

# Departmental Disclosure Statement

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| Unit Titles (Strengthening Body Corporate Governance and Other Matters)<br>Amendment Bill |
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A departmental disclosure statement for a supplementary order paper the government is proposing to amend the Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of the supplementary order paper.

The information provided relates to the supplementary order paper, rather than the Bill as whole.

It identifies:

- background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

There was no original disclosure statement for this Bill, as it is a Member's bill.

This disclosure statement was prepared by Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development.

Te Tūāpapa Kura Kāinga certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

16 March 2022.

## Contents

|  |   |
|--|---|
| Contents .....   | 2 |
| Part One: General Policy Statement .....                   | 3 |
| Part Two: Background Material and Policy Information ..... | 4 |
| Part Three: Testing of Legislative Content .....           | 6 |
| Part Four: Significant Legislative Features .....          | 8 |

## **Part One: General Policy Statement**

As a Member's bill, the Government did not prepare a General Policy Statement for the Bill on introduction.

The General Policy Statement was prepared by the Member in charge of the Bill at introduction. It can be found here:  
<https://www.legislation.govt.nz/bill/member/2020/0306/6.0/d8830543e2.html#LMS367991>.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

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| <b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b> | <b>NO</b> |
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### Relevant international treaties

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| <b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b> | <b>NO</b> |
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### Regulatory impact analysis

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| <b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>   | <b>YES</b> |
| <p>A regulatory impact statement was provided in relation to one of the proposals in the supplementary order paper: <i>Regulatory Impact Statement: Unit Titles Act 2010 – Policy proposals to be included in a Supplementary Order Paper</i>.</p> <p>An earlier regulatory impact statement was provided in relation to the proposed amendments to the Bill at select committee: <i>Regulatory Impact Statement: Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals</i>.</p> <p>Both regulatory impact statements can be found at: <a href="https://www.hud.govt.nz/residential-housing/unit-titles-act/update-unit-titles-strengthening-body-corporate-governance-and-other-matters-amendment-bill/">https://www.hud.govt.nz/residential-housing/unit-titles-act/update-unit-titles-strengthening-body-corporate-governance-and-other-matters-amendment-bill/</a>.</p> |            |

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| <b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>   | <b>NO</b> |
| <p>The Regulatory Impact Summaries above did not meet the threshold for needing an independent opinion on the quality of the regulatory impact assessment from the Regulatory Impact Assessment Team in the Treasury.</p> |           |

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| <b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>  | <b>NO</b> |
| <p>Four amendments in the supplementary order paper did not meet the threshold for requiring a regulatory impact assessment: providing that a matter requiring a special resolution cannot be delegated to a body corporate committee; extending protections for service contracts to signage agreements; allowing bodies corporate to charge metered services to accessory units; and clarifying that unit titles disputes heard by the Tenancy Tribunal are subject to the Limitation Act 2010.</p> |           |

### Extent of impact analysis available

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| <b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b> | <b>NO</b> |
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| <b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>  |            |
| <b>(a) the size of the potential costs and benefits?</b>   | <b>YES</b> |
| <b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>  | <b>NO</b>  |
| <p>The potential benefits to unit owners are assessed as medium-high, as they will have improved certainty of costs that may be imposed against them in a unit titles dispute at the Tenancy Tribunal. The Tenancy Tribunal will have improved consistency in costs awards.</p> <p>The costs to regulated parties are assessed as low – for bodies corporate, it may increase legal costs which are not repaid through a costs award. However, this may encourage legal counsel to keep costs low or encourage parties to self-represent at the Tenancy Tribunal.</p> <p>The regulatory impact statement can be found at: <a href="https://www.hud.govt.nz/residential-housing/unit-titles-act/update-unit-titles-strengthening-body-corporate-governance-and-other-matters-amendment-bill/">https://www.hud.govt.nz/residential-housing/unit-titles-act/update-unit-titles-strengthening-body-corporate-governance-and-other-matters-amendment-bill/</a>.</p> |            |

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| <b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:</b> |           |
| <b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>                  | <b>NO</b> |
| <b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>                          | <b>NO</b> |

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

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| <b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b> |
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| The supplementary order paper makes discrete amendments to the Bill. Te Tūāpapa Kura Kāinga considered the amendments are consistent with the right to enjoy adequate housing in Article 11 of the International Covenant on Economic, Social and Cultural Rights. |
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### Consistency with the government's Treaty of Waitangi obligations

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| <b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b> |
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| Te Tūāpapa Kura Kāinga considered the supplementary order paper's consistency with the principles of the Treaty of Waitangi during policy development. |
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### Consistency with the New Zealand Bill of Rights Act 1990

