NEW ZEALAND LAW SOCIETY

NZLS EST 1869

27 January 2017

Mr Scott Simpson
Chair, Local Government and Environment Select Committee
Parliament Buildings
Wellington

By email: lge@parliament.govt.nz

Dear Mr Simpson

Regulatory Systems (Building and Housing) Amendment Bill – NZLS submission

The New Zealand Law Society made a submission to the Committee on 2 December 2016 in relation to this Bill. Paragraph 7 of the submission reads as follows:

> **7 Clause 20 – reassessment of ownership interest and utility interest**
>
> 7.1 Clause 20 amends section 41, in relation to the reassessment of ownership interests and utility interests. Clause 20 as currently drafted is inconsistent with other similar provisions in the Act and the Law Society recommends it be amended, to provide that the date that the reassessment comes into effect is the date that the reassessment is **lodged** with LINZ and recorded on the Supplementary Record Sheet. [emphasis added]

The Law Society attended a meeting with MBIE officials on 19 January 2017 and further discussion has since taken place concerning clause 20 of the Bill. For the reasons set out below, minor changes are required to paragraph 7 of the submission, for clarity and accuracy.

The Law Society notes that it is possible for a dealing to be withdrawn or lapse if it is not re-lodged within the requisition or rejection resubmitting period. If the words *lodged or notified* are used it could, albeit in extreme cases, lead to a reassessment being 'binding' even if it is not actually registered. Therefore, the Law Society submits the date the reassessment is **registered** with LINZ should instead be the effective date.

The Law Society would also like to take this opportunity to provide further detail in relation to paragraph 7 of the submission, where it was highlighted that an inconsistency exists between clause 20 and "similar provisions in the Act". Section 106(3)(b) of the Act provides for changes to body corporate operational rules. Section 106(3)(b) states:

> 106(3) Any amendment, revocation, or addition—
>
> …
>
> (b) does not have effect until the body corporate **has notified the Registrar** in the prescribed form. [emphasis added]

The Law Society submits that there is an opportunity to achieve consistency between clause 20 and section 106(3)(b), by using the date of registration with LINZ as the effective date for both.

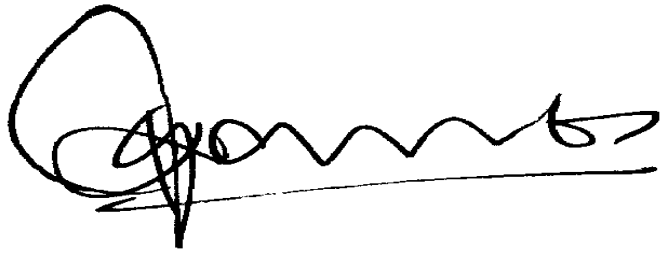
In summary, the revised paragraph 7 reads as follows:

> **7 Clause 20 – reassessment of ownership interest and utility interest**
>
> 7.1 Clause 20 amends section 41, in relation to the reassessment of ownership interests and utility interests. Clause 20 as currently drafted is inconsistent with other similar provisions in the Act **(such as section 106(3)(b))** and the Law Society recommends it be amended, to provide that the date that the reassessment comes into effect is the date that the reassessment is ~~lodged~~ **registered** with LINZ and recorded on the Supplementary Record Sheet.
>
> [changes in bold]

For ease of reference, an updated submission containing the revised paragraph 7 is **attached**.

Please do not hesitate to contact the Law Society (through Katrina Thomas, Property Law Section Manager, katrina.thomas@lawsociety.org.nz) if the Committee has any questions or would like further information.

Yours sincerely



Tim Jones
Vice President

Encl (1)

Regulatory Systems (Building and Housing) Amendment Bill

02/12/2016

NEW ZEALAND LAW SOCIETY
NZLS EST 1869

Law Society Building, 26 Waring Taylor Street, Wellington,
DX SP20202, Wellington or PO Box 5041, Lambton Quay,
Wellington 6145, New Zealand

TEL +64 4 472 7837 • FAX +64 4 473 7909
E inquiries@lawsociety.org.nz
www.lawsociety.org.nz • my.lawsociety.org.nz

Regulatory Systems (Building and Housing) Amendment Bill

1 Introduction

1.1 The New Zealand Law Society welcomes the opportunity to comment on the Regulatory Systems (Building and Housing) Amendment Bill (Bill).

1.2 This is an omnibus Bill containing minor technical amendments to building and housing legislation. The Law Society's Property Law Section has reviewed the Bill and comments on the proposed Part 2 amendments to the Unit Titles Act 2010 (Act).

2 General comments

2.1 The explanatory note to the Bill states that the amendments are "smaller regulatory fixes" identified as necessary to maintain the effectiveness and efficiency of regulatory systems established by legislation (including the Unit Titles Act). The objective of the Bill is to reduce the chance of regulatory failure, by keeping the Act up to date and relevant.

2.2 The Law Society agrees there is a need to update and improve the Unit Titles legislative framework, but considers the amendments in the Bill do not go far enough. The Law Society supports the Bill as a stop-gap measure but a host of other issues have not been addressed and a comprehensive review of the Act is overdue. There have been repeated calls over a lengthy period for comprehensive reform of the Act. The Law Society understands officials have signalled that a substantive review is about to commence. The Law Society is very willing to contribute to that review and has a group of experienced specialist practitioners prepared to assist.

2.3 In the meantime, comments on the limited technical fixes in the Bill are set out below for the select committee to consider.

