strata community association®

# Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill

*Strata Community Association New Zealand (SCA NZ) Submission to New Zealand Parliament Finance and Expenditure Select Committee*

**29 April 2021**

## Introduction

SCA (NZ) is the peak professional association for the New Zealand Body Corporate and Community Title Management industry and was formed in 2016 to provide a forum for improved standards and education in the industry.

Membership includes body corporate managers, support staff, committee members and suppliers of products and services to the industry. SCA proudly fulfills the dual roles of a professional institute and consumer advocate.

SCA (NZ) is a chapter of the Strata Community Association, which represents practitioners throughout Australia. The Strata Community Association has formal links with the Community Associations Institute of the USA.

Based on the 2020 Australasian Strata Insights Report, approximately 115,000 New Zealanders live in apartments and between 275,000 and 400,000 people living in properties under strata title of some kind (including townhouses, residential accommodation etc.). The industry employs approximately 352 full-time strata managers.[1]

As the growth of apartment and strata living has intensified over the last decade, the strata management strata services industry has grown in lock step to serve it. Strata managers navigate through a maze of legislation and regulation ranging from actual strata specific legislation, regulation, workplace, health and safety issues and building codes as well as measures applicable to the management of body corporate funds.

A key driver of SCA (NZ) is to improve the standard and professionalism of the body corporate management industry.

If you have any questions about this submission, please direct them to Shaun Brockman, National Policy and Advocacy Manager, SCA, shaun.brockman@strata.community.

[1] Hazel Easthope, Sian Thompson and Alistair Sisson, *Australasian Strata Insights 2020*, City Futures Research Centre, UNSW, Accessed at https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/

## An outline of the SCA (NZ) Submission

We have divided our submission into three parts:

- **Part 1** includes our comments on the matters covered in the Bill.
- **Part 2** includes matters outside the Bill which we recommend the parliamentary committee advise on, and the government take action on as needing further attention, either as part of the current Bill or as part of a future review.
- **Part 3** is a table of our specific feedback on the Bill section by section.

We encourage the Select Committee to review the Bill in light of our comments in Part 1 and 3.

We acknowledge and accept that our Part 2 comments may not be considered at this point in time and may fall outside the scope of this Select Committee's efforts at this point in time.

The Bill makes essential improvements to several aspects of the UTA, and we ask that the Select Committee not delay the Bill's finalisation in order to carry out a wider review if that is contemplated based on our submission. Our desire is for the Bill with our suggested amendments to be finalised and enacted as soon as possible.

References in our submissions to UTA are references to Unit Titles Act 2010.

## PART 1 – Comment on the Bill

**Remote access voting**

COVID-19 has presented huge challenges across all industries including unit title management. The introduction of meeting and voting by remote access borne out of the necessity to reduce the spread of COVID has been welcomed by the industry where owners, committees and strata management companies alike have experienced positive outcomes.

SCA (NZ) supports the continuation of these measures with the right settings and oversight.

We submit that the simplicity of the current temporary section 88(3) is retained. The requirements set out in proposed section 104A are quite onerous and could be open to abuse if a Body Corporate Chairperson or Committee wished to influence the outcome of a meeting.

However, if a body corporate resolution is necessary to approve the use of remote attendance it should be an ordinary (majority), not special resolution (75%). The section should also ensure that an owners' right to attend a general meeting "in person" (or by their proxy "in person") remains in place, and a Body Corporate cannot require a general meeting to be held solely by remote means. The only exception to this should be if this is necessary due to government restrictions, such as the Covid-19 pandemic.

One aspect of owners attending a meeting remotely that requires attention is verifying the owner attending remotely is the owner.

Proposed section 101(2) refers to regulations covering remote attendance procedures. Procedures can be set out in the regulations ensuring remote attendees are verified adequately. At present there are no verification requirements prescribed in the UTA for owners attending a meeting in person. Usual practice is for a meeting attendance register to be signed by all those attending in person which is checked against the owners register prior to the meeting commencing. The Bill presents an opportunity to consider verification for attendance both in person and remotely, to ensure consistent and robust procedures are in place. Otherwise, auditing voting results becomes difficult, and questions of reliability arise. To achieve this the regulations could include:

a. Requiring owners attending in person to confirm they are an owner (or the named proxy) by signing a short declaration. The Body Corporate is then able to rely on this and is under no obligation to investigate further.

b. Requiring pre-registration by owners attending remotely using a form prescribed in the regulations.

c. Allowing only the phone number or email address recorded in the owners register to be used by an owner attending by audio link or audio-visual link and requiring use of a password (generated by the Body Corporate) where technology allows.

**Electronic Voting**

We also submit that the use of electronic voting prior to a meeting be addressed by the Bill, and also during a meeting by remote attendees. The latter is already occurring in practice for meetings with remote attendees, using the voting features within software such as Teams and Zoom. However, this is not expressly addressed in the current temporary section 88(3) and should be to ensure there is no doubt around the validity of owners exercising their vote in this manner.

To encourage owner engagement and embrace today's technology, we also submit that the Bill needs to address pre-meeting electronic voting. At present owners can submit a paper postal voting form. Pre-meeting electronic voting is an alternative to this with the ease of electronic means. Australian based Body Corporate Management software systems provide for this and Australian software is used by many New Zealand based management companies. New Zealand Managers are not however using the pre-meeting electronic voting feature as our UTA does not expressly provide for this ability. Please see Part 2, sections 14 to 17, of the New South Wales Strata Schemes Management Regulations 2016 for an example of how this can be legislated. Thought needs to be given to how a person exercising pre-meeting voting is verified as an owner. At a minimum registration could be through the email on the owners register and a password provided, together with a declaration from the person carrying out the electronic voting that they are the owner.

**Regulation of Body Corporate Managers**

*Body Corporate Managers – definition, functions, duties, conflicts, and terms in agreements*

Body Corporate Managers were completely removed from the current UTA which was intended to help empower owners. However, Managers play an essential role and need to be recognised in the legislation. We strongly support the re-introduction of Managers into the Bill and the extent to which this has been done. There is a desire amongst our members to improve professionalism and accountability in the industry. The Bill provides an opportunity to support this by regulating Managers, and introducing transparency and consumer protection measures, particularly given Body Corporate Management companies handle significant levels of Body Corporate funds.

We support the introduction of the conflict-of-interest regime in new section 114I, but do not agree with the ability given to the Chairperson or Committee to decide whether, and to what extent, a Manager can continue to act on a matter after a conflict is disclosed. This gives power to unilaterally alter the service contract in place between the Body Corporate and the Body Corporate Manager. We see the purpose of the register of Body Corporate Manager disclosures as necessary for transparency purposes only.

*Body Corporate manager must be member of industry organisation*

We support this amendment. The role of a Body Corporate Manager is complex and covers many technical areas. Ongoing training is necessary to keep abreast of current issues and relevant legislation and something we strongly advocate for. An example of a suitable organisation is SCA NZ. We provide training and industry support to Body Corporate Managers across New Zealand and membership requires compliance with the SCA Code of Conduct, and a complaints process is available if the Code is breached. Our training courses include the NZ100, a 3-day intensive for Body

Corporate Managers and suppliers, and Committee training for Chairpersons and Committees, as well as other special events on topical issues and round table gathers for Managers.

Strata Community Association (NZ) proudly fulfils a duality of responsibilities as a professional institution and representative body for approximately 352 strata managers.

Strata managers perform an essential role for a substantial percentage of the population owning and/or living in properties under Community Title, with the provision of essential services, maintenance and improvement works to common property areas.

Professionalisation of the strata management sector represents an opportunity to be distinguished as a recognised profession, while highlighting effective industry-led regulation via tangible commitments to high professional standards.

This in turn sends a strong and positive message to members, clients, and the wider public about the value of strata managers, and their unique status in undertaking appropriate works.

In the Australian state of New South Wales, SCA (NSW) have pushed for the implementation of a Professional Standards Scheme (PSS) for strata managers as a cornerstone of ensuring adequate consumer protection, in alignment with its function as an advocate for consumer rights within the strata sector.

A scheme like this, run by an industry body with regulatory oversight and consumer buy in means that strata managers are confidently placed to address issues inherent to the sector is not affected by regulatory overlap with other industries, namely real estate, which has its own remit.

PSS licensing present in other industries such as real estate, accounting and law has already demonstrated its capability to deliver effective industry-led regulation via enshrined principles of best practice, wherein members commit to mandated continual professional development (CPD).

We are concerned that a Manager could join an industry organisation that does not have a Code of Conduct. This would comply with the proposed regulation 28B but does not support the accountability and consumer protection measures that a Code of Conduct provides. An option may be to add a compulsory Code of Conduct in the UTA for Body Corporate managers. Particularly if a Manager is not part of an industry organisation with a Code of Conduct.

We refer you to the Queensland legislation, Body Corporate and Community Management Act 1997, for an example of a low-cost regulation approach with the legislation setting out a Manager's duties, appointment and termination, and a code of conduct. Managers in Queensland do not need to be licensed and there are no formal qualifications or training requirements, but they must follow the statutory requirements.

The legislation could also prescribe certain termination provisions that must be in the service contract, or that sit within the legislation and override the service contract, including for example, breaching the Code of Conduct, or being convicted of an offence such as fraud of dishonesty.

**Proxy appointments and votes**

The new limit of 5 per cent of votes being held by proxy will be onerous, will result in fewer quorums being reached and is poorly targeted at addressing the measure of proxy farming, which most of our members do not see as an issue that has significantly affected the owners corporations they manage.

Proxies should be able to be assigned to the meeting Chairperson and be allowed to ensure general meetings in the future do not fail to meet quorum. Anecdotally, our members have said that at least 50 per cent of AGMs would fail to meet quorum without proxies being allowed. Most vote holders, if consulted, would say they are very happy to be able to give a proxy vote as they are unable to attend for various reasons, or they live outside the area or overseas.

Introducing electronic voting in keeping with new regulations and continuing with allowing meeting to be attended remotely (brought in as a result of COVID-19) will also help to increase participation and naturally reduce the prevalence of proxy voting.

There should also be clarification inserted in the Bill that proxies can call a poll on a vote under current section 99 (in contrast to the Tenancy Tribunal's view). Proxies should have the same rights as normal voters, which is particularly important in a Covid-19 context when proxies are more likely to be granted.

We also seek clarification in the Bill around proxies where a unit is owned by more than one individual (e.g., a husband and wife). Do one of those individuals attending a general meeting on behalf of the other co-owner need to obtain a Form 11 proxy form signed by the other co-owner to be able to attend the meeting and vote? Essentially, can the one individual attend a general meeting and vote for the unit without a proxy from the other co-owner? The UTA and regulations are not clear and there are differing views in the industry causing questions around validity of voting and proxy forms.

**Mandatory body corporate arrangements for small and large complexes**

We support the introduction of medium and large complexes needing to engage a Body Corporate Manager. Our preference would be for small complexes to also need to engage a Manager as we know the value a Manager adds, and in our experience the smaller complexes are often non-compliant and require professional support. Non-compliance becomes an issue when a unit in that complex is to be sold.

