

Insurance Council of New Zealand

P.O. Box 474 Wellington 6140
Level 2, 139 The Terrace

Tel 64 4 472 5230

email icnz@icnz.org.nz

Fax 64 4 473 3011

www.icnz.org.nz

3 March 2017

Unit Titles Act Review
Construction and Housing Markets, BRM
MBIE
PO Box 1473
Wellington 6140

Emailed to: UTAreview2016@mbie.govt.nz

To Whom It May Concern,

RE: ICNZ submission on Review of the Unit Titles Act 2010

1. Thank you for the opportunity to submit on this Review. We submit on behalf of the Insurance Council of New Zealand (“ICNZ”). ICNZ represents 26 members who operate as general insurers in New Zealand, and who collectively insure over half a trillion dollars in New Zealand’s assets (including property) and liabilities.
2. We support the Discussion Document’s proposed improvements to consumer disclosure, body corporate governance, professional requirements for body corporate managers, improvement to long term maintenance plans and increasing accessibility to dispute resolution.
3. The remainder of our submission focuses on a set of issues that is, strictly speaking, out of scope of the Discussion Document. However, we have been invited during consultation with MBIE officials on the Review to submit on these issues as they are critical contextual issues for the regulation of the building and housing environment more broadly. We will also copy this submission to Minister Brownlee who has expressed an interest in these issues arising from problems that were encountered after the Canterbury Earthquake series.
4. Insurers faced significant hurdles during their efforts to reinstate property they insure that were damaged in the Canterbury Earthquake Sequence. Those hurdles were caused by shortcomings in laws relating to shared interests in individual properties in multi-unit buildings (“MUBs” in this letter), and also other shared property such as multiple buildings

on an individual parcel of land. Cross leased properties posed special difficulties, particularly where unit owners share common foundations, walls and roofing. These MUB issues must be borne in mind by MBIE for possible improvements to legislation governing MUBs and shared property, to ensure an effective and efficient insurance response and reinstatement of housing, especially post-natural disaster where reinstatement of housing is an area-wide, economy-wide issue.

5. The central problem is the complexity involved in obtaining agreement between multiple unit owners to a building reinstatement pathway, after those units have suffered insured damage. Unit owners may have conflicting or competing interests, and individual and separate insurance arrangements when in a MUB or other shared property arrangement and without a body corporate committee and associated governance arrangements under the Unit Titles Act. Cross-lease arrangements pose a particular problem, as memoranda of lease require agreement between all parties (all unit owners) involved in the cross-lease. We submit enhanced governance and more accessible dispute resolution arrangement may improve the situation, though a change to legislation to help determine unit owner rights is ideally required.
6. Post-earthquake damage scenarios provide the most obvious examples, but the issues we raise apply equally to situations where MUBs and shared property are damaged by fire and other perils.
7. Specifically, problems arise where:
 - a. There are differences between unit owners' level of insurance coverage, including that some unit owners may be uninsured or underinsured.
 - b. There are differences between unit owners' preference for how a property should be reinstated.
 - c. Unit owners are absent, especially after a natural disaster.
 - d. Unit owners do not understand their memorandum of lease obligations in a cross-lease situation.
8. Unit owners in a MUB are affected by the insurance arrangements of other owners, making disclosure of others' insurance arrangements necessary, and/or requirements for the other unit owners to hold adequate insurance in shared property situations necessary. Uninsured and underinsured units pose specific problems. A body corporate under the Unit Titles Act with a single building with multiple units (or several buildings with multiple units) will take out one material damage policy covering the entire property (except for the individual unit owners' contents). But in situations where there is no body corporate to take out that insurance, individual unit owners are responsible for entering their own insurance arrangements, even where those units are in the same building.
9. When individual unit owners are responsible for their own insurance, one unit owners' insurable property interests can be significantly impacted by the other owners' actions. Uninsured and underinsured units are a specific problem. One unit owner's decision not to

take out insurance after purchasing a property, or who lets that insurance lapse, reduces the pool of funds available to reinstate the MUB for the benefit of all unit owners.

