



REGIONAL
GROWTH
FORUM

Unit Titles Act 1972:
The Case for Review
Discussion Document
August 2003

Reviewing the Unit Titles Act 1972, August 2003

Unit Titles Act 1972: The Case For Review

Discussion Report

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August 2003

Foreword

The quality and long-term viability of intensive housing is an important issue for Aucklanders, as owners, occupants or neighbours. Much of this housing is owned as unit titles and managed as a body corporate of owners, under the Unit Titles Act 1972.

A review of the Unit Titles Act 1972 is urgently needed to ensure that multi-unit housing is well managed and maintained in the longer term.

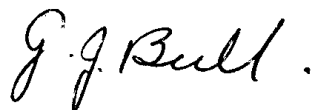
The Auckland Regional Growth Forum is pleased to be releasing this discussion document as a first step to encouraging this review.

By 2050, more than 500,000 people could be living in unit-titled property in the Auckland Region. It is therefore vital that there is appropriate legislation in place to ensure consumer protection, meet the demands of modern development styles and successfully regulate the relationships, rights and responsibilities necessitated by common property ownership and management.

Our intention is to engage the wider industry – body corporate secretaries, property and building managers, owners of units and apartments, real estate agents, legal and planning professionals, valuers and surveyors, developers and financiers, in a discussion of how common property ownership and management can be improved.

Seminars and workshops will be held over the coming months and wide participation is invited.

As regional and local government we cannot change legislation. We are happy to take a lead on this but need your support to take a compelling case to central government to initiate a formal review.



Gwen Bull
Chair, Auckland Regional Growth Forum
Chair, Auckland Regional Council

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1 Executive Summary

The Unit Titles Act 1972 (the “Act”) urgently needs reviewing because it is not sophisticated enough to successfully regulate the relationships, rights and responsibilities necessitated by common property ownership and management in multi unit developments.

Tens of thousands of people in the Auckland region live in medium and higher density unit title developments and this is expected to increase to hundreds of thousands.

Market demand and strategic planning policy drive this trend. The regional policy of containment and intensification is intended to take into account environmental constraints and achieve a more sustainable city.

Also, over the last decade or more other applications of the Act have emerged that were not envisaged when the Act was drafted, including;

- Conversions of existing buildings to residential unit titled developments;
- Mixtures of retail, office and residential unit developments;
- Shopping centres;
- Industrial unit developments;
- Office blocks;
- Motels;
- Car parks;
- Marinas;
- Storage units;
- Retirement villages; and
- Tourist developments.

However, regional research indicates significant problems with the management and maintenance of unit title developments. This is a concern when the Act being applied to create an increasing number and diverse range, of unit titles.

These problems are undermining the acceptability and integrity of this form of land tenure. Confidence in tenure is a fundamental part of our legal system, especially in New Zealand where the majority of personal wealth is invested in home ownership.

Legal title for multi-unit developments is granted under the Act. The Act does not provide adequate levels of consumer protection.

New Zealand society is now far more diverse socially, culturally and economically than it was in 1972. New building products are now available and the design and scale of developments is more varied.

This has resulted in increased demand for a choice of lifestyle opportunities. However, the Act is failing to adequately provide for the requirements of contemporary housing and commercial demands.

Overseas jurisdictions have rewritten their legislation to better address issues also faced in New Zealand. Key areas of reform include:

- Tailoring the legislation and rules to better reflect different development types, e.g. terraced houses, high rise apartments and commercial applications;

- Increasing the information available to purchasers from the developer and subsequent vendors;
- Defining the job descriptions and performance standards of those involved in the administration of bodies corporate;
- Providing better asset management systems; and
- Providing more accessible and effective dispute resolution mechanisms.

The Auckland Regional Council (the “ARC”) and councils in the Auckland region, like many other regions in New Zealand, have policies promoting the containment and intensification of urban areas.

Councils have a statutory obligation to monitor the performance of their policies. Research indicates there are significant and increasing problems with unit title developments.

Faced with the conclusions of its research, the ARC has investigated the operation of the Act to gain an appreciation of how the legislation may be changed to make it more effective. That is the purpose of this report and the report is also intended to provide a stimulus for further debate and discussion.

The ARC and local councils now seek a collaborative relationship with the Government and other councils in New Zealand to reform the Act. There is a persuasive case for reviewing the Unit Titles Act 1972.



2 Introduction

2.1 Brief

The ARC commissioned research on the functioning of bodies corporate in intensive housing developments, which indicated a low level of satisfaction with many body corporate ownership/management structures. It also indicated negative perceptions by some people about medium and higher intensity housing.

Unless body corporate issues are addressed and the management and maintenance of unit title housing is improved, there may be increased pressure for more “traditional” forms of ownership, which are generally associated with lower density forms of habitation. This pressure has the potential to frustrate the Auckland Regional Growth Strategy strategic policy of urban containment and intensification.

The authors of the report recommended that the Government should conduct a major review of the Act as soon as possible and outlined deficiencies in the Act that the review should address. The report also recommended that the Government consider regulating body corporate managers and secretaries and that information be made available to educate owners and prospective owners of unit titled dwellings in body corporate matters.

The ARC discussed how to implement these recommendations with staff at Glaister Ennor, an Auckland legal firm. It was agreed to prepare a discussion report to develop the case for reforming the Act and to engage with the Government on this issue. This report is to fulfil this brief. A body corporate manual, “The Mysteries of Bodies Corporate: a guide to the rights and responsibilities of apartment ownership”,¹ has been produced in a related project.

2.2 Content

This discussion report consists of five main sections. The first two sections are the Executive Summary and the Introduction.

Section 3 provides a Background to the case for review by outlining information on unit title development applications, a summary of the content of the Act and tracing its origins. It also explores the social, economic, cultural and environmental drivers for change.

Section 4 is the Key Issues section and starts by distinguishing statutory issues from general issues. The general issues are then discussed followed by an introduction to how overseas jurisdictions have reviewed their legislation. The way the Act is working in New Zealand is then discussed according to topics on finance, administration, rules and disputes.

Section 5 is a tentative Regulatory Impact Statement written in the format of the Cabinet Manual. First the problem is defined, objectives are listed and the merits of non-legislative options to achieve the objectives are discussed. Finally the case for reform is outlined and some of the costs and benefits of reform are identified.

¹ Regional Growth Forum, prepared by Dr Ann Dupuis and Penny Lysnar, Massey University, Albany and Professor Jenny Dixon and Clare Mouat, University of Auckland, (2003) *Bodies Corporate and Intensive Housing in Auckland: A Preliminary Assessment*

² The ARC (August 2003)

2.3 Acknowledgments

The authors are grateful for the contributions made by many people, with different interest backgrounds, to the preparation of this discussion report. Special mention is made of the following peer reviewers and contributors;

- John Crocker, Bayleys, Auckland.
- John Greenwood, Chapman Tripp, Wellington.
- Robbie Muir, Registrar-General of Land, Land Information New Zealand, Wellington
- Ian Wright, H.G. Livingstone Limited, Auckland
- Ross Miller, Team Leader Subdivisions, Auckland City Council.
- Philip Clarke, Chair of Freemans Park Owners' Committee, Auckland
- Stephen Connolly, Chair of Waiatarau Terraces Owners' Committee, Auckland
- Professor Jenny Dixon, University of Auckland, Auckland
- Dr Ann Dupuis, Massey University, Albany.

While we thank those listed above, the authors take full responsibility for any criticism of the final content of this report.

The authors hope that other people will be encouraged by this report to contribute to the discussion about the Act so that review of the Act proceeds on an informed and robust foundation.

3 Background

3.1 Background facts on unit titles

The writing of this discussion report has been frustrated by the lack of data on unit title developments. For example, neither city councils nor Land Information New Zealand currently collect statistical data on unit title developments. However, the following information is indicative of the current situation and provides some predictions for the future.

At least 45,000 people are presently living in unit titled properties in the Auckland Region.³ The majority of larger residential developments (including serviced apartments) are unit titled, while some smaller ones are still cross-leased or have company ownership structures. If the Regional Growth Forum (RGF) vision is realised, 30% of the estimated population of 2 million in 2050 could be living in multi unit housing, which could mean over 500,000 people living in unit titled properties.

The ARC research has shown high levels of satisfaction of residents in higher density developments, particularly in relation to location and convenience, proximity to shops, services and transport, as well as modern design, security, and safety and low maintenance (pre-leaky home problem). However, residents were only moderately satisfied with the way their developments were managed or the way the rules were enforced, scoring the lowest of 28 criteria.

An earlier scoping survey⁴ also found concerns with management generally and specific issues like rules, security, rubbish and recycling. Residents surveyed in 2001 felt that developments needed to be better controlled and managed and businesses felt that the apartments were poorly maintained. Further qualitative research in 2002 identified many problems in relation to bodies corporate including a poor understanding of roles and responsibilities and poor management practices.⁵

There is also strong evidence that design and construction quality impacts on the ongoing management and maintenance of units e.g. lack of adequate soundproofing. While design and quality are more directly under the control of the Building Code and not the Act, the effects of poor quality can manifest as bodies corporate management and maintenance issues.

Fair Go (Television New Zealand Programme) have received numerous complaints (50-100) in regard to the operation of bodies corporate relating to levies, rules, management or disputes between parties. There is increasing anecdotal evidence that management and maintenance issues are discouraging purchasers and some accountants and lawyers are recommending to people that they do not buy unit titled properties.