The need for medium and large complexes to have their long-term maintenance plan peer reviewed should be abandoned and replaced with the need for a suitably qualified expert to prepare the plan in the first instance. This ensures the report is prepared properly at the outset and removes duplication. The Body Corporate is free to have the plan peer reviewed if they wish but we do not believe this should be mandatory.

We do have a concern that grouping units by number as proposed overlooks smaller complexes that would benefit from similar requirements. Often smaller complexes can have expensive and complex building systems requiring ongoing maintenance and the building may warrant and benefit from the additional requirements being proposed for medium and large complexes.

We are also concerned that the additional requirements apply to residential buildings only and suggest that commercial building are included.

We submit that audit requirements need to cover all body corporate accounts not just the Long Term Maintenance Plan and associated Long Term Maintenance Fund of a medium or large complex. Under the current UTA, a Body Corporate already has the opportunity to audit their accounts and can opt out of an audit. We see adding further audit requirements as adding unnecessary compliance costs for little gain.

**Defects and Long-Term Maintenance Plan**

Our key concern is that the term "defects" is undefined and could be misinterpreted to mean that each body corporate needs to seek a defects report from a building surveyor to feed into its long-term maintenance plan. This is a significant cost, and we question whether this is the intention? We suggest, for clarity, that "defects" is amended to "known defects not yet remediated". Regulation 30 setting out the content of long-term maintenance plans, will also require amending if section 116 is amended as to include reference to "defects".

We note the Chief Executive of MBIE has the power to monitor the financial and management regimes of bodies corporate under s133 of the UTA to our knowledge this role has not been exercised in relation to long-term maintenance plan. Utilising this function would help ensure compliance with long-term maintenance plan requirements.

**Disclosure**

*Pre-contract disclosure*

We support the changes proposed to the pre-contract disclosure statement, in principle. Pre-contract disclosure should include further information a has been proposed. It also needs to be made more available and easier to understand to aid this process.

We have concerns with the requirement for "endorsement" of the statement in new section 146. We do not agree this is necessary. This will slow down the sale and purchase process and increase costs. We agree that the vendor should certify the information is correct as the contractual relationship on a sale is between the vendor and purchaser and disclosure is an obligation on the vendor. No such "endorsement" is required at present from the Body Corporate, or Body Corporate Manager, for the current pre-contract disclosure statement. If endorsement is deemed necessary, it should be rephrased as "certifying as correct" which is the current wording used for the pre-contract disclosure statement. "Certifying as correct" should be limited to levies, details of any proceedings, and insurance information. Proposed section 146(2)(b) and 148(2) should be removed/amended accordingly.

New sections 146(3)(a) and (b) seem problematic. Often the seller's real estate agent provides the pre-contract statement to the purchaser on the seller's behalf. This section could prohibit that practice which would be an unintended consequence. Introducing an obligation on the seller to "discuss issues arising from the statement" with the purchaser seems vague and unwarranted and will likely attract disputes around its interpretation.

The need to include 7 years of financial statements and audits is excessive in the new pre-contract disclosure statement. This should be amended to 3 years in line with current practice and is consistent with the requirement for 3 years for Body Corporate and Committee minutes.

We suggest that the following be added back to the pre-contract disclosure statement which appear to have been removed; any planned maintenance work that sits outside the long-term maintenance plan (current regulation 33(c)), the balance of every Body Corporate fund or bank account at the date of the last financial statement (current regulation 33(d)), and explanation of terms and documents (current regulation 33(f)). Structural and fire issues could also be added.

*Additional disclosure*

Current regulation 35 setting out the content of the additional disclosure statement needs to be added back into the Bill in this round of amendments and consideration. Its removal seems to be an oversight. The reference to insurance details in regulation 35 needs to be removed as this has now been inserted into the new pre-contract disclosure statement. As set out above we do not see the need for the additional disclosure statement to be "endorsed" by the Body Corporate or Body Corporate Manager. No such endorsement is required under the current additional disclosure statement.

*Cancellation by buyer*

With respect to new section 151 and cancellation rights for non-compliance, there might also be additional clarification that if matters relating to Body Corporate non-compliance with the UTA have been disclosed in the pre-contract disclosure, the purchaser may not cancel for disclosure being non-compliant if the non-compliance was already disclosed, and that cancellation may not take place for non-material matters.

*Pre-contract disclosure*

In our view the pre-settlement disclosure should be kept in the regime, as often there can be a period in between pre-contract disclosure being issued, and pre-settlement disclosure and the purchaser needs to know the current levy and payment situation and whether any events may have changed. Current regulation 34 should be added back in which sets out its content.

This is also significant for Bodies Corporate and their Managers as an important part of the pre-settlement statement is the Body Corporate's ability to withhold it from providing it to the vendor if money remains owing to the Body Corporate. Currently the vendor's lawyer will undertake to pay outstanding amounts from the sale proceeds. The Body Corporate needs this mechanism to force payment of overdue debt on a sale settlement, and the purchaser wants Body Corporate confirmation of any amounts owing so that they can receive undertakings on settlement that the

vendor's lawyer will pay. Therefore, we strongly encourage the reinstatement of the pre-settlement disclosure statement.

**Utility interests**

Assessment of utility interests should be changed to a simple majority decision.

We generally support this amendment but have some significant concerns. The utility interest regime was introduced in the UTA to provide more flexibility to Bodies Corporate in the way they levy expenses on owners. The proposed amendment takes this a significant step further. The section needs to provide clarification on what is meant by "a multiple set of interests, each targeted at a particular service or amenity", otherwise those interpreting the legislation need to make assumptions and interpretations will differ, increasing disputes. For example, is it possible to adopt a combination of (a) uniform utility interests for a group of services and amenities in a complex together with (b) a set of multiple utility interests for the balance of services and amenities?

The practical reality of levying owners using multiple sets of utility interests throughout a financial year also needs consideration. Most Bodies Corporate raise the annual levies in instalments sometimes monthly, quarterly, or 6 monthly. Issuing levy invoices for numerous different amounts based on multiple sets of utility interests will increase Body Corporate Management fees significantly and be administratively onerous. Our members have seen very few Bodies Corporate take up the current utility interest option introduced by the UTA. Many that have attempted have failed to reach a consensus amongst owners to meet the s41 reassessment requirements. Our members have seen very few (if any) developers introduce a separate utility interest at the outset of a development either, as provided in section 39.

As currently drafted, the amendment is only available to new developments under section 39. If the amendment is adopted, it also needs to be available to existing Bodies Corporate under section 41. With that, however, comes the difficulty of a Body Corporate reaching a consensus on adopting a multiple set of utility interests. The Body Corporate must ensure they are "fair and equitable having regard to the relevant benefits and the costs to units" (see s41(5)(A)). Every owner will have their own view on how each budget line item for a service or amenity should be shared amongst owners. Disputes will likely increase, culminating in objection claims lodged by unhappy owners in the Tenancy Tribunal under the designated resolution notice process (see s212 to 216), thwarting the process and increasing costs for all involved. With more choices as to how a Body Corporate may share its costs comes more risk of disputes.

There is also thought that a reassessment of utilities interests should be changed to a simple majority decision (ordinary resolution) instead of the current threshold of a special resolution. Changing to a majority resolution still enables owners to file minority relief if they are unhappy. The premise of lowering the threshold is based on anecdotal feedback that the utility interest reassessment process is too difficult to achieve.

**Committees**

We support the proposed amendments regarding Committees.

However, we believe the drafting of new section 112 causes confusion around its application to subsections (1) and (2). We recommend it be amended to read "*Where a body corporate committee is formed under subsection (1) or (2), that committee must* conduct its business in accordance with the Act and regulations".

While we agree with the addition of Committee conflict of interest regime and a code of conduct, we suggest that some protections be added for Committee members to ensure Committee volunteers will still be willing to stand for election. The proposed Schedule 1A Code of Conduct is direct from Schedule 1A, Body Corporate and Community Management Act 1997, in Queensland, Australian. That Act also states that a Committee member breaching the Code can be removed from the Committee (see section 101B) and a Committee member will not be personally liable if they acted in good faith and without negligence (see section 101A).

We also submit that:

- ", the regulations" be inserted after "under this Act" in section 114C(4)(c);
- "and regulations" be inserted after "with this Act" in section 4 of the Schedule 1A Code of Conduct;
- "interests" be inserted before "register" in section 114F (2). (The term "register" is often used to describe the owners register in regulation 4, so clearly distinguishing the interests register is important)

We support the amendments to regulation 24 regarding Committee elections (clause 31). However, we submit that a nominee for election to the Committee must consent to their nomination if nominated by another owner. See current regulation 24(3)(b) for this requirement. Regulation 24(3)(b) is being removed, but the need for such consent should be reinstated in new regulation 24(5)(a) with consent required by the commencement of the meeting.

The proposed s157C sets up extensive reporting obligations on the delegations to Committees for medium and large complexes which is currently rarely reported on well. The proposed change to regulation 27(5) (clause 33) will mean all Committee minutes must be provided to all owners within 1 month of a Committee meeting. This means owners will receive Committee updates more regularly and applies to all complexes regardless of type and size. Current section 114 and regulation 28 already require the Committee to report on the exercise of its delegated powers and duties so it seems section 157C is duplication. In our view Committee reporting obligations should be the same across all complexes as the Committee is the "hub" of a Body Corporate and makes important decisions, regardless of the type and size of the complex.

*Conflicts of interest*

The legislation needs to be written in a way that makes conflicts of interest obvious between an interest that a committee member has for themselves, and an interest they might hold for a third party (for example, trying to win a contract).

**Body Corporate decision making**

We also support, in principle, the Clause 9 amendment of section 101 of the Act clarifying that the default position is that a matter is decided by way of ordinary resolution unless the Act provides specifically for a matter to be decided by special resolution or the body corporate has delegated the matter to its body corporate committee to decide. This section is clearer and reflects case law.

However, we have some concerns with the drafting of new section 101(1) and (2). As drafted, it suggests if the Committee has delegated powers, then subsection (1) does not apply, and the matter must be decided by the Committee. The Committee's delegated powers are not exclusive to the Committee. The Body Corporate can continue to exercise its powers and duties despite the delegation to the Committee (see section 111). Committees often send significant decisions back to the Body Corporate. The proposed section 101 also raises the question of whether a Committee can use its delegated powers to decide a matter that the UTA says must be by special resolution. At present Committees are able to decide special resolution matters by ordinary resolution due to the way section 108 regarding delegations is drafted. In our view that should remain, but proposed section 101 is drafted in way that suggests otherwise.

