In Confidence

Office of the Minister of Housing

Cabinet Economic Growth and Infrastructure Committee

Regulatory Systems Bill: Housing Portfolio Matters

Proposal

1 This paper seeks Cabinet's approval for minor amendments to the Residential Tenancies Act 1986 and the Unit Titles Act 2010, to be included in the Regulatory Systems Bill.

Executive Summary

2 The Regulatory Systems Bill will be an omnibus bill to improve statutes that affect businesses and housing regulatory systems, sponsored by the Minister for Economic Development. Other Ministry of Business, Innovation and Employment Ministers intend to submit papers to the Economic Growth and Infrastructure Cabinet Committee seeking decisions for other matters to be included in the Bill. Although changes to individual statutes do not warrant stand-alone bills, together the changes will make a significant difference.

3 I propose to make changes to legislation within my Housing portfolio through the Regulatory Systems Bill. This paper seeks approval for five amendments to the Residential Tenancies Act 1986 (the RTA) and 13 amendments to the Unit Titles Act 2010 (the UTA). These changes are intended to reduce business compliance costs and clarify existing provisions by addressing inconsistencies within the two Acts.

4 With regard to the RTA, the changes would:

- remove the requirement that non-state sector persons must be appointed as tenancy mediators for applications involving the Crown and confirm that the chief executive must ensure the independence of mediators, to align with current practice for the Tenancy Tribunal

- make changes to clarify when email documents are deemed to be served and to enable a document to be served on an organisation by sending it to its registered office

- require that landlords must keep records relating to a tenancy for seven years after a tenancy ends

- prescribe the maximum amount of damages that may be awarded for two unlawful acts – failure to keep records ($200) and failure by the tenant, without

reasonable excuse, to allow the landlord to enter the premises ($1,000) – consistent with other maximum amounts prescribed in the Act.

5 The proposed changes to the UTA would clarify that alterations to the default body corporate rules can be deposited with the unit plan by the developer, remove the six-month time limit for applying to the Registrar to cancel a unit plan following a decision by the High Court and make the minor and technical changes described in the Annex to this paper.

Background

Omitted

7 The purpose of the Regulatory Systems Bill is to bring together a collection of amendments that will improve several statutes. The amendments are relatively uncontroversial changes to deal with issues that inhibit the efficiency and effectiveness of regulatory systems. Dealing with these issues through the Regulatory Systems Bill will reduce the risks of systemic regulatory problems.

8 The Housing portfolio Acts that will be affected by the proposals in this paper are the Residential Tenancies Act 1986 (the RTA) and the Unit Titles Act 2010 (the UTA).

9 The issues associated with these Acts do not warrant stand-alone Bills. The net benefits of the changes across all portfolios taken together are sufficient to justify a bill. Benefits include reducing compliance costs for business and clarifying existing provisions within the two Acts

Comment

10 I am seeking your approval to progress five amendments to the RTA and 13 amendments to the UTA through the Bill.

11 The changes would collectively reduce business and other compliance costs, clarify existing statutory provisions and address gaps and inconsistencies within the Acts.

Residential Tenancies Act

12 The purpose of the RTA is to define the rights and obligations of landlords and tenants of residential properties. The RTA also provides a dispute resolution service by allowing for mediation and adjudicated hearings at the Tenancy Tribunal.

13 I propose five changes to the RTA, which are outlined in the following paragraphs.

Amendment to provisions around mediator independence

14 Under the RTA most applications to the Tenancy Tribunal may be referred to mediation before being heard by the Tribunal. The primary function of tenancy mediators is to attempt to bring parties to a dispute to an agreed settlement.

15 The RTA contains a requirement to appoint non-state sector persons as mediators to deal with tenancy disputes involving the Crown. This requirement is historical. When the current legislation was put in place, the requirement was due to the fact that tenancy mediators were part of Housing New Zealand, which was party to a significant proportion of the disputes.

16 I do not consider that it is necessary to appoint non-state sector persons as mediators to deal with tenancy disputes involving the Crown, so long as they are effectively independent.