This background provides the foundation for the recommendation that the Act needs reviewing. While problems with the Act are more evident in Auckland because a large number

³ This is an ARC "best guess" conservative estimate based on 1,000 resource consents since 1993, for developments with 5 or more units, comprising 22,000 units and assuming average occupancy rates. Many others were registered before 1993.

⁴ ARC, *Building a Better Future*, 2000

⁵ ARC, 119 residents in 63 developments

⁶ ARC, Mixed use perceptions survey, April 2001

⁷ ARC, *Bodies corporate and intensive housing in Auckland Region*, Jan 2003

of multi-unit developments are being built in the region, this is by no means only an “Auckland issue”.

3.2 Overview of the Act

The long title of the Act is: “An Act to facilitate the subdivision of land into units that are to be owned by individual proprietors, and common property that is to be owned by all the unit proprietors as tenants in common, and to provide for the use and management of the units and common property.” The Act consists of four main parts and four schedules.

3.2.1 Part 1

Part 1 of the Act describes how stratum estates are developed through the subdivision of land into two or more principal units, accessory units and common property. Each stratum estate freehold is capable of being dealt with independently of the others in a similar manner to a conventional freehold estate (s 3). The unit entitlement calculation and its effect are covered in Part 1 (s 6), as well as the ownership of common property (s 9) and rights associated with common property (s 11). Sections 12 – 16 cover the membership, legal status, liabilities, duties and powers of the body corporate. Finally, sections 17 – 19 cover dealings, transfers and additions to common property.

3.2.2 Part 2

Part 2 contains special provisions relating to leasehold land that make the provisions in the Act paramount where the lease may contain contrary terms (s 21). It also preserves the lessor’s reversionary interest when a unit plan is deposited (s 22), outlines the powers of the body corporate in respect of the lease (s 23), and covers dealings in the stratum estates and underlying leasehold title. There is an implied guarantee by unit holders to pay money due under the lease (s 26), controls over how arrears may be recovered (s 27, 28), renewal provisions for the expiry of the lease, and the consequences of merging all titles.

3.2.3 Parts 3 and 4

Part 3 contains miscellaneous provisions starting with the powers of the body corporate to recover contributions (s 32) and money expended where a particular unit(s) has benefited (s 33) or a person has been at fault (s 34). Section 36 contains the important obligation on the body corporate to disclose certain information to a purchaser or mortgagee. Section 37 is the empowering provision for the rules as contained in Schedules 2 and 3 and outlines how the rules may be altered and their legal effect, for example, who is bound by the rules and the powers of enforcement available to the body corporate.

Part 3 also contains provisions about insurance (s 38, 39), appointment and removal of an administrator (s 40), how voting rights are exercised (s 41) and how relief for a minority may be applied for (s 43). Section 44 deals with redevelopment of the unit plan, sections 45 – 47 deal with cancellation of a plan through the Court and s 51 outlines the consequences of default by the body corporate.

Part 4 is concerned with the conversion of existing company structures to unit titles.

3.2.4 Schedules

Schedule 1 contains standard forms.

Schedule 2 outlines rules that may only be amended by unanimous resolution. These cover proprietors' duties, the powers and duties of the body corporate, the operation of the committee of the body corporate, how general meetings are to be run (including voting rules), and miscellaneous rules which include provisions for special resolutions where voting is based on unit entitlement.

Schedule 3 contains rules that may be amended by resolution of the body corporate and require owners or occupiers to comply with specific standards of conduct.

Schedule 4 contains a form of certification relevant to the deposit of a unit plan.

3.2.5 Amendment

The Act was amended in 1979 to modify the provisions to deal with staged development.

3.3 History of unit title legislation development

3.3.1 Cultural and lifestyle change

It is a perennial question whether statutory enactments mould cultural and social attitudes or whether cultural and social attitudes create an environment for new legislation. In New Zealand, land law and particularly in the area of unit title legislation, it appears lifestyle changes have driven reform of the statutory framework. When the Act was passed in 1972 it was a direct response to the emerging demand for medium and higher density housing in the main centres not met by existing title.

The cross-lease form of title was another initiative, but it was never intended to legally define three-dimensional space and was far too limited to meet the needs of the more sophisticated types of dwelling structures that were being built. The Act drew upon the experience of various other jurisdictions including and, in particular, those in Australia.

3.3.2 Law Commission Report

In 1999 the Law Commission Report No. 59, entitled "Shared Ownership of Land," considered various amendments to the Act, more as a by-product of the original study, which was focussed on the legal status of cross-lease titles. The report suggested changes to the legislation, largely from the perspective of the inadequacy of the legislation, rather than addressing the new needs and demands of modern intensive housing in New Zealand⁸. Even since 1999 the issues have continued to change.

3.3.3 Demand for choice

In 2003 there is a growing tide of disquiet and concern about problems within unit title developments. This has placed the Act under the spotlight. Lifestyle changes over the last three decades have exposed the inadequacies of the legislation in many areas. In 2003 New Zealand is a far more sophisticated and diverse society than it was in 1972. This diversity, combined with increasing environmental constraints, has been the catalyst for a wide variety of different developments in medium and high density housing over the last decade.

⁸ See Appendix 2: Law Commission Recommendations, *Shared Ownership of Land*, Report 59, 1999

Consumers of housing are now demanding a much greater choice of living opportunities to match contemporary urban lifestyles.

The sophistication of contemporary multi unit housing is reflected by:

- The diversity of designs, for example, low and high-rise apartments, terraced housing, townhouse complexes;
- The diversity of uses, for example, mixed commercial and residential developments;
- The emerging investment market and the participation of overseas investors;
- The large scale of some developments with 100-200 units; and
- Facilities that some offer including pools and gym complexes.

Central Auckland now has in excess of 7,000 apartments, with over 4,000 currently under construction.

An appropriate legislative framework for diverse multi-unit housing must take into account social, cultural, economic lifestyle and environmental influences.

4 Key Issues

4.1 Distinguishing statutory issues from general issues

Terraced housing and apartments vary greatly in style, cost, design, location and quality, and in the types of people that choose to live in them. Consequently the level of satisfaction of both residents and neighbours also varies, and influences the long-term enjoyment, management and maintenance of these dwellings.

In this section the discussion of “general issues” is distinguished from issues relating to the core function of the Act, which is to provide a form of tenure and to control the way intensive housing is managed through a body corporate structure. The reason for this approach is to recognise that the primary management of these general issues is not under the Act, but under the control of other statutes and regulations, for example the Building Act 1991, the Resource Management Act 1991 and district plans.

Therefore, it is not appropriate to justify reform of the Act on the basis of an argument such as, for example, low levels of owner satisfaction because a development is poorly located. Reform recommendations need to be accurately targeted and based on relevant issues. However, any new Act may encompass new issues within its scope.

4.2 General issues for medium and higher intensity housing

4.2.1 Expectations and lifestyle issues

Expectations differ about medium and high density housing depending on the lifestyle and experience of the consumer, and the information they have had access to. Unrealised expectations are a source of discontent with some higher density developments.

Many people do not have experience of living in intensive developments and bring attitudes and habits more attuned to living in stand-alone dwellings on separate sections. The differences of living in intensive developments include;

- Units are a lot closer together so noise and privacy issues become more important, for example, some people living in Auckland’s Viaduct or CBD have been surprised to find these areas noisy;
- Gardens and outdoors areas, balconies or courtyards are often smaller or shared;
- Less space to accommodate cars, boats or other personal assets;
- Water and other services are often provided and paid for communally;
- Owners have collective responsibility for common property;
- Decisions about how the development is maintained, how it can be altered and day-to-day management issues and rules will be made by the body corporate (all owners) at an AGM or by an owner’s committee.; and
- Relationships with neighbours may be more interactive due to closer physical proximity, the co-operation required to manage common property and mutual obligations to follow body corporate rules.

Different expectations and lifestyles can create tensions between owners and occupants within the developments themselves, for example:

- Owners with an expectation of hassle-free living may be surprised and disappointed to have to attend meetings or follow rules on rubbish collection, pool hours or visitor car park use;
- Owners attracted by the opportunity to live in a more collaborative environment or who want to be in a busy, vibrant environment may be disappointed by disinterested absentee owners and transient tenants; or
- Owners interested in developing common areas or upgrading buildings may be disappointed by a minimalist approach from other owners.

Despite the gaps between expectation and reality that may occur, multi-unit housing is fulfilling a demand and providing a unique housing choice. Units often enable people to live close to work or in an area that would generally be out of their financial reach. They also have the potential to free people from the hassles of stand-alone house ownership e.g. garden maintenance and upkeep, perhaps in retirement. Some are looking for a relatively hassle-free investment.

The purpose section of a piece of legislation can help to mould expectations, but expectations are largely a product of culture, experience and information and are outside the core scope of the Act. However, because the Act establishes processes that govern the relationships between owners, and those relationships encompass individual expectations, the performance of the Act's procedural rules is highly relevant.

4.2.2 Adequate financial resources

Price is a key factor in decisions about housing, with affordability being one of the main reasons some people choose to occupy a unit or apartment, especially to get into an area in which a traditional home would be too costly. The Act cannot be held responsible for issues caused by unit owners not having adequate financial resources to meet their commitments.