Based on the above, we suggest that section 101(1) and (2) be redrafted to read:

> *(1) A matter to be decided by a body corporate must be decided by ordinary resolution at a general meeting, except where the Act or regulations provide for the matter to be decided by the body corporate by special resolution and then a special resolution applies.*
>
> *(2) Notwithstanding subsection (1), where the body corporate committee has delegated authority to decide the matter, generally or specially, under section 108, the committee may decide a matter by majority vote that falls under subsection (1) and any other matter that is stated elsewhere in the Act and regulations as requiring an ordinary resolution or special resolution at a general meeting.*

The above amendment also clears up a further interpretation issue with current regulation 17(1) and a Committee's delegated powers. Current regulation 17(1) states that a body corporate can only enter into an obligation (e.g., a contract) if an ordinary resolution has first been passed at a general meeting. Current section 108 says a body corporate can delegate all its powers to the Committee. This should include the ability for the Committee to pass a resolution and enter into an obligation on behalf of the Body Corporate. However, the reference in regulation 17(1) to needing a body corporate ordinary resolution at a general meeting leaves it open to argue that regulation 17(1) overrides the Committee's delegated power and a Committee cannot enter into an obligation on the Body Corporate's behalf. That interpretation slows down decision making, increases costs and thwarts efficient day to day decision making. The above amendment to section 101(1) and (2) helps remove this issue and ensures a Committee can approve and enter into an obligation under regulation 17 on the Body Corporate's behalf under its delegated powers.

**Tenancy Tribunal Fees**

We support the proposed reduction in fees. The current fees are prohibitive and discourage legitimate claims. In our view Body Corporate applications regarding outstanding levies should be directed straight to adjudication (not mediation). These are the bulk of all UTA Tribunal applications and are usually straight forward and undefended.

**Bill language and technical aspects**

The Bill needs a thorough edit to ensure that there are no minor or major issues that will make it harder to write, enact or enforce the regulations flowing from the legislation. Our specific feedback section by section in the table below will assist with this, together with our comments above.

## PART 2 – Matters outside the Bill needing attention

**Delegation of duties Body Corporate Chairperson and Body Corporate Managers.**

Currently the Bill leans heavily towards the Chairperson and the delegation is unclear where a manager is appointed.

**Redevelopment within unit titles legislation**

Current section 68 enables a unit plan to be amended if common property is being changed, or units are being added or removed etc. Section 68(3)(a) requires the Body Corporate to obtain written consent to the redevelopment plan from every owner "materially affected by the redevelopment." Guidance is needed on what this phrase means. For example, where the ownership interests of all units will change as a result of the redevelopment, this can be said to be a "material affect" on all owners, triggering the need for written consent from all owners, including those whose legal title will not be affected. This phrase needs to be given context so that its application can be narrowed down. It is questionable whether this is needed at all, given such an owner can vote on the special resolution required for the redevelopment, and can also make an objection under the process in sections 212-216 of the Act.

**Committee rules and regulations**

*Allowing for committee members to be elected for longer terms:* Governance continuity is lacking on committees, where current legislation requires that the committee be re-elected every year. There should be a chance for members to be elected for longer terms to be able to provide institutional knowledge that experience brings.

This could be achieved by allowing election for longer terms (say for three years), or only electing a proportion of the committee at a time (one-third, or on half at a time for example).

*Committee member resignation*

There is a need to clarify the election rules for committee regarding when a member resigns or is removed from office. Currently, there are two schools of thought, that the body corporate sets the size of the committee and therefore any reduction of a member requires that the body corporate call an EGM to elect another member to bring the committee to the correct size resolved by the body corporate. The other opposing view is that the body corporate only needs to hold an election if the committee falls below quorum. This should be clarified in the Act.

*Committee member voting – multiple ownership*

Clarification within the Act is needed around membership for multiple owners in one unit or voting rights for those with multiple units sitting on a committee.

*Committee member – proxies not to be permitted*

At present the UTA and regulations are silent on whether a Committee member can appoint a proxy to attend a Committee meeting and vote on their behalf. General accepted practice is they cannot unless the UTA or regulations expressly allow for it. In our view proxies are not appropriate for Committees as a Committee member is a representative of the Body Corporate elected by owners and the powers and duties delegated to Committees should fall on those elected Committee members only. An amendment to current regulation 24 is recommended to clarify that Committee proxies are not permitted should Government agree with this view.

*Committee decision making by email*

At present the UTA and regulations are silent on the use of email by Committees for decision making. This practice is used regularly by Committees in between Committee meetings. Helpfully, the High Court has held that Committee decisions can be made by email. When using email, it is essential that a quorum is reached, the resolution is clearly set out, the responses of the Committee members voting are unequivocal (i.e., the response is not conditional), and the Committee resolution is subsequently prepared as a Committee minute recording the voting result.[2] We recommend proposed section 113 be amended to allow for Committee voting by email in this manner. Alternatively, procedures for Committee voting by email could be set out in the regulations. Regulation 27(5) (clause 33) would also need amending to address Committee decision making by email which is not a traditional "meeting. *Committee nominations and voting where multiple owners*

There should be clarification if there is more than one owner of a unit only one owner from that unit may be elected to a committee, and then when the committee is established it is only one vote per committee member (with no ability to poll).

There needs to be clarification that only one owner/director of each unit may be elected to the committee to prevent the stacking of some small bodies corporate by multiple owners from only one or two units.

**Creation of Licensing Authority and education mandatory requirements**

As part of a wider review thought could be given to whether licensing of Body Corporate Managers is necessary supported by an independent licensing body to oversee the regime. Requiring minimum levels of education to operate as a Body Corporate Manager could also be explored, and example regimes could be examined in Australia.

In the meantime, we refer to our comments above regarding Queensland's low-cost regime regulating Managers.

[2] *Wheeldon v Body Corporate 342525* [2017] NZHC 87 [7 February 2017]

**Insurance**

Within the Act currently, there is not enough clarity around what insurance is required by a body corporate. Minimum cover and type should be clarified.

**Act Enforcement**

The UTA lacks enforcement options. We favour a penalty or fine regime and would support the instruction of this. Bodies Corporate will benefit greatly from having power to issue an infringement notice and a penalty or fine for ongoing breaches of rules or the UTA. Without this, breaches persist, and the only option is to seek an order from the Tenancy Tribunal which takes time and incurs costs. The Bill could set limits of penalties which Bodies Corporate could impose, with the ability for the Tribunal to determine as to whether an offence has been committed. This would cut down enforcement costs via the Tribunal benefiting both the Body Corporate and defaulting owners. If owners thought these were imposed unfairly, they could challenge them to the Tribunal. The penalty and offence regime could be looked at in the Residential Tenancies Act 1986 as an example.

In relation to penalties and enforcement of long-term maintenance schemes, the penalties should be greater than the cost of putting together a long-term maintenance plan, to encourage compliance.

**Minority Relief**

There needs to be clarification as to whether minority relief is available in relation to committee decisions, or how owners can view/challenge decisions committees make. If an owner is not a committee member, they cannot vote against a decision which may negatively impact them, and they may not find out about the resolution until after the 28 days has passed. This is a legislative gap which needs addressing which requires an obligation for committees to both circulate minutes and then the right to object up to 28 days from receiving notification of the committee decision.

**Using units for short-term accommodation**

An ongoing issue for many bodies corporate is whether operational rules may restrict short-term accommodation. This could be clarified by legislation as to whether bodies corporate can decide to prohibit this, or limit it in some way, within their operational rules. See clarification regarding short term accommodation rules introduced in New South Wales, Strata Schemes Management Regulations 2016, Section 137A, allowing some prohibition. While Victoria and Queensland have not introduced restrictions but have instead focused on managing the effects of the use.

| **Recommendation** |
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| Form an industry reference group to be formed to work through some of the issues raised that are outside of the current scope of the Bill review. |

## Specific Feedback – Section-by-Section

| Section | |
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| **Section 112 – Establishment of a body corporate committee** | • Omission. Correction is to change this to '*Where a body corporate committee is required a body corporate committee must be formed…*' |
| **Section 114G to 114I** | • **Definition of a body corporate manager** – add to this section that a body corporate manager is part of an organisation or registered business and holds a minimum level of qualification. T<br>• These sections should contain grounds for terminating a Manager that sit outside from and override the termination rights in a service contract between the Body Corporate and Manager, such as breaching the code of conduct or being convicted of an offence such as fraud of dishonesty. Alternatively, regulation 28C(c) could require these specific grounds for termination must be included in the service agreement.<br>• Section 114G (1) – the phrase "(whether itself or through its body corporate committee)" should be removed. This phrase is not used anywhere else in the UTA and seems unnecessary. The Committee has delegated powers under section 108 it can approve and sign a Body Corporate Management service contract. The Body Corporate is always the contracting party. The term "company" should also be added alongside "person".<br>• Section 114G (2) – should include "assisting the Body corporate Chairperson, Committee and Body Corporate in carrying out their powers and duties under the Act and regulations, which may include carrying out the duties of the body corporate chairperson in regulation 11(1)(a) to (h) and (j) to (m)." This is essentially the key function of the Manager and it should be noted. Regulation 11(1)(i) is intentionally excluded as it relates to the duty to sign documents for the Body Corporate.<br>• Section 114I(2)(d) - We do not believe the power granted to the Chairperson or Committee under this section is warranted. The register of Body Corporate Manager disclosures is necessary for transparency purposes. It should not enable the Chairperson or Committee to alter the service contract in place between the Body Corporate and the Body Corporate Manager, which appears possible under section 114I(2)(d).<br>• Section 114H (3) – usually it is a director of the management company or an employee that may own a unit or have an interest in or control over an entity that owns a unit. This need to be addressed within the section. If not, it may have limited scope.<br>• Section 114H (4) - "principal unit owner" needs to replace "person", and "body corporate" should be inserted before "manager.<br>• Section 114I (5) – the Committee should keep the register of disclosures, and where there is no Committee then the Body Corporate Chairperson<br>• Section 114I (6) – "*interests*" be inserted before "register" in section 114F (2). (The term "register" is often used to describe the |

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| | owners register in regulation 4, so clearly distinguishing the interests register is important.)<br>• Regulation 28C – there needs to be a savings provision added so that these terms do not apply to Body Corporate Management agreements entered into prior to commencement. |
| **Section 148** | • '*One or more body corporate managers'* needs to be removed from the Bill.<br>• As part of the disclosure regime body corporate certification should come out of the Bill.<br>• There should be a requirement for pre-settlement. This should go back into the Bill. There is a big difference between pre-contract and pre-settlement and this needs to be adequately represented in the Bill. |
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| **Regulation 33 (c)** | • Seven years for previous financial statements and audit reports is very difficult to administer and maintain, in particular where management or ownership has changed hands. This is particular onerous and ***should be changed to three years, instead of seven years.*** |
| **Section 157 (b)** | • For the purposes of this section, schemes with nine lots or less should be required to have a body corporate manager, but it should not be mandatory and bodies corporate can choose to vote not to have one. Schemes of more than 10 should have a mandatory requirement to employ a body corporate manager who is a member of an accredited association. |
| **Section 146** | • Remove the word 'discussing', this word should not belong in statute. |
| **Section 39**<br>**After section 39(2A), insert:**<br>**(2B) A utility interest apportionment for the purposes of subsection (2A) may be—**<br>(a) **a single uniform interest; or**<br>(b) **a multiple set of interests, each targeted at a particular service or amenity.** | • There needs to be a mechanism to charge owners by a way other than UI and S126.<br>• Clarification required about whether this affects new complexes being S39 not 41? Or all complexes? |
| **Section 104 (a) inserted (attending meetings and voting by remote access)** | • This section needs clarification, for example, what if owners want an audit of votes, how do we know who was in the 'room' voting? |

**Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill Draft Feedback**

| Part # | Clause # | Section(s) | Heading | Original UTA 2010 Wording | Description of Amendments | Feedback |
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| Part 2 Subpart 5 | 5 | 39 | S39 amended (UI (other than FDU)) | (1) Before a unit plan is deposited under section 17(1), 21(1), or 24(2)(a), the registered proprietor or owner (as the case may be) must assign a utility interest to every principal unit and every accessory unit.<br>(2) The utility interest assigned to a unit is the same as the ownership interest assessed for the unit under section 38(2).<br>(2A) Alternatively, the registered proprietor or owner may assign to a unit a different utility interest if that different utility interest is—<br>(a) fair and equitable, in the view of the registered proprietor or owner, having regard to the relevant benefits and the costs to units; and<br>(b) shown on the documentation lodged with the unit plan.<br>(3) The utility interest is used to determine a range of matters including, but not limited to, —<br>(a) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the body corporate under section 121 in respect of the long-term maintenance fund, the optional contingency fund, and the operating account:<br>(b) the rights of the owner of the principal unit in relation to a distribution of any surplus money in the long-term maintenance fund, the optional contingency fund, or the operating account, or personal property of the body corporate under section 131. | After section 39(2A), insert:<br>(2B) A utility interest apportionment for the purposes of subsection (2A) may be—<br>**(a)** a single uniform interest; or<br>**(b)** a multiple set of interests, each targeted at a particular service or amenity. | ▪ Ambiguous wording. Based on the description, it appears the intent is that a unit could have multiple UI's, targeted at individual budget line items. An UI when currently amended can already consider a 'fair and equitable' basis of a unit's use of all budget items. For instance, less / more lift use, less / more waste removal (for instance commercial / residential mixed-use complexes). Each line item can be assessed and a percentage of use on that item value applied to it. At the end of the item evaluations, each unit will have a total value, which when scaled out of the 100% is the overall UI that is applied to the **whole budget**.<br>▪ It is not feasible to have a unit have multiple sets of interests on each item. The end effect is the same and from a levying perspective, raising a levy invoice which has potentially 20 different UIs allocated to a unit is simply unworkable on a practical level.<br>▪ The current regime does not cater for all options, for example: units with car stacker AU's that may wish to do an upgrade. There needs to be a mechanism to charge owners by a way other than UI and S126. |
| Part 2 Subpart 12 | 6 | 79 | S79 amended (Rights of owners) | An owner of a principal unit—<br>(e) subject to section 80(1)(h) and (i), may make any alterations, additions, or improvements to his or her unit so long as these are within the unit boundary and do not materially affect any other unit or common property: | In section 79(e), after "do not materially affect", insert "the use, enjoyment, or ownership interest of ". | Questions for clarification on this amendment:<br>▪ By specifying this, does this limit it to just those items.?<br>▪ How does damage that does not affect the use, enjoyment or ownership interest fall into this category? |
| | 7 | 80 | S80 amended (Responsibilities) | (1) An owner of a principal unit—<br>(i) must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate: | In section 80(1)(i), after "materially affect", insert, "the use, enjoyment, or ownership interest of" | As per clause 6, s.79, same concerns. |
| | 8 | 95 | S95 amended (Quorum) | (1) At a general meeting of a body corporate, the persons entitled to exercise the voting power in respect of not less than 25% of the principal units or their proxies constitute a quorum, provided that if the body corporate contains 2 or more members a quorum must be at least 2 members. | Replace section 95(1) with:<br>(1) A quorum for a general meeting of a body corporate is the number of persons (including proxies)—<br>(a) who are entitled to exercise the voting power in respect of not less than 25% of the total number of principal units; and<br>(b) who also satisfy the eligibility requirements to exercise that voting power (for example, have no outstanding levy amounts owing to the body corporate). | ▪ S95(1)<br>The wording '(including proxies)' does not consider postal votes, yet regulation 13 mentions 'may proceed without a quorum if the persons who have cast postal votes, together with those present'. If you can have quorum with postal votes in accordance with regulation 13, then why not just state that in S95. |

| Part # | Clause # | Section(s) | Heading | Original UTA 2010 Wording | Description of Amendments | Feedback |
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| | 8 | 95 | S95 amended (Quorum) Continued | No existing subsection | (1A) However, if a body corporate comprises 2 or more members, a quorum must be at least 2 persons who satisfy the requirements of subsection (1). | ▪ S95(1A)<br>- This does not assist with clarification of whether this must be two people physically present as a minimum, or whether one person can attend holding the proxies / postal votes for others, or the body corporate manager can attend by themselves with no owners / others in physical (in person or by virtual) attendance because they hold 2 or more proxies or postal voting forms (which currently happens with some companies as means of running some small AGM's, the body corporate manager just moves / second everything as they type up the minutes).<br>▪ For ethical integrity, this should be clarified to state two people physically present (proxies, postal voting or virtual). |
| | 10 | 102 | S102 amended (Voting: proxies) | (1) An eligible voter may exercise the right to vote either by being present in person or by proxy.<br>(2) A proxy for an eligible voter is entitled to attend and be heard at a body corporate meeting as if the proxy were the eligible voter.<br>(3) A proxy must be appointed by notice in writing signed by the eligible voter.<br>(4) If there are 2 or more eligible voters who own 1 principal unit and they are jointly entitled to exercise 1 vote and wish to do so by proxy, that proxy must be jointly appointed by them and may be 1 of them. | After section 102(4), insert:<br>(5) A proxy cannot act as a proxy for the eligible voter or voters of—<br>(a) more than 1 principal unit, if the unit title development comprises fewer than 20 principal units<br>(b) more than 5% of the total number of principal units, for any other unit title development. | SCA (NZ) disagrees with this amendment for the following reasons:<br>- It will make achieving quorum particularly difficult, if not impossible for large bodies corporate. This means a second meeting at additional expense to the body corporate.<br>- The issue is not large enough in the NZ industry to warrant this amendment which will cause significantly more difficulties, workload, and expense than the amendment will resolve.<br>- Particularly for overseas investors, they do not know who to give a proxy to, aside from the chairperson, building manager, body corporate manager or property manager.<br>- It is not the body corporate's right to interfere in an owner's right to provide a proxy to whomever they so wish to represent them.<br><br>SCA (NZ) disagrees with the suggestion of directed proxies instead, as this would be logistically unworkable for larger bodies corporate, an example being an owner who owns multiple units (i.e., Kainga Ora), they will not want to split their proxy vote up between multiple people. Perhaps they own 10 units and want their son to represent them at the meeting, they will potentially not be able to dependent upon the size of the unit development. |

| Part # | Clause # | Section(s) | Heading | Original UTA 2010 Wording | Description of Amendments | Feedback |
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| | 11 | 104A | S104A inserted (attending meetings and voting by remote access) | No existing subsection | After section 104, insert:<br>104A Attending meetings and voting by remote access.<br>(1) A general meeting of a body corporate may be conducted, and voting undertaken, by 1 or more members participating by telephone, audio-visual link, or other remote access facility if—<br>(a) the body corporate has, by special resolution, previously authorised its members to participate at general meetings by remote access (whether in all cases or in specified circumstances); and<br>(b) the chairperson considers that—<br>(i) it is appropriate to conduct the meeting with members participating by remote access, given the agenda for the meeting; and<br>(ii) the specified circumstances (if any) of the special resolution authorising remote access are met; and<br>(c) the necessary facilities are available.<br>(2) A meeting conducted under this section must comply with any procedures or other matters prescribed in the regulations, including those relating to electronic voting. | ▪ SCA (NZ) agrees with this amendment in principle, however, there needs to be clear parameters around what is and isn't acceptable, for example, what if owners want an audit of votes, how do we know who was in the 'room' voting? |
| | 12 | 112 | S112 amended (establishment of body corporate committee) | No existing subsection. | After section 112(2), insert:<br>(3) A body corporate committee must be formed and conduct its business in accordance with this Act and the regulations. | - The wording is ambiguous and needs to be amended to reflect that where a body corporate committee is formed, it must be formed and conduct its business in accordance with this Act and the regulations. |
| | 14 | 113 | S113 replaced (Decision-making of committee) | 113 Decision-making of body corporate committee<br>Any matters at a meeting of a body corporate committee must be decided by a simple majority of votes. | Replace section 113 with:<br>113 Decision-making of body corporate committee<br>(1) A body corporate committee must keep written records of its meetings. | SCA (NZ) agrees with this amendment, however there should be a reference to email resolutions and flying minutes for clarity. |
| | 14 | 113 | S113 replaced (Decision-making of committee) Continued | 113 Decision-making of body corporate committee<br>Any matters at a meeting of a body corporate committee must be decided by a simple majority of votes. | (2) Matters must be decided by a simple majority of votes and each resolution must be recorded and included in the written records for the meeting.<br>(3) The committee must promptly report to the body corporate on the meetings it holds in the manner prescribed in the regulations. | See above for feedback. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | | | | | 114E Consequences of failure to disclose interest.<br>(1) A body corporate committee must notify the members of the body corporate of a failure to comply with section 114C or section 114D, and of any transactions affected, as soon as practicable after becoming aware of the failure.<br>(2) A failure to comply with section 114C or section 114D does not affect the validity of the committee's decision on the matter concerned or the matter itself (but the member's behaviour may be censured under Part 4). | SCA (NZ) suggests that if there is a failure to comply, the matter must be referred back to the general meeting for the body corporate to either confirm the decision or revoke it.<br>- |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | 15 | 114A to 114I | S114A to 114I inserted. Continued | No existing sections | 114F Interests register.<br>(1) The body corporate committee must keep a register of disclosures made by members under section 114C (an interests register).<br>(2) The register must be available for inspection by the members of the committee.<br>(3) The operational rules of the body corporate may provide for whether (and, if so, the extent to which) the interests register is to be made available for inspection by other members of the body corporate or any other person. | SCA (NZ) recommends that this be incorporated into the S206(1)(g) & (2) provisions of documents instead, as that at least covers the costs aspect of time and attendance. |

