



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

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**December 2016**

**Name of submitter:** s 9(2)(a)

**Organisation:** s 9(2)(a)

**Contact address:** s 9(2)(a)

**Contact phone number:** s 9(2)(a)

**Contact email address:** s 9(2)(a)

\*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](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.**

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### 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 think that a complex of less than 20 Units should not have any additional compliance costs imposed on it. The current Unit Titles Act works well for us. We already resolve at AGM to waive the requirement for an annual audit because it is too expensive and deemed unnecessary for a small BC. We will undoubtedly resolve against contracting a BC corporate manager or paying for a professional to sign off the LTMP each year. We cannot afford either.

Our first BC LTMP was developed in FY 2007/08 under the previous Unit Titles Act. The BC needed a plan before embarking on a reroofing project for the complex. We already had a roof replacement fund which after 10 years contained about \$100,000.00. The LTMP was to guide BC expenditure on the roofs and other major maintenance items and was prepared by a professional valuer, <sup>s 9(2)(a)</sup>. The plan was quite expensive to produce and we found it of little real value. What we found was that the professionally assessed cost of the major items in that plan were out of date in a year and even though subsequent year costs were increased in line with inflation, they bore no relation with reality. The BC called for tenders to replace two of the roofs in the complex. The initial the tender price was over \$40,000.00 and the actual cost eventually was over \$90,000.00. The BC very nearly ran out of money.

Since the new Unit Titles Act our BC annually prepares a LTMP. This contains a list of the probable works that would need to be done in the next 10 years. The cost in year 1 is estimated and successive years are adjusted for inflation. But we know that the actual price will be determined through a tender process. So the LTMP gives early warning to Unit owners of potential expenditure on major works such as the replacement of roofs, the painting of units and renovations to the common areas. The LTMP is updated annually and approved at the AGM and owners can contest the order in which projects are tackled and the scope of work to be done. Our BC also now conducts two working bees each year to cleaning up the complex and doing minor maintenance work. Other maintenance projects are undertaken professionally after BC committee consideration.

The new Unit Titles Act (2010) provides the means to avoid the BC having large reserves available to pay for all the maintenance projects of the complex. The way we are now able to operate is that every project that benefits a single unit is paid for by that unit owner and the project is usually also managed by that owner. The BC becomes involved when the project benefits more than one unit. In this case the BC will manage the project and the cost is shared equitably among



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## 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?

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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?

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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?

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## 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?

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### 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?

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### 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?

**It is already difficult to find sufficient owners willing to volunteer their services on the BC committee. We would disagree with any measure that increases the committee members workload or responsibility.**

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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?

**This is not a problem for our BC**

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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?

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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?

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### 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?

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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?

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#### 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?

**We do not support this. We have already suggested that the definition of medium and large complexes be amended so that a complex with 15 Units remains a small complex. Our BC could not afford a BC manager.**

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#### 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?

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?

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#### 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?

We do not agree that this should be required. It is our view that the LTMP contains a list of the likely maintenance tasks that will need to be undertaken. Identifying the items on a list is a matter of common sense and does not need professional input. The estimate of cost may well require professional input but since the cost of each project will really only be accurately known when tenders are received the importance of the accuracy of the LTMP cost estimates are moot. Furthermore each Unit owner is going to have to pay for work that benefits their Unit. The actual cost will be determined at the time the contract is let. Work in common areas is paid by the BC from currently existing reserves which are maintained at a sensibly low but adequate level.

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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?

Not sure why this adds to the process. The LTMP is currently approved at the AGM.

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Proposal 2: Develop a new online template for LTMPs

20 Are there mandatory fields/information you consider should be included in the revised template? If so, please list.

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Proposal 3: Extend the timeframe of LTMPs to 30 years

21 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?

**We think this exercise will be an expensive waste of time.**

**We also maintain that complexes with less than 20 Units should be regarded as small.**

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Proposal 4: Require body corporates to review their LTMPs every three years

22 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?

**We review our LTMP annually.**

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Proposal 5: Require large bodies corporate to have a LTMF

23 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?

**We consider that complexes with less than 20 Units should be considered to be small complexes. They can still be required to have a LTMP but they should not be required to have professional input to it.**

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Proposal 6: Require bodies corporate LTMFs to be annually audited

24 We propose that the LTMFs of medium and large bodies corporate are audited annually. Do you agree?

**No. If complexes of 15 Units are to be considered medium complexes then they should be able to opt out of annual auditing as they can currently.**

**Our preference is for complexes of less than 20 to be considered as small complexes.**

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### 4.5 Accessibility of the Disputes Resolution Regime

Proposal 1: Fee settings

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

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

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

27 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?

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