A further expense for the owners of units is the levy, paid by all owners to maintain common areas and facilities, and pay for common insurance, services, management and administration. Typical levies might be \$1200 to \$1500 per annum for a basic terraced unit, or perhaps \$2000-\$5000 for an inner city apartment with extra facilities. Anecdotal evidence suggests that occasionally developers and their agents may either not fully represent the levies at the time of sale or under price the levies for the first year to make the development seem more attractive.

When price is an overriding determinant of the decision to buy a dwelling, the owner is likely to be stretched financially at the time they take possession. Mechanisms in the Act can require levy payments, irrespective of the resources of each owner, and the body corporate has processes at its disposal to ensure payment is made. When essential and expensive maintenance is necessary, for example roof leaks, major tensions can develop between owners unable to meet large capital repair and maintenance bills, and other owners with adequate resources. The establishment of funds to pay for maintenance, discussed later in this report, can smooth the payment of outgoings and reduce the need for special calls for funds.

4.2.3 Location

The location of medium and higher intensity housing has become very diverse within the region. The urban landscape is no longer a place in which high-rise and high density housing is located only within the CBD. This is partly due to a change in regional and district planning policy in favour of more intensive development in selected locations and partly due to the increased cost of land in many areas justifying higher intensity development to maximise rates of return.

As entry-level prices for traditional housing have increased some consumers have opted for higher intensity lower maintenance properties interspersed among lower density residential housing and commercial zones. It is the intention of the Growth Strategy that the location of such developments should ideally be close to employment centres, transport nodes and corridors, shopping precincts, educational facilities and areas of recreation.

However, the location of some developments has been less than ideal and this has affected how well the new development functions for occupants and how well it integrates with existing development. For example, there have been problems with noise effects where multi-unit developments have located in business/commercial zones.

Location problems are not a fault of the Act, but are primarily a planning issue.

However, poorly located developments may result in issues that affect their long-term management within the body corporate structure of the Act. For example, increased car-parking demand where a development is isolated from public transport and facilities, or managing noise and traffic impacts on residents in a busy commercial area.



4.2.4 Design quality

Conjoint or terraced housing has become a common type of medium density housing and is a significant divergence from the predominantly stand-alone dwellings of the 1960s and 70s and earlier. Along with new layouts of residential units, new designs and construction methods have been adopted. The weather-tightness problem is evidence that some design features, for example Mediterranean style house with no eaves, and materials, for example unvented monolithic cladding, have resulted in poor quality homes being built.

While quality is not just an issue for multi-unit housing, because of the cost driven nature of this type of development, there have been significant problems with the quality of some units created under the current building and planning regulations. In multi-unit developments building and design failures can be harder to fix, particularly as agreement on a course of action to seek redress will need to be reached by all owners, i.e. the body corporate. For example, the outer skin of many developments is common property and the responsibility of the body corporate. If the skin leaks and a claim is to be made against the developer, the owners have to decide whether to use the Weathertight Homes Resolution Service or pursue civil court proceedings, and this can be a difficult decision to make.

Better quality at the outset undoubtedly leads to a smoother running development with fewer problems for the body corporate to manage in the long-term. The physical design of multi-unit

developments is therefore an issue that is related to the Act, but not part of the Act's core function.

Auckland councils are addressing location and design issues in a range of ways including the development of urban design and medium density design guides, refinement of planning rules and zones, monitoring of consumer satisfaction, providing design advice and supporting the Government's Building Act review. A buyers guide has also been developed for terraced housing and apartment owners to emphasise aspects of quality.

Specific issues regarding operation of the Act are discussed in the following sections.

4.3 Overseas examples of legislation

4.3.1 Introduction

Review of comparative legislation from other jurisdictions puts the Act into a clear perspective. It is very much a "first generation" statute devised at a time when New Zealand exhibited more uniform lifestyle patterns and was less culturally diverse. Many jurisdictions such as Ontario, Queensland and New South Wales have or are about to adopt, second generation legislation that has a more sophisticated legislative structure to match diverse contemporary housing.

Whilst the legislation in most of those jurisdictions addresses similar issues and contains similar concepts to those in New Zealand, they adopt different approaches. Common features include provision for:

- Disclosure of relevant consumer information by the original developer;⁹
- More comprehensive information disclosure to prospective purchasers than s 36 in the current Act;
- Consumer safeguards to ensure purchasers are better protected;
- Appropriate by-laws and methods of enforcing by-laws;
- Establishment of funds for maintenance, capital works and repairs to replace major building components and other capital items; and
- Clear rules and in some cases codes of conduct, for third parties providing services to owners.

Furthermore, second generation statutes provide a more transparent and open set of rules and regulations for the ongoing day to day administration of the development whatever its size and the type of units within the development.

Some jurisdictions have identified certain key types of developments that comprise medium-to high-density housing and retail/commercial, e.g. Queensland and Ontario distinguish different categories of development in their legislation. New South Wales does not distinguish forms of development at this stage, but is currently considering the Queensland model.

⁹ Available at the ARC and city councils in the region.

¹⁰ Note developers may be required, under a proposal in the review of the the Building Act, to provide information on construction specifications and technologies, and inspection, maintenance and replacement advice.

4.3.2 Consumer protection

As noted above, consumer protection has been a major theme in recent reforms of overseas legislation. The Act needs to be significantly enhanced in this area to provide a greater measure of consumer protection both for buyers of brand new units from developers and second-hand units from existing owners. Many lawyers are currently advising owners of existing unit title developments to demand a very high standard and detail of disclosure or simply not to purchase at all, which is most unsatisfactory.

As a first generation piece of legislation establishing a new form of title in 1972, the Act contained minimal consumer protection features for buyers of units in unit title developments. The Act was essentially a technical piece of legislation. Therefore, the only feature of the Act that contains any protection for buyers is the requirement of a section 36 certificate which a vendor may hand to a purchaser.

However, even this certification was relatively narrow in its consumer protection measures. Further, the provision of this certificate is not mandatory, but has become expected by convention as a result of provisions in the standard agreement for sale and purchase of land in New Zealand and mortgagee requirements. However, its effect is relatively insignificant in informing consumers on the broad range of issues that consumers need to know about when buying a unit within such developments. Under the Act the onus lies on the purchaser and there are few obligations on the vendor e.g. outstanding maintenance does not have to be disclosed.

By contrast, recent legislation in other jurisdictions has provided far more sophisticated consumer protection measures. In focusing on instilling confidence in consumers in purchasing units of this type, consumer protection measures must be an essential feature of any amendment legislation. Changes should take a lead from the significant amendments and provisions in legislation from jurisdictions such as Queensland and Ontario.

In those jurisdictions, the legislation contains a significant focus on the needs of consumers to have a broad range of information about the unit that they are purchasing, whether it is a brand new unit being purchased from a developer or a unit being purchased from an existing owner. Various jurisdictions deal with matters differently but the common emphasis is the requirement that the onus is upon the vendor to supply information to the purchaser. In one jurisdiction failure to provide the information within a certain statutory timeframe will allow the purchaser to cancel a contract to purchase.

The underlying theme of overseas legislation is that a certain standard minimum level of information is required in all cases. In Queensland this is termed the "Community Management Statement". The legislation imposes certain contractual obligations on a vendor of units within a unit title development to supply information including:

- A full Community Management Statement, containing financial reports and budgets, sinking fund details, annual contribution to body corporate levies of various sorts e.g. maintenance funds or sinking funds.
- Details of the regulation module (body corporate Rules) used for the development.
- Details of any amendments to the unit title development where the unit is a brand new unit in the development in the course of construction.
- Details of body corporate financial and property management and support service contracts, such as caretaker contracts.

¹¹ The certificate "shall" be supplied but only if a request is first made.

The Ontario legislation provides a similar list under its disclosure statement requirements, but it also requires such additional information as:

- Statements of whether or not the property is subject to legislation relating to building warranties. This goes to the heart of the type of construction and its construction integrity.
- A copy of any surveyor or engineers' reports in relation to the building.
- A statement of the proportion of units for owner/occupier as opposed to rental.

As can be seen from the above, the range and sophistication of consumer protection and information measures is broad and of itself, provides purchasers with an ability to withdraw from a contract where information is either inadequate or unsatisfactory.

In addition, certain jurisdictions impose statutory implied warranties upon vendors in relation to their knowledge of the development. The Queensland legislation in particular imposes warranties on vendors covering such issues as:

- Building defects, body corporate management and disclosure.
- Financial contribution liabilities to the body corporate.
- Records of body corporate meetings and the matters in relation to the affairs of the body corporate.

The effects of such warranties are such that disclosure of any information in breach of the implied warranties enables a purchaser to either withdraw from a contract or take action against a vendor. The onus upon a vendor is high, however the benefits to consumers are considerable. The combination of measures imposes a significant degree of consumer confidence in the product.

Imperfect information is one of the recognised failures of so-called "free markets." Changing the Act to ensure that housing market participants are better informed will arguably contribute to a more efficient housing sector. It gives purchasers greater power to influence the physical and administrative structures of multi unit housing developments.

In conclusion, the Act falls far short of imposing any such duties and obligations on vendors. Therefore it does not provide any measure of consumer protection or consumer confidence in the product. This has been exposed during the "leaky building crisis." The lack of any real consumer protection measures or any duties on vendors has exacerbated the problem for owners of leaky buildings in unit title developments. Owners of leaky buildings in such developments should have been better protected under this legislation and certainly would have been under similar legislation in other jurisdictions.

