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**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

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

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Name of submitter: s 9(2)(a)

Organisation: s 9(2)(b)(ii)

Contact address: s 9(2)(a)

Contact phone number: s 9(2)(a)

Contact email address: s 9(2)(a)

- 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. 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.

Introduction to my UTA Submission

As landlord I own apartments and a townhouse and I lived in apartments when working for international companies at least for 20 years. As unit title holder I've been experiencing firsthand the risks and problems with NZ's unit title properties.

Following overseas trends in building more unit title properties in NZ I would like to see better property laws to strengthening owner's position for executing their liabilities and for resolving the problem under "ill-managed body corporates".

People have been experiencing lots of difficulties with the governance of the RTA and adding the UTA (body corporate) to the equation makes good changes to a question of trust.

Often experienced people deal with severe problems for owners and occupants in faulty and badly managed buildings due to drawback in body corporate management. Especially in townhouse complexes is the line between BC and owner's liability very blurry. That is why I look at Unit Titles Act and Unit Titles Regulations in correlation.

Let me ask;

(1) Does the UTA give unit owners sufficient protection from their ill-managed BC or why are body corporates not very much trusted?

(2) Why do BCs fail to treat the LTMP as living document and spend money that does not deliver the desired outcome?

(3) Where are the operational procedures (defined as template) a BC must put in place for the specific of a building and to keep occupants safe? I think about procedures for Emergencies and Evacuation, Health and Safety. Important for owners are operational procedures e.g. for signing-off repairs/projects to guarantee service life and quality.

Unit title properties under the current UTA suffer from sub-standard repairs and installations, work on buildings has never been completed and work permitted without written contracts (based on pre-sales estimates), and installations signed off by the chairperson with no expertise causing escalating costs and nuisance in years to come.

Not to ignore for unit owners are badly maintained buildings, unresponsive BC and low levels of professionalism. Sadly the UTA 2010 is rather used by BC Managers as licence to print money than as a tool to manage liabilities. Passive chairman and committee leave the BC's operation blindly to contracted agents. Will that change?

We live in a connected world and keeping a set of living BC documents online accessible for unit title holder must be compulsory as well as regular updates of those documents.

It is the recipe for problems when e.g. building managers operate without up-to-date documentation for services in a building, nor maintaining service contracts, schedules for inspections, monitoring product warranties, service life, etc. To stop here, NZ's BC suffer from bad reputations and the governance of the RTA. Can the proposed amendments improve that?

3. Overarching Reform Proposals

3.1 Potential size thresholds for more rigorous legislative requirements

1

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.

I had a case where the BC management caused damage to the building. The disputes court rejected the case because of jurisdiction, engaged services are not liable and at the end unit title holders paid for everything saying - a government agency for mediation could help in operational disputes

What is when the BC committee fails? An agency to settle a dispute between owner and BC representation might be helpful.

Under the current UTA operational disputes are hard to settle.

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

4

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

Yes, just to simplify the disclosure regime.

Proposal 2: Add further requirements in disclosure statements

5

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

What I've seen it was okay.

Proposal 3: Require a statutory warranty on all disclosure statements

6

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

No. Who is the interested party? For stand-alone properties the owners carry the responsibilities.

4.2 Strengthening Body Corporate Governance

Proposal 1: Address conflicts of interest

7

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?

yes

Proposal 2: Increase reporting of delegated powers

8

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?

Yes, but also providing information (meeting minutes) to unit owners should be mandatory.

Proposal 3: Duties and responsibilities of body corporate committees

9

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?

yes

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

10

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?

Yes, because the attendance might be low and proxy farming can cause distortions.

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?

Yes, all committees I dealt with had problems with service contracts. Running service contracts on auto-pilot, paying for services without a written contract, and a common problem – missing the time frame for cancellation.

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?

4.3 Professionalism in Body Corporate Management

Proposal 1: Status Quo and Self-Regulation

13

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?

No, the reality is illustrated in my introduction at the beginning. Professionalism does not start with industry bodies (Master builders guaranties is one example).

Yes, by strengthening owner's position by a compulsory set of "living documents" and a agency who supports the owner in the case of a non-responsive BC to resolve building issues.

14

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?

No, what would change? My point here is that I met body corporate managers who have only taken care of their own business. Removing them has been proven difficult, they are engaged by the BC, but not liable.

Instead I would look into operational rules (obligations to provide meeting minutes and access to a set of living documents set in Unit Titles Regulations, such as emergency procedure , health & safety and so on as illustrated at the beginning

In today's online world how difficult might it be to access a set of living documents?

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

15

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

No, I do believe in a property specific set of operational rules and set of living documents to encourage and support owners to execute their rights and responsibilities.

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

16

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

Yes, but only with a contract in writing

17

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

BC manager must not engage trades people without job description or agreement in writing

BC manager must not settle payments without inspected and signed-off work

18

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

Requirements to meet BC's needs

4.4 Ensuring Adequate Long Term Maintenance Plans

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

19

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

No, Accuracy of LTMPs is not guaranteed by qualified people.

I've done two LTMP reviews with building inspections. Both LTMPs were issued by qualified agencies. None was correct or accurate.

The problem lies with the BC. They have engaged a qualified agency, they paid thousands of Dollars for a service, but the LTMP has never been reviewed for its accuracy.

Secondly attached to the LTMP was an action list – never executed by the BC. Again the BC in default - a serious matter!

That is why I suggest to review the LTMP annually and to be confirmed by resolution at the AGM

20

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?

No, I met too many chairpersons with little expertise. That is why -

Everything should be signed at least by a second person (e.g. committee member)

Secondly, everything that has an impact on owner's financial liability should be accessible for the owner as draft version, to be informed and making professional comments (contributions)

Proposal 2: Develop a new online template for LTMPs

21

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

Proposal 3: Extend the timeframe of LTMPs to 30 years

22

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?

If a building has been designed and erected for a lifespan of 50 years, why would you limit it on long-term maintenance?

I've seen not realistic funding models and plans, that is the problem.

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

23

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?

No, the LTMP should be confirmed by resolution at every AGM (I used the term – living document)

It makes no sense locking away a document for 3 years, but that is actually happening,

Proposal 5: Require large bodies corporate to have a LTMF

24

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?

No, why would you treat a building with 20 units differently to one with 40 units? Assets need to be maintained and owner's investment needs to be protected in all buildings.

Proposal 6: Require bodies corporate LTMFs to be annually audited

25

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

Audit or review, what is the difference? Important is that the LTMP is maintained and kept up-to-date with all changes to services and replacements/repairs.

E.g. a broken and replaced hot-water system would require changes accordingly, also think about a situation of a damaged building by a leaking plastic water pipe.

The BC may replace during an emergency repair pro-actively all risky plastic pipes with copper.

Replacements with "new" or different products would require updates of the LTMP, thought.

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?

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

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?
