



## Submission on MBIE's proposed amendments to the Unit Titles Act 2010

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- MBIE officials can contact me if they have a question about the content of my submission
- I wish to remain anonymous in any reporting or submission analysis

### Making a submission

To make a submission, please fill out the submission form below, and send to [UTAreview2016@mbie.govt.nz](mailto:UTAreview2016@mbie.govt.nz). Both Word documents and PDFs will be accepted.

Alternately, you can download the submission form and post it to:

Unit Titles Act Review  
Construction and Housing Markets, BRM  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Consultation on the Unit Titles Act finishes on Friday 3 March 2017 at 5pm. Thank you for your submission.

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### 3. Overarching Reform Proposals

#### 3.1 Potential size thresholds for more rigorous legislative requirements

We propose that the following legislative requirements apply to complexes with 10 units and over. The body corporate for complexes between 10 and 29 units, may, however, resolve against adopting any of these requirements by special resolution.

Bodies corporate must:

- report on the performance of delegated powers at the annual and any other general meeting;
- contract a body corporate manager to perform functions as specified in the UTA;
- have LTMPs signed by the body corporate chair and a qualified person;
- have a long term maintenance fund to finance the long term maintenance plan already required under the UTA; and
- have body corporate accounts and LTMFs audited annually.

Do you agree? If no, why?

**Do not agree.**

Our entities are the property managers for four body corporate commercial complexes, which include over 500-unit title hotel rooms and other unit title retail units.

As noted in paragraph 2.2 of the Discussion Document:

*“while the UTA includes both commercial and residential arrangement this review focusses on complexes containing residential units”*

Yet – the intended rule changes will apply equally to commercial complexes notwithstanding the commercial complexes have not even been considered. This is exactly the same issue that arose re the proposed changes to GST and Body Corporates in 2014, when all the initial focus was on residential body corporates and only at submission stage did officials realise the inherent differences with commercial body corporates, leading to a complete U turn on the initial proposals. This avoided the complexities of having separate rules for residential and commercial body corporates.

The treating of all complexes over 30 units will catch many commercial buildings, hotel etc. and these larger body corporates are the very ones that do not need “mandatory” and “compulsory” rules, and can “look after themselves” within the current UTA framework.

Commercial operations/units are different from residential units, as the units are largely owned by investors or business owners/operators with a potentially higher level of knowledge as to what is involved in an investment or ownership of a commercial unit. In addition, these commercial complexes often have other protections and arrangements in place e.g. lease agreements, management agreements, building management agreements, hotel/property engineers and maintenance personnel on site, etc. which ensure, inter alia, the property is looked after (including for hotels often having separate funds to cover various building costs etc.).

In addition, in our experience with hotel operators, the body corporate costs are often 10% or less than the total hotel operating costs each year, so much less significant. The hotels are separately audited and the additional mandatory separate audit of the body corporate is simply not required, or seen as worthwhile.

The current Act requires the passing of a special resolution (75% of owners) at the AGM if a body corporate does not wish to fund the LTMP, and does not wish to have an audit.

These existing provisions “balances governance without inhibiting flexibility” – i.e. one of the Ministers objectives per the Discussion Document

Making it mandatory to have a 30 year LTMP, mandatory funding of the LTMP and compulsory audits, **notwithstanding the vast majority of unit owners may not wish this** – does not provide the desired flexibility and does not allow owners to decide what they consider is best for them, considering all the specific facts of a complex.

Accordingly, we do not support the mandatory proposals for complexes with 30 units or over and consider the existing provisions providing for 75% resolutions at AGM are sufficient, work well in practice, and provide the required balance between governance and flexibility.

Furthermore, we consider as a general premise, that if certain rules are introduced for complexes of 30 units and over, then owners by special resolution should be able to opt out.

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Do you consider that it is appropriate for complexes between 10 and 29 units to be able to opt out of the above proposed legislative requirements by special resolution? If no, why?

We consider the current UTA provisions are sufficient i.e. all complexes with the passing of a special resolution should be able to opt out.