3 Clause 10(2) – interpretation

3.1 Clause 10(2) should have the words "and proposed ownership interest" deleted. Otherwise, there is a definition of "ownership interest and proposed ownership interest", and a separate definition of "proposed ownership interest", which does not make sense.

4 Clause 12 – meaning of principal unit

4.1 In clause 12, the replacement section 7(1)(a) could simply read: "that is shown as a unit on a unit plan" (i.e., the other words are redundant).

5 Clause 16 – ownership interests

5.1 Clause 16 amends section 38. The replacement section 38(6) should also include a reference to section 41 (which deals with reassessment), as follows:

> "After a unit plan is deposited, the ownership interest or proposed ownership interest of a unit may be reassessed <u>under section 41 of this Act</u>, and the new interest assigned to the unit, as set out this Act." (inserted wording underlined)

6 Clauses 17 and 18 – utility interests

6.1 The concept of utility interests does not work for many bodies corporate. The Law Society supports the changes introduced in clauses 17 and 18, as they resolve some of the problems of terminology and methodology of creating utility interests. However, the concept is flawed as it does not provide the flexibility the Act intended, and there needs to be a total rethink in the forthcoming review about the way utility interests are devised and what they are for.

6.2 In the meantime, some examples in the legislation would assist. Some suggestions are:

> Example: The unit title development comprises eight units across two buildings. One building consists of seven storeys, with each storey being one unit, and with a lift from the ground floor to level seven that is common property. The other building consists of one single-storey building. The utility interest may be assigned in a way that recognises that the single-storey building does not need to contribute to the costs of maintaining the lift.
>
> Example: The unit title development is a mixed-use development with both commercial (retail) and residential units. The commercial units generate more refuse and traffic than the residential units. The utility interest may be assigned in a way that recognises that the commercial units should cover a greater proportion of utility and parking costs

6.3 Some drafting amendments to clause 17 are also recommended:

- the words "unless section 39(2A) applies" should be added to the end of proposed new section 39(2).
- the words "that different utility interest" should be added to the beginning of new section 39(2A)(b).

6.4 An amendment to clause 18 is also recommended:

- In clause 18, the words "as a place of residence or business or otherwise" can be removed: they are both redundant, and inconsistent with the proposed new section 7(1) (clause 12).

7 Clause 20 – reassessment of ownership interest and utility interest

7.1 Clause 20 amends section 41, in relation to the reassessment of ownership interests and utility interests. Clause 20 as currently drafted is inconsistent with other similar provisions in the Act (such as section 106(3)(b)) and the Law Society recommends it be amended, to provide that the date that the reassessment comes into effect is the date that the reassessment is registered with LINZ and recorded on the Supplementary Record Sheet.

8 Clause 22 – noting of subsidiary unit title development

8.1 The proposed repeal of section 48(b) means there is no need to retain the existing reference to "section 48(a)". (Paragraph (a) can simply merge into the wording at the end of section 48 ending at "must".)

9 Clauses 25 and 26 – in relation to easements and covenants

9.1 Clauses 25 and 26 amend sections 62 and 63 of the Act dealing with easements and covenants. It would be most helpful if an additional subsection was inserted so that where

there is a reference to “easements” or “covenants” that includes “easements in gross” and “covenants in gross”. This would also anticipate the changes in clause 240 of the Land Transfer Bill (which is currently before the House), concerning covenants in gross.

10 Clause 27 – Redevelopment requiring amendment to unit plan

10.1 In relation to the new section 65(1) to be introduced by clause 27, the Law Society agrees in principle with the concept, but believes that as long as the common property is not affected by the redevelopment, changing the number of units should not be an exclusion under new section 65(1)(c). (This is an issue that will need to be dealt with in the substantive review of the Act, but is mentioned here so that the practical issues are not overlooked.)

11 Clauses 32 and 33 – in relation to calling meetings

11.1 The Law Society does not support the clause 32 and 33 amendments, and considers that the provisions in relation to calling meetings should be contained in regulations rather than the Act. (This is another topic which will need to be included in the substantive review.)

12 Clause 34 – body corporate operational rules

12.1 The wording in proposed new section 105(2)(b) is somewhat confusing. A clearer wording would be:

> “(b) The altered rules when the original owner lodges them for notification with the registrar come into effect at the time of deposit of the unit plan.”

13 Clause 40 – merger

13.1 The Law Society does not support the requirement in proposed new section 169(3)(c) that **all** registered owners deposit a declaration that a merger should occur – with large bodies corporate that will simply be impractical. Certification from the chair of a body corporate should suffice. This is an important practical issue that should be addressed in the Bill.

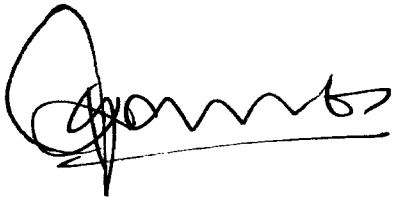
14 Minor technical “fixes” to Regulations are needed

14.1 In a previous round of technical amendments to the Act in 2013, section 104 of the Act was amended to say “a majority” rather than “50%” – but the Unit Titles Regulations 2011 were not amended at the same time, so Form 13 in those regulations still refers to “50%” in relation to section 104. This inconsistency is obviously undesirable.

14.2 Correcting this may be outside the scope of the technical fixes contained in the current Bill, but an overall review of the Unit Titles regulations as well as the Act is needed.

15 Conclusion

15.1 The Law Society does not wish to appear in support of this submission, but is available to meet with officials advising the Committee if that would be of assistance.



Tim Jones

Vice President

2 December 2016