4.4 Unit title application in New Zealand

4.4.1 District plan treatment of fee simple, cross-lease and unit title

From a planning perspective there have been significant differences between various territorial authorities in the treatment of these three forms of title. This led to significant diversity as developers opted for fee simple, cross-lease or unit title developments, to take advantage of district plan rules.

Previously in the 1970s and 80s the approach to more dense and medium intensive housing developments was to establish a series of cross-lease developments. Certain building controls and reserve contribution requirements were less onerous and accordingly more popular with developers.

The “levelling of the playing field” for fee simple and cross-lease/unit title developments under district plans created after the Resource Management Act was introduced has led to a significant decline in cross-lease developments and an increase of fee simple titles for medium-intensity housing developments.

For higher density housing developments and multi-storey developments, unit titles are the main form of title available (strata titles can also be created). In practice, many older intensive developments and new smaller ones (up to five units) are still on cross lease titles, but the majority of recent developments are unit titled.

4.4.2 Development staging

The provisions of the 1979 Unit Titles Amendment Act have not fully addressed problems in staged developments and therefore some unusual structural arrangements are being created. In one Auckland development a site has been subdivided into 10 separate lots, each with a separate Unit Title, but it is effectively one comprehensive development. A “Residents Society” will be set up to operate in effect as a body corporate of bodies corporate. The problems of trying to keep a residents association functioning may prove significant e.g. the mandate and authority of the association may be difficult to define adequately.

4.4.3 Principal units

The survey and legal definition of a Principal Unit (PU) needs to be reviewed in the light of contemporary applications e.g. demand to create PUs on the skin of a building to sell for advertising space. The Act is not clear about whether or not a PU can include areas of open space outside the building or whether or not there is even a need for a building within the PU.

Also, the relationship of the Act with the Building Act through s 224(f) of the Resource Management Act needs consideration. The present requirements create unnecessary difficulties especially when, for example, PUs are such things as car parking spaces within a building.

4.4.4 Commercial application

Sometimes commercial or retail units in a comprehensive development, such as a mall, are registered as unit titles so they can be sold to separate owners e.g. Southmall in Manurewa and Meadowbank and Royal Oak shopping centres.

Other developments may have a mixture of uses e.g. commercial and residential, which present specific challenges in terms of how budgets for the different uses are managed. Although separate budgets may be established through negotiation, the Act needs to provide more guidance for mixed-use applications. Due to current problems, applications for further sub-division are sometimes made and granted, creating potentially even greater problems in the future when upgrades are needed or the building needs replacing.

Unit title ownership can be a significant constraint on redevelopment. Multiple owners with different interests, expectations and financial ability, can mean it is very difficult to carry out any kind of significant redevelopment of the site in response to planning, community or business aspirations, or market demands. In practice, no one has the mandate to lead a redevelopment process, which is provided for in the Act, but has proved to be a significant barrier to town centre redevelopment in some areas. For example, problems arise due to a lack of control over matters including;

- A standard lease;
- The retail mix;
- The ability to relocate tenants;
- The ability to redevelop (normally a 7 year cycle for retail);
- Access to turnover information; and
- Managerial and strategic direction.

Constraints on redevelopment can also apply in residential developments, but dwellings are not generally subject to the same commercial pressure to update premises in order to compete with other retail centres.

An option that needs consideration is whether or not to provide more specifically for the needs of commercial uses by allowing greater flexibility to redevelop e.g. by relaxing the voting thresholds on making changes to the unit plan.

Protecting individual owners rights will still need recognition in the Act (e.g. minority relief), but whether or not those rights should enable an individual owner to frustrate the interests of a significant majority is a policy issue that needs further debate.

4.5 Financial management

4.5.1 Common property and body corporate levies

One feature common to many medium and higher-density-housing schemes throughout the world is the importance placed upon the collection and use of funds from owners. The present Act is unable to deal adequately with current issues, which are created by the increased diversity and size of developments. Often the payment and use of financial contributions for the development are an area of significant disharmony between unit owners; individual owners and the body corporate; and the body corporate and the body corporate management.

On the revenue side, dealings by a body corporate affecting common property (s 17) may be unnecessarily restricted in certain applications e.g. a unanimous resolution is required to casually lease a common area in a shopping centre.

Under the current legislation and standard rules, the body corporate is responsible for maintaining the common property and carrying out a number of other duties, which require levies and contributions from the body corporate members (i.e. all owners as per s 15). In the Act the body corporate has considerable discretion as to how it goes about its task.

By contrast, other jurisdictions vest the requirements and obligations on the body corporate to levy funds from owners according to a defined set of duties and obligations. The body corporate is required, in some jurisdictions, to develop several annual budgets to undertake ongoing maintenance and also to plan for capital and financial expenditure. Use of the various funds established are controlled by rules that define the limits of powers of the body corporate executive committee. However, review of the Act needs to be mindful of the level of financial acumen or "literacy" of most owners to ensure that new requirements are not unnecessarily complicated.

4.5.2 Unit entitlement and owners' responsibilities for common outgoings

Each owner's share in the common property, responsibility to pay for common outgoings, and obligations, liabilities and certain voting rights, are determined by the unit entitlement (s 6). A

valuer sets the unit entitlement before the unit plan is deposited and it is the relative value of a particular unit in comparison to other units. Valuers take a wide range of factors into account in setting each entitlement.

Problems can arise where owners have not fully appreciated what their unit entitlement is and disagree with continuing to pay for things according to this apportionment. Owners would benefit from becoming better informed about what their obligations are and that the unit entitlement is unlikely to change.

The circumstances by which the unit entitlement may be altered are very limited under the Act and this may cause problems, including:

- The apportionment of contributions for the maintenance of common property is not considered equitable, e.g. payment for lifts that are not used by ground floor residents or the apportionment of the repairs for a common roof.
- The unit entitlement may become inequitable due to changes in value over time, e.g. a view may be lost, or a ground floor apartment becomes a shop through planning changes.

However, all ownership involves future risk and how this is factored into the unit entitlement is complicated. For example, it may not be equitable that the owner of a street-frontage unit pays a higher entitlement proportionally following the building-out of a view of a unit on another boundary. The owner of the street front unit may have been savvy enough to look at the district plan and determine the loss of the view of the other unit was always possible. Similarly, the purchaser of a residential unit with future retail potential may have always been hopeful of a plan change to make retail possible.

Greater flexibility to review unit entitlements could be provided to address changes in relative value over time. However, without a defined process to review the unit entitlements, which has effective dispute resolution mechanisms, such flexibility may cause long and costly disputes. This could result in unpaid levies and deferred maintenance until such time as new unit entitlements are established. Increasing the flexibility to vary unit entitlements is a concern to some administrators.

4.5.3 Sinking funds for maintenance and capital works

A related issue is the ongoing responsibility for capital works and replacement. As developments have become larger and more diverse the requirements and needs for capital works have become more acute.

The current prevalence and difficulty with weathertightness experienced by some intensive developments in New Zealand has brought this issue sharply into focus. In many developments, the exterior skin of the development is a part of the common property. Accordingly, the body corporate owners are all responsible to meet the cost of maintenance of that exterior skin together and other areas such as the common driveway yards and grounds. Other common properties may include lifts and escalators, which require replacement after a finite period of time.

Other facilities require regular inspection and maintenance as part of the building warrant of fitness, under the Building Act 1991 (for example mechanical ventilation and air conditioning systems, automatic sprinkler and emergency lighting systems).

In other jurisdictions, second generation legislation contains specific requirements to establish sinking funds for capital works to address such issues. Provisions are made and criteria are established within the legislation to calculate sinking funds. Some require the developer to

establish a sinking fund from the outset and for the sinking fund to be maintained by owners' contributions throughout the period of the development.

The Act needs to establish a regime for the institution and maintenance of sinking funds for capital works as it is considered to be a prudent governance issue to preserve the integrity of a unit title development. The issues the Act needs to address are:

- How sinking funds are determined, given the capital works that have to be paid for out of the sinking fund;
- How the sinking fund is levied amongst owners, whether by equal share, unit entitlement, or otherwise;
- How the amount is collected and actioned for failure of owners to pay the sinking fund fee;
- Where the fund is to be held and administered from, e.g. whether in a financial or trust institution or a Government agency e.g. the Housing Corporation;
- How the fund can be utilised; and
- The requirements for a sinking fund budget by the body corporate annually.

The Ontario legislation provides for a performance audit on the physical structure to be submitted within a certain period of the completion of the development and thereafter on a regular basis. That performance audit must be submitted to the appropriate Government authority. This requirement, along with the provision of a sinking fund for the overall maintenance and upkeep of the structure and various equipment within the structure, provides a robust regime for the building to be maintained to a high level. Whilst the cost of such a regime to the individual may appear to be high, it is arguably more desirable than a large lump sum payment to be paid by the owners whenever a payment for capital works is required.

Some jurisdictions make provisions for sinking funds to be held by financial or trust institutions and to be administered by the body corporate committee in conjunction with the body corporate management. However, regular and detailed financial reporting to the body corporate owners is required, which are in turn financially audited. Such provisions are appropriate when one considers the magnitude of the sum that could be accumulated over a period of some years. In turn it is most appropriate that the regulation of control over the body corporate management is enhanced in the light of such requirements.

It is salutary to consider that if developers/bodies corporate had been obliged to establish appropriate sinking funds then many developments may have been adequately funded to deal with some of the weathertightness problems they are now experiencing.