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| | | | | | 114H Functions and duties of body corporate manager<br>(1) A body corporate manager must exercise or perform the functions and duties—<br>(a) that the body corporate may lawfully authorise the body corporate manager to exercise or perform; and<br>(b) that are specified in a written agreement setting out the manager's terms of employment/engagement.<br>(2) The agreement must also provide for any matter prescribed by the regulations.<br>(3) Subsection (4) applies if a body corporate intends to employ or engage a body corporate manager that is the owner of a principal unit within the unit title development.<br>(4) The person or a proxy for the person is not entitled to vote on any resolution relating to the person's employment or engagement as the manager. | SCA (NZ) agrees with the amendment, however the only concern is the usage of the word 'must'. There may be times where a committee instruction is received that either pushes the boundaries of the scope of services or are perhaps not within the intent and meaning of the Act. The body corporate manager must be able to refuse those services if the committee refuse to pay additional fees, or if the manager feels the action is detrimental to the well-being of the body corporate or the management company reputation. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | 15 | 114A to 114I | S114A to 114I inserted.<br>Continued | No existing sections | (d) as soon as practicable after becoming aware of any conflict of interest, disclose it to the body corporate committee or, if there is no committee, to the body corporate chairperson, and the committee or the chairperson (as the case may be) must decide whether, and on what terms, the manager may continue to act in the matter concerned.<br>(3) To avoid doubt, if a person is engaged as a body corporate manager by more than one body corporate—<br>(a) the manager must act independently in relation to each body corporate; and<br>(b) all matters for which the manager is responsible in relation to each body corporate must be independently satisfied; and<br>(c) the manager must not intermix the funds, records, or any other things of any of the body corporates with 1 or more of the other body corporates.<br>(4) For the purposes of determining whether there is a conflict of interest in relation to a matter, section 114C (3) to (5) applies—<br>(a) as if a reference to a body corporate committee were a reference to a body corporate manager; and<br>(b) with any other necessary modifications.<br>(5) The chairperson of a body corporate must keep a register of disclosures made by its body corporate managers (an interests register).<br>(6) The register must be available for inspection—<br>(a) by members of the body corporate committee (if any); and<br>(b) if the operational rules of the body corporate allow, by any other members of the body corporate or any other person to the extent that the rules provide. | SCA (NZ) advises that:<br>There are similar issues as noted with 114F (3). Suggest this be incorporated into the S206(1)(g) & (2) provisions of documents instead, as that at least covers the costs aspect of time and attendance. |
| Part 2 Subpart 13 | 16 | 116 | S1165 amended (LTMP) | No existing subsection | Section 116 amended (Long-term maintenance plan)<br>In section 116(3), before paragraph (a), insert:<br>(aaa) identify any defects in or repairs required to the unit title development and estimate the costs involved in resolving the issue; and | SCA (NZ) recommends:<br>- Disagree with the intent of the LTMP is changed to become a defects or condition/repairs report. The original intent is to identify future maintenance, estimate costs, establishment, and management of funds; provide a basis for levying; guidance on annual maintenance decisions.<br>- A defects / condition report is a different report that requires a significantly more in-depth review of the condition of the building and equipment, verses identification of roof, lifts etc and giving end of life timeframes, then estimated costs for budgeting purposes.<br>- A defects report will need to do investigation testing (i.e.: cutting holes in cladding and walls) to determine what hidden defects there are in the building which would be inefficient, time consuming and costly. |

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| | 16 | 116 | S1165 amended (LTMP) continued | No existing subsection | Section 116 amended (Long-term maintenance plan)<br>In section 116(3), before paragraph (a), insert:<br>(aaa) identify any defects in or repairs required to the unit title development and estimate the costs involved in resolving the issue; and | - SCA (NZ) advises that:<br>- All buildings have defects, it is just a question of how many and what severity. If the intent is to provide purchases with more information about a complex, they are buying into then mandatory defect reports are not a good solution for the consumer. Pre purchase inspections are the best and most affordable tool to understand defects or conditions upon purchase. Costs of defect reports are prohibitive. A LTMP is usually anywhere from $650 to around $4,000. A defects report $3,000 - $5,000, sometimes as expense as $15,000 - $20,000. This is a clear time and cost impost on consumers that will not achieve the intended outcomes. |
| | 17 | 139 | S139 amended (Original owner's obligation in relation to service contracts) | 139 Original owner's obligation in relation to service contracts<br>(1) This section applies if a body corporate enters into a service contract for the unit title development before the date that the control period ends.<br>(2) The original owner and any associate of the original owner who is a member of the body corporate during the control period must exercise reasonable skill, care, and diligence and act in the best interests of the body corporate, as constituted | After section 139(2), insert:<br>(3) Despite subsection (2), the body corporate must not enter into a service contract that has effect for longer than 24 months after the date that the control period ends, unless the contract also includes—<br>(a) a term providing for the contract to be varied by the body corporate after the control period ends (by negotiation with the contractor and including a right for either party to cancel, | ▪ SCA (NZ) advises that:<br>- The timeframe referenced in the amendment is not workable in practice. Several companies have 36 months agreements, including fire monitoring and lift contracts.<br>- The contract is the contractors, and the body corporate cannot force a contractor to have termination clauses that allow the body corporate to cancel without penalty. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | 17 | 139 | S139 amended (Original owner's obligation in relation to service contracts) Continued | after the date that the control period ends, in ensuring that—<br>(a) the terms of the service contract achieve a fair and reasonable balance between the interests of the service contractor and the body corporate as constituted after the date that the control period ends; and<br>(b) the terms are appropriate for the unit title development; and<br>(c) the powers able to be exercised, and functions required to be performed, by the service contractor under the service contract—<br>(i) are appropriate for the unit title development; and<br>(ii) do not adversely affect the body corporate's ability to carry out its functions. | without penalty if agreement cannot be reached); and<br>(b) a term providing that any rights of renewal under the contract exercisable after the control period ends are exercisable only if the body corporate agrees (by ordinary resolution) to each renewal as it arises. | SCA (NZ) advises that:<br>- The business is not concerned with the internal governance functionality (or dysfunctionality) of the entity they contract with, merely that the entity has entered into a contract for a specified timeframe. The contract will stipulate termination clauses and it is unfair and unreasonable to expect a contractor to simply walk away empty handed if an entity's internal ownership changes and they do not agree with the previous internal ownerships decision-making.<br>- A body corporate cannot force a contractor to insert a clause in their contracts that state the body corporate must pass an ordinary resolution for each renewal. A contractor is not concerned with the internal governance mechanisms of the entities it contracts with, merely concerned with roll over clauses and the actual instruction (yes/no, not how they make that decision). |
| Part 2 Subpart 14 | 18 | 146 -149 | S146 to S149 replaced | 146 Pre-contract disclosure to prospective buyer<br>(1) Before a buyer enters into an agreement for sale and purchase of a unit the seller must provide a disclosure statement (a *pre-contract disclosure statement*) to the buyer.<br>(2) The pre-contract disclosure statement must be in the prescribed form and contain the prescribed information. | Replace sections 146 to 149 with:<br>146 Pre-contract disclosure statement to buyer<br>(1) Before a buyer enters into an agreement for sale and purchase of a unit, the seller must provide a disclosure statement to the buyer (a *pre-contract disclosure statement*).<br>(2) The disclosure statement must—<br>(a) be in the prescribed form and contain the prescribed information (to the extent that it is applicable to the unit and the development concerned); and<br>(b) be endorsed by the body corporate (or the original owner if there is not yet a body corporate) in accordance with section 148.<br>(3) The seller—<br>(a) must not delegate responsibility for providing the statement to the buyer to any other person; and<br>(b) is responsible for discussing any issues arising from the statement with the buyer. | ▪ S146(2)(b)<br>▪ The seller should be endorsing this, rather than the body corporate. |

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| | | | | | (4) Subsection (3) does not prevent a body corporate manager from preparing a statement to be provided under this section (so long as the manager is authorised by the body corporate to do so). | |
| | 18 | 146 -149 | S146 to S149 replaced continued | 147 Pre-settlement disclosure to buyer<br>(1) This section applies if a buyer and a seller have entered into an agreement for sale and purchase.<br>(2) No later than the fifth working day before the settlement date, the seller must provide a disclosure statement (a *pre-settlement disclosure statement*) to the buyer.<br>(3) The pre-settlement disclosure statement—<br>(a) must contain the prescribed information; and<br>(b) must contain a certificate given by the body corporate certifying that the information in the statement is correct.<br>(4) A body corporate may withhold a certificate referred to in subsection (3)(b) if any debt that is | 147 Additional disclosure statement to buyer<br>(1) A buyer may request an *additional disclosure statement* from the seller at any time after an agreement for sale and purchase of a unit has been entered into and before the settlement date.<br>(2) The additional disclosure statement must—<br>(a) be in the prescribed form; and<br>(b) be endorsed by the body corporate (or the original owner if there is not yet a body corporate) in accordance with section 148; and<br>(c) be provided to the buyer no later than the fifth working day after the request is made.<br>(3) The seller— | - See feedback in Part 3 above on this area.<br>- In addition, *"Some members take the view that if endorsement is deemed necessary, it should be rephrased as "certifying as correct" which is the current wording used for the pre-contract disclosure statement. "Certifying as correct" should be limited to levies, details of any proceedings, and insurance information. Proposed section 146(2)(b) and 148(2) should be removed/amended accordingly.* |
| | 18 | 146 -149 | S146 to S149 replaced continued | due to the body corporate by the unit owner is unpaid. | (a) must not delegate responsibility for providing the statement to the buyer to any other person; and<br>(b) is responsible for discussing any issues arising from the statement with the buyer.<br>(4) Subsection (3) does not prevent a body corporate manager from preparing a statement to be provided under this section (so long as the manager is authorised by the body corporate to do so).<br>(5) The buyer must pay to the seller all reasonable costs incurred by the seller in providing the additional disclosure statement, but the non-payment of these costs does not justify the seller withholding disclosure. | - not the body corporate (being all owners who have nothing to do with preparation of the form or the supply of information).<br>▪ 147(2)(c)<br>- Currently this is the fifth working day before settlement, not the fifth working day after request. This will cause difficulties on time management with the process and cause uncertainty.<br>▪ 147(5)<br>- SCA (NZ) opposes this. The seller is always liable for the payment of the s147 to the manager/body corporate and an undertaking is always required by the lawyer for payment of the fee and any outstanding levies before the document is supplied. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | ▪ **Feedback** |