10. Disputes between unit owners that hold up efficient reinstatement can range from the fundamental (such as what kind of foundation solution to reinstate a building on) to the trivial (such as what colour of paint to use on the exterior of a MUB).
11. Unit owners may make different decisions about how to use the indemnity under their insurance contract. For example, insurance contracts often include the ability for the insured unit owner or the insurer to reinstate the property, or to cash settle for the value of the loss or damage to their property. If one unit owner decides to cash settle with their insurer instead of reinstate, that decision impacts other unit owners who may want to reinstate, and who cannot progress without the agreement of all unit owners, or the financial contribution from all unit owners, to each bear their fair share of reinstating the building. Disagreement by one unit owner blocks the other unit owners from reinstating their property.
12. The Memorandum of Lease in cross-leased properties is often misunderstood by homeowners, and purchasers are often not fully or properly advised on these MOL before purchasing a property. We understand the Law Society has taken steps to ensure property lawyers are apprised of issues so as to advise clients appropriately, especially post-Canterbury Earthquakes, but this is not a complete solution.
13. Insurers have also seen issues related to the lack of understanding of memorandum of lease obligations in cross-lease situations, both from unit owners, advocates advising unit owners, and lawyers advising unit owners. Some unit owners may take insurance proceeds or Earthquake Commission Act proceeds and put those proceeds to personal use, instead of fulfil their memorandum of lease obligations (if those obligations exist in memoranda of lease, which is not always the case).
14. There are issues relating to having different insurers for one MUB. Each insurer sends out assessors to inspect a property and advise on the extent of repairs required. Insurers have seen differences in the assessment of the same property between assessors. These differences do not help a shared reinstatement pathway for the unit owners collectively and for reinstatement of the building. Insurers advise that, for example, assessors would advise on cosmetic repairs to an individual unit and subsequent settlement with the particular unit owner, but without considering structural issues relating to the building as a whole and the impact of adjacent units. Some sites need major releveling work to a MUB or to the land a MUB is on.
15. Titles may also be in defect, such as where a unit owner or neighbouring unit owners make alterations to their property but do not update the title. This causes further delays for unit owners who are collectively looking for a shared reinstatement pathway, and in our view emphasises the need for continuing disclosure obligations or some other form of

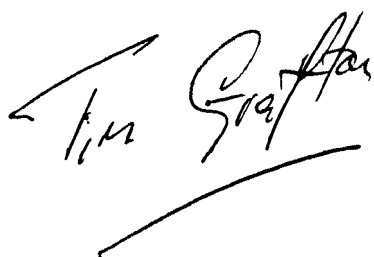
governance mechanism sitting above the individual unit owners, who otherwise are not sufficiently incentivised than to act in their own individual interests.

16. Possible solutions to the issues we have raised could include:
 - a. Education and disclosure obligations to purchasers and other unit owners.
 - b. Enhanced governance and more accessible dispute resolution arrangements for MUBs and shared property.
 - c. Legislation that allows a reinstatement pathway to proceed with the consent of a majority of unit owners. A forum like a body corporate committee with related governance arrangements would be appropriate. Governance arrangements need to ensure that one unit holder cannot hold up reinstatement for all other unit owners, and to set out a low cost and accessible disputes process where there is a stalemate between unit owners on a reinstatement pathway.
 - d. Legislation that requires owners of units in MUBs to insure the units and/or the building with one insurer. This is not a problem for properties subject to the Unit Titles Act 2010, but is for older unit title structures and cross-leased properties.

17. Finally, we expect the problems we have outlined above to worsen in future, for two reasons. First, the insurance market in New Zealand has moved to provide policies on a sum insured basis rather than a full reinstatement basis. This means the problem of unit owners in a MUB having different levels of insurance for their property (outlined above) will exacerbate. Second, insurers are more likely to opt to cash settle rather than repair or reinstate property in future. This will put pressure on unit owners to coordinate their own repairs with, perhaps, not enough cash to complete the work, especially if they have underinsured compared to the reinstatement value of the building, and with the governance issues outlined above added on top. In our view, the appropriate response is a legislative/regulatory one. All MUBs need to have some form of body corporate committee or other governance structure which manages repairs, insurance, and administration of the building as a whole.

18. Thank you again for considering our submission. If you have any questions, please contact our legal counsel Nick Mereu on (04) 495 8008 or nick@icnz.org.nz.

Yours sincerely,

A handwritten signature in black ink that reads "Tim Grafton". The signature is written in a cursive style and is positioned above a horizontal line that underlines the name.

Tim Grafton
Chief Executive