



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

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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.

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.

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?

Agree where there is a multi-dwelling greater than 10 Units that a management company be involved in managing the BC; they come to the Body Corporate bringing experience of managing multiple buildings and should know issues and solutions. The general experience of owners in most body corporates is based on personal opinion and decisions are made without a really knowing what they are doing.

Audit is not really needed for any Body Corporate where there is good transparent reporting by the managers; in addition, having the annual accounts compiled by an independent chartered accountant with an overview of BC accounting requirements (accounts for LTMP etc) should provide transparency and a level of comfort to the BC that the accounts are good

2 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?

No; all BC's should be able to expect a consistent standard of management; part of the review is to ensure management companies are appropriately "qualified" to deliver an expected service level – if a BC elects not to use a management company there is often no way the BC can remove poorly

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?

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?

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?

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?

Some committees have hang ups where there is a manager in the BC that points out issues in the complex; is an owner wanting to apply to be a BC Manager (they don't understand the managers attend committees but do not vote) There should be good definition of what committees can do to understand what is and is not a conflict of interest.

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?

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 like those included in the Queensland's Code of Conduct for committee members. Do you agree? If no, why?

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?

BC members should be directing their proxy on the proxy form how to vote

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?

The initial term of a BC Management contract in a new building should be for a period of 2/3 years so a new BC can settle down then the new BC can decide if they wish to continue with the developer appointed service providers.

Long term signage right contracts to private companies – NO; should be properly valued and titled as Common Area so the BC can get income.

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?

Body Corporate Managers should be given the power to Manage the BC without “operational” interference from the governance committee (clear roles & responsibilities needs to be defined). Where poor managers exist; they will be soon replaced by managers with a better reputation - the dross will go out of business. Self Regulation

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; regardless of the value and education that existing organisation state that they deliver, there is those that have no ability to put into practice what has been taught them; passing and holding having a driver’s license is the classic example). Good firms will train direct and manage their staff for a more consistent outcome for BC’s.

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?

Yes they should but committees need to step up to the mark with good governance;

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 indeed; similarly, where there is a management company involved, they should be able to manage the BC within their mandate to deliver governance outcomes set by the committee within approved budgets they manage. Always the BC Management Companies should be accountable to the BC to deliver good management. The cannot be held accountable if BC committee are also playing in the sandpit.

17

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

Holding money of a Body Corporate in an account that is under the Management company name – regardless if it is a trust account of that company. All Accounts need to be in a bank account that is in the name of the BC

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

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?

Yes, the more expensive items are then identified scheduled and tracked.

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?

Every three years max, there should be no reason why it cannot be updated earlier to integrate necessary changes requiring financial approval at the next AGM

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?

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?

No; its all quite academic what is needed in a LTMP; at reviews is a good time to validate how the LTMP is going

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?

There should be a reasonable fee for entering into a dispute; too low a level will potentially cause distress to BC Committees and Managers from those that are permanently disaffected about all aspect of living in a unit titled complex

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

If there was a reasonable issue to resolve

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?