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| | 18 | 146 -149 | S146 to S149 replaced continued | 148 Buyer may request additional disclosure.<br>(1) A buyer may request an *additional disclosure statement* or may request some, but not all, of the information required to be in an additional disclosure statement (**specific prescribed information**).<br>(2) The request may be made at any time before whichever of the following dates occurs first:<br>(a) the close of the fifth working day after the date that the agreement was entered into; or<br>(b) the close of the tenth working day before the settlement date.<br>(3) If a buyer makes a request in accordance with subsections (1) and (2), the seller must provide the additional disclosure statement to the buyer no later than the fifth working day after the date on which the request was made.<br>(4) The additional disclosure statement must contain the prescribed information or, if the buyer has requested only specific prescribed information, the specific prescribed information requested.<br>(5) The buyer must pay to the seller all reasonable costs incurred by the seller in providing the additional disclosure statement or specific prescribed information, but the non-payment of these costs does not justify the seller withholding disclosure. | 148 Body corporate or original owner must endorse disclosure statements.<br>(1) A body corporate or the original owner (as the case may be) must endorse a disclosure statement to be given under section 146 or section 147 to the effect that the body corporate or original owner, taking account of all of the information that it has in its possession, is satisfied that the information in the statement is complete and correct.<br>(2) For the purposes of this section, the following persons may endorse a certificate on behalf of a body corporate:<br>(a) the chairperson of the body corporate:<br>(b) if there is a body corporate committee for the body corporate, the chairperson of the committee:<br>(c) if there is 1 or more body corporate managers for the body corporate, a manager that is authorised by the body corporate to do so. | ▪ S148<br>- Complete removal of third additional disclosure document.<br>- Perhaps suggest incorporation of both the S147 & S148 original together instead.<br>- The ADS provides information that is not contained elsewhere, including contracts and lease documents, current balances, and current invoices.<br>▪ S148(1)<br>▪ SCA (NZ) opposes this.<br>- As per S146 & S147 wording on '*endorse*'.<br>- The wording '*all of the information it has in its possession*' is problematic. A body corporate could have 15 – 20 years plus of documents, with most archived. A current member (chair or committee) would not necessarily know about reports received years before they took ownership, especially if those documents were deliberately ignored. The possibility of having something in their possession they do not know about is quite large.<br>▪ S148(2)(a) & (b)<br>Our recommendation would be no chairperson or committee endorse something with this liability.<br>▪ S148(2)(c)<br>- Likewise, as a body corporate manager I will never sign or endorse this with this wording.<br>- Remove '*if there is 1 or more body corporate managers*. There will only be one body corporate manager or management company |
| | 18 | 146 -149 | S146 to S149 replaced continued | 149 Buyer may delay settlement if disclosure late or not made.<br>(1) This section applies if—<br>(a) the seller provides a pre-settlement disclosure statement or an additional disclosure statement on a date that is later than the fifth working day before the settlement date; or<br>(b) at the close of business on the last working day before the settlement date the seller has not provided a pre-settlement disclosure statement or, if one had been requested, an additional disclosure statement.<br>(2) The buyer may, by notice in writing, postpone the settlement date—<br>(a) in the case referred to in subsection (1)(a), until the fifth working day after the date on which the latest disclosure statement to be given was provided; or<br>(b) in the case referred to in subsection (1)(b), until the fifth working day after the date on which the disclosure statement is provided or, if more than 1 is required to be provided, the latest to be provided. | 149 Buyer may delay settlement if disclosure late, incomplete, or not made at all.<br>(1) A buyer may delay settlement of an agreement for sale and purchase in accordance with this section if any of the following circumstances apply:<br>(a) the seller provides an additional disclosure statement to the buyer on a date that is later than the fifth working day before settlement date; or<br>(b) the seller has not provided a complete statement on a date that is earlier than the fifth working day before settlement date, when any of the following circumstances apply:<br>(i) the seller has not provided a pre-contract disclosure statement to the buyer:<br>(ii) the seller has provided an incomplete pre-contract disclosure statement to the buyer:<br>(iii) the seller has provided an incomplete additional disclosure statement to the buyer:<br>(c) the seller does not provide an additional disclosure statement to the buyer before the | ▪ S149<br>- This section as written is a little confusing.<br>- The term '*incomplete*' could be deemed to be an arbitrary interpretation as to '*incomplete'*.<br>▪ 149(1)(a), (b)(i)(ii)(iii)<br>- Refers to the previous issue raised under 147(2)(c) being time crunch, with lawyers waiting until the last possible day before requesting so they can have as close to settlement as possible and body corporate managers not being able to drop everything to accommodate time frames. Currently, lawyers can request them at any time, and they have to be provided within the 5 workings.<br>- This is inconsistent with the amended wording in S147, as the "*fifth working day before settlement*' was removed and replaced with the wording '*five days after request*'.<br>▪ 149(1)(c)<br>This timeframe is confusing, when the amended (1)(a) states '*ADS to the buyer on a date that is later than the fifth working day before settlement date'*, yet (1)(c) |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |

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| | 18 | 146 -149 | S146 to S149 replaced continued | | close of business on the last working day before the settlement date.<br>(2) The buyer may, by notice in writing, delay the settlement until the fifth working day after the date on which the seller provides a complying statement.<br>(3) However, if another statement is required to be provided (for example, because the statement provided during the delay period is incomplete), the buyer may, by notice in writing, extend the delay date until the fifth working day after the date on which the seller provides the last complying statement.<br>(4) In each case, notice in writing must be given by the buyer no later than the fifth working day after the date of the triggering event for postponement arises.<br>(5) Nothing in this section limits or affects any other remedy available to a buyer for the disclosure or accuracy of information supplied by a seller in relation to an agreement for sale and purchase. | states '*an ADS to the buyer before the close of business on the last working day before the settlement date'*.<br><br>Overall, this is a confusing amendment and completely removes the original ADS. |
| | 19 | 151 | S151 replaced (cancellation by buyer) | 151 Cancellation by buyer<br>(1) This section applies if—<br>(a) the seller does not provide the disclosure statements referred to in section 147 or 148 within the times prescribed in those sections; and<br>(b) the buyer does not postpone the settlement date under section 149(2).<br>(2) The buyer may, by giving 10 days' notice in writing to the seller, cancel the agreement for sale and purchase. | Replace section 151 with:<br>151 Buyer may cancel agreement for sale and purchase if disclosure late, incomplete, or not made at all.<br>(1) The buyer may cancel the agreement for sale and purchase if—<br>(a) the seller has not provided a pre-contract disclosure statement to the buyer in accordance with section 146, or the pre-contract disclosure statement provided by the seller is defective or incomplete; or<br>(b) the seller has not provided an additional disclosure statement to the buyer in accordance with section 147, or the additional disclosure statement provided by the seller is defective or incomplete; and<br>(c) the buyer chooses not to delay the settlement in accordance with section 149.<br>(2) Before cancelling an agreement for sale and purchase under this section—<br>(a) the buyer must give the seller notice in writing that they intend to cancel the agreement; and<br>(b) the seller has 10 working days from the notice being given to fully comply with the seller's obligations under section 146 or section 147, or both.<br>(3) The buyer may cancel the agreement for sale and purchase by notice in writing if the seller has not fully complied with their obligations at the conclusion of the period provided by subsection (2)(b).<br>(4) If subsection (1)(a) applies, and the seller has fully complied with their obligations at the conclusion of the period provided by subsection (2)(b), the buyer may still cancel the agreement | ▪ 151<br>- There is cross over with S149.<br>- A concern the definition of '*defective'* or '*incomplete'*.<br>- 151(4) & (5) are not consistent, as buyer can cancel if seller has fully complied with S146 which is a mandatory document, yet buyer cannot cancel if seller has fully complied with S147, yet that document is only a '*may'*.<br>- This is a very confusing section when looking at the amended s146, 147, 148, 149 sections. What if the settlement date falls within the 10 days? |

| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
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| | 19 | 151 | S151 replaced (cancellation by buyer)<br>Continued | 151 Cancellation by buyer<br>(1) This section applies if—<br>(a) the seller does not provide the disclosure statements referred to in section 147 or 148 within the times prescribed in those sections; and<br>(b) the buyer does not postpone the settlement date under section 149(2).<br>(2) The buyer may, by giving 10 days' notice in writing to the seller, cancel the agreement for sale and purchase. | for sale and purchase by giving 10 days' notice in writing to the seller.<br>(5) If subsection (1)(b) applies, and the seller has fully complied with their obligations at the conclusion of the period provided by subsection (2)(b), the buyer may not cancel the agreement for sale and purchase in accordance with this section. | ▪ |
| 2A | 20 | 157A | S157A Application of Part | No existing section | 157A Application of Part<br>(1) This Part applies to large residential developments and medium residential developments as those terms are defined in subsection (4). | ▪ S157A (1)<br>- 30 units is not a large residential development, this is medium sized development. |

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| | | | | | (2) If there is an inconsistency between a provision in this Part and a provision in the rest of the Act (or any regulations made under the Act), the provision in this Part prevails, but only to the extent of the inconsistency.<br>(3) To avoid doubt, except to the extent expressly provided in this Part or as set out in subsection | - Dividing complexes by sizes is irrelevant when discussion complexity of complex.<br>- Please see SCA (NZ) comments above in Part 1 of our submission and in Part 3 above and note that this amendment is not supported based on those grounds. |
| 2A | 20 | 157A | S157A Application of Part | No existing section | (2), unit title developments to which this Part applies must also comply with all the relevant provisions of the rest of this Act and the regulations. | As above |
| 2A | 20 | 157A | S157A Application of Part<br>Continued | | (4) In this Part, —<br>*large residential development* means a unit title development that includes no fewer than 30 principal units that are primarily used as places of residence.<br>*medium residential development* means a unit title development that includes no fewer than 10 and no greater than 29 principal units that are primarily used as places of residence. | - As above – please refer to submission details above. |
| | | 157B | S157B Employment or engagement of body corporate manager or managers | No existing section | 157B Employment or engagement of body corporate manager or managers<br>(1) The body corporate of a large residential development must employ or engage 1 or more body corporate managers.<br>(2) The body corporate of a medium residential development must employ or engage 1 or more body corporate managers unless the body corporate (by special resolution) votes against doing so. | ▪ S157B – as above:<br>- Size has nothing to do with complexity.<br>- All bodies corporate should be required to appoint a body corporate manager. It does not have to be a professional company or person, an owner could undertake the duties of secretary, however, all complexes should have to appoint someone to do this and not have the option of opting out.<br>- That person should have to undergo a basic training certification for competency. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | | 157C | S157C Additional reporting requirements regarding delegations<br>Continued | No existing section | (2) The committee must report to the body corporate at every general meeting on the performance of the duties or the exercise of the powers delegated to it under section 108(1).<br>(3) A report must include the following information:<br>(a) a description of the duties and powers delegated to the committee in the period since it last reported on its delegations (whether reporting under this section or as otherwise required by this Act or the regulations); and<br>(b) an update on the fulfilment of any duties or the exercise of any powers by the committee for all delegated functions and duties, if performed or exercised during the period since it last reported on its delegations (whether reporting under this section or as otherwise required by this Act or the regulations). | ▪ As above |

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| | | 157D | S157D Additional requirements regarding long-term maintenance plans | No existing section | 157D Additional requirements regarding long-term maintenance plans<br>(1) The body corporate of a large residential development must comply with all the requirements of this section.<br>(2) The body corporate of a medium residential development must comply with—<br>(a) the requirements of subsection (3) and subsection (5); and<br>(b) the other requirements of this section unless the body corporate votes (by special resolution) to not do so.<br>(3) The long-term maintenance plan for the body corporate must cover a period of at least 30 years from the date of the plan or the last review of the plan. | - As above, and in addition:<br>▪ This is simply too onerous and brings in costs that most owners (particularly those in the aging bracket who will only reside at a body corporate for a few years as they age in place) will have to pay but realistically see no benefit in. The current term of 10 years is fine, although no objection if this is raised to 15 years. |
| | | 157D | S157D Additional requirements regarding long-term maintenance plans Continued | No existing section | (4) The long-term maintenance plan for the body corporate must be reviewed in accordance with these section every 3 years.<br>(5) However, if the body corporate becomes aware of any matter that may have a material impact on the long-term maintenance plan, it must review the plan in accordance with this section as soon as practicable (and the date on which the review is conducted becomes the start date from which the next review cycle is calculated).<br>(6) At each review, the long-term maintenance plan of the body corporate must be peer reviewed by a member of one of the following:<br>(a) the New Zealand Institute of Building Surveyors:<br>(b) the Royal Institute of Chartered Surveyors (also known as RICS):<br>(c) the Institute of Professional Engineers New Zealand (also known as IPENZ):<br>(d) any other body prescribed in the regulations. | 157D (6) – SCA (NZ) disagrees with this subsection:<br>- Disagree with this subsection. The first preparation of the plan should be trusted, as it is conducted by a professional, and should not require a review. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | ▪ **Feedback** |
| | | 157D | S157D Additional requirements regarding long-term maintenance plans Continued | No existing section | (7) For the purposes of the peer review, the body corporate must provide the reviewer with a written statement that to the best of the body corporate's knowledge, having made all reasonable investigations, the known or suspected building defects listed in the statement is a complete list.<br>(8) The peer reviewer, on completion of the review, must provide a written statement to the body corporate as to whether the plan, in the reviewer's opinion, having made all reasonable investigations, is as accurate and complete as possible and identifies any defects in or repairs required to the unit title development.<br>(9) The current plan for a body corporate must be signed by the chairperson at each annual general meeting to the effect that to the best of the body corporate's knowledge, the plan records as accurately and completely as | - SCA (NZ) advises that only those bodies corporate who prepare the plan themselves, must have its peer reviewed by a qualified professional. Peer reviewing, as noted above, should not be the standard and preparation of reports by professionals should be trusted and relied upon. |
| | | | | | possible all defects in or repairs required to the unit title development. | |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | ▪ **Feedback** |

