

DRAFT

19 March 2009

The Chair
Social Services Committee
Parliament Buildings
WELLINGTON

UNIT TITLES BILL

Introduction

- 1 This submission on the Unit Titles Bill (Bill) is made by the Legislation Advisory Committee (LAC).
- 2 The LAC was established to provide advice to Government on good legislative practice, legislative proposals, and public law issues. The LAC produces and updates the LAC Guidelines adopted by Cabinet as appropriate benchmarks for legislation.

Disclosure Regime

- 3 The LAC has concerns about the Bill's proposed disclosure regime. Under this regime a seller of a unit title must disclose certain information to a prospective buyer, in either:
 - a pre-contract disclosure statement (clause 130);
 - a pre-settlement disclosure statement (clause 131); and
 - if requested, an additional disclosure statement (clause 132).
- 4 If disclosure statements under clauses 131 and 132 are not made within the prescribed time, the buyer may cancel the contract.

- 5 Likewise, under clause 140, a turn-over disclosure statement must be provided by the original owner once he or she is no longer entitled to exercise 75% or more of the votes of the body corporate.
- 6 The disclosure statements must contain “prescribed information”. The prescribed information is to be set out in regulations and under clause 196 regulations may be made “prescribing the form and content of disclosure statements required under this Act”.
- 7 The LAC guidelines indicate that technical and detailed matters are appropriate matters to set out in regulations. However, the guidelines also suggest that empowering provisions should be drafted so that the limits of the delegated legislative power are specified as clearly and precisely as possible.
- 8 The LAC is concerned that the absence of detail in the Bill regarding the disclosure scheme means that on the face of the Bill it is unclear what information a seller would be required to disclose to a buyer (under clauses 130–132). Also, it is unclear what information original owners would be required to disclose to the body corporate in turn-over disclosure statements (clause 140).
- 9 It appears that the purpose of the disclosure scheme contained in clauses 130–132 is to ensure that prospective buyers have accurate information about unit titles and to address the general lack of understanding about the nature of unit titles. However, the disclosure requirements reverse the general principle of caveat emptor, that is, that a prospective buyer must beware, as a seller of property is not required to disclose defects in quality to him or her. This has the effect that a seller of a unit title may be required to disclose matters to a buyer, where there would be no such obligation, if the land were not part of a unit title development, for example, the condition of the building. The result of this scheme may be to impose significant obligations on sellers of unit titles. Given the potential effect of the scheme, the parameters of what must be disclosed should be clearly defined.
- 10 While the detail of what information is to be disclosed could be left to regulations, it may be more appropriate to constrain the power to make regulations regarding disclosure statements and more clearly set out what those regulations can cover. In the alternative, the Bill itself could prescribe the information that must be

disclosed. See, for example, the information that the Commerce Commission may require be disclosed under the Telecommunications Act 2001, which is set out in section 69ZC(3).

Appointment of an administrator

- 11 Clause 125(2) provides that the court may “in its discretion on cause shown, appoint an administrator”. However, it is unclear when this provision would apply and it may be appropriate to specify grounds for appointing an administrator.

General Functions of the chief executive

- 12 Clause 185(1) states that the chief executive may perform and exercise a number of functions and powers. Under paragraph (d) this includes “the investigation, whether on the complaint of a party or not, of any alleged breach of this Act, and the taking of such action, whether involving legal proceedings, negotiation, or arbitration, as the chief executive thinks proper”. It is unclear when this provision is intended to apply. The Act does not contain any offence provisions and the procedure for dealing with disputes under the Act (including those with the chief executive) is set out in Part 4 of the Act.

Minority Relief

- 13 Part 5, subpart 3 deals with minority relief. Clause 191 allows a person who has voted against a resolution to apply to the Tribunal or the court for relief “on the grounds that the effect of the resolution would be unjust or inequitable for the minority”.
- 14 The following clauses set out another procedure for dealing with minority relief in the case of specified types of resolutions. This allows a person to object without having voted against the resolution and sets out notice requirements (clause 193). It also provides for the orders that a court can make after receiving an objection.
- 15 It is not clear how these different processes for minority relief relate to each other and whether the process set out in clauses 192 to 195 also applies to clause 191. If not, it is unclear why clause 194, which indicates types of orders that a court may make, does not also apply to clause 191.