

Regulatory Impact Statement:

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Unit Titles Act 2010 Regulations Development

Agency Disclosure Statement

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

This statement provides an analysis of options for regulations and/or guidance to support the requirements of the Unit Titles Act 2010. The Act states that there are certain matters that must be regulated and certain matters that could be regulated. This statement will therefore analyse whether regulation is the best option for those matters that could be regulated.

The analysis is based on a public consultation on proposals made by the Department of Building and Housing to support the requirements of the Unit Titles Act 2010. The Department received 73 submissions to the consultation. The Department has also drawn on the knowledge of an external reference group made up of representatives from Property Council of New Zealand, Property Institute of New Zealand, Real Estate Institute of New Zealand, Property Investor's Federation, New Zealand Institute of Surveyors, Crocker Strata Management, Home Owners and Buyers Association of New Zealand, New Zealand Law Society, Auckland District Law Society, Auckland Regional Council, BRANZ and Property Reserve Planning and Administration.

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

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Status quo and problem definition

There are approximately 18,449 unit title developments in New Zealand comprising 122,874 units (as of June 2010). In Auckland alone, up to half a million people could be living in multi-unit developments within 40 years. The Unit Titles Act 2010 (the Act) impacts on all people who live or work in a unit title development, and will also impact on property developers, territorial authorities, time-share owners and retirement villages.

Parliament passed the Act on 1 April 2010. The Act will repeal and replace the Unit Titles Act 1972 (the 1972 Act) which had become inadequate to cover the full range and diversity of unit titles developments. Consultation has shown the 1972 Act lacks clarity, transparency and accountability. In many circumstances this means that people are unaware of their rights and responsibilities and the industry is unclear about how the Act applies to modern developments.

The purpose of the Act is to achieve an appropriate balance between certainty for unit owners over how their development is run and allowing bodies corporate the flexibility to manage their developments fittingly. The legislation needs to bring clarity. This statement will address options to the problem of how to achieve this balance of certainty, flexibility and clarity through regulations and/or guidelines to support the requirements in the Act.

Objectives

The policy key issues identified through consultation are that within the Act:

- some matters need **certainty** to provide unit owners with the appropriate security that those running the body corporate will follow proper processes
- some matters need **flexibility** to cater to the wide variety of developments
- some matters need **clarity**, especially in cases where the proposals relate to new regimes.

Regulatory impact analysis

The Department has not been able to find dollar values for all the costs and benefits in forming this regulatory impact analysis. The following options have been considered for addressing the objectives:

Option A: Status Quo

The status quo is that no supporting regulations or guidelines are produced to support the Act. This option does not meet the objectives as it does not provide the necessary support for the requirements of the Act.

Option B: Regulatory Option – use of prescriptive regulations wherever the Act allows

This option would provide uniformity throughout New Zealand for unit title developments, and provide unit owners with certainty over how the body corporate runs their development.

Option B creates certainty but does not meet the objectives as it does not provide the flexibility for the range of unit title developments and will fail to meet Parliament's objectives and respond to the feedback received in consultation which supports a flexible approach.

Option C: Non-Regulatory Option: Best practice guidance and information only

Option C does not meet the objectives as the Act states that some matters must be regulated.

Option D: Regulations where the Act requires them and guidance where the Act allows for regulations but does not make them compulsory

This option meets the objectives of making regulations where the Act requires it, and leave the other matters to be supported by consumer guidance. The costs and benefits of this option are outlined in Table One.

Option E: Regulations and best practice guidance (preferred option)

This option meets the objectives by providing uniformity for unit title developments in some set-up and management issues while allowing bodies corporate the flexibility to tailor other issues to suit their development. The costs and benefits of this option are outlined in Table One.

Where regulations have been proposed to support the Act (both where the Act requires them and where it allows them) they have drawn on current best practice (as evidenced from the consultations). A further objective in forming these regulations was to keep them cost-effective for compliance and enforcement. None of the regulations proposed to support the Act create new or onerous regimes for bodies corporate to follow – rather they provide more detail around the requirements in the 2010 Act and reflect current practice.

The matters that the Act states could be regulated (but does not make it compulsory) include:

The long term maintenance plan

- Option D response – guidance only
- Option E response – guidance and regulate the minimum required to be in the plan, a process for establishing the plan and minimum review periods. Consumer guidance will give more detail about what components of a development the plan should cover, if relevant. The benefit of this approach is that the smaller bodies corporate will not become unduly burdened by requirements that do not fit their development.

Additional responsibilities of the body corporate chairperson

- Option D response – guidance only
- Option E response – guidance and regulate the responsibilities of the chairperson to include running meetings, keeping records and documents and distribution of documents to unit owners. The benefit of this is that there is a named officer responsible for ensuring the above is carried out a unit owner knows where to go for information about the running of the body corporate.

Quorum and voting procedures at body corporate and body corporate committee meetings

- Option D response – guidance only
- Option E response – guidance and regulate to prohibit enduring proxy votes. Also regulate process to be followed for reconvening the meeting if quorum is not achieved. The benefit of this is that unit owners will not become disenfranchised through being uninformed about rescheduled meetings, and proxy votes are used appropriately and transparently.

Body corporate funds

- Option D response – guidance only
- Option E response – guidance and regulate that where spending exceeds 10% of the total annual budget, or is spending not related to the exercise of a body corporate power it must be referred to a body corporate general meeting. The benefit of this is that bodies corporate or committees have the flexibility to spend when they need to and that such spending is transparent.

Delegation of body corporate duties to the body corporate committee

- Option D response – guidance only
- Option E response – guidance and regulate the form of notice of delegation of powers by the body corporate to the body corporate committee including who serves the notice. The benefit of this is that there will be a written trail of delegations of duties and evidence of what body is responsible.