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| | | 157E | S157E Mandatory Long-term maintenance funds | No existing section | 157E Mandatory long-term maintenance funds<br>(1) The body corporate of a large residential development or a medium residential development must establish and maintain a long-term maintenance fund.<br>(2) To avoid doubt, section 117 applies to the fund, other than the ability of the body corporate to opt out of establishing a fund. | ▪ 157E – SCA (NZ) advises that this continued referencing could be redundant and should be reviewed for intent and usefulness. |
| | | 157F | S157F Mandatory auditing of long-term maintenance funds | No existing section | 157F Mandatory auditing of long-term maintenance funds<br>(1) The body corporate of a large residential development or a medium residential development must, annually, submit its records, statements, and other relevant information in relation to its long-term maintenance fund for audit to an independent auditor.<br>(2) The body corporate must provide each owner of a principal unit with a summary of the auditor's findings as soon as practicable after the audit is completed. | - 157F – SCA (NZ) disagrees with this amendment as the body corporate already has audit requirements in S132 (including opt out provisions) so there is no need to highlight LTMPs. |
| | | 157F | S157F Mandatory auditing of long-term maintenance funds | No existing section | (3) For the purposes of this section, section 132(4), (6), and (7) apply with any necessary modification. | ▪ As noted above, size of body corporate has no bearing on financial complexity of complex. |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | ▪ **Feedback** |
| 5 Subpart 4 | 22 | 217 | S217 Amended (Regulations) | Regulations<br>The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:<br>(a) prescribing the form and content of, and anything required to accompany, any application to deposit a unit plan or an amendment to a unit plan or to cancel a unit plan:<br>(b) prescribing the form and content of financial statements to be provided by specified bodies corporate:<br>(c) prescribing for the regulation of the funds set up under sections 115, 117, 118, and 119:<br>(d) specifying the matters to be included in a body corporate committee report:<br>(e) specifying the information to be included in the register of unit owners:<br>(f) prescribing matters relating to the administration of a body corporate and a body corporate committee:<br>(g) specifying matters associated with the functions, powers, and duties of a body corporate and a body corporate committee:<br>(h) prescribing the manner and form of voting procedures and all other matters relating to voting:<br>(i) prescribing body corporate operational rules:<br>(j) prescribing requirements of a long-term maintenance plan and matters to be included in that plan:<br>(k) prescribing the form and content of disclosure statements required under this Act:<br>(l) prescribing the form and content of certificates:<br>(m) prescribing for matters relating to the register and requirements for depositing unit plans and amendments to unit plans with the Registrar:<br>(n) imposing fees and charges for anything authorised by this Act: | Section 217 amended (Regulations)<br>(1) After section 217(c), insert:<br>(ca) prescribing any professional or expert body for the purposes of peer reviewing a long-term maintenance plan under section 157D(6)(d):<br>(2) In section 217(f), after "committee", insert ", including in relation to meeting requirements and procedures for participation by remote access".<br>(3) After section 217(f), insert:<br>(fa) specifying matters associated with the functions and duties that a body corporate manager may perform or exercise, including any terms that must be included in a manager's terms of employment/engagement:<br>(4) In section 217(n), after "this Act", insert ", including in relation to the settling of disputes".<br>(5) In section 217(h), after "voting", add ", including in relation to electronic voting". | - SCA (NZ) within this section disagrees with:<br>- naming any specific professional body.<br>- The peer review of LTMP. |

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| | | | | (o) prescribing the rate of interest payable on money owing to a body corporate:<br>(p) regulating the practice and conduct of business under this Act:<br>(q) prescribing forms for the purposes of this Act:<br>(r) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect | | |
| **Part #** | **Clause #** | **Section(s)** | **Heading** | **Original UTA 2010 Wording** | **Description of Amendments** | **Feedback** |
| | 25 | 4 | S4 amended (Overview) | No existing section | After section 4(1)(f), insert:<br>Special provisions for certain medium and large unit title developments<br>(fa) Part 2A applies to particular types of unit title developments, characterised by the number of residential units that are contained within the entire complex. The Part imposes extra or more specific obligations, or both, on these types of developments over and above the general obligations in the rest of the Act and the regulations, although, in most cases, developments that include no fewer than 10 but no more than 29 residential units may opt out of the requirements if its body corporate decides to do so. | ▪ 4(1)(f)<br>- As noted, disagree on separating bodies corporate by size, as size does not equate to complexity of financial or maintenance management. |

**Regulations**

| **Part #** | **Clause #** | **Regulation** | **Heading** | **Original UTR 2011 Wording** | **Description of Amendments** | **Feedback** |
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| Subpart 2 | 29 | | Amendments to UTR | | This subpart amends the UTR | |
| | | | | (4) If a candidate for election as a committee member is not a natural person, the candidate must nominate a director to act as a committee member on the candidate's behalf.<br>(5) A candidate for election as a committee member may nominate himself or herself.<br>(6) A committee member must be— | (5) After regulation 24(8), insert:<br>(9) *See* section 112A of the Act that confers automatic membership of the body corporate committee on the chairperson of the body corporate. | SCA (NZ) advises that there could be a provision for a non-director, perhaps with a company minute? |
| | 33 | 27 | Regulation 27 amended (Body corporate committee business) | 27 Body corporate committee business<br>(1) A body corporate committee must meet within 1 month of the date of service of a notice of delegation under section 108(1) of the Act.<br>(2) A body corporate committee may meet as often as it considers necessary.<br>(3) If there is no quorum at a body corporate committee meeting, the following procedure applies:<br>(a) the meeting must be adjourned until the same day 1 week later:<br>(b) the reconvened meeting must be held at the same time and place, unless the committee chairperson has notified the committee members of a change to the time or place (or both) at least 3 days before the reconvened meeting is due to take place:<br>(c) the reconvened meeting must proceed, whether a quorum exists or not.<br>(4) If the chairperson of a body corporate is not a committee member, he or she is entitled to attend and be heard at a body corporate committee meeting, but not to vote.<br>(5) The body corporate committee must provide copies of the minutes of its meetings to a unit owner in the unit title development if the unit owner requests them. | Regulation 27 amended (Body corporate committee business)<br>(1) In regulation 27(2), after "considers necessary", insert "(so long as it has a quorum)"<br>(2) After regulation 27(2), insert:<br>(2A) A meeting may be conducted by telephone, audio-visual link, or other remote access facility if—<br>(a) the chairperson considers that it is appropriate for 1 or more members to participate by remote access, given the agenda for the meeting; and<br>(b) the necessary facilities are available.<br>(3) After regulation 27(3), insert:<br>(3A) A committee member who, at a committee meeting, does not satisfy the eligibility requirements to exercise a vote as if the meeting were a general meeting of the body corporate (for example, because the member has outstanding levy amounts owing to the body corporate)—<br>(a) must not be counted when determining whether there is a quorum for the meeting; and<br>(b) must not vote on any resolution put at the meeting; but<br>(c) may remain at the meeting and take part in any discussions.<br>(4) Repeal regulation 27(4). | 27(5) SCA (NZ) advises that there may be issues interpreting the sentence following the amendment and it should instead read: *The body corporate committee must provide copies of the minutes of its meetings to a unit owner in the unit title development if the unit owner requests them, excluding any "in committee" items if privacy or other issues require that items be redacted, to all unit owners promptly but no later than 1 month after the meeting date".* |

| Part # | Clause # | Regulation | Heading | Original UTR 2011 Wording | Description of Amendments | Feedback |
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| | 34 | 28 | Regulation 28 amended (Body corporate committee reports) | 28 Body corporate committee reports<br>(1) A body corporate committee must report to the body corporate at each annual general meeting of the body corporate.<br>(2) A body corporate committee must report to the body corporate at such other times and in such manner as the body corporate decides by ordinary resolution.<br>(3) A body corporate committee report must include the following information:<br>(a) a description of the duties or powers that have been delegated to the body corporate committee during the period covered by the report; and<br>(b) an update on the fulfilment of those duties or the exercise of those powers by the committee. | Regulation 28 amended (Body corporate committee reports)<br>(1) In regulation 28(3)(b), replace "committee." with "committee; and".<br>(2) After regulation 28(3)(b), insert:<br>(c) a summary of the committee's decisions during the period covered by the report. | ▪ 28(3)(b)<br>Agree a summary of the committee's decisions should be supplied, although this should already be covered by (a) & (b), as the committee only have the duties delegated, so cannot make decisions outside of (a). |
| **Part #** | **Clause #** | **Regulation** | **Heading** | **Original UTR 2011 Wording** | **Description of Amendments** | **Feedback** |
| | 36 | 30 | Regulation 30 amended (Long-term maintenance plans) | 30 Long-term maintenance plans<br>(1) A long-term maintenance plan must—<br>(a) cover—<br>(i) the common property, building elements, and infrastructure of the unit title development; and<br>(ii) any additional items that the body corporate has decided by ordinary resolution to include in the plan; and<br>(b) identify those items that the body corporate may decide by ordinary resolution not to maintain for any period during the lifetime of the plan; and<br>(c) state the period covered by the plan; and<br>(d) state the estimated age and life expectancy of each item covered by the plan; and<br>(e) state the estimated cost of maintenance and replacement of each item covered by the plan; and<br>(f) state whether there is a long-term maintenance fund; and<br>(g) if there is a long-term maintenance fund, state the amount determined by the body corporate to be applied to maintain the fund each year; and<br>(h) state who has prepared the plan.<br>(2) A body corporate must carry out a review of its plan at least once every 3 years.<br>(3) Subject to subclause (2), a body corporate may carry out a review of its plan as frequently as it considers necessary. | In regulation 30(1), insert after paragraph (a):<br>(aa) summarise the current state of the common property; and | ▪ SCA (NZ) advises that this wording is ambiguous and should be changed for clarity - 'current state of the common property'. |
| | 37 | 33 – 35 | Replace regulations 33 – 35 | *33 Pre-contract disclosure statement*<br>The following information is prescribed for the purposes of section 146(2) of the Act (which requires a pre-contract disclosure statement to be in the prescribed form and to contain the prescribed information): | 33 Disclosure statement<br>(1) The following information is prescribed for section 146(2)(a) of the Act (which requires a pre-contract disclosure statement to contain prescribed information):<br>(a) whether any part of the unit development has— | ▪ 33(1)(a)<br>It is not possible for an owner, manager, or the body corporate manager to know if 'any part of the unit development' has the items noted. The parties can only speak to their own unit and the common property.<br>▪ 33(1)(i) & (ii) |
| **Part #** | **Clause #** | **Regulation** | **Heading** | **Original UTR 2011 Wording** | **Description of Amendments** | **Feedback** |
| | | | | (a) the amount of the contribution levied by the body corporate under section 121 of the Act in respect of the unit being sold; and<br>(b) the period covered by such contribution; and<br>(c) details of maintenance that the body corporate proposes to carry out on the unit title development in the year following the date of the disclosure statement, and how the body corporate proposes to meet the cost of that maintenance; and | (i) weather tightness issues for which a claim has been made under the Weathertight Homes Resolution Act 2006; or<br>(ii) weather tightness issues that have been remediated without a claim under that Act or other proceedings before a court or tribunal; or<br>(iii) earthquake-prone issues:<br>(b) whether the body corporate is involved in any proceedings in any court or tribunal and, if so, details of the proceedings: | ▪ 33(1)(c)<br>7 Years is too long. Suggest 3 years as that is currently standard best practice. Owners can request other years if they require, although it should be noted there are additional charges for the supply of material beyond 3 years.<br>▪ 33(1)(d) |

