

Regulatory Impact Statement:

Regulatory Impact Statement

Unit Titles Act 2010 Setting of Fees

Agency Disclosure Statement

This Regulatory Impact Statement (statement) has been prepared by the Department of Building and Housing.

This statement provides an analysis of the comprehensive service and cost to serve model to support the requirements of the Unit Titles Act 2010. The Act extends the jurisdiction of the Tenancy Tribunal to hear unit title disputes. Cabinet has also directed that costs for this dispute resolution process will be recovered under the Act (fiscally neutral to the Crown). This statement analyses the proposed fees recovery model and explains the rationale for the fee options proposed.

The Department developed a comprehensive service and cost to serve model to inform the setting of fees which was reviewed in consultation with representatives of the Ministry of Justice and the Principal Tenancy Adjudicator.

The analysis is based on a public consultation on proposals made by the Department to support the requirements of the Unit Titles Act 2010. The Department received 15 submissions to the consultation.

The Department does not expect the preferred fees model to impose significant costs on businesses, impair private property rights, market competition, or affect the incentives on businesses to innovate or invest, or override fundamental common law principles.

Maria Robertson, Deputy Chief Executive Service Delivery

28 February 2011

Status quo and problem definition

The status quo under the Unit Titles Act 1972 was that there was no specific dispute resolution process available to unit title owners. The Disputes Tribunal does not provide clear jurisdiction to hear unit title disputes, and can only consider cases up to \$20,000 and which involve disputes based in contract or tort. The Department of Building and Housing (the Department) has anecdotal evidence that the Disputes Tribunal was being used for certain disputes, mainly around levy recovery.

Unit title owners can also take an action in the District or High Courts, but there are significant obstacles in time and cost. The problem is that neither the District Court nor the High Court is an appropriate forum to resolve a wide range of disputes, leading to a large proportion being unresolved.

The Unit Titles Act 2010 (the Act) has extended the jurisdiction of the Tenancy Tribunal (the Tribunal) to establish a dispute resolution process for disputes relating to unit title matters. Cabinet also agreed that a dispute resolution model for unit title disputes would be based on the existing tenancy dispute resolution model.

In order to fund this service, on 21 March 2007 Cabinet agreed [CAB Min (07) 10/3 refers] that the Unit Titles Bill (now the 2010 Act) will provide for regulation making powers to recover costs for these services.

Regulations are required to set fees to provide a unit title dispute resolution service. There is no non-regulatory option to prescribed fees. It is important to note that the status quo is no longer a viable option once the new Act comes into force.

Objectives

Fees regulations are required to fund the new unit titles dispute resolution service.

The fees need to be set at a level that:

- Enables access to justice for all parties involved in a unit titles dispute
- Provides relevant and appropriate services for disputes that people have under the Unit Titles Act 2010
- Encourages people to either self-resolve or to resolve their dispute in the most appropriate, timely and cost-effective manner.

Regulatory impact analysis

The fee model

There were two considerations when setting the fees: the model to use, and the level at which to set the fees. This RIS discusses the options.

In consultation with Martin, Jenkins and Associates Limited, the Department developed a comprehensive fee model to inform the setting of fees for unit title services based on the existing dispute resolution system used in the Department. This system provides for targeted advice education and information services, provided at no cost, in order to encourage self-resolution of disputes in timely and cost effective ways. If further intervention is still necessary, mediation and/or adjudication services are also provided.

This creates two levels of dispute, non-complex and complex, with differing fee levels, reflecting the time and cost to resolve the different disputes. This will allow the Department to charge separately for mediation and adjudication, which attract different costs. The levels are summarised below.

Unit Titles disputes	Non-complex	Complex
Types of dispute	<p>Uncomplicated disputes that are likely to require less time and cost to resolve, on the day-to-day management of the unit title development, body corporate rules, or other matters under the Act requiring simple interpretation, including but not limited to disputes about:</p> <ul style="list-style-type: none"> -behaviour by other residents that affects the use and enjoyment of a unit, -non-compliance with the body corporate operational rules, -failure to pay body corporate levies. 	<p>Complicated disputes that are likely to require more time and cost to resolve, on the governance of the body corporate or other matters under the Act requiring complex interpretation, including but not limited to disputes about:</p> <ul style="list-style-type: none"> -common property repair and maintenance, -changes to the body corporate rules, -other decisions and procedures of the body corporate. <p>A dispute involving both non-complex and complex elements will be a complex dispute.</p>
Resolution method anticipated	Mediation/minimal adjudication within 1-2 months.	Mediation and/or adjudication within 2-3 months.
Volume anticipated	750 applications per annum.	250 applications per annum.

This is the preferred fee model.

Alternative fee models

A number of fee models were considered in developing the preferred fee model. The option of a single flat fee for all disputes, regardless of the complexity of the dispute, was not considered viable as the fee level would have to be set at such a magnitude that access to justice would become an issue and the objective would not be met.

Other models that were explored included having a differentiated fee model for different services or having a multiple entry point model based on unit title development size. These were also not considered viable due to legislative restrictions and excessive complexity, as well as receiving little support from other agencies.

Options for fee level

The Department analysed three options for the setting of fees, which are discussed below. The preferred option is Option 1 because it meets the policy objectives to provide an accessible, cost-effective, appropriate and timely dispute resolution process for disputes relating to unit title matters.