Furthermore, if contributions to the sinking fund are based on a professional assessment of the durability of the materials used in construction and the overall life expectancy of the building, then more robust developments should have lower contributions. Therefore a compulsory sinking fund may be a positive driver for higher quality and more sustainable forms of construction.

Another issue is how to address problems with existing properties that have huge deferred maintenance requirements.

Compulsory sinking funds raise the important policy issue of justifying the regulation of the maintenance of unit title developments when it is not a requirement for the owners of separate dwellings. Most homeowners do not depreciate their asset, but they only have the ability to directly influence the value of their own asset. A public policy response to justify a compulsory sinking fund for unit titles is that it could;

- Safeguard occupant health and safety;
- Reduce emergencies or "crises";

- Smooth the outgoings the owners will be required to pay;
- Maintain individual resale value in the long-term;
- Mutually protect the collective investment of all owners;
- Maintain use and enjoyment; and
- Make governance easier

If the Act is amended to require more substantial sinking funds, it would be essential to parallel such a provision with more efficient enforcement mechanisms to ensure funds are paid and strict financial management provisions to ensure accumulated funds were secure.

Ultimately a regulated fund would help ensure that intensive development is (and remains) attractive to a wide range of people, which is essential for the implementation of the RGS.

4.5.4 Long-term viability

Without the ability to properly maintain and upgrade unit title developments they will inevitably, decay, lose value and conceivably become derelict. This would not only be financially difficult for the owners, but has social, financial and planning implications for cities in the region if parts become somewhat decayed through this process.

Even with a proper sinking fund, it is unclear what will happen when a building reaches the end of its economic life and needs replacement. Individual owners will collectively have to come to terms with what to do with what remains of their investment. Some of Auckland's older multi unit residential developments already need significant upgrading. Ultimately replacement may be more practical. Overseas jurisdictions are looking at provisions to more easily dissolve unit titles at the end of their useful life to allow for full-scale redevelopment.

4.5.5 Reporting requirements

Overseas legislation often has more demanding reporting requirements for financial information, minutes and the management of contracts. The legal requirements on charities and trusts in New Zealand for good quality information, transparency, accountability and disclosure are much higher than for bodies corporate.

The reporting requirements under the Act are also linked to s 36 disclosures, which are intended to afford purchasers some degree of protection, but often fall short of the mark. Currently there is no duty on a body corporate to disclose significant outstanding common area deferred maintenance e.g. a leaking building, to a prospective purchaser but for which there is no actual contract to fix.

4.5.6 Recovery of dues

Bodies corporate can spend considerable amounts of time attempting to recover funds from individual owners. The Law Commission recommended amendment of the District Court Rules to reinstate the default summons procedure. This would mean bodies corporate would have access to a swift and relatively inexpensive method of dealing with defaulters e.g. to recover unpaid levies.

Other areas in the Act dealing with the recovery of funds that need to be reviewed are;

- Whether or not a mortgagee should be required to pay money due and owing to the body corporate when a unit owner goes into liquidation and becomes bankrupt; and

- Clarification of the definition of what constitutes “due and payable” with respect to the voting rights under the Rules.

4.6 Administration

4.6.1 Body corporate

The poor performance of the administration of the affairs of unit title developments was one of the key areas of criticism of the current Act identified in the ARC research. Entities involved in the management and administration of unit title developments may include:

- Proprietors constituting the body corporate (s 12);
- Occupiers (tenants) that are subject to certain rules (s 37(11)(c));
- A committee of the body corporate where there are more than 3 proprietors (Schedule 2 rules 4 – 13);
- A secretary appointed by the body corporate (Schedule 2, rules 30 – 31A);
- A property manager if appointed; and
- Various contractors that may engaged for services (e.g. mowing).

Problems arise due to the poorly defined, and sometimes conflicting, roles, rights, responsibilities and duties of all of the parties involved in the management and administration of a particular development.

Low levels of owner participation in meetings is another source of problems e.g. wasted time because of failure to get a quorum, or control ending up in the hands of a few by default and therefore the decisions of the few being harder to enforce against the majority.

The Second Schedule of the Act sets out rules that can only be amended by unanimous resolution and outline the duties of a proprietor (owner), the powers and duties of the body corporate and owners’ committee, financial accounting requirements, and procedures for the conduct of the AGM and meetings, including voting, and what constitutes a quorum.

The increasing size of developments and the sophistication and diversity of developments has lead to significant difficulties with the current legislation over administration. There is a need to distinguish between the most appropriate structures for the various sizes and types of medium and higher density developments.

4.6.2 Differentiating developments

There is a need to create a legislative framework that meets variations in size and diversity now seen in New Zealand developments. For example, the Queensland legislation is divided into four separate modules for different types of intensive development: standard; small scheme; commercial; and accommodation. The regulation modules for each of these deal in different ways with such issues as:

- Committees;
- General meetings;
- Proxies;
- Managers;
- Third party contractors;
- Financial management; and
- Administrative matters

Modules are responsive to the likely level of input owners may desire or require. For example, in dealing with the issue of selection of the body corporate committee:

- The standard module deals with this by a secret ballot unless otherwise determined; and
- The accommodation module provides for no secret ballot.

Dealing with the issue of proxies:

- The standard module provides that the body corporate may restrict the use of proxies; and
- The accommodation module has no restriction on proxies.

The examples above are simply an indication of the level of sophistication that may be required for any legislation to meet the ongoing needs for the different forms of medium and higher density unit developments. Without that level of sophistication the administration of bodies corporate will continue to be an area of significant disharmony amongst consumers.

4.6.3 Owners' committees

The role of the executive owners' committee depends on the body corporate, and the contracts with the body corporate secretary and the building manager, if there is one. Sometimes the owners' committee will be hands on, sharing jobs around the development like meeting tradespeople and cleaning common areas. They may monitor compliance with rules, for instance visitor parking, arrange working bees and social activities for residents to meet each other, and produce friendly newsletters to keep residents informed of their responsibilities.

Active owners committees, with a range of professional skills, may take a lead role in all activities including tendering and managing contracts for maintenance, gardening, on-site management, administration and security. This will depend on the capability and willingness of owners on the committee. In practice, many developments will need to rely more heavily on the professional advice and input of a body corporate secretary and/or on-site manager, employed by the body corporate. Anecdotally, a development is likely to run more smoothly if it has an



active and capable owners committee and/or a good body corporate secretary and building manager.

4.6.4 Professional management and secretaries

The Act does not have a transparent regime or provisions for body corporate management, and there is significant confusion about the appropriate roles of body corporate secretaries, on-site managers, and the body corporate itself, or its committee, in administration and management.

The role of management may vary between different applications e.g. in the commercial/retail sector the management role may need to be empowered to make strategic decisions in the best overall interests of the development as a whole. By contrast, in the residential arena, it may be more appropriate to shift the balance of power more towards individual owners.

Some property management arrangements that are in place are probably ultra vires the legislation e.g. where the property manager takes over the role of the Body Corporate Committee. Indeed in some retirement villages, the resident owners have little or no say, which is contrary to the spirit and intent of the unit title regime.

Without the benefit of a legislative framework the area of professional body corporate management has become a matter of significant disharmony between body corporate owners. There is no standard of licensing for body corporate managers or a code of conduct by which they operate. As a result, owners of unit title developments have become increasingly disenchanted with the performance of some body corporate secretaries and the burden that has fallen back upon the executive committees to manage these developments.

However, the lack of realistic funding for professional service providers is also a reason that the performance of the sector is perceived as being less than adequate e.g. it is understood that current fees commonly range from less than \$100 to \$200 per unit per annum. Unless owners pay a reasonable fee it is unlikely that the services they receive will be adequate.

The process for appointing a secretary is covered by Rule 30 of the Second Schedule and the person appointed may or may not be a proprietor. It is not uncommon for someone to be appointed at the first "annual general meeting" when the all of the unit titles are owned by the developer. At this time there may also be a subsequent long-term contract put in place by the developer for management that may not be cost effective for the unit holders, nor have performance or termination clauses.

There are mechanisms in the Act to remove a secretary or manager, which require an AGM or an extraordinary general meeting. However, owners committees can be met with resistance, especially when a long-term contract is involved and can find the process difficult.

The present Act gives very little guidance on the role and duties of the body corporate secretary. Rule 31 (Second Schedule) refers only to keeping books of account and other functions as may be delegated by the body corporate, and Rule 31A requires an annual report of financial transactions.

The role of the body corporate secretary is not a manager and was never intended to be. However, a practice has arisen for developers to impose a number of different management techniques and provisions into the management "vacuum". Many of them have common elements, which have proved to be unsatisfactory and unacceptable to unit owners in developments.

Moreover many owners seem unaware that they, as the body corporate, employ the services of the secretary to carry out the functions that have been agreed. The functions can vary significantly and can be a source of frustration if the owners are unaware of the level of service has been agreed to (and paid for).

Drawing on the Queensland legislation, the Act should contain sets of model agreements setting out the basic requirements of a manager. This should contain such information as:

- A full job description;
- A Code of Conduct;
- Reporting criteria; and
- Reporting lines between the body corporate owners and the body corporate committee.

Industry standard documents would ensure consistency across the market place and greater certainty for owners and prospective owners.

Many jurisdictions do not have a separate role for a body corporate secretary as such. As mentioned earlier, many jurisdictions lay the responsibility at the feet of a body corporate administrator who has a wider job specification than the New Zealand body corporate secretary. The administrator works for and alongside the body corporate executive committee. Depending upon the diversity and complexity of the development, and the capability of the owners committee, the body corporate administrator in other jurisdictions and in New Zealand can take on a broader or narrower role.

