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**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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## Submission on MBIE's proposed amendments to the Unit Titles Act 2010

December 2016

### 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.

### 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:

1

- 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?

**Mostly agree but the audit cycle is too fast. This produces an extra cost and places more burden on the body corporate chairperson. A three year cycle seems sufficient.**

**The potential blind spot is the body corporate management firm. At present they are insufficiently regulated and accountable.**

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.**

**Medium-sized body corporates should not be able to opt out of meeting requirements. Just because nobody wants to deal with it does not mean the roof will never leak and the walls won't need repainting.**

**Similarly, it would be extremely difficult for a new owner to convince existing owners to establish a LTMF thus ensuring a vast cornucopia of future maintenance issues.**

**What other sector allows people to opt out of regulation? And whose interest would it serve? Probably only property investors wanting a quick turnover for whom pointing to low body corporate levies would be a useful selling point. Certainly not good for people who want to live there long term.**

### 3.2 Improving Government Services to the UTA Sector

3

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.

**At present, information relating to the unit titles act is distributed randomly. Considering most of the constituent members of body corporates are not lawyers nor property professionals this seems borderline negligence. Or at the very least inviting discord.**

**An entire agency seems unnecessary, but a central repository of information (i.e the act itself, relevant case law and some plain English explanations, flow charts plus of course useful templates.) should be easy enough to establish. Of course, the Act itself will need to be internally consistent before this will be feasible. It will be difficult to explain something that is ridiculed with vagaries.**

#### 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?

Yes

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?

Yes

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?

Yes

## 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?

**Absolutely.**

### 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?

**Yes.**

### 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?

**Mostly yes: for clearer guidance on duties and responsibilities, but penalties would result in more reluctance to serve on committee.**

**And getting people to participate in body corporate governance is not easy.**

### 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 - limit proxy farming. It is clearly undemocratic and there is already a history of it being abused. Furthermore, anyone holding proxies is not accountable for how they vote. There is no guarantee that they will vote according to the wishes of the person they are ostensibly representing.**

### 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**

#### 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?

**Yes**

### 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?

**Yes.**

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?

**Absolutely.**

#### 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?

**Yes.**

#### 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**

17

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

**Tendering for body corporate's management service. Meaning being involved in a process where a body corporate is doing its due diligence on management costs.**

18

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

**Body corporate managers at present often behave like a law unto themselves and can be hostile and unresponsive to owners. This is a well acknowledged problem and requires attention.**

**The case of Heritage Hotels vs Body Corporate Management exemplifies well the shortcomings of the current regime in respect to holding body corporate managers to account:**

**Adjudicator Brian Stephenson remarked "While the evidence does not indicate deliberate misappropriation, the scale of the discrepancies and the delay in accounting for them suggest strongly that BCA's accounting standards were below what is acceptable for a professional secretary/manager. Had the same facts arisen in the context of a solicitor's trust account, the inevitable result would have been an inspection of the trust account by the New Zealand Law Society, probably followed by disciplinary action. There appears to be no comparable regulatory regime overseeing trust accounts operated by secretary/managers for bodies corporate." <sup>1</sup>.**

**There is clearly a strong need for much tighter regulation in this space. Body Corporate managers need to be accountable for their conduct and advice: they must be made to understand who it is they are working for and the responsibilities incumbent with that.**

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**1. Tenancy Tribunal Order Application Number:15/00052/UT s51**

**<https://forms.justice.govt.nz/search/Documents/TTV2/94695204.pdf>**

## **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?

**Yes. And the scope of the work must be made abundantly clear to avoid confusion and conflicts.**

**Secondly, it is astonishing that this review has made no mention of the conflict between s126 and s138 of the Act. The lack of clarity around oncharging and maintenance costs for accessory units will only produce discord, and when such concerns are the backbone of a LTMF & a LTMP, it seems ridiculous that this would be ignored in the context of a review.**

**It is also worth noting that reputable law firm Kensington Swan remark “This inconsistency of wording in drafting (unless there are reasons for it, which is doubtful) is inexcusable in modern legislation.”<sup>1</sup>**

**Now is when this can be rectified.**

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2.

**[https://www.kensingtonswan.com/Legal-Updates-And-Events/Property/2012/Unit-Titles-%E2%80%93-the-state-of-Body-Corporate-Main-\(1\).aspx](https://www.kensingtonswan.com/Legal-Updates-And-Events/Property/2012/Unit-Titles-%E2%80%93-the-state-of-Body-Corporate-Main-(1).aspx)**

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?

**Provided the previous step has been taken, they should be able to do so with peace of mind. Otherwise, they are not qualified to do so.**

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.

**Looks good.**

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?

**Thirty years seems a bit of a stretch while 10-15 years represents the lifespan of many**

**building materials and paint. That seems more practical and reasonable.**

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?

**It depends on the degree of review. If a surveyor must be engaged then there is a cost.**

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.  
10-29 Units is still quite a few and should have a LTMF to ensure the integrity of the structure.**

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. Too frequent. Maybe three to five years unless there is a significant change or event. Combine it with the review.( Q23)**

## **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?

**Yes.**

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

**I would consider mediation anyway.**

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?

**This seems like the least important issue on the table. But if it could be done easily and cheaply then it would contribute to clarity around its duties.**