17 The current requirement under the RTA is not consistent with how the need for mediator independence is dealt with in other regimes, such as under the Employment Relations Act 2000. Additionally, mediators working under the RTA are already expected to act independently, including complying with a mediator's code of ethics.

18 Housing New Zealand is party to approximately 27 percent of tenancy mediations. Other parts of the state services are rarely involved in tenancy mediations. It is pertinent to note that mediators are now part of the Ministry of Business, Innovation and Employment (the Ministry) and are independent from the main state sector party to mediations (Housing New Zealand).

19 I propose to amend the RTA to remove the requirement that non-state sector persons must be appointed as tenancy mediators and confirm that the chief executive must ensure the independence of mediators, to align with current practice for the Tenancy Tribunal.

Two changes to provisions about service of notices or documents

20 I propose to update provisions in the RTA that specify how documents may be served on landlords and tenants (section 136). As it currently operates, section 136 is hindering the efficient service of documents.

21 One of the ways that the RTA enables documents to be served on a landlord or tenant is by sending the documents to an email address or fax number where one has been given as an address for service. The RTA defines when documents transmitted by fax are deemed to have been served, but does not do the same for documents transmitted via email. I propose to clarify that email documents served after 5pm on any day shall be deemed to be served on the next working day, which is what is already prescribed for documents sent by fax.

22 It is possible that the Act may need to be updated to include other types of electronic service in the future, to allow for new technology. However, MBIE's experience and feedback from stakeholders suggests that access to this sort of technology is difficult for some tenants. For this reason, any new methods of serving documents electronically would need to be carefully considered and the impacts well understood.

23 I also propose to add a provision enabling a notice or document to be served on a company or organisation by sending it to its registered office.

Introducing a timeframe for recordkeeping requirements

24 Section 30 of the RTA requires a landlord to keep certain records relating to the tenancy but fails to stipulate how long they must do this for. I propose that the RTA be amended to require these records to be kept for seven years after the end of the income year to which the record relates.

25 The recordkeeping requirements in section 30 of the RTA relate to rent and bond payments. The proposed timeframe of seven years would align the recordkeeping requirements with section 22 of the Tax Administration Act 1994, which requires that records are kept for a period of seven years for all those "carrying on any business in New Zealand", or, "carrying on any other activity (not being the carrying on of employment as an employee) in New Zealand for the purpose of deriving assessable income".

26 This change will provide clarity for landlords about their obligations under the RTA.

Correcting omissions in the schedule that outlines maximum amounts a person may be ordered to pay in the case of unlawful acts

27 Schedule 1A of the RTA sets out maximum amounts a person may be ordered to pay in the case of unlawful acts. There are two unlawful acts in the RTA that do not currently have maximum amounts specified in the Schedule.

28 I propose to insert maximum amounts for these two unlawful acts into the Schedule, to clarify what damages may be awarded. The amounts are consistent with other equivalent unlawful acts already included in the Schedule:

- Section 30(2): failure to keep records in accordance with this section is an unlawful act. The proposed maximum penalty for this unlawful act is $200. An example of an equivalent unlawful act for which $200 is already prescribed as the maximum penalty is failure by a landlord to give receipts for rent.

- Section 48(4)(b): failure by the tenant, without reasonable excuse, to allow the landlord to enter the premises in any circumstances that this section entitles the landlord to enter. The proposed maximum penalty for this unlawful act is $1,000. Examples of equivalent unlawful acts for which $1,000 is already prescribed as the maximum penalty are: altering locks without consent of the other party and unlawful entry by a landlord.

29 Two of the 12 stakeholders consulted on this proposal commented that they felt one or other of the maximum penalties proposed may be too low. I consider that it would be inappropriate to review these amounts independently of the amounts already listed in Schedule 1A of the RTA, so recommend leaving the amounts as they are proposed to ensure consistency with other equivalent amounts in Schedule 1A.

Unit Titles Act

30 The purpose of the UTA is to provide a legal framework for the ownership and management of land and associated buildings by communities of individual owners. The UTA allows subdivision of land and buildings into unit title developments and the creation of bodies corporate.

