



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.

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?

We agree with the proposed size limits (our complex has 69 units). Comments on each of the specific legislative requirements are given later in this submission

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?

This leaves a large number of complexes potentially still at risk from the problems that this change attempts to address. It might be more appropriate to make the requirements mandatory for all complexes, and only allow the opt-out clause for complexes having fewer than 10 units.

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.

We have no specific views on the first two bulleted items and do not support the establishment of a dedicated entity. However, we would support dedicated resourcing within existing government structures.

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?

Agree

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?

We agree with the additional requirements but have reservations about the volume of paperwork potentially involved with the final 2 items- 'financial statements going back 7 years' and 'all supporting documentation supplied to owners (for general meetings) going back three years'.

A more practical approach for the financial statements would be to require that they be provided for the previous 3 years but with an additional 4 years to be provided at the purchaser's request.

In the case of supporting documentation we would suggest that the requirement be to simply provide a list of supporting documentation, with copies only being provided if requested by the purchaser.

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?

We generally agree but have concerns around the suggested requirement for the BC to have to sign all the documentation provided. A more practical approach would be to require a single certification statement at the bottom of a list of the documents provided.

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?

Agree

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?

Agree

Proposal 3: Duties and responsibilities of body corporate committees

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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?

Agree, and we also agree that there should not be a penalties regime for non-compliance - because this would discourage people from agreeing to serve on the committee.

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. Our BC has direct experience of this happening in the past. We would suggest a limit of 10% of the total number of units.

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. Our BC is mid-way through a 25-year contract for the supply of electricity. While the rates currently charged by the power company are quite reasonable there is no guarantee that this will always be the case. In addition, residents are unable to take advantage of other possible options, such as combined power and broadband deals.

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?

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 _____

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 _____

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?

Agree _____

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 _____

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

None _____

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

Agree _____

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?

Agree

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?

Agree

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.

No

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?

Agree

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?

Disagree. A timeframe of between 5 and 10 years would be more appropriate, given the potential costs involved in reviewing the LTMP. As indicated by the title, we see this as a long-term planning/funding tool and maintain a smaller contingency fund for addressing any unexpected more immediate issues that might arise.

Proposal 5: Require large bodies corporate to have a LTMF

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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. Our LTMF is automatically included with the audit of our annual operating account.

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?

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?

Agree
