



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. 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.

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. Having been through this process relatively recently I found it unhelpful that information could be drip fed and at cost. If the information is available then it should be presented at the one time, at the beginning of the process.

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?

Agree

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?

Agree in principle but would suggest the responsibility as to the accuracy of the information is placed onto the Body Corporate manager, if in place as part of their service, not the body corporate chair for example. Typically the Chair and Committee are volunteers and do not have the resources to compensate if enforcement provisions are successfully brought against them for incorrect disclosure. If the obligations of the Committee were actually fully understood it is surprising that anybody actually stands for office. Shifting the responsibility to the Body Corporate management puts it into the realm of a body who should have the necessary focus to attend to these important requests with the appropriate detail.

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?

Agree

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?

Agree – although with consideration given to unit developments that comprise a significant proportion of Principal Units owned as car parks.

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?

Do not agree. Body corporate committees comprise volunteers for the good of the development. Imposing too many requirements with associated penalties will discourage participation in this regard. The new requirements around body corporate managers should provide a foil in this regard.

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?

No

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?

Agree

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?

Minority relief – agree

Alteration to units – Changes not considered necessary

Quorum - agree

Resolutions - agree

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?

Agree that an industry body does have the potential to raise standards and more importantly create an even playing field across the board. However, body corporate management must be reminded that they work for the unit holders not the other way around.

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?

Yes but not if it would result in significant membership costs being passed onto unit holders. How will added value be identified, measured?

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 don't Support although I have seen evidence that they can value add – Opt out clause for medium developments would need to be in place because at this level the day to day building control by committee is much more manageable than for a larger development.

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?

Agree because this would make sure that they are providing visibility to the services that should be providing rather than just clipping the ticket as a consequence of ignorance.

17

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

Not sure

18

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

Do not support. Setting additional requirements in regulation may provide the suggestion that the Body Corporate management has more powers than they actually have. As mentioned previously they work for the unit owners not the other way around.

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?

Do not support. In the end of the day, a building is a building with scale being the only difference. A house owner for example, is not required to seek qualified advice to set a plan for maintenance. Maintenance needs to be done but in the end of the day it is the responsibility of the unit holders to make sure their building is maintained appropriately. Getting advice from appropriately qualified persons is a good thing, and should be encouraged, but to require them to take on that responsibility will just ramp up costs when maintenance decisions are really quite obvious. It is not rocket science and as long details about maintenance long term or otherwise is communicated to unit owners on a regular basis, ie. more than an AGM, would be a good thing to include. In a perfect world, replacement of many maintenance items will be carried out on well before failure, requiring someone to certify something with penalties, is only going to encourage 'over-maintenance' prescription, thus increasing costs to the unit owners – who are the actual subject of the UTA.

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 do not agree. The chairperson is unlikely to have the experience or knowledge required to guarantee accuracy. Providing the weasel clause to the best of their knowledge waters the requirement down to not being effective at all. Also a chair certifying day one is then also taking responsibility 10 – 20 years down the track. Severely impacts on the enjoyment of being the chairperson.

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.

Would support the development of a template

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?

No – 10 years is a good time

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?

Yes 3 years is a good time as long as it is supported with regular updates of progress at AGM's

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?

Agree

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?

Agree

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?

Agree with the concept. Proposed fees seem much more reasonable than current

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

Yes

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?

Yes agree to name change because current title suggest just that 'tenants' and not unit owners. I struggle to see why a name change would have cost implications. More discussion on this would be helpful to understand this comment.
