

FairWay Resolution Limited's Submission to MBIE on the Unit Titles Act 2010 Review Proposals

Submission in respect of Accessibility of the Disputes Resolution Regime

Fundamentally FairWay seeks to support and add to MBIE's priorities. Like MBIE we are committed to providing the highest dispute resolution service for New Zealanders. Our belief is that this will be best achieved by MBIE and FairWay working collaboratively and exercising our relative strengths. We have therefore restricted our submission to aspects of the review that relate to dispute resolution.

Question 26. Do you support the proposed fee level for the dispute resolution service? If no, why?

FairWay does not support the proposed fee level. It is not clear that the proposal takes account of the reality that disputes involving body corporates occur:

1. Within members of the community who are governed by the body corporate;
2. Between members of community and the body corporate;
3. Within the body corporate committee;
4. Between the body corporate and third parties.

There is a lack of information about what sort of dispute resolution service would be made available to parties paying that fee or about what sort of dispute would be dealt with.

The fees levels proposed appears to undervalue the services provided and does not reflect the commercial reality that body corporates are a user pays process for managing community living.

\$600 plus \$100 admin fee would be well under the cost of mediating a complex unit title dispute. Likewise, \$1000 plus \$100 is very low for a complex adjudication. These would soon become perceived as low value processes. The Government has been criticized for establishing a fixed fee dispute resolution service in the Family Dispute Resolution area and in doing so limited the capacity for dispute resolution professionals to provide dispute resolution except through a government subsidised regime.

While we support the legislative aim of incentivizing people to choose mediation to resolve their disputes, our overall view is that with unit title disputes, it is preferable that body corporates be incentivized to establish their own dispute resolution schemes, to enable self-resolution.

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

FairWay is not in a position to respond to this submission as a user.

Our experience is that some parties are reluctant to engage in a mediation process and that there is considerable work required to engage parties.

Our experience working with multi-unit and body corporate disputes is that there is great value to be had through trained coordinators working with the parties to ensure engagement and that through this proves a great deal of dispute resolution can occur before the parties enter into some form of mediation or joint problem solving.

Proposal 2: Revise the name of the Tenancy Tribunal (preferred proposal)

Question 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?

FairWay does not have a particular view on the name of the Tribunal. We consider that if there is to be any change to the name of the tribunal that some consideration be given to including jurisdiction for other forms of multi-unit ownership. Specifically, consideration might be given to those people in cross cross-lease ownership being able to access dispute resolution.

About Us

FairWay Resolution is an independent Crown-owned company, which provides comprehensive, specialist conflict management and dispute resolution services. FairWay provides services across both the public and private sectors, handling issues and disputes of all kinds and all levels of complexity; including medical, building and construction (including earthquake and weathertight cases), insurance, financial services, telecommunications, environmental, family and local government.

As part of its work, FairWay determines requirements, identifies issues and solutions, and creates dispute resolution schemes that are cost-effective, efficient, pragmatic, and which provide meaningful access to resolution. FairWay administers several complaints-based schemes for consumers, including the Telecommunications Dispute Resolution (TDR) service, the Financial Dispute Resolution Service (FDRS). It also operates a Family Dispute Resolution Service under contract to the Ministry of Justice and the, iStudents Complaints Resolution Service under contract to the Ministry of Education.

Our Experience

With the aim of facilitating early settlements, and retaining strong party relationships, FairWay operates a sophisticated triage and early resolution service with complex matters referred to a specialist panel of senior resolution practitioners.

FairWay has significant experience dealing with properties owned by multiple owners in both the cross lease and those for which the Unit Titles Act applied.

FairWay is actively involved with body corporates assisting with the design of dispute resolution processes for use by body corporates.

FairWay supports the UTA review and has participated in the regional workshop sessions.

With the increasing popularity of multi-unit living, combined with recent weathertight and earthquake response difficulties, the need for effective dispute resolution in multi-unit developments seems to be greater than ever.

The disputes that these developments generate are often characterised by their complexity, difficulty, toxicity, emotional disturbance and longevity.

Research in Australia (which aligns with anecdotal evidence we have gained here) has found that residents are largely dissatisfied with the formal (i.e. legislated) dispute resolution processes that are available to them to deal with their concerns. There is a real reluctance to engage in mediation and tribunal/court processes for a host of reasons including the high time and cost commitments, relationship damage, inconsistent outcomes and negative publicity.

FairWay considers that it is time to find fresh ways to think about how to promote harmonious living in multi-unit developments. Legislation needs to encourage voluntary empowerment of owners and self-help so that they can develop their own dispute resolution plans to cover:

- Communication, trust and relationship building and participative engagement
- Communal public-mindedness
- Confrontation prevention and conflict management
- Dispute resolution – this would cover the full spectrum of options starting with talking issues over, through involvement of other owners, the manager and management committee, external third party facilitation, dispute panels, tribunals and courts.
- Formal mediation and tribunal processes should be provided only as a default option for those body corporates or members that either agree to, or by default, opt out of the voluntary scheme process.

Thank you for the opportunity to submit on the proposal. Please contact us if you have any questions or need further information.

Person making the submissions on behalf of FairWay Resolution:

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Contact information:

Date of submission:

3 March 2017