations that would govern the costs awarded as part of unit title proceedings.

32. We envisage this scale following a similar form to those used in both the District Court and the High Court, which are set out in the District Court Rules and the High Court Rules respectively. These scales work on a two-step basis:

    a. The first part of the scale is a number category (1, 2 or 3). The number represents the amount of money that can be claimed each day in legal fees. Which category a dispute falls in depends on how complex the proceedings were.

    b. The second part of the scale is a letter category (A, B or C) that specifies how much time can be claimed for each task a lawyer does. Which category a task falls in depends on how much time would have been reasonable.

33. A similar approach could be achieved for the Tribunal by amending section 171 of the UTA to allow the Government to set a costs scale in regulations. The development of the scale itself would then be done in consultation with the sector.

34. The key advantage of this option is that it brings the Tribunal's costs award processes in line with those of the higher courts, and addresses concerns about the disparity between levy recovery processes and other processes in the Tribunal. It also reduces the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery. It provides a level of certainty for applicants on what costs awards they may receive.

35. The main downside of this option is that it is a relatively cumbersome solution to a limited problem. The development of the scale may be a complex regulatory task, involving sector consultation and negotiation to agree what rates are fair in terms of case complexity and reasonable time to be spent. This would be in the context of the relatively small number of unit titles applications to the Tribunal (as at 22 June 2021, 980 applications to the Tribunal had been received over the period of five years since 28 May 2016. Sixty-nine percent, or 676 applications, related to unpaid body corporate levies.)

36. However, we do expect the number of cases brought to the Tribunal to increase with the proposal in the Bill to reduce the filing fee.

Option Three – amend section 124 to restrict legal costs that can be awarded

37. This option would see section 124 amended to place restrictions on the level of legal costs that can be passed on as part of a levy recovery process. This could be achieved by stipulating a maximum proportion of legal costs that can be passed on.

38. This would address the issue created by the higher courts' ruling on section 124, and help ensure levy recovery disputes are treated in a similar fashion to other disputes before the Tribunal (where the adjudicator typically awards only a portion of the actual costs of the successful applicant).

39. The primary downside of this option is that it risks being overly prescriptive in primary legislation, potentially requiring frequent review and primary legislative amendment. Due to the stage of the Bill, this option also does not allow for the extensive sector consultation in comparison to that which could be conducted in the development of a cost scale in regulations (the above option), meaning there is a risk that the level of acceptable costs could be set at an incorrect level.

Further options not included in analysis

40. Officials also considered whether to include three further options:

    a. removing the ability for parties to unit title disputes to have legal representation at the Tribunal;

    b. restricting the Tribunal from passing legal costs on at all in unit title disputes; and

    c. amending section 124 to give the Tribunal explicit discretion as to what might constitute the reasonable costs of collection.

41. The first two options were both discarded as having too great a potential impact on access to justice. Unit title disputes at the Tribunal can relate to significant sums for an individual unit holder, and can be complex. It is important that parties retain the right to have legal counsel for complex or high-value matters, as is enshrined in the current law. Likewise, removing the ability for the Tribunal to award legal costs at all to a successful party would be likely to have a severe chilling effect on parties choosing to take their dispute to the Tribunal.

42. The third option was discarded as offering no certainty for either party, and no guarantee of a net benefit. Without a guide to what is reasonable, bodies corporate would have little clarity about what costs they could or could not incur with reasonable expectation of being able to recover them.

43. We consider that the objectives are better met by the two main options analysed above.

How do the options compare to the status quo/counterfactual?