31 I propose 13 amendments to the UTA. All of the proposals are minor and technical and collectively will reduce business and other compliance costs for stakeholders. The proposals are outlined in the Annex, but the two most substantial proposals are detailed below.

Clarification to alterations to operational rules on deposit of unit plan

32 I propose to clarify that the default body corporate operational rules can be altered by the developer on deposit of the unit plan, or at any time afterwards by the body corporate. The operational rules apply to all bodies corporate and relate to body corporate issues about the control, management, administration, use or enjoyment of units and common property.

33 Currently, the UTA is not clear on whether or not a developer is empowered to lodge the altered rules together with the unit plan.

34 By providing default body corporate operational rules, developers will be able to meet demand from prospective purchasers of units, who expect to purchase a complete apartment package. Bodies corporate are able to subsequently amend the rules by majority resolution if they choose.

Removing the time period to apply to Registrar to cancel a unit plan following a High Court decision

35 The UTA details the process for cancellation of a unit plan following a decision of the High Court – which has been used, for example, where a building has been severely damaged following the Canterbury earthquakes. The process allows for an application to be made to the Registrar-General of Land to cancel the unit plan within six months of the decision.

36 However, experience has shown that six months may not be enough time for all the conditions imposed by the High Court to be complied with.

37 I propose that the UTA be amended so that the six month timeframe is removed, and to introduce a new requirement that the Registrar-General of Land be satisfied that any conditions imposed by the High Court have been complied with.

38 The amendment would remove any issues caused by the time constraint for lodgement, while allowing the Registrar-General of Land to ensure that conditions imposed by the High Court have been fulfilled.

Consultation

Sector

39 **Residential Tenancies Act**: The Ministry consulted on the proposals outlined in this paper with a limited number of key stakeholders. Those stakeholders included property managers, tenants' protection organisations, city councils, the Property Law Section of the New Zealand Law Society and the Citizens' Advice Bureau. Stakeholders supported the proposals outlined in this paper.

40 **Unit Titles Act**: The proposals were contained in a Unit Titles Amendment Bill that was proposed but not proceeded with in 2013 (because House time was required

to progress a separate Unit Titles Amendment Bill containing items that had been taken out of last year's Statutes Amendment Bill). A full consultation process was conducted as part of that Bill's development and submitters' views have been included in the current amendments.

41 Because the proposed amendments concern matters of property law, the Ministry consulted with the Property Law Section of the New Zealand Law Society in May 2014. The Property Law Section supports the proposed amendments and provided useful clarification for several, which have been taken into consideration when finalising the proposals.

Agencies

42 The following government agencies were consulted during the preparation of the paper and their feedback has been taken into account: Land Information New Zealand, Ministry of Justice, Housing New Zealand, Ministry of Social Development, Te Puni Kōkiri, Department of Internal Affairs, Inland Revenue and the Treasury. The Department of the Prime Minister and Cabinet has been informed.

43 The Ministry worked closely with the Ministry of Justice (which has co-responsibility for the Tenancy Tribunal that provides dispute resolution services under the RTA) to develop the RTA proposals. With regard to the UTA, the Ministry worked closely with Land Information New Zealand on development of proposals that mainly concern unit title registration matters under the UTA, which are LINZ's responsibility.

Financial Implications

44 Any financial implications from the proposed amendments will be met from within existing Ministry of Business, Innovation and Employment baselines.

Human Rights

45 The proposed amendments are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

46 An amendment bill will be required to implement the proposals in this paper. The proposals in this paper will form part of the Regulatory Systems Bill.

Omitted

48 In relation to the housing portfolio, the Regulatory Systems Bill will amend two Acts which are binding on the Crown. Consequently, the amendments will also bind the Crown.

Regulatory Impact Analysis

49 A Regulatory Impact Analysis has not been prepared for the proposals, as they are of a minor and technical nature and/or will clarify policy intent under both Acts.

Gender Implications

50 The proposed amendments do not have any gender implications.

Disability Perspective

51 The proposed amendments do not have any implications from a disability perspective.

Publicity

52 The Minister for Economic Development will publicise the Regulatory Systems Bill by issuing a media statement relating to the Bill as a whole.