### 3.2 Improving Government Services to the UTA Sector

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Please comment on :

- how government agencies might achieve a more joined up approach;
  - how we can improve the services we provide; and
  - whether you think a separate dedicated entity is warranted; and if yes, what functions and responsibilities would a dedicated unit titles entity deliver? Please list.
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## 4.1 Improving the Disclosure Regime

Proposal 1: Amalgamate the current requirements of the pre-contract, pre-settlement and additional disclosure statements into one step

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Do you agree that the pre-contract, pre-settlement and additional disclosure step should be consolidated into one step? If no, why?

**Do not agree.**

These disclosure statements are designed to cover different things. We would now prepare over 40 pre-contract disclosure statements a year, but less than half of these will require a pre-settlement disclosure statement.

Since 2011, we have probably prepared over 200 pre-contract disclosure statements, but virtually no additional disclosure statements.

Given that we are operating hotel complexes, on sale of a unit in a commercial complex, the focus of the proposed purchaser is on things like, hotel returns, room occupancy and room rates, hotel costs, and chattels in rooms etc. not so much on body corporate related matters, which is a minor component of their decision-making process. Accordingly, we are satisfied with the status quo.

However, we do suggest the pre-settlement disclosure statement have a copy of the body corporate certificate of insurance attached to it.

Proposal 2: Add further requirements in disclosure statements

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Do you agree that these additional requirements should be included in disclosure statements? Do you consider any other requirements should be included?

**Do not agree.**

In terms of commercial complexes, the key decision making re buying and selling units is the investment/business aspect, and the fact the unit is in a body corporate complex is minor and secondary to the decision to buy/sell.

Hence these additional compliance requirements are just not warranted in the commercial environment where the perspective purchaser will be doing their due diligence covering many additional matters, not just body corporate related ones.

Proposal 3: Require a statutory warranty on all disclosure statements

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Do you agree that bodies corporate should certify all disclosed information is complete and correct? If no, why?

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## 4.2 Strengthening Body Corporate Governance

### Proposal 1: Address conflicts of interest

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We propose to add provisions to the UTA that address conflicts of interest that achieve similar aims to the provisions included in the Incorporated Societies Bill. Do you agree? If no, why?

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### Proposal 2: Increase reporting of delegated powers

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We propose that bodies corporate of large sized complexes (30 and over) should report on the performance of their delegated powers at every general body corporate meeting? Do you agree? If no, why?

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### Proposal 3: Duties and responsibilities of body corporate committees

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We propose including additional provisions on the duties and responsibilities of a body corporate committee similar to those included in the Queensland's Code of Conduct for committee members. Do you agree? If no, why?

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### Proposal 4: Limit the number of proxy votes an individual can hold

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Do you consider that the risk of proxy farming is sufficiently high to warrant amendment of the UTA to limit the number of proxy votes one person can hold at a time? If yes, why?

**We do not consider "proxy farming" a risk.**

From a practical experience with commercial (hotel) complexes we have a number of overseas owners and hence they often appoint a body corporate committee members as their proxy.

With a 250-room hotel one individual can often have 30-40 proxy votes, and this is required to ensure that a quorum is obtained and a meeting can proceed.

Proposal 5: Limit the impact of unfair service contracts

**11** We propose to amend the UTA so that bodies corporate can vary the terms of or seek to release themselves from longer term contracts in certain circumstances. Do you agree? If no, why?

**Do not agree.**

We are not sure such an amendment will achieve the desired outcome. At contract law the body corporate will not be able to unilaterally cancel a contract.

In addition, there are already rules re onerous and oppressive contracts which will make these ultra vires anyway.

So no amendments needed.

Proposal 6: Clarification of governance terms

**12** Do you agree with the proposals made above as they relate to:

- Minority relief – no change warranted;
- Alteration to units – sections 79 and 80 (i) to be amended if necessary to align with section 65;
- Quorum – section 95 to be clarified; and
- Resolutions – section 101 to be amended.

If no, why?

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### 4.3 Professionalism in Body Corporate Management

#### Proposal 1: Status Quo and Self-Regulation

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Do you agree that industry bodies such as those mentioned have the ability to increase professionalism and help address body corporate management issues? If no, why?

**We do not agree and we prefer the status quo.**

As per 3.1 above we do not agree that complexes with 30 or more units must contract a body corporate manager. Many commercial complexes already have a building manager, property engineer, or similar, so do not require a "professional" body corporate manager.