	Option One – *Status Quo*	Option Two – *Introduce regulatory power to set scale costs*	Option Three – *Amend section 124 to restrict legal costs that can be awarded*
Effectiveness	0 Under the status quo, parties who are taken to the Tribunal over outstanding levies face higher potential costs than parties facing other proceedings. There are also concerns that parties may be incurring higher costs than they otherwise would in recovering a levy debt, as they know that all costs may be passed on to the unit owner.	+ + Addresses concerns about the disparity between levy recovery processes and other processes in the Tribunal, and reduces the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery.	+ + Addresses concerns about the disparity between levy recovery processes and other processes in the Tribunal, and reduces the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery.
Certainty	0 Under the status quo there is little way for parties to know the scale of legal costs the other side is incurring, and consequently the additional costs they may have to bear.	+ + All parties would know the maximum costs that could be awarded.	+ Parties would know there are restrictions on the scale of legal costs that can be awarded as part of a levy recovery process.
Proportionality	0 Under the status quo the Tribunal is obliged to award full costs of levy recovery to the body corporate, if sought. Where legal costs have been incurred, these costs sometimes substantially exceed the value of the levies being recovered.	+ Addresses concerns about the disparity between levy recovery processes and other processes in the Tribunal, and reduces the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery. A scale costs regime may be a cumbersome solution to a limited problem, and require updating from time to time.	+ Addresses concerns about the disparity between levy recovery processes and other processes in the Tribunal, and reduces the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery. This option would involve a less cumbersome regulatory process initially,

			but may be overly prescriptive and require frequent review.
Flexibility	0 Under the status quo the Tribunal arguably has low flexibility in deciding what level of cost award is appropriate.	+ Under this option adjudicators would have a set scale to apply. However, as per other scale regimes, they would also have flexibility to award higher costs if they consider it appropriate (an "uplift").	- This option risks being inflexible by placing in primary legislation a specific limit on cost awards for levy recovery processes.
Implementation risk	0 The status quo creates a disparity between the Tribunal's approach to levy recovery disputes, and their approach to other matters. It also creates a disparity between the approach applied in the Tribunal and that applied in the higher courts, where scale costs do apply.	+ Under this option, the Tribunal would operate under a similar costs system to that already used in the higher courts. Developing a scale costs regime will require consultation with the sector and may have some complexities.	- Ascertaining an appropriate limit for legal costs in levy recovery processes will require consultation with the sector, which will be difficult to conclude effectively in the time available.
Overall assessment	0	+ +	+

44. The criteria for assessing options in the RIS was assessed with the following key:

Key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

45. Our preferred option is Option Two – introduce a regulatory power to set scale costs for the Tribunal.

46. A scale costs regime would bring the Tribunal's costs award processes in line with those of the higher courts, and address concerns about the disparity between levy recovery processes and other processes in the Tribunal.

47. It would also provide a level of certainty for applicants on what costs awards they may receive, and reduce the likelihood that unnecessary legal costs will be incurred by the party seeking levy recovery.

48. As the regime itself would be in regulations, this option gives time for officials to consult widely with the sector to determine the appropriate level of costs that should be awarded under the regime.

What are the marginal costs and benefits of the option?

Affected groups	Comment.	Impact.	Evidence Certainty.
Additional costs of the preferred options compared to taking no action			
Regulated groups – body corporate	May increase legal costs (i.e. costs that cannot be claimed back) as full cost of recovering unpaid levies in the Tribunal will not be met. However, the amendment may encourage legal counsel to keep costs low (or parties to self-represent) and reduce this impact.	Low	Medium
Regulated groups – individual unit owner	May increase legal costs if moving to scale costs reduces any costs award in the Tribunal.	Low	Medium
Other – legal firms representing parties	May reduce income from levy recovery processes.	Low	Medium
Regulators	May increase legal costs the regulator would bear associated with enforcement action, if moving to scale costs reduces costs awards in the Tribunal.	Low	Medium
Tenancy Tribunal and the wider justice sector	There is a risk of additional administrative costs as Tenancy Adjudicators transition to this new approach to cost awards. It is likely to reduce administrative costs in the long term as costs awards become more standardised.	Low	Medium
Wider Government	There is no direct cost to the wider Government.	N/A	Medium

Total monetised costs		N/A	
Non-monetised costs		Low	Medium

Additional benefits of the preferred options compared to taking no action			
Regulated groups – body corporate	Improved certainty of costs that may be imposed through Tribunal processes (other than levy recovery proceedings); may reduce expenditure on legal costs if the change encourages a move toward self-representation.	Low	Medium
Regulated groups – individual unit owner	Improved certainty of costs that may be imposed through a Tribunal process, whether a levy recovery process or otherwise	Medium-High	Medium
Regulators	No direct benefits to the regulator	N/A	Medium
Tenancy Tribunal and the wider justice sector	Improved consistency across different dispute types at the Tribunal, and improved consistency with processes in higher courts	Medium	Medium
Wider Government	No direct benefits to wider Government	N/A	Medium
Total monetised benefits		N/A	
Non-monetised benefits		Medium	Medium

What are the key assumptions underlying the cost benefit analysis?

