



29 April 2021

Committee Secretariat  
Finance and Expenditure Committee  
Parliament Buildings  
Wellington

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## **Submission on the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill**

The Institute of Directors (IoD) appreciates the opportunity to comment on the [Unit Titles \(Strengthening Body Corporate Governance and Other Matters\) Amendment Bill](#) ('Bill'), a Member's Bill under Nicola Willis. The Bill will amend the law relating to high-density housing set out in the Unit Titles Act 2010 ('Act'). The changes are intended to ensure that the Act remains fit for purpose and effective in dealing with the change in circumstances of its use, in particular the increasing number of people living in apartments and other high-density living arrangements. Our submission focuses on governance related matters in the Bill.

### **About the Institute of Directors**

The IoD is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future powered by best practice governance.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities. Our members also serve on body corporate committees.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

### **Background and overview of the Bill**

In 2016 the government (at the time) consulted on a discussion document on the review of the Act and the IoD [submitted](#) on this. The Bill essentially follows on from the review and it includes amendments to:

- strengthen the governance arrangements in relation to the body corporate, the owner (entity) responsible for the management and operation of a unit title complex
- increase the professionalism and standards of body corporate managers

- improve the information disclosure regime to prospective buyers of units, and
- ensure that planning and funding of long-term maintenance projects is adequate and proportionate to the size of the complex concerned.

### **Overview of the Act and body corporate committees**

The Act governs how unit title complexes are created and managed, and the rights of unit owners. Under the Act, bodies corporate are required to operate and manage unit title complexes. A body corporate of a unit title complex of 10 or more units must form a body corporate committee (unless the body corporate, by special resolution, decides not to). It is optional for a body corporate of a unit title complex of 9 or fewer units to form a committee.

The committee exercises the duties and powers delegated to it by the body corporate and must report on the performance of them. Professional body corporate managers are often engaged to carry out management and administrative matters.

### **Body corporate governance**

Good body corporate governance is important to the operation and management of unit title complexes. The Bill aims to strengthen body corporate governance, while ensuring the legislative framework is flexible and appropriate for small and large bodies corporate. We discuss key governance related matters in the Bill below.

### ***Duties and responsibilities of body corporate committees***

Duties and responsibilities of committees are set out in the Act and in the Unit Titles Regulations 2011. The Bill introduces additional responsibilities for body corporate committees and their members.

A code of conduct for body corporate committee members is included in the Bill and this has been modelled on Queensland's Body Corporate and Community Management Act 1997. The code of conduct includes a duty to (among other things):

- commit to acquiring as much understanding of the Act and regulations as is relevant to the member's role on the committee
- act honestly and fairly in performing their duties as a committee member and not disclose confidential information unless authorised
- act in the body corporate's best interests
- comply with the Act and code
- disclose conflict of interests.

Committee member duties are central to good governance. They reflect the fiduciary nature of the obligations of committee members and promote accountability. We support the introduction of the code of conduct which should lead to more consistency in the quality of body corporate conduct and help raise the standard of governance.

The Bill also expands on the meeting procedure requirements for body corporate committees by making it a requirement for committees to keep written records of their meetings and to record

each resolution. Committees must promptly report to the body corporate on the meetings it holds. We support these requirements which are good governance practices.

The Bill does not introduce penalties for non-compliance. We note that onerous penalties could deter people from serving on committees but some ability to censure could help underpin improving good practice. Although some action can be taken under the Tenancies Tribunal, we suggest that the Select Committee consider whether body corporate committees need the power to censure for breaches of the code of conduct.

### ***Conflicts of interest***

The Bill introduces conflict of interest disclosure rules for body corporate committee members, an essential part of any governance regime. The main purpose of having such rules is to provide a process to manage actual or potential conflicts and to ensure that decisions are made (and seen to be made) without bias and for the right reasons. In the context of body corporate committees, a person may be conflicted, for example, where they serve on the committee and the committee engages them to provide maintenance or other services to the body corporate. The provisions in the Bill are based on corporate governance principles and provisions in other legislation (including the Companies Act 1993 and the Crown Entities Act 2004). They are also similar to the conflict of interest provisions in the draft Incorporated Societies Bill. Under the Bill:

- a member of a body corporate who is 'interested' in a matter must disclose details of the nature and extent of the interest to the body corporate committee and in an interests register to be kept by the committee
- a person is interested if they have a direct or indirect financial interest or benefit (or if the body corporate operational rules provide that they are interested in the matter – allowing for non-financial interests to be addressed)
- there are exclusions to being interested including if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the person
- a member who is interested in a matter cannot vote or take part in any decision relating to the matter but can take part in any committee discussion and be present when the decision is being made (unless the committee decides otherwise)
- there are consequences of failing to disclose an interest (eg the body corporate must notify the members about the failure).

We support the inclusion of conflict of interest disclosure rules including to ensure transparency and accountability.

### ***Reporting of delegated powers***

Under the Bill, body corporate committees are required to report annually to the body corporate on the use of their delegated powers. This will apply to medium and large residential developments, although medium residential developments can opt out by special resolution. 'Medium residential development' means between 10 and 29 principal units that are primarily used as places of residence and 'large residential development' means 30 or more principal units that are primarily used as places of residence. We support this reporting requirement for large residential developments and the ability to opt out for medium residential developments. Regular reporting

supports good governance and the underlying principles of accountability and transparency.

### ***Proxy voting and proxy farming***

Under the Act, unit owners can nominate other members of the body corporate to cast a proxy vote on their behalf. This enables, for instance, overseas or absentee owners to indirectly participate in body corporate decision making. Proxy voting is common in other contexts, such as for companies. However, proxy voting can also lead to proxy farming. This is where one member collects the right to vote on behalf of other unit owners and in some circumstances they can have significant control over body corporate matters. Proxy farming can disenfranchise owners and cause other issues between owners who reside in the complex together.

The Bill introduces limitations on the number of proxy votes any one proxy may hold so that a proxy cannot act as a proxy for a voter of:

- more than 1 principal unit, if the unit title development comprises fewer than 20 units
- more than 5% of the total number of principal units, for any other development.

We support the inclusion of anti-proxy farming provisions in the context of unit titles. This is consistent with the approach taken in Australia where they have introduced provisions to limit proxy farming in legislation governing unit complexes.

### ***Electronic meeting and voting***

The Bill also provides that members of a body corporate can attend meetings and vote at meetings using some form of remote access facility (eg by telephone or audiovisual link) including:

- if the body corporate has (by special resolution) previously authorised its members to participate at general meetings by remote access;
- the chairperson considers that it is appropriate given the agenda; and
- any specified circumstances of the special resolution authorising remote access are met.

Attendance and participation in meetings (including in decision-making) can be enhanced through electronic means. As a result of COVID-19, it is now more common for organisations to hold meetings virtually. The provisions in the Bill should be more facilitative to enable better attendance and participation and to future proof the unit title regime.

### **Conclusion**

We support the introduction of the Bill to ensure there is up to date, relevant and effective legislation in place that is appropriate for the increasing amount of high-level intensity living in New Zealand. In particular we support the introduction of stronger body corporate governance requirements and the code of conduct for body corporate committees. These changes should help raise the standard of governance in relation to unit title developments.

We also encourage the Ministry of Business, Innovation and Employment to provide updated guidance material and assistance to bodies corporate and committees on their rights, duties and responsibilities.

We appreciate the opportunity to comment on behalf of our members

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'SE', with a stylized, cursive font.

**Selwyn Eathorne**

Manager, Governance Leadership Centre