4.6.5 Regulating management

The whole area of body corporate administration and management is one of significant concern to many owners and some participants in this service sector. The Law Commission report did not consider this issue in its review of the Act. There are proposals under the review of the Building Act for a statutory registration scheme for building practitioners, including engineers, architects, draughtspersons, project managers and builders. The registration process is intended to lead to greater professionalism and competence in the industry.¹² Similarly the question of occupational licensing is being addressed in discussion of the Real Estate Agents Act 1976, which also has consumer protection as a focus¹³. Licensing real estate agents can reduce risks to the public by protecting the large amounts of money they hold, requiring certain levels of experience and qualifications, preventing dishonest people becoming agents, setting standards, and providing for a complaints and disciplinary system.

Other jurisdictions (e.g. Queensland) have a professional institute for body corporate managers and specific training including degree courses. Body corporate administrators and managers need to be professionally trained and work within a code of practice that assures owners of a fair reliable efficient and effective administrative and management system of their development.

Generally, second-generation legislation in other jurisdictions has adopted a clear set of legislative rules around the ongoing management of the body corporate. Indeed, the Queensland legislation is entitled the "Body Corporate and Community Management Act 1997". The 1997 legislation, as amended by the 2003 legislation, contains broad ranging provisions concerning the body corporate management including the requirements of various codes of conduct for the managers and those providing other services to the body corporate.

¹² Ministry of Economic Development, *Better Regulation in the Building Industry in New Zealand, Discussion Document*, March 2003

¹³ Ministry of Justice, *Renovating the Real Estate Agents Act: Reasonable Offers Considered, A Public Discussion Paper*, August 2003.

The level of sophistication adopted by the Queensland and the Ontario legislation is appropriate given the value of units and importance of ongoing professional management to the harmony, economy and efficiency of a development. The need for sophisticated administrative capability is not surprising because larger developments may contain as many household units as a small village or township.

4.7 Rules and disputes

4.7.1 Body corporate rules

Against the backdrop of the issues referred to in the preceding sections, the current rules for a body corporate set up under Schedules 2 and 3 of the Act are inadequate. In fact most unit title developments have sets of rules that have been established by the developer, probably in consultation with a professional body corporate secretary, who is appointed while the developer is still the owner of the units (and is therefore the body corporate). Whilst they follow the format of the Act, they may contain a range of more sophisticated provisions than are currently contained within the Act.

The diversity of contemporary developments and the frequency with which the standard rules are abandoned and rewritten by developers highlights the inadequacy of the current rules. Different types of developments lend themselves to different sets of rules.

This is well reflected by the Queensland legislation (as referred to previously). The Queensland approach is a set of model rules, for the standard module, which is the most common type of medium density housing development. Then the model rules (under the standard module) are modified to suit the size and diversity of the particular development. In this flexible and sophisticated manner, the rules can be tailored to the specific needs of each development. For example, the small scheme module is for developments with six or less units and is less regulated and allows for more self-management and more informal administration than other modules.

However, an important feature of many jurisdictions with second-generation legislation is the ability for the rules to be changed by the owners from time to time. The Act requires unanimous agreement by all owners to make changes to Second Schedule rules or if only 80% support is achievable a petition can be made to the High Court, an expensive and drawn-out process. The difficulty of changing the rules can lock a development into a climate of inaction and frustration for many owners. In larger developments, with over 15 units, reducing the voting threshold to 75% to make a change may be appropriate, but the minority relief procedures need to be retained for when substantial prejudice is demonstrated.

Ability for rules to be changed, without unanimity between all owners, adds flexibility and a greater ability to adapt to changing circumstances. However, there must also be a legislative balance between the flexibility to amend rules and certainty and the protection of the rights of the individual owners. It may be useful to differentiate between rules for which flexibility could be granted and rules that require high levels of certainty and expand on the approach in the Second and Third Schedules.

4.7.2 Dispute resolution procedures

Disputes can arise between unit owners or between the unit owners and the body corporate. Bodies corporate are not in trade so are not subject to the Fair Trading Act unless an agent makes a misrepresentation. The current provision in the Act is generally for unit owners to seek redress through the High Court. This leads to frustration by disaffected unit owners because disputes may not be resolved due to the delay and cost of taking proceedings in the High Court. The legislation should set up a framework for alternative dispute resolution at a much lower level than the High Court.

Other areas of dispute may occur between the body corporate and its representatives which may include a nominated professional secretary e.g. when a secretary has been removed because of poor performance, but refuses to hand over the books or funds). Yet another area of dispute may arise between the body corporate and the developer (e.g. over building completion and contract specifications).

One suggestion is to establish an adjudication or resolution process within the legislation. This is common within other jurisdictions, and recent New Zealand legislation has adopted alternative dispute resolution procedures (e.g. the Construction Contracts Act 2002 and the Land Transfer Regulations 2002). In New Zealand and overseas, there is movement towards alternative dispute resolution mechanisms.

A more radical proposal would be to create a "Land Tribunal", which would hear and determine disputes under the Act (and its successor(s)), the Land Transfer Act 1952, and other property-based legislation.

Disputes, whether in relation to disagreements between unit owners, or breaches of the rules or by-laws, or unpaid levies, are best handled swiftly, cheaply and in a sensitive fashion. Alternative dispute resolution can achieve these objectives.

5 Regulatory Impact Statement

5.1 Introduction

5.1.1 Cabinet Guide

This section is modelled on the format set out in the Cabinet Guide for proposals for legislative change. It provides a good structure for policy analysis and development. Further work will be required to produce a Business Compliance Costs Statement.

5.2 Problem definition – summary of issues

5.2.1 Nature and magnitude

Tens of thousands of people now live in unit title developments and it is forecast that there will be hundreds of thousands in the near future.

ARC research has revealed high levels of dissatisfaction across the multi-unit housing sector.

The leaky building issue has precipitated problems with unit title maintenance and bodies corporate management.

Current legislation is resulting in:

- Inadequate rules and by-laws being developed;
- Poor asset management;
- Ineffective and inefficient administration and management of bodies corporate;
- Inadequate monitoring and auditing of the performance of body corporate secretaries and managers; and
- A failure to resolve disputes effectively.

5.2.2 Need for government action

Security of land tenure is a fundamental part of our social, legal and economic system.

The Act is very much a “start-up” piece of legislation for multi unit developments in New Zealand and does not reflect contemporary social, cultural, environmental and economic conditions.

Comparative analysis of second generation legislation in places such as Queensland and Ontario highlights the inadequacy of our current legislation. Overseas legislation places far more emphasis on consumer protection.

There is a demand for the lifestyle choice that higher density housing offers.

To maintain the security and value of intensive housing throughout New Zealand the statute needs reviewing.

New legislation should be a broad-based code covering the diverse spectrum of multi-unit developments and provide a framework for developers, owners and administrators of such developments.

5.3 Public Policy

5.3.1 Objective

To review the Unit Titles Act 1972 in order to:

- Better protect the consumers of unit title properties;
- Maintain and enhance confidence and security of tenure involving shared ownership;
- Better accommodate the needs of different types of unit titled properties e.g. residential verses commercial applications
- Improve the long-term management and maintenance of multi-unit higher density housing; and
- Increase the levels of occupier/owner satisfaction.

5.3.2 Outcomes

Multi-unit housing is a desirable choice for increasing numbers of people.

Higher density housing contributes to cities that are more sustainable.

5.4 Non-legislative options to achieve desired objective(s)

5.4.1 Introduction

No legislation is perfect, but there is a point at which legislation becomes so imperfect that reform is justified.

The passage of time alone does not justify review, but if legislation is not delivering desired outcomes, and it is more than an issue of poor practice, then the nature of the legislation itself needs to be looked at. This was the clear conclusion of the Law Commission and the Regional Growth Forum.

However, alternatives to legislative reform need to be considered and these are outlined below.

5.4.2 Education

Research indicates that there is considerable room for improved practice for residential, retail and other types of developments under the current Act. Clues to this are that in high value residential developments, where parties are more commercially aware, have more resources and obtain quality advice, there are arguable fewer problems.

The principle of caveat emptor is very relevant and ultimately well-informed consumers will help to promote better practice. For example:

- Developers need to improve the quality of developments, e.g. durable materials, noise control, no leaks, enough visitor carparks, separate water meters etc., so that many of the problems that precipitate body corporate conflicts are eliminated;
- Purchasers need to become informed about what a quality development is;
- Purchasers need to appreciate that shared ownership of land requires a “cultural shift”, in one’s approach to rights, responsibilities and relationships with one’s “neighbours” when compared with traditional forms of occupation;
- Purchasers need to shun developments with unfavourable rules so that the rules don’t survive. However, in the current housing economy where demand is outstripping supply this may not be realistic;
- Real estate agents need to be better informed themselves and more open with purchasers so that buyers expectations have a better correlation with reality;
- Lawyers need to consistently provide high quality comprehensive advice to purchasers so that their clients are alerted to problems, e.g. by carefully scrutinising the rules and investigating management practices;
- Owners need to adequately fund body corporate activities so they can do the work required. Every independent homeowner spends significant resources on managing and maintaining their property. It is not a direct problem of the Act that many entering the housing market at the budget end have insufficient funds;
- Body corporate secretaries and managers could take it upon themselves to self-regulate their industry to improve practice now and temper the need for government regulation, e.g. by forming a professional association with membership criteria and standards;

Research is also a key part of education and more research need to be undertaken by councils and the government so that the market can be better informed.