Fees for dispute resolution type and timeframe under the 2010 Act

Dispute type	Resolution Type	Time to resolve	Option 1 Fees at full cost recovery ex GST (inc GST) ¹	Option 2 Fees set with discount ex GST (inc GST)	Option 3 Fees to align with Ministry of Justice advice ex GST (inc GST)
Non complex	Mediation	Within 1-2 months	\$724 (\$850)	\$313 (\$360)	\$43 (\$50)
Complex	Adjudication	Within 3 months	\$2831 (\$3300)	\$1739 (\$2000)	\$174 (\$200)

Option 1 – Full Cost Recovery

The benefit of the full cost recovery option is that that disputes are able to be resolved without requiring further Crown appropriation and part of the existing appropriation can be returned to the Crown. A budget bid in the 2007-08 financial year provided the Department with an ongoing appropriation of \$395,000 to offset some of the costs of providing the disputes resolution service.

Fourteen of the 15 submitters (including the Law Society) opposed full cost recovery fees. The submitters expressed concern that the proposed fee structure may create barriers to justice and thwart the intention of the Act to create an affordable and accessible dispute resolution.

In order to mitigate these concerns, while fees will be set at full cost recovery, \$150,000 of the existing \$395,000 appropriation will be used to deliver targeted, client-centric advice, education and information services into the unit titles sector. This will in turn reduce the overarching costs of providing the dispute resolution system.

These services will enable consumers to acquaint themselves with the new Act and support them to participate with confidence and encourage self-resolution of disputes in timely and cost effective ways. Through these services, consumers will come to understand their rights and responsibilities under the Act, and therefore will not require the more costly interventions of mediation and/or adjudication.

Provision of these services at no cost to the sector does take into account the concerns of submitters and closely aligns with the intentions of the new Act.

The Department intends to closely monitor the costs and evaluate the policy intentions under the 2010 Act.

This is the preferred option.

¹ Any difference is caused by rounding to create a reasonable GST inc fee

Option 2 – Reduced fee through using the existing appropriation

Using the existing appropriation of \$395,000, and based on an implementation date of 1 April 2011, would set fees at:

Type	Primary Method	Estimated number per annum	Average time to resolve	Fees set with discount ex GST (inc GST) ¹	Per unit subsidy (cost to the Crown) ex GST
Non complex	Mediation	750	1.5 months	\$313 (\$360)	\$411
Complex	Adjudication	250	3 months	\$1739 (\$2000)	\$1092

The benefit of this option is disputes are able to be resolved quickly.

However, a budget bid would be required in 2013, and the Government is clear that there is no new funding available.

This is not the preferred option.

Option 3 – Alignment with other comparable Tribunals

Alignment with other Tribunals would set fees at:

Type	Primary Method	Estimated number per annum	Average time to resolve	Fees to align with Ministry of Justice advice ex GST (inc GST)	Per unit subsidy (cost to the Crown) ex GST
Non complex	Mediation	750	1.5 months	\$43 (\$50)	\$681
Complex	Adjudication	250	3 months	\$174 (\$200)	\$2657

The benefit of these fees is that they fit within the current tribunal fee structure and create the lowest barrier to justice.

However, if fees were set at this level, the Department would require additional annual funding of \$681,541 per annum Crown revenue above the \$395,000 already appropriated in order to provide unit title services as described.

This not the preferred option.

To summarise the Crown funding needed:

	Option 1	Option 2		Option 3	
	2010/11 and out years	2010/13	2013/14 and out years	2010/13	2013/14 and out years
Appropriation required	1,250,454	2,814,000	1,250,454	2,814,000	1,250,454
Less already appropriated	\$245,000 would be returned	1,185,000	395,000	1,185,000	395,000
Increase in appropriation needed	-	1,629,000	855,454	1,629,000	855,454
To be funded by					
Fees	1,250,454	1,539,000	684,200	521,719	173,913
Additional Funding (ex GST)	-	90 ²	171,254	1,107,261	681,541

Model provides fair and proportionate fees appropriate to type of dispute

The model provides fair and proportionate fees to the type of dispute by ensuring costs are low where service complexity is minimal and that simple disputes are not subsidised by complex disputes. It meets the policy objectives of providing an accessible and cost-effective dispute resolution process for unit title disputes, while at the same time being financially sustainable.

In consideration of access to justice, the lower application fee level for entry point one will enable access to the service. The relatively higher cost of an adjudication compared to a mediation also encourages those involved in disputes to self-resolve at the earliest opportunity.

Financially the two tier entry fee is also preferable as it allocates the cost for providing these services proportionally to the fee charged for them. In addition, as the model is based on the existing Tenancy Dispute resolution model, the costs involved in establishing new processes are reduced.

Consultation

The Department undertook public consultation to gain the views of likely participants in the new dispute resolution service. The consultation ran from 29 November 2010 to 21 January 2011 and requested views on the division of the entry points and on the proposed fee level. The public consultation tested the level of fees on Option 1 as directed by Cabinet. The Department received 15 submissions, 14 of which opposed fees set at full cost recovery and one in support.

² Will be met from existing baseline

The Ministry of Justice as a partner agency in the dispute resolution process has been directly involved in the development of the services, fees and supporting business processes.

Conclusions and recommendations

The Department recommends the two-tier entry point model as outlined above, as it most effectively fulfils the required policy objectives. The Department also recommends that the fee levels be set at those recommended in Option 1, and \$150,000 of the existing appropriation be used to deliver targeted, client-centric advice, education and information services into the Unit Titles sector to enable consumers to be acquainted with the new Act and support them to participate with confidence and encourage self-resolution of disputes in timely and cost effective ways.

Implementation and enforcement

It is anticipated that the regulations will be drafted by mid-2011. The Act will come into force simultaneously with the regulations.

The Unit Titles Act 2010 is not expected to have any significant impact on any other legislation.

Monitoring, evaluation and review

The Department intends to formally review fee levels at the end of the first complete year of operational delivery after the 15 month transition period to examine whether the fee revenue is out of line with the actual costs. Subsequent fees reviews will then occur on a more typical three yearly cycle.