If rules are to be introduced requiring this – then, once again, notwithstanding the size of the complex, units owners, by special resolution should be able to opt out.

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Do you support requiring body corporate managers to be members of a professional group and being subject to the codes of practice of the group? If no, why?

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#### Proposal 2: Make contracting a body corporate manager a requirement for medium and large complexes

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Do you support body corporate managers being mandatory for medium and large complexes? If no, why?

**No we do not support this for the reasons in paragraph 13 above.**

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#### Proposal 3: Define body corporate managers in the UTA and introduce operational requirements in regulations

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Do you support the functions of body corporate managers being set out in the UTA? If no, why?

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**17** What functions, if any, do you think should be prohibited from being contracted to a body corporate manager?

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**18** Do you support the setting of additional requirements in regulation for body corporate managers? If no, why?

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## 4.4 Ensuring Adequate Long Term Maintenance Plans

Proposal 1: Guarantee the credibility of the LTMP through body corporate committee and appropriately qualified signatories

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Do you agree that an appropriately qualified person should be required to guarantee the accuracy and completeness of the LTMPs? If no, why not?

**Do not agree.** From a practical experience with commercial (hotel) complexes we have the property engineers prepare the LTMP, so again the differences between residential and commercial properties is highlighted. The engineers are "suitably" qualified, and this should be sufficient without requiring a "guarantee".

A hotel complex is not, for example, going to have the roof leak into guest rooms, and hence all maintenance related matters are dealt with (by early preventive maintenance) or as they arise.

We have an engineer/property maintenance division in each complex dealing with all property related issues on a day to day basis.

Once again, the issues around LTMP etc. being raised in the Discussion Document are more directed at residential complexes. Hence the need to retain the ability of large complexes to be able to opt out if they wish.

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Do you agree that the body corporate chairperson, on behalf of the body corporate, should be required to sign LTMPs to guarantee accuracy (to the best of their knowledge)? If no, why?

**Do not agree.** You can't "guarantee" accuracy even with best efforts and endeavours.

Proposal 2: Develop a new online template for LTMPs

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Are there mandatory fields/information you consider should be included in the revised template? If so, please list.

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Proposal 3: Extend the timeframe of LTMPs to 30 years

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Do you agree that 30 years is an appropriate timeframe for LTMPs for medium (unless they resolve not to) and large complexes? If no, what threshold or timeframe do you consider appropriate?

**Do not agree.** Happy with current UTA requirements.

Proposal 4: Require body corporates to review their LTMPs every three years

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Do you agree that LTMPs for medium and large complexes should be reviewed every three years? If no, what threshold or timeframe do you consider appropriate?

Agree that review every three years is appropriate.

Proposal 5: Require large bodies corporate to have a LTMF

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We propose that medium sized bodies corporate comprising 10-29 units are required to establish and maintain a LTMF (unless they resolve not to by special resolution). Large complexes comprising 30 units and over units would be required to have and maintain a LTMF. Do you agree? If no, why?

**Do not agree as outlined in 3.1 above.** All body corporates, irrespective of size, should have the right on the passing of a 75% special resolution, to make their own decisions, relating to their own property. This is particularly relevant to commercial complexes with often have engineers/maintenance personnel on site, maintaining the building etc. on a daily basis.

Proposal 6: Require bodies corporate LTMFs to be annually audited

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We propose that the LTMFs of medium and large bodies corporate are audited annually. Do you agree?

**Do not agree as outlined in 1. above.** All body corporates, irrespective of size, should have the right on the passing of a 75% special resolution, to make their own decisions.

## 4.5 Accessibility of the Disputes Resolution Regime

### Proposal 1: Fee settings

**26** Do you support the proposed fee level for the dispute resolution service? If no, why?

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**27** Would you consider using mediation if the above option was adopted? If no, why?

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Proposal 2: Revise the name of the Tenancy Tribunal (preferred proposal)

**28** Do you agree that the name of the Tenancy Tribunal should be changed to the 'Tenancy and Unit Titles Tribunal' to reflect its jurisdiction over unit title disputes? If no, why?

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