The RGF has developed a manual for owners and prospective owners of units about being part of a body corporate and their roles and responsibilities under the Act. This will be a valuable tool to inform the market.

However, despite the positive contribution that the above measures will make to problems with the administration and maintenance of unit title developments, the opinion of the writers is that education alone will not be sufficient. The Act needs to provide certain minimum standards of performance to protect the interests of consumers.

5.4.3 Model rules

A model set of rules to update and replace the default rules in Schedules 2 and 3 of the Act could improve best practice within the constraints of the current Act. The rules could even be an attachment to the standard Sale and Purchase Agreement and promoted as industry “best practice”. Progressive developers may use them as a marketing advantage and departing from the standard rules would invite scrutiny.

However, there are limitations to this approach, including:

- The rules cannot address substantive deficiencies in the Act without being ultra vires.
- A voluntary code will obviously not be able to be enforced so the level of consumer protection will not be adequate.

¹⁴ The ARC and North Shore City Council (no date – 2002) “*What to look for when buying a Terraced House or Apartment*”

¹⁵ ARC *The Mysteries of Bodies Corporate: a guide to the rights and responsibilities of apartment ownership* (August 2003)

5.5 Legislative reform to achieve desired objectives

Reforming the legislation so that it reflects the demands of modern multi-unit development and incorporates higher levels of consumer protection, is the key recommendation in this report.

A variety of approaches to reform could be pursued. At a more minimalist level, changes to some key sections of the Act and corresponding required changes to other legislation (e.g. the Land Transfer Act) would go some way to resolving substantive problems with the current administration of bodies corporate. The Law Commission took this approach and its work is an excellent foundation if one decided this was the best option e.g. amendment of the District Court Rules to reinstate the default summons procedure would mean a swift and relatively inexpensive method of dealing with defaulters would be available.¹⁶

However, it is considered that the brief for the Law Commission was too narrow and what is now required is more comprehensive review of the legislation as a whole. A major review of the Act would be appropriate considering its age and the sophisticated models that are available overseas, and contemporary emphasis on consumer protection.

At an even broader level, the Act is one piece of legislation affecting the sustainable management of urban areas. If the Government reviews the Act it will be making a contribution to its broader sustainable cities policy initiative..

The Act is not highly topical and will have to compete for a place on the Cabinet legislative agenda. On the other hand, the need for reform is widely accepted by practitioners and because this aspect of land tenure it is relatively apolitical, reform may attract broad parliamentary support.

Net benefit of proposal to reform the Act.

5.5.1 Level playing field for title

Problems with the Act are undermining the security of unit title properties and in some cases there has been considerable decline in the value of unit titled property e.g. retail units.

While the legal status of stratum unit titles will never be equivalent to freehold titles, there is considerable benefit in minimising any gap in legal status.

This is especially so when increasing proportions and numbers of people own unit title developments.

5.5.2 Consumers

Consumers will benefit from reform of the Act by achieving better protection, e.g. being able to obtain more information prior to purchase of a property or having access to more cost effective dispute resolution procedures.

There may be increased costs to consumers (e.g. to establish sinking funds), but this can be justified on the grounds of minimum levels of protection and prudent asset management.

Owners of commercial and retail units may benefit from greater flexibility to redevelop their complexes.

¹⁶ Law Commission Report 59 (1999) p24

5.5.3 Developers

Developers have benefited from being able to control the rules, and the appointment of a secretary and manager. They may lose this benefit if the Act is reformed and may seek to “recover” this lost revenue by increasing the costs of units.

If developers have to abide by more stringent information disclosure they may be under increasing pressure to improve building quality and the costs of this will be passed to consumers.

The government needs to decide upon an appropriate level of regulation for developers. The leaky home situation is indicative of the need for a minimum standard of construction and there is an analogous argument for a minimum standard of body corporate administration.

As the multi-unit sector of housing increases as a proportion of the total number of new homes, developers with a long-term commitment to the sector are likely to support raising minimum standards across the industry.

5.5.4 Professionals

Greater statutory specification of the roles and responsibilities of administration and management professionals would provide more certainty for owners and professionals.

Elevating the standards of practice may mean higher costs to provide services for owners, but this may be necessary to ensure good standards of management.

In the current unregulated environment, being undercut by poorer providers of services may compromise better operators. Therefore, a minimum performance standard may help put service providers on a truly professional footing, and be justified even if costs do increase for owners.

5.5.5 More sustainable cities

If the experience of ordinary people with unit title medium and higher density housing is negative then it is likely that there will be more pressure on the outward expansion of the major cities in New Zealand. This can lead to adverse environmental effects.

Reform of the Act is seen as providing environmental benefits.

5.6 Conclusion

The writers consider there is a compelling case for reviewing the Act.

Legislative change could significantly improve the levels of satisfaction of many owners and occupiers of multi-unit housing who currently have to rely on the outdated provisions in the Act.

New and more sophisticated legislation, which can adequately cope with contemporary and future forms of multi-unit ownership and management would maintain and enhance security in multi-unit tenure.

If shared ownership is a robust and secure investment it will play an increasingly important role in implementing the Auckland Regional Growth Strategy. The objective of the Strategy is to achieve a more sustainable city and region.

Appendix 1 – Growth Forum Report – Executive Summary

Critical issues concerning the operation of bodies corporate have come to the fore with the rapid growth in medium and higher density housing developments in Auckland. This report provides information so that councils and other private parties might identify and bridge current gaps in legislation and practice, through the implementation of their respective responsibilities.

Chapter 1 introduces the topic of bodies corporate, the brief for this research and the methodology adopted. Chapter 2 focuses on the Unit Titles Act 1972 (UTA) and briefly reviews some New Zealand literature on bodies corporate. Chapter 3 discusses overseas models for managing intensive housing and lessons drawn from overseas experiences. Chapter 4 reports on key research findings from the thirty in-depth interviews undertaken for this project with the following stakeholder groups: developers; representatives from owners' committees; body corporate management spokespeople; staff in Auckland councils; on-site and off-site managers; lawyers; and a property valuer. Chapter 5 offers recommendations, identifies issues for further exploration and sets out guidelines for good practice.

Key findings from the interviews are summarised under the following four themes:

Relationships and Responsibilities

There is a lack of clarity with respect to relationships between developers and body corporate management companies, developers and property management companies and developers and on or off-site managers. The report highlights the strong possibility of conflicts of interest arising in these sets of relationships.

Legislation and Regulation

There are numerous problems and deficiencies with the Unit Titles Act. These include matters such as the establishment of unit entitlements, body corporate rules and the regulation of, and practice by, body corporate management companies.

Communication and Awareness

Communication issues were evident across all stakeholder groups, except valuers. These issues can be explained by several factors including: various parties being poorly informed regarding roles, responsibilities and legislation; interpersonal difficulties, sometimes created by heavy handed practice; and inadequate attention to administrative responsibilities by stakeholder groups.

Housing Quality and Management

Three interrelated aspects of this theme are addressed. First, a fundamental indicator for the long-term success of intensive housing is good design and the use of high quality building materials. Second, while body corporate management companies attracted considerable criticism, it should be recognised that they are often forced to operate on low budgets, which can compromise the quality of the service they can offer. Third, the employment of an on-site

or off-site manager was unanimously endorsed as assisting the smooth running of intensive housing developments.

The following recommendations are proposed:

1. To Central Government

1.1 That a major review of the Unit Titles Act be undertaken as soon as possible.

1.2 That this review should take account of the recommended changes to the Act made in the Law Commission's Report 59: Shared Ownership of Land and also include consideration of: the role and functions of body corporate management companies, secretaries and agents, owners and owners' committees; the current inflexibility of rule changes; the appointment and dismissal of the body corporate management company and/or secretary; the preparation of an asset management plan for each body corporate; the establishment of a sinking fund; the setting of levies; an early opportunity for the first group of owners to review the body corporate regulations and contractual arrangements put in place by the developer; and issues around Future Development Units.

1.3 That consideration be given to the registration and/or regulation of body corporate management companies and/or body corporate secretaries, which provides for appropriate training, supervision and accountability.

1.4 That consideration be given to establishing an independent, government funded office to provide information and education on bodies corporate. A feasibility study needs to be undertaken on its functions, location and funding.

2. To Local Government

2.1 That councils take a more proactive role in promoting the provision of information and education with respect to the responsibilities, and obligations of those involved in bodies corporate management and membership. In this regard councils consider preparing a 'guide to bodies corporate' which can be widely disseminated to owners, potential buyers and professionals.

2.2 That councils consider appointing a case officer to liaise with bodies corporate and on body corporate matters.

2.3 That councils consider ways of ensuring that, where appropriate, reference is made on Land Information Memoranda to the existence of a body corporate.

2.4 That this report be circulated to relevant Government Ministers and Departments, and professional bodies such as the Institute of Surveyors, the Law Society and the Real Estate Institute of New Zealand.