Recommendations

53 The Minister of Housing recommends that the Committee:

Policy issues

1 **note** that the Regulatory Systems Bill is an omnibus Bill that will improve several regulatory systems under legislation administered by the Ministry of Business, Innovation and Employment;

2 **agree** to amend the Residential Tenancies Act 1986, through the Regulatory Systems Bill to:

2.1. remove the requirement that non-state sector persons must be appointed as tenancy mediators where applications involve the Crown, and confirm that the chief executive must ensure the independence of mediators, to align with current practice for the Tenancy Tribunal; and

2.2. clarify when email documents are deemed to have been served and add a provision enabling a notice or document to be served on a company or organisation by sending it to its registered office; and

2.3. require that landlords must keep records relating to a tenancy for seven years; and

2.4. prescribe maximum penalties for two unlawful acts – failure to keep records ($200) and failure by the tenant, without reasonable excuse, to allow the landlord to enter the premises ($1,000) - consistent with other maximum amounts prescribed in the Act;

3 **agree** to amend the Unit Titles Act 2010, through the Regulatory Systems Bill to:

3.1. clarify that alterations to the default body corporate rules can be deposited with the unit plan by the developer; and

3.2. remove the six-month time limit for applying to the Registrar to cancel a unit plan following a decision of the High Court; and

3.3. make the minor and technical changes described in the Annex to this paper;

4 **note** that other Ministers have submitted proposals for changes to other Acts to be included in the Regulatory Systems Bill;

Legislative implications

Omitted

6 **note** that the Regulatory Systems Bill is the responsibility of the Minister for Economic Development;

7 **authorise** the Minister of Housing to make any decisions on minor and technical matters that may arise during the drafting process, that are consistent with policy decisions, in consultation with other Ministers as appropriate;

8 **invite** the Minister for Economic Development to issue drafting instructions to the Parliamentary Counsel Office in relation to the proposed changes to be included in the Regulatory Systems Bill;

Publicity

9 **note** that the Minister for Economic Development will issue a press statement on the Regulatory Systems Bill as a whole; and

10 **authorise** the Ministry of Business, Innovation and Employment to place this paper on its website.

Hon Dr Nick Smith

Minister of Housing

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Annex: proposed amendments to the Unit Titles Act 2010

Proposal 1: clarify that if a new unit plan or amendment to an existing unit plan is required as a result of public works, that plan or amendment must be prepared by or on behalf of the authority carrying out the public works, at its own expense.

Reason: the current wording in the Unit Titles Act could be read as making this requirement optional.

Benefits: removes ambiguity around this requirement.

Costs: nil.

Proposal 2: remove a redundancy in section 32(3)(b), which covers restrictions when unit plans are deposited with the Registrar, so that the requirement for ownership interest to be reassessed only applies to a subdivision of land and not a subdivision of a principal unit.

Reason: the requirement is redundant as it is not appropriate for the ownership interest of a single unit to be assessed in isolation. Arranging this valuation can also cause considerable difficulties for the owner.

Benefits: removes unnecessary compliance burden.

Costs: nil.

Proposal 3: section 177 relates to the cancellation of a unit plan by the body corporate. One of the pre-requisites to the cancellation of the unit plan is that the ownership interests of the units be reassessed, which is currently mandatory. I propose to allow a body corporate to forego the requirement to reassess the ownership interests of all the units where it intends to apply to cancel the unit plan if it considers it unnecessary, and where evidence has been provided to the Registrar that a special resolution has been passed agreeing to this requirement.

Reason: in some circumstances, this requirement is unnecessary, for example if a single owner owns all the units, or if the ownership interests were recently reassessed. The amendment allows a body corporate to determine the situations where it considers the requirement is unnecessary.

Benefits: removes unnecessary compliance; strengthens the body corporate's ability to manage its affairs.

Costs: nil.

Proposal 4: remove the words 'reassess' and 'reassessment' in section 41 and replace them with the words 'assess' and 'assessment', and recast the wording of section 41(3) to read, "A decision by the body corporate to reassess the ownership interest or the utility interest under subsection (1) may only be made if 36 months or more have elapsed since the deposit of the plan or the last reassessment of the ownership interest or utility interest under subsection (1), as the case may be".