49. The assumptions made in this RIS include that unit owners want improved certainty of costs that may be imposed or awarded through a Tribunal process. Another assumption is that bodies corporate will not be disincentivised to take proceedings even if they cannot pass on the full legal costs incurred.

50. In the cost-benefit analysis, we assume that there may be a temporary additional administrative cost for the Tribunal while Tenancy Adjudicators transition to the new approach. In the long-term, we assume that scale costs may improve efficiency, and therefore costs, for the Tribunal.

If there are non-monetised costs or benefits identified, how has the impact (low/medium/high) been determined?

51. We have determined the impact of non-monetised costs or benefits by considering how the proposal will impact the unit titles sector. We have considered the number of stakeholders the proposed options will affect, as well as how significant a change the proposal is to the status quo.

Section 3: Delivering an option

How will the new arrangements be implemented?

Legislative Change

52. The option agreed by Cabinet will be included in an SOP to be tabled in Parliament for consideration during the Committee of the whole House stage. This stage in the legislative process is likely to occur in early 2022. To give effect to the proposal, regulations will be required. HUD intends to undertake consultation with stakeholders on the policy relating to any proposed regulations.

Timing

53. Clause 2 of the Bill states that the Bill will come into force on one or more dates set by an Order in Council, with any remaining provisions brought into force within two years of the Bill's Royal assent. HUD will provide advice on an appropriate commencement date, or dates, closer to the time of Royal assent. A key consideration on the appropriate commencement date will be allowing sufficient time for parties to implement and prepare for the changes.

54. The passage of the Bill is subject to the rules for progressing Member's bills in Parliament. This makes it difficult to determine when the Bill might receive Royal assent, but it is likely to be in early 2022.

Implementation Management

55. HUD and MBIE will develop a legislative implementation plan that will ensure:

    a. operational policies, processes and systems are in place to meet their responsibilities and give effect to the new requirements. Note that sufficient time is required to ensure a smooth transition to the new rules

    b. HUD and MBIE can deliver an effective communications programme that ensures key stakeholders understand the changes to the law, and have sufficient time to give effect to them

    c. the Tenancy Tribunal, and government agencies with an interest in the reforms, are engaged appropriately

    d. HUD can meet its regulatory stewardship responsibilities, including monitoring and evaluating the impact of the proposed changes.

56. More information about implementation management, including new operational guidance, changes to supporting systems and communications are set in out the RIS *Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals.*

Implementation risks

57. There is a risk that regulated parties do not understand the proposed changes to scale costs and this impacts on their decision-making in relation to Tribunal proceedings.

This risk will be mitigated by the proposed information and education campaign. Implementation risks in relation to the Bill more generally are set out in the RIS *Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals.*

How will the new arrangements be monitored, evaluated, and reviewed?

58. HUD and MBIE are the regulatory stewards for the unit titles system and will monitor the implementation of the whole set of changes in the Bill, including the changes proposed in this RIS.

59. HUD and MBIE will work to develop a monitoring plan for the proposed changes, which will set measures and identify the required data sources for monitoring the impact of the new provisions. There is currently no system-level monitoring of the UTA in place. This means that there may be a need to seek new sources of data, in order to effectively monitor the impact of the new provisions. This will be determined as part of the development of the monitoring plan.

60. Without pre-empting the planning work, we anticipate the approach will include data collection relating to the Tribunal. This could include the number of applications for mediation and adjudication, the types of issues being raised in the applications and the costs awarded.

61. After implementation, HUD will also work across government and with key stakeholder groups to review the new provisions. This will enable the identification of any issues that need policy work leading to further legislative or regulatory change to address gaps or operational issues.