The successful management of intensive housing is contingent on attention to what might be perceived as relatively minor practices, which can make a significant difference to the quality of day-to-day living on site. Many issues that arise need to be dealt with quickly and competently, in order to stop problems escalating unnecessarily. Below are good practice guidelines for owners and professionals additional to the requirements of the Unit Titles Act. It is suggested that:

For Good Day-To-Day Management:

- body corporate secretaries/ body corporate management companies respond promptly to information requests from owners and owners' committees.
- bodies corporate should consider the employment of an on-site (or off-site) manager, where developments are of a sufficient size to warrant the investment.
- the body corporate secretary/ body corporate management company should adopt clear accounting procedures and report regularly to owners.
- maintenance issues should be attended to immediately.

For Good Long-Term Management:

- an asset management plan is prepared which includes a long-term maintenance plan.
- a sinking fund is established, based on the long term maintenance plan.
- owners' committees take the initiative in revising body corporate rules where necessary.

For Improved Day-To-Day Communication:

- regular newsletters are disseminated to keep residents informed.
- the names and contact details of owners' committee members and the body corporate manager are available for all residents and potential buyers.
- communication is encouraged between off-site owners and their tenants with respect to rules and responsibilities.

Councils Need To:

- encourage better relationships between bodies corporate and councils over such matters as adequacy of parking for residents and visitors, suitability and placement of recycling and rubbish containers and disposal practices, and charging for services (such as water and waste water).
- ensure that resource consent conditions are adhered to and implemented.
- ensure that council staff are accessible and where appropriate, that councils have nominated contact people with specific responsibility for liaising with bodies corporate.

Appendix 2 – Law Commission Recommendations

Summary of Recommendations

A1 No further flat or office owning companies (within the meaning of the Land Transfer Act 1952 Part VIIA) should be permitted.

A2 No further cross-lease schemes should be permitted.

A3 There should be provision for voluntary conversion of cross-lease schemes to subdivisions.

A4 After a date to be fixed by Order in Council not earlier than 10 years after the royal assent to the proposed legislation (“the mandatory date”), no instrument should be registered against any cross-lease title, with the intended consequence that to enable any other dealing to be registered the scheme would need to be converted to a subdivision or a unit title scheme.

A5 Until the mandatory date a District Court on the application of any interested party should have power to direct either a conversion to subdivision or a conversion under the Unit titles Act 1972 Part IV to unit titles.

A6 Any dispute as to the terms of a conversion should be resolved by the District Court, and the Unit Titles Act 1972 section 58 should be amended to give that Court the appropriate jurisdiction in the case of cross-lease to unit title conversions.

A7 The procedure for agreed cross-lease to subdivision conversions should be the lodging of an application with the Registrar signed by all interested parties. Such application should set out what the parties have agreed as to the ownership of lots, easements, and restrictive covenants, by a reference to a plan of definition under section 167 deposited for the purpose or to any substitute accepted by the District Land Registrar.

A8 There should be a provision enabling the parties to elect to not precisely define in such application easements and other ancillary rights, but to rely on a broadly stated statutory entitlement analogous to the Unit Titles Act 1972 section 11. If this election is made, that fact must be noted against the new title.

A9 The consent of no person other than the cross-lease owners to a conversion should be needed.

A10 The entitlement of encumbrancers should be noted against merged titles in such a way as to preserve their priorities.

A11 The territorial local government must receive a notice of the conversion analogous to the notice of sale required by the Rating Powers Act 1988 section 106.

A12 If the title underlying a cross-lease scheme is itself leasehold and the cross-lease scheme is converted to a unit title scheme, the Unit Titles Act section 27 shall not apply to such unit title scheme.

A13 There should be no Registry Office charge in relation to applications.

A14 The Unit Titles Act 1972 section 2 should be amended to make it clear that a unit may be wholly comprised of open air space.

A15 Where a Unit Titles Scheme comprises no more than six units and there is shown on the Unit Plan no common property other than driveways or party walls, in the case of existing schemes the owners of all the units should have the right either to dispense with the body corporate or to subdivide analogously to our proposals for cross-leases, and in the case of new schemes to dispense with the body corporate.

A16 The Unit Titles Act 1972 should be amended:

- (a) to permit, despite section 15(2)(c), differential levies on a basis analogous to the “substantially for the benefit” formula in section 33;
- (b) to permit varying unit entitlements at any time before cancellation by unanimous agreement or by the order of the Court;
- (c) to give power by unanimous resolution to remove the obligation on bodies corporate to insure stand-alone buildings;
- (d) to permit, despite sections 18(1) and 19(2), minor variations to the boundaries of the unit plan without deposit of a new unit plan subject to (with the consent of the Registrar) appropriate annotation of the supplementary record sheet, and to permit minor variations to the boundaries between units where the proprietors of those units and any mortgagees agree;
- (e) to require production of a section 36 certificate to the District Land Registrar on registration of any dealing;
- (f) to make first mortgagees liable for levies under section 15(2)(c);
- (g) to disallow future use of the staged development procedure provided by the Unit Titles Amendment Act 1979 Part I;
- (h) to provide that a unit styled a Balance Unit may be subdivided by a new unit plan without the consent of the proprietors of existing units;
- (i) to make provision for unit title schemes to be subject to heritage and like covenants;
- (j) to reduce in certain small developments the 80 per cent threshold laid down by section 42 and enacting a guideline to the exercise of the discretion under that section;
- (k) to make express provision for a sinking fund;
- (l) to transfer jurisdiction under sections 42 and 43 to the District Court;
- (m) to amend the “all the land in one title” provision in section 5(1)(b) to exclude interests in jointly owned access lots; and
- (n) to provide as a new section 4(3B) that notwithstanding section 4(3) an easement appurtenant to any unit or the common property may be surrendered or varied with the consent of every proprietor and every mortgagee of all the units in the development.

A17 There should be provisions governing the maintenance and repair of access lots.

Appendix 3 – Bibliography

Auckland Regional Council (2003); *The Mysteries of Bodies Corporate: a Guide to the Rights and Responsibilities of Apartment Ownership*, Auckland.

Auckland Regional Council and North Shore City Council; *What to look for when Buying a Terraced House or Apartment*; Auckland Regional Council, Auckland.

Auckland Regional Growth Forum (2003); *Bodies Corporate and Intensive Housing in Auckland*; Auckland Regional Council, Auckland. Researched by Professor Jenny Dixon and Clare Mouat, Department of Planning, University of Auckland and Dr Ann Dupuis and Penny Lysnar, School of Social and Cultural Studies, Massey University, Albany.

Cabinet Office (2001); *Cabinet Manual 2001*; Department of Prime Minister and Cabinet, Wellington.

Cabinet Office (2001); *Step by Step Guide – Cabinet and Cabinet Committee Processes*; Department of Prime Minister and Cabinet, Wellington.

Condominium Act 1998; accessed from www.e-laws.gov.on.ca/DBLaws/Statutes/English/98c19_e, Canada.

Department of Prime Minister and Cabinet (2003); *Sustainable Development for New Zealand Programme of Action*; Department of Prime Minister and Cabinet, Wellington.

Herkowitz, H & Freedman, M F; *Condominiums in Ontario – A practical analysis of the new legislation*; Ontario Bar Association, Canada.

Law Commission (1999); *Report 59 – Shared Ownership of Land*; Law Commission, Wellington.

Legislation Advisory Committee (2001); *Legislation Advisory Committee Guidelines – Guidelines on Process and Content of Legislation 2001 Edition*; Legislation Advisory Committee, Wellington.

Ministry of Internal Affairs (2003); *Weathertightness of Buildings in New Zealand – Report of the Government Administration Committee's inquiry into the weathertightness of buildings in New Zealand*; Presented to the House of Representatives in Wellington.

NSW Government (2003); *Living in Strata Developments in 2003 – some matters for discussion*; Department of Commerce, Sydney.

Oceanic Insurance Ltd, *Strata Title Information Sheets 2002*, accessed from www.oceanicinsurance.co.nz

Parliamentary Commissioner for the Environment (2003); *Superb or Suburb*; Parliamentary Commissioner for the Environment, Wellington.

Strata Title Administration Limited; *Body Corporate Manual*; Strata Title Administration Limited, Auckland.

The Office of the Queensland Parliamentary Counsel (2003); *Body Corporate and Community Management Act 1997 – reprinted as in force on 4 March 2003 (includes commenced amendments up to 2003 Act No. 6)*; The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); *Body Corporate and Community Management Regulation 1997 – reprinted as in force on 1 July 2002 (includes amendments up to SL No. 122 of 2002)*; The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); *Body Corporate and Community Management (Accommodation Module) Regulation 1997 – reprinted as in force on 5 January 1998 (includes amendments up to SL No. 482 of 1997)*; The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); Body Corporate and Community Management (Commercial Module) Regulation 1997 – reprinted as in force on 5 January 1998 (regulation not amended up to this date); The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); Body Corporate and Community Management (Small Schemes Module) Regulation 1997 – reprinted as in force on 5 March 1998 (includes amendments up to SL No. 12 of 1998); The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); Body Corporate and Community Management (Standard Module) Regulation 1997 – reprinted as in force on 5 January 1998 (includes amendments up to SL No. 482 of 1997); The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); Body Corporate and Community Management and other Legislation Amendment Act 2003 – Act No. 6 of 2003); The Office of the Queensland Parliamentary Counsel, Queensland.

The Office of the Queensland Parliamentary Counsel (2003); Sanctuary Cove Resort Act 1985 – reprinted as in force on 4 March 2003 (includes amendments up to 2003 Act No. 6 of 2003); The Office of the Queensland Parliamentary Counsel, Queensland.

Unit Titles Act 1972; Accessed from New Zealand Statutes 2003.