Reason: the terms are causing confusion in the industry, because the initial assignment of the ownership interest and utility interest is not described as an assessment.

Benefits: use of the correct terms will resolve confusion.

Costs: nil.

Proposal 5: clarify that the arrangements in sections 62 and 63 that cover the registration of easements and covenants also include covenants and easements in gross affecting the common property and units respectively.

Reason: the current wording omits references to easements and covenants in gross.

Benefits: clarification that the section does provide for easements and covenants in gross should strengthen unit owners' property rights.

Costs: nil.

Proposal 6: clarify confusion around the words "materially affect" in section 65(1) where redevelopment requires amendment to the unit plan, by making it clear that no change may be made to the common property and by adding a statement that redevelopment will not alter the number of existing units.

Reason: the current wording is intended to apply only to boundaries between units, and not where there is a change to the boundary of the common property. The wording "materially affect" has led some stakeholders to the conclusion that even minor adjustments to common property boundaries may fall within this section.

Benefits: clarification should reduce or eliminate unnecessary compliance costs.

Cost: nil

Proposal 7: permit the variation of the terms and conditions of the ground lease and clarify that renewal or variation of the ground lease will not wind up the unit title development.

Reason: section 167 of the UTA allows the body corporate of a leasehold unit title development to exercise a right of renewal on the ground lease, or extend the term of that lease. However, variations of the covenants and conditions of the ground lease are currently not allowed but are often desirable for both parties given that these leases tend to have lengthy terms and are automatically kept in being for the duration of the unit development. In addition to permitting variations of the terms and conditions and their registration it is important to put in place mechanisms that ensure that the renewal of the ground lease or the extension of its term will not terminate the unit development and its titles and registered interests.

Benefit: allowing variations of the terms and conditions of the ground lease will permit that lease to be kept up to date in order to serve its current needs.

Cost: nil.

Proposal 8: section 169 of the UTA covers the situation where in a unit title development either the lessor of the base land has obtained ownership of all the leasehold units, or the unit owners have obtained ownership of the fee simple interest in the base land. However, the section does not express how interests registered on the title for the fee simple and stratum leasehold estates will be dealt with in the merger. I seek an amendment to authorise the recording of the merger on the appropriate titles, on both the fee simple title (prior to cancellation) and on the supplementary record sheet for the (now) stratum freehold unit title development, and provide clearer directions as to how existing interests affecting both fee simple and stratum leasehold are to be carried

forward and prioritised against the stratum freehold created as a result of the merger.

Reason: although this type of merger is permitted in the UTA, there is a lack of clarity as to how it can be recorded and how existing interests affecting both merging estates are to be dealt with against the emergent stratum freehold that is created as a result of the merger.

Benefit: would permit this instruction to be recorded by the Registrar and clarify that the merger must be recorded on both the fee simple title (prior to cancellation) and on the supplementary record sheet for the (now) stratum freehold unit title development.

Costs: nil.

Proposal 9: clarify the meaning of principal unit so that it can include one or more car parks.

Reason: the UTA does not permit multiple car parks within the meaning of a principal unit.

Benefit: clarification should strengthen ownership rights of unit owners in a body corporate.

Costs: nil.

Proposal 10:.clarify "the time of sale" under the provision that the sale, lease or licence of the common property must be distributed in proportion to the ownership interests "at the time of sale, lease, or license".

Reason: the UTA implies, but does not define the time of sale in this circumstance.

Benefit: clarification should reduce or eliminate unnecessary compliance costs.

Costs: nil.

Proposal 11: provide a timeframe for when an extraordinary general meeting must be held.

Reason: There is no timeframe specified by which a chairperson needs to call an extraordinary general meeting, which is an issue when a time critical decision needs to be made by the body corporate and where the body corporate has two camps, i.e. a majority of unit owners (that can pass a written resolution) and owners with the majority of ownership interest (that can veto by poll, but only at a physical meeting).

Benefit: clarifying when an extraordinary general meeting must be held will resolve legislative uncertainty, and would strengthen the ownership rights of unit owners in a body corporate.

Cost: nil.