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**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



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

December 2016

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

Organisation: s 9(2)(a)

Contact address: s 9(2)(a)

Contact phone number:

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

Yes 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

1 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:

- 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?

I agree that certain sized complexes may vote against legislative requirements by special resolution

Why would any owner want imposed on them the mandatory use of the services of an unregulated third party body for administration duties and why would anyone try to take away an owners right to make their own decision about that?.

Currently the UTA requires the BC chairman to undertake these duties No contract can be made without the approval of the body corporate. Mandatory appointments would may impinge on their right to choose.

Bullet point 5 NO. I do not believe that annual auditing is necessary but any auditing should be conducted independently.

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?

YES

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?

Your proposal does not make it clear whether proposals 4 & 5 are for new or existing developments. Existing complexes should not have serious financial information made available to any casual enquirer. I believe requirements in the current regulations are more than sufficient.

The provider of secretarial services may clip the ticket for additional disclosure material requested. The vendor receiving nothing for this and any issue about late delivery is completely out of the vendors hands. There is no reason why provision of additional information should be slow in arriving from the secretary. Once in conveyancers hands timing is also out of the vendors hands.

More clarity around the meaning or intent of the 10 days cancellation notice might be required.

New developments or off the plans purchases may be a different matter entirely. Here the purchaser can be expected to agree to any documentation supplied, too quickly for due diligence although this can be extended. In either situation no one should be forced to settle before all disclosures are made.

Where this is alleged to have happened the purchaser must have been reasonably satisfied to allow it?.

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?

Once an agreement or an agreement subject to approval is signed, full disclosure should be made I believe this is adequately covered in regulations.

See www.homelegal.co.nz article written 2011 You and your Property

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?

Existing developments

A simple signed statement by the secretary and owner or BC chair and owner should be all that is required. The regulations 2011 require what disclosures should be made

New developments

Purchasers and developers should be working through their lawyers

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?

I understand that complex issues so far can only be resolved through the courts.

It might be possible to frame something around Inc Soc Bill but since this is only a Bill I would suggest it is too soon to adopt any proposals

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?

Sec 114 currently requires BC committees report to BC annually. I can see no reason not to report at a general meeting should the owners hold a general meeting and ask for one.

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?

I believe our current NZ law provides sufficient provisions with the exception of conflict of interest.

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?

My answer is basically no. I have included comments, however. See below

I do not know how much so called "proxy farming" there is or if it is a "problem".

In our own BC proxies are given to the trusted committee members who always attend AGMS

Committee members are the most likely people to gain multiple votes . Voting is usually agreed before hand and any rogue committee members can be punished by other owners as the committee is up for re election annually.

There could possibly be a danger of non committee owners proxy garnering. Since there is no recourse by other owners or committee members who are required to manage complexes, these owners perhaps could have limitations placed on them with votes extra to their ownership entitlement be passed to committee members where there is the re election checks and balance in place..

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?

Yes.

I am sure owners can release or vary the terms of any contract they have made.

There is a remedy already for unfair Service contracts in the UTA in respect of original owners.(Developer)

Any amendment to the current act should distinguish between existing developments and those that were entered into by the developer.s. Under the act the original owner has an obligation to subsequent owners with respect to service contracts. There should be the facility for new owners taking over an existing contract to end it if not suitable to them.

Owners are generally bound by providers who perform services for statutory requirements for BCs .

As they are usually the only providers available there is no option to change them.

Eg Fire alarm testing.

Your comment around billboards is interesting. If billboard spaces weree required to be part of the unit plan and the space become an AU with an identifier (certificate of title) issued then at least the owner would be liable to a contribution. And yes, the owner of said au would most likely have a vote.

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?

One would think that changes under sec 65 is bound to affect other owners but possibly no more than would be experienced by the noise of someone installing a new kitchen, for example. Sec 65 requires provision of sufficient written (plans?) information to the BC to not only fully inform them of the nature of the redevelopment a certificate must also be obtained from the BC which implies the application must be to their satisfaction. In my experience most owners are prepared to tolerate temporary building/renovation noise if they consider changes will lead to the improvement of the building.

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?

Some of these companies have been around for a very long time and no attempt has been made to regulate them nor they have attempted this themselves. They are not all bad. I am sure there is room for improvement. One must not forget these providers are a business model and their interests and owners might not always align.

The industry only formed their own national group SCANZ in 2016 based on the Australian model . Self regulating but there appears to be no legislative requirement in Australia either except for some states.

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?

Generally, yes. See above. Self regulation is not ideal but so far there is no other model to follow . Owners need better protection from third party service providers.

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. Why? As You correctly point out the UTA does not cover BC managers, or those enterprises providing secretarial services. Since owners have no protection under this or any other Act from providers that I am aware of owners should not be forced to employ these providers

The term body corporate manager needs to be defined. I believe it has come to be a replacement term for what used to be known as the body corporate secretary. There are also other types of management services ,eg management of rental properties, live in building managers. Those apartments owned entirely by overseas owners raise other management issues. I dislike the general term BC manager when it is not clear what service is being provided.

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?

I would possibly support the functions of BC managers being set out somewhere, not in the UTA. All functions statutorily required and perhaps performed by providers engaged by the BC are set out in the UTA and are to be performed either by the chairman, committee or BC.

17

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

Any that gives third party providers unreasonable power, control or interest over the owners rights and responsibilities. Any where there is a possible conflict of interest .

18

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

I think i generally would support that proposal. Schedule 2 of The old Act listed the functions of the secretary, however this did not lead to third party providers being regulated or establish self regulated industry standards. Regulatory requirements in respect of performance and conduct, is probably a step in the right direction.

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?

NO

Any decision on this matter should be the owners entirely. Owners are able to purchase templates. Owners are fully able to

to decide if there are gaps in their plan and take action accordingly. They are able to amend their plans. This may include engaging a so called qualified person should they so desire. Right now I do not know which "suitably qualified person" is actually willing to guarantee the accuracy and completeness of an LTMP. This would imply potential liability on their part would it not?.

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?

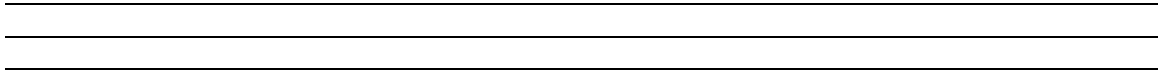
To

the extent that a plan is in place and any work completed should be noted and possibly signed and there is no intention to deceive should it be expected that the BC committee chairperson can guarantee more beyond this?.

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.



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?

I believe a 30 yr threshold takes a plan too far out from year 1.

What is wrong with starting another 10 or 15 year plan at the end of a current 10 or 15 yr plan? At least 10-15 years out would give planners a more relevant starting point.

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?

I generally agree the owners should/could regularly review and amend their plans.

Three years might be too often for anything meaningful.

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?

The act currently requires ALL BCs must establish a LTMF unless by special res they decide not to. I would think any well run complex would want to have one especially if the complex was developed 10 years ago or more. The absence of a LTMF for a complex of this age or more should be a significant pointer to prospective purchasers. In saying that any decision about LTMPs of any sized complex should be left entirely to owners as it is they who will fund it.

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?

Decisions about auditing should be owners decision. I recommend independent auditing when ever auditing takes place.

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?

Seems reasonable

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?

The name could be changed. Bear in mind the tribunal has no powers of enforcement no matter what name it has.