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| | | | | (d) the balance of every fund or bank account held or operated by the body corporate at the date of the last financial statement; and<br>(e) whether the unit or the common property is, or has been, the subject of a claim under the Weathertight Homes Resolution Services Act 2006 or any other civil proceedings relating to water penetration of the buildings in the unit title development; and<br>(f) an explanation of the following:<br>(i) unit title property ownership; and<br>(ii) unit plans; and<br>(iii) ownership and utility interests; and<br>(iv) body corporate operational rules; and<br>(v) the information required to be contained in a pre-settlement disclosure statement; and<br>(vi) the information required to be contained in an additional disclosure statement; and<br>(vii) records of title; and<br>(viii) the land information memorandum issued under section 44A of the Local Government Official Information and Meetings Act 1987; and<br>(ix) easements and covenants; and<br>(g) how to obtain further information about the matters referred to in paragraph (f); and<br>(h) an estimate of the cost of providing an additional disclosure statement. | (c) financial statements and audit reports for the previous 7 years or (as the case may be) audit reports for those of the previous 7 years for which an audit was carried out and a statement of the years in that time period for which no audit was carried out:<br>(d) notices and minutes of general meetings of the body corporate and the body corporate committee for the previous 3 years—<br>(i) including all supporting documentation; but<br>(ii) excluding any "in committee" items if privacy or other issues require that the items be redacted:<br>(e) the name and contact details of the body corporate manager or managers:<br>(f) the body corporate levies payable for the unit for the current financial year and the amounts that have been paid or are owing:<br>(g) any outstanding amounts of body corporate levies payable for the unit from previous financial years: | No issue with providing 3 years of AGM and Committee Minutes.<br>▪ 33(1)(d)(i) & (ii)<br>Strongly oppose 'all supporting documentation', as sometimes the information prepared for committee meetings can be upwards of 50 – 80 pages. If they are meeting every month, this is a substantial amount of information to review and have to remove items that might be sensitive to owners or still 'in committee'. |
| | 37 | 33 – 35 | Replace regulations 33 – 35.<br>Continued | *34 Pre-settlement disclosure statement*<br>The following information is prescribed for the purposes of section 147(3)(a) of the Act (which requires a pre-settlement disclosure statement to contain the prescribed information):<br>(a) the unit number; and<br>(b) the body corporate number; and<br>(c) the amount of the contribution levied by the body corporate under section 121 of the Act in respect of the unit being sold; and<br>(d) the period covered by such contribution; and<br>(e) the manner of payment of the levy; and<br>(f) the date on or before which payment of the levy is due; and | (h) any amounts being held in credit by the body corporate for the unit for the purposes of any long-term maintenance fund, contingency fund, or capital improvement fund of the body corporate:<br>(i) any proposed works under the long-term maintenance plan for the unit title development to be carried out or begun within the next 3 years and the estimated costs of the works:<br>(j) the next review date for the long-term maintenance plan for the unit title development: | ▪ 33(1)(h)<br>There will never be any amounts held in credit by the body corporate for a unit owner for LTMF, Contingency Fund or capital improvement funds. Once a body corporate levies an owner and the funds are paid by the owner to the body corporate, they belong to the body corporate not the owner. If this is in reference to section 131 (distribution of surplus funds), then that is always in the proportion as prescribed. |
| **Part #** | **Clause #** | **Regulation** | **Heading** | **Original UTR 2011 Wording** | **Description of Amendments** | **Feedback** |
| | 37 | 33 – 35 | Replace regulations 33 – 35.<br>Continued | (i) whether any metered charges due to the body corporate are unpaid and, if so, the amount of unpaid metered charges; and<br>(j) whether any costs relating to repairs to building elements or infrastructure contained in the unit are unpaid and, if so, the amount of unpaid costs; and<br>(k) the rate at which interest is accruing on any money owing to the body corporate by the seller; and<br>(l) whether there are any proceedings pending against the body corporate in any court or tribunal; and<br>(m) whether there have been any changes to the body corporate operational rules since—<br>(i) the additional disclosure statement if one has been provided; or<br>(ii) the pre-contract disclosure statement.<br><br>*35 Additional disclosure statement*<br>The following information is prescribed for the purposes of section 148(4) of the Act (which requires an additional disclosure statement to contain the prescribed information):<br>(a) the contact details for the body corporate and body corporate committee (if any); and | (ii) the type and amount of cover, the annual amount payable for it, and the excess payable on any claim under it; and<br>(iii) any specific exclusions from cover; and<br>(iv) a statement of where and how the insurance policy can be viewed.<br>(2) The following information is also prescribed for section 146(2)(a) of the Act if the pre-contract disclosure statement is provided in relation to the sale and purchase of an "off-the-plan" unit:<br>(a) a summary of the financial budget for the unit title development:<br>(b) the proposed ownership interest for the unit:<br>(c) the proposed utility interest for the unit:<br>(d) the body corporate operational rules that will first apply:<br>(e) what, if any, service contracts that are proposed to be entered into that will continue in force after the unit purchase is settled:<br>(f) whether the original owner has been involved in any capacity in any previous unit title development or other building-related work that has resulted in weather tightness issues—<br>(i) for which a claim has been made under the Weathertight Homes Resolution Act 2006; or<br>(ii) that have been remediated without a claim under that Act or other proceedings before a court or tribunal: | **SCA (NZ) has noted several issues with this section:**<br>- The section does not cover other remediation works that might be known, or soon to be levied that are not classified as 'weathertight' or for which no claim or other proceedings have been lodged (i.e.: age-related membrane deterioration on balconies, or end of life on cladding, age-related roof replacements).<br>- The explanation of things is now removed, and this is an important opportunity to educate prospective new owners.<br>- The period covered by the levy is no longer noted.<br>- Changes to operational rules is no longer covered.<br>- Current balance of funds is no longer provided.<br>- Details of regular expenses incurred is removed.<br>- Debtor levels is removed, and this is important to advise if a body corporate has a significant debtor problem.<br>- Contractor list is removed.<br>- Lease details is removed (i.e.: ground lease, signage rights) |

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| | | | | (b) the balance of every fund or bank account held or operated by the body corporate at the date of the last financial statement; and<br>(c) amounts due under invoices to be paid by the body corporate at the date the additional disclosure statement is requested; and<br>(d) details of regular expenses that are incurred at least once a year; and<br>(e) amounts owed to the body corporate at the date the additional disclosure statement is requested; and<br>(f) the following details of every current insurance policy held by the body corporate:<br>(i) the name of the insurer; and<br>(ii) the type of policy; and<br>(iii) the amount of the current premium; and<br>(iv) the amount of any excess payable under the policy; and<br>(g) the following details of every current contract entered into by the body corporate:<br>(i) the names of the parties; and<br>(ii) the goods or services to be provided under the contract; and<br>(iii) the price at which the goods or services are to be provided; and<br>(iv) the term of the contract; and<br>(h) information about every lease to which the base land is subject; and<br>(i) the text of motions voted on at the last general meeting and whether each motion was passed or not; and<br>(j) whether the body corporate's operational rules are different from the prescribed body corporate operational rules, and if so, what the differences are; and<br>(k) a summary of the long-term maintenance plan, including—<br>(i) details of maintenance to be carried out; and<br>(ii) details of maintenance carried out in the last year; and<br>(iii) whether there is a long-term maintenance fund; and<br>(iv) if there is a long-term maintenance fund, — | (3) The information required by this regulation must be provided to the extent that it is applicable to the unit and the development concerned (*see* section 146(2)(a) of the Act). | |

| Part # | Clause # | Regulation | Heading | Original UTR 2011 Wording | Description of Amendments | Feedback |
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| Schedule 1A Subpart 3 | 40 | 5 | Regulation 5 replaced | 5 Filing fees<br>• (1)The fee payable for the filing of an application with the Tenancy Tribunal under section 86 of the 1986 Act in relation to a unit title dispute is—<br>○ (a)$3,300 for category 1 proceedings; or<br>○ (b)$850 for category 2 proceedings.<br>(2) The fee includes goods and services tax. | Replace regulation 5 with:<br>5 Fees<br>(1) The fee payable for filing an application with the Tenancy Tribunal under section 86 of the 1986 Act in relation to a unit title dispute is $100.<br>(2) The following fees are also payable:<br>(a) for a dispute that is referred to mediation with a Tenancy Mediator—<br>(i) $600 for category 1 proceedings (divided equally between the parties); and<br>(ii) $300 for category 2 proceedings (divided equally between the parties):<br>(b) for a dispute that is referred to adjudication (whether directly or because 1 or more of the parties refuses to have the | - SCA (NZ) disagrees with the low fee and we argue that this will generate a lot of nuisance or harassment claims. The current schedule 2 fee of $850 means claims are only lodged where this is a genuine dispute, and the parties are unable to reach resolution.<br>▪ 5(2)(a)(i) & (2) – SCA (NZ) advises that splitting the fee equally irrespective of who wins is unfair and should be revisited. |
| | | | | | matter considered by a Tenancy Mediator or because mediation has failed to resolve the dispute)—<br>(i) $1,000 for category 1 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee); and<br>(ii) $600 for category 2 proceedings (divided equally between the parties unless a party has refused mediation, in which case that party pays the fee).<br>(3) To avoid doubt, a fee is payable under both clause (2)(a) and (2)(b) for a dispute that, in the course of resolution, is referred to both a Tenancy Mediator and for adjudication before the Tenancy Tribunal. | 5(/b) SCA (NZ) does not agree with this clause, as by the time the body corporate acts against another party, they have already tried to mediate a resolution privately and have no interest in wasting further time and money attending a mediation.<br>- As above, a body corporate will already have tried to mediate the problem. Why should they be penalised because they do not wish to waste even more time and expense going through a mediation. Owners will use this mediation tactic as a delaying mechanism against the body corporate and also to force the body corporate to cover the full fee. |