



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

December 2016

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- MBIE officials can contact me if they have a question about the content of my submission YES
- 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.

General

What is the problem and how big is it?

Is the size and scope of the problem independently verified, bearing in mind that a lot of input so far seems to be from the industry and other stakeholders who have a vested interest in getting someone else to pay up.

Just because someone raises a potential problem doesn't mean it has to be solved. I thought the overall approach in the discussion document – balancing costs and compliance is good, though I don't always agree with the proposals, and do wonder if rigorous cost benefit analyses will be carried out in the next phase of the process.

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:

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- 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?

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?

Q 2. 10 to 29 can opt out. Agree but suggest that more than the usual 50% of votes should be required. Possibly 70%. To avoid

capture by a small group that go after proxy votes. Some smaller complexes (nearer the 10 end) will be fairly simple and should not

3.2 Improving Government Services to the UTA Sector

Please comment on :

3

- 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.

Q3. Joined up approach. The UT Act and regs should be the primary go to sources. However, they are not simple to navigate, even probably for BC managers. Suggest a simple but definitive website, maintained by MBIE, with some social media presence as well. Of course there is already a site but I can't tell if it is definitive. Is it?

Plus it is hard to find, buried under Tenancy Services, which is not at all intuitive. Some sections on the current website have links to the act or regs, others do not. Every section should reference all the relevant legislation so that those who need to look further can do so with confidence. Similar to Tenancy Services site.

The first page on the website should point visitors to the areas that they want to know about. So – 'I'm thinking about buying an apartment or unit'; 'I own an apartment or unit'; 'I've made an offer on ...'; 'I'm an owner – what are my rights'; 'About BC committees'; 'About BC Manager'. Not hard to set up a menu tree under each area. Get some end user testing (see usertesting.com for ideas).

A few case studies would be good – like the IRD has. Any specifics which are not set out in the legislation could be covered off here. One item that is not well known is where common property finishes. I understand it is midway between the external wall and the internal

wall of a unit but have never seen that written anywhere and the implications for responsibility and cost apportionment are unclear. .

One BC manager who attended the workshop I was at has written a manual, looked like nearly 2 cm thick. Might be worth grabbing a copy and checking it against any new website information. I don't recommend a hard copy publication – too hard and expensive to keep up to date.

New unit purchasers should get decent information from their solicitor. Some at the workshop I went to suggested a brochure like the ones in the doctor's office. Since lawyers are easily identified and I guess already receive electronic or newsletter communications from eg the Law Society, suggest a periodic reminder to tell lawyers to make sure their clients know where to look for ongoing information. MBIE could consider a simple one page PDF which could be auto emailed to lawyers to print or forward to clients, pointing them to the website. Just a paragraph or two saying what is there.

Separate dedicated entity? Nope, unless it is a couple of MBIE people. I see some want an Ombudsman type entity. I'm guessing they want someone else to pay for it. Assuming it would be free to applicants as opposed to the Tenancy Tribunal,

One BC manager at the workshop I attended said that \$30 per unit would pay for this, though based on what? Who knows? I doubt that total took into account scope creep in the public sector, the effort to properly collect the levy, or compliance costs if units don't pay – at all or by due date. (Might work for complexes with an external BC manager – other complexes not so much. Particularly bearing in mind that most complexes are small and this is expected to continue.

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

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

Q6. Disclosures. Generally agree with additional disclosures, provided these are the clear responsibility of the BC. Disagree that additional recourse is needed other than the Tenancy Tribunal.

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?

Q7a. Access to owner information. There is no question in the document about access to owner's information. This is potentially a problem, particularly related to lobbying and proxy farming. If only some have access to the information, and they use it to gather proxies they may use the information to push their own barrows.

This is not theoretical – I know of a couple of cases where this has happened and elderly owners have had proxy forms thrust at them to sign. In one case this was done by the BC Chair, the self appointed decision maker, plus another committee member, who both turned up at the door without warning. Fortunately that owner was clued up, and the net result was that Chair was removed by vote. I would not like to see some people have access to contact details and some not, as the information is easily misused and who would know?.

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 similar to 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?

Q10. Proxy farming. That is a pejorative term and should not be used. Gathering proxies is quite legitimate in the business world, so why should a BC business have different rules.

Proposal 5: Limit the impact of unfair service contracts

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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?

Q11. Management contracts. Agree. There have been a couple of court cases where owners have had to spend big to get out of onerous management contracts entered into by developers (probably with their mates).

Proposal 6: Clarification of governance terms

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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

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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?

Q13. Industry bodies. Agree, to the extent that the organisations are sound and do not have a bias towards getting as much business for their members as possible. How could that be determined? The broader real estate industry does not have a good rep. (I did wonder whether the thick manual mentioned above was designed to persuade owners that they cannot manage on their own.)

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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?

Q14. Professional affiliation. Disagree. Mandatory seems like overkill but I cannot see an issue with voluntary affiliation. Then it would be up to BC committees to choose.

However if there really are problems caused by BC managers then these problems should be quantified and costed so that any solution is correctly targeted. No point in forcing a solution if there is only a minor problem which the BC committee or Tenancy Tribunal can deal with. Once owners become aware of an issue they have the option of addressing it directly (firing the BC manager, or adding oversight for example) or Tenancy Tribunal recourse. If they don't know there is a problem, then having a code of conduct etc is not going to help.

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?

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

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

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?

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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?

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.

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?

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?

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?

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?

Q26. Revised fee levels. Suggest that mediation is encouraged, and the fee level proposed for mediation looks OK to me. However, if mediation is not successful, the current fee level / cost recovery can be the next step.

- 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?

Q28. Rename the Tenancy Tribunal. I don't think the Tenancy Tribunal needs to be renamed, provided there is better access to online information. If people have a dispute, then they will generally research, ask around including on social media, ask their lawyer or

Community Law for advice. Seems a lot of changes to legislation, stationery, websites etc etc for something which is not really a problem. Or is it a problem? And if so how big? Also most people know about the Disputes Tribunal, so possibly that site could be more upfront about where to go for unit title disputes.