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| <b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b> | <b>NO</b> |
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| No advice has been provided to the Attorney-General on this supplementary order paper. Advice provided on the original Bill can be accessed on the Ministry of Justice's website <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/</a> . |
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### Offences, penalties and court jurisdictions

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| <b>3.4. Does this Bill create, amend, or remove:</b> |  |
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| <b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b> | <b>NO</b> |
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| <b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b> | <b>YES</b> |
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| The supplementary order paper makes two amendments to the jurisdiction of the Tenancy Tribunal. Clauses 16AAA, 21AA and 21B provide a regulation-making power to set a costs scale in regulations, that must be followed by the Tenancy Tribunal in making costs awards. Clause 21 clarifies that unit titles disputes heard by the Tenancy Tribunal are subject to the Limitation Act 2010. |
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| We note the Bill as amended by the select committee includes new provisions for civil penalties in certain circumstances (clause 21B). |
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| <b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b> | <b>YES</b> |
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| The Ministry of Justice was consulted during the policy development process. Any issues it raised were resolved. |
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### Privacy issues

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| <b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b> | <b>NO</b> |
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The supplementary order paper does not include any privacy issues.  
 We note the Bill as amended by the select committee includes several provisions that may relate to the disclosure of personal information (clauses 33A and 37).

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| <b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>                | <b>NO</b> |
| The Office of the Privacy Commissioner was consulted during the policy development process. |           |

### External consultation

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| <b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>  | <b>NO</b> |
| <p>There was no public consultation on the supplementary order paper.</p> <p>The Principal Tenancy Adjudicator was consulted on the proposals in the supplementary order paper.</p> <p>We note the Bill has its origins in a Government review of the Unit Titles Act in 2016-17. The Government released a discussion document covering the five main areas of proposals in the Bill: pre-purchase disclosure, body corporate governance, body corporate managers, long-term maintenance planning and dispute resolution. There were 119 submissions, which were generally in support of change to the Unit Titles Act.</p> |           |

### Other testing of proposals

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| <b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>   | <b>YES</b> |
| Consultation occurred with a range of government departments including the Ministry of Justice, Ministry of Business, Innovation and Employment, Kāinga Ora-Homes and Communities, Land Information New Zealand, the Treasury and Department of the Prime Minister and Cabinet. |            |

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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| <b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b> | <b>NO</b> |
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### Charges in the nature of a tax

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| <b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b> | <b>NO</b> |
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### Retrospective effect

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| <b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b> | <b>NO</b> |
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### Strict liability or reversal of the burden of proof for offences

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| <b>4.4. Does this Bill:</b>  |           |
| <b>(a) create or amend a strict or absolute liability offence?</b>   | <b>NO</b> |
| <b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b> | <b>NO</b> |

### Civil or criminal immunity

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| <b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b> | <b>NO</b> |
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### Significant decision-making powers

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| <b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>   | <b>YES</b> |
| <p>The Tenancy Tribunal has the existing power to make determinations about obligations and rights relating to unit titles. The new obligations and rights established in the supplementary order paper are in line with the Tribunal's existing powers and do not significantly extend its decision-making power.</p> <p>The supplementary order paper clarifies the Limitation Act 2010 applies to unit titles disputes in the Tenancy Tribunal (clause 21).</p> <p>The supplementary order provides a regulation-making power to set a costs scale in regulations. Any regulations made must be followed by the Tenancy Tribunal in making costs awards (clauses 16AAA, 21AA and 21B).</p> <p>We note the Bill creates enforcement powers for the regulator to issue improvement notices which carries a penalty if not complied with. This aims to encourage people to comply with their obligations under the Act. Improvement notices can be challenged in the Tenancy Tribunal.</p> |            |

## Powers to make delegated legislation

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| <b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b> | <b>NO</b> |
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| <b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>  | <b>YES</b> |
| <p>The supplementary order paper creates a power to make regulations to set a costs scale for costs awards in the Tenancy Tribunal (clause 21B).</p> <p>We note the Bill also creates other powers to make regulations – to specify the documents that must be retained by bodies corporate and body corporate managers for production to the regulator; and to set rules for participation in meetings by remote access and for electronic voting. The Bill also creates powers to make regulations (and also makes those regulations in the Bill itself) – to specify matters that a body corporate manager may perform or exercise and to prescribe codes of conduct for body corporate committee members and body corporate managers.</p> |            |

## Any other unusual provisions or features

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| <b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b> | <b>NO</b> |
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