

# inbrief

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## STRENGTHENING BODY CORPORATE GOVERNANCE AND OTHER MATTERS

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Judith Collins, on 2 July 2020, introduced the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (Bill) into Parliament. The Bill is intended to improve the disclosure regime for prospective purchasers of units, to strengthen governance arrangements, to increase professionalism and standards for body corporate managers, and to ensure planning and funding for long-term maintenance.

The Bill proposes changes to the Unit Titles Act 2010, the Unit Titles Regulations 2011, and the Unit Titles (Unit Titles Disputes – Fees) Regulations 2011. We have summarised changes below:

### Utility Interests

Utility interests can be apportioned on the basis of a single uniform interest or a series of interests relating to a particular service or amenity. This change would allow different utility interests to apply to different line items in the body corporate's budget.

### Meetings

The quorum at a general meeting is calculated on the basis of those who are both entitled and eligible to vote. This means those owners who are not up to date with their levies cannot be counted towards the quorum (but those owners are still entitled to be present and speak at the meeting).

All decisions are ordinary resolutions unless the Act provides they are to be special resolutions. Or, the decision-making is delegated to the committee (where all committee decisions are ordinary resolutions).

The number of proxies able to be held by one person are limited to one for developments with less than 20 units or up to 5% for developments with 20 or more units.

Meetings can be held by audio or audio-visual link (or a combination of different methods) if the method of meeting is approved in advance by special resolution.

Committees

OCTOBER 2020

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## STRENGTHENING BODY CORPORATE GOVERNANCE AND OTHER MATTERS CONT...

The body corporate chairperson is an automatic member of the committee and the committee chairperson; unless, it is decided that the committee chairperson should be elected by the committee.

Committee members are subject to a code of conduct. And, they must maintain a conflict of interest register. The Bill provides for consequences of a conflict of interest and provides for failing to disclose a conflict of interest. Committee must also keep written records (minutes) of their meetings. Non-financial members are not eligible to vote at committee meetings.

### **Body Corporate Managers**

The Bill defines the role of a body corporate manager and sets out their functions and duties, including acting in the best interests of the body corporate. Body corporate managers must be members of an industry body.

In addition, specific terms are identified for inclusion in service contracts between bodies corporate and body corporate managers. Service contracts entered into before or during the control period and that last for more than two years after the end of the control period must include terms providing for the contract to be varied by agreement with the contractor or cancelled if agreement cannot be reached, and requiring the body corporate to agree to the exercise of any rights of renewal.

### **Large and Medium Residential Developments**

The Bill introduces special rules for large and medium residential developments. A large residential development has 30 or more principal units used as apartments. A medium residential development as 10 to 29 principal units used as apartments.

Large and medium residential developments:

- must have a body corporate manager (medium residential developments can opt out)
- must have the committee report on delegations at every general meeting (medium residential developments can opt out)
- must have 30-year long-term maintenance plan that is reviewed every three years or earlier if the body corporate becomes aware of something that affects the long-term maintenance plan (no opt out)
- must have long-term maintenance report peer reviewed by a suitably qualified and experienced professional (medium residential developments can opt out)
- must have long-term maintenance fund (no opt out); and
- must audit long-term maintenance fund (no opt out).

## STRENGTHENING BODY CORPORATE GOVERNANCE AND OTHER MATTERS *CONT...*

### Disclosure

All disclosure statements must be endorsed by the body corporate (or developer) as being correct. Additional information that must be included in pre-contract disclosure statements includes:

- whether any part of the unit title development has weathertightness issues the subject of a claim or remediated without a claim, or earthquake-prone issues
- whether the body corporate is involved in legal proceedings
- financial statements or audit reports for the last seven years
- notices and minutes of meetings for the last three years including all supporting documentation
- the name and contact details of the body corporate manager
- body corporate levies for the unit for the current financial year
- details of any outstanding amounts
- details of any amounts held in credit for the unit
- proposed works under the long-term maintenance plan for the next three years and estimated costs
- the next review date for the long-term maintenance plan; and
- a summary of insurance held by the body corporate including the insurer's contact details, the type of cover, premium, excess, specific exclusions, and statement as to where or how to view the policy.

Specific information is also required for off-the-plans sales.

### Unit Title Disputes

Fees for unit title disputes in the Tenancy Tribunal are reduced to:

- matters referred to mediation (\$600 or \$300 shared between the parties); and
- matters referred to hearing (\$1,000 or \$600 shared between the parties unless a party has refused mediation, in which case that party is responsible for the fee).

The next step in the Bill's progression is to have its first reading in Parliament. We will keep you updated as to the Bill's progress.

## CONTACT US

*For specialist legal advice and assistance, please contact us.*



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