Election of the body corporate chairperson and body corporate committee

- Option D response – guidance only
- Option E response – guidance and regulate who is eligible, how the election process is run, the term of the offices and replacing a chairperson mid-term. This will benefit unit owners by ensuring an equitable chance of representation on the committee and ensure elections are fair and transparent.

Table One: Costs and benefits of Options D and E.

Costs	Benefits
Government	
Option D: Guidance	
<ul style="list-style-type: none"> • Possible decrease in well managed developments if bodies corporate do not adhere to best practice advice 	<ul style="list-style-type: none"> • Fewer monitoring and enforcement costs
Option E: Regulation and guidance	
<ul style="list-style-type: none"> • Monitoring and enforcement of regulations by Tenancy Tribunal • Producing, publishing and disseminating information on regulations and optional extras for certain requirements • Costs for up-skilling and training Department advisors 	<ul style="list-style-type: none"> • Ensuring quality and sustainable residential and commercial developments • A well-informed sector that offers quality services
• Industry/Sector (professional body corporate management companies, long-term maintenance planning companies)	
Option D: Guidance	
<ul style="list-style-type: none"> • Possible increase in disputes among unit owners and bodies corporate on interpretation of guidance and confusion over main provisions of the 2010 Act 	<ul style="list-style-type: none"> • Flexibility to adapt legislation as fitting to the development
Option E: Regulation and guidance	
<ul style="list-style-type: none"> • Time, staff and administrative resources • Costs to become familiar with the legislation • Cost to change business practices to come to minimum standard for some bodies corporate that are not already at or above the standard 	<ul style="list-style-type: none"> • Fewer costs with disputes over repairs among bodies corporate and unit owners due to regulating long-term maintenance planning • Increased business opportunities due to potential increase in demand from developments (eg, for long-term maintenance plans or body corporate management services) • Better development of the industry through regulations over management processes • Increased public confidence in the sector as management companies become answerable to regulations over actions • Decreased likelihood of disputes over decisions made in meetings
Society	
Option D: Guidance	
<ul style="list-style-type: none"> • Possibility of surprise levies if body corporate long-term maintenance plan is inadequate • Possible disenfranchisement of unit owners as ability be chairperson or on committee is unregulated 	<ul style="list-style-type: none"> • No unnecessary costs for developments that require less comprehensive long-term maintenance plans
Option E: Regulation and guidance	
<ul style="list-style-type: none"> • Bodies corporate may incur costs in engaging professionals to produce the long-term maintenance plan if they decide an expert is required. Costs will be passed to unit owners • Cost to review regulations and decide on whether to opt-in to optional extras • Anecdotal information from the consultation suggests that professional body corporate managers may increase their prices for services 	<ul style="list-style-type: none"> • Clear and accountable maintenance planning • Clear and accountable governance structure • Regulations will provide all unit owners an equitable opportunity to act as chairperson or committee member • Increased participation in meetings by unit owners as meeting and voting regulations are more comprehensive • Reduction in surprise levies as better planning ameliorates need for urgent work

Option E is the preferred option as it meets the objectives of certainty, flexibility and clarity outlined in the problem definition.

In forming this option, the Department of Building and Housing has drawn heavily on the results of the consultation carried out in April-June 2010 on proposals for regulations or guidance to support the requirements of the Act.

Where regulatory requirements are imposed (including those matters which must be regulated not covered in this RIS), the additional costs are expected to be minimal. Many bodies corporate already follow most of the proposed regulations by way of best practice. The possible additional costs to smaller bodies corporate who may not need to have a comprehensive long-term maintenance plan has been ameliorated by setting out only basic minimum requirements as regulations. Bodies corporate that wish to have the more extensive long-term maintenance plan or financial statement have the option of opting-in to those additional requirements by resolution at the body corporate.

Additional guidelines and promotion of guidance will help to limit costs. There are also transitional arrangements in place before the requirements come fully into force.

Consultation

The Department of Building and Housing released a discussion document for public consultation which made a number of proposals about regulation to support the Act. Questions asked as part of the consultation included any financial or other impacts, and the extent of regulation or guidance the submitter thought necessary. The Department of Building and Housing received 73 submissions to this consultation.

The Department has also undertaken a targeted industry consultation on specific issues with: Property Council of New Zealand, Property Institute of New Zealand, Real Estate Institute of New Zealand, New Zealand Institute of Surveyors, Crocker Strata Management, Home Owners and Buyers Association of New Zealand, New Zealand Law Society, Auckland District Law Society, Auckland Regional Council, BRANZ and Property Reserve Planning and Administration.

The Department has consulted with Land Information New Zealand, Treasury, the Ministry of Justice, Housing New Zealand Corporation, the Department of Internal Affairs and the Ministry of Economic Development. The Department of Prime Minister and Cabinet has also been informed.

Conclusions and recommendations

The Department recommends Option E: a mix of regulations and best practice guidelines support the requirements of the Act.

Implementation and enforcement

It is anticipated that the regulations will be drafted and implemented by the end of 2010. The Act will come into force simultaneously with the regulations.

Transitional arrangements are in place for some of the requirements of the Unit Titles Act 2010 in order to give bodies cooperate time to incorporate any new regulations in their working practices.

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

The requirements in the Act will be enforced by the Tenancy Tribunal, which holds the jurisdiction to hear disputes relating to unit title developments and courts. There will be some costs incurred with training adjudicators and mediators in unit title matters.

Monitoring, evaluation and review

The Department of Building and Housing is considering options for the monitoring and enforcement of the legislation.