



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

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**December 2016**

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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](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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## 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?

The pre-Contract and Pre-Settlement Disclosure Statements can easily be amalgamated. The additional Disclosure Statement should be kept separate because – it is not so often requested; and the detailed information required may take some time to collect which could delay the disclosure process unnecessarily.

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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?

No. If buyers want additional information they may ask for, and receive it.

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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?

Yes

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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?

**No, because conflicts of interest are unavoidable within certain environments and situations could arise where the whole process grinds to a halt because of umbrella legislative measures governing conflict of interest. If changes are to be made as indicated, then provision should be made for those complexes under 30 to opt out by special resolution. The construction and maintenance of an Interests Register would be a time consuming and in the end a profitless exercise.**

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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?

**Yes**

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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?

**No. Any additional provisions tend to complicate procedures, whereas the aim of the legislation should be to allow for flexibility and simplification.**

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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?

**No**

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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**

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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?

**Yes**

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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?

Yes

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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?

Yes

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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?

Yes

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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?

Yes

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

**Only those functions more to do with Governance than with Operation.**

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

**No. Any additional requirements should be left to the Committee to stipulate depending on the circumstances pertaining to the Body Corporate involved. Furthermore, additional regulatory requirements may make recruitment of sensible managers even more difficult than now.**

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Proposal 3: Extend the timeframe of LTMPs to 30 years

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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?

**No. Much can happen in 30 years which could make a nonsense of any LTMP. 10 years is a more reasonable period, but even that length of time could be considered too long to plan ahead sensibly. Why stipulate a timeframe at all?**

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

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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?

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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?

Yes

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Proposal 6: Require bodies corporate LTMFs to be annually audited

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

**No, because that would increase body corporate fees. Biennially should be sufficient.**

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## 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?

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**27** 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)

**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?

Yes

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**See Attachment for further matters which are not covered by this document and review but which need attention as much as the ones covered in this document**

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## Unit Titles Act – Supplementary Issues

### Insurance

Section 135 of The Unit Titles Act 2010 demands that Bodies Corporate “*must insure and keep insured all buildings and other improvements on the base land to their full insurable value*”, ie replacement value. The number of Insurance Companies prepared to insure for replacement appears to have diminished, and those that do, do so at greatly inflated rates. To meet this substantial increase Body Corporates must increase Body Corporate Fees to an extent that causes residents financial difficulty.

In addition, potential buyers of Apartments who need a mortgage from a Bank are refused if Bodies Corporate cannot provide evidence that they have replacement insurance.

It seems a nonsense, therefore, for legislation to demand Bodies Corporate to insure for replacement when either there is no willing Insurer, or the cost is so prohibitive that in due course it will force Apartment dwellers to sell – if they can!

Furthermore, if buildings are demolished as a result of fire or earthquake, the chances that Body Corporates would want to replace the building to its original state are highly unlikely. Some buildings, in fact, are such that replacement to their original state would be unrealistic or complete folly.

Section 137 of the Act, **Further provisions relating to insurance**, states in Clause (2)(b) that

*(b) indemnity cover is permitted if full replacement cover is not available in the market.*

It is difficult to understand why indemnity cover should be permitted only if full replacement cover is not available in the market; and what market - local, regional, national or international?

In summary, all that needs to be said is that Bodies Corporate “*must insure and keep insured adequately all buildings and other improvements on the base land*” thus giving flexibility and responsibility for insuring according to circumstances and the environment in which buildings stand.

# Chairperson

Section 10 of the Unit Titles Act 2010 causes a number of problems.  
The appropriate section of the Regulations is shown below.

## 10 Election of chairperson

- (1) A body corporate must elect a chairperson by ordinary resolution at every annual general meeting of the body corporate.
- (2) A candidate for election as chairperson must—
  - (a) be nominated by another unit owner in the unit title development; and
  - (b) consent to the nomination.
- (3) If a candidate for election as chairperson is not a natural person, the candidate must nominate a director to act as chairperson on the candidate's behalf.
- (4) The chairperson must be—
  - (a) the owner of a principal unit in the unit title development; or
  - (b) a director who has been nominated under subclause (3).
- (5) As soon as practicable after the annual general meeting at which he or she is elected, the chairperson must notify every unit owner in the unit title development, by each owner's preferred method of contact, of his or her election to that office.
- (6) Unless a chairperson sooner resigns or is removed from office by ordinary resolution of the body corporate, he or she holds office from the close of the general meeting at which he or she is elected until the close of the next annual general meeting.
- (7) Subject to [regulation 12\(7\)](#), a chairperson is eligible for re-election.

Section 3 of the Regulations deals with interpretation of terms.

### Regulation, Section 3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the [Unit Titles Act 2010](#)

**committee chairperson** means a chairperson of a body corporate committee

**committee member** means a member of a body corporate committee

**corporation** means an incorporated body of persons

**director**,—

- (a) in relation to a company, means any person occupying the position of director of the company, by whatever name called; or
  - (b) in relation to a corporation other than a company or a corporation sole, includes a person occupying a position (however described) in the body corporate that is comparable with that of a director of a company; or
  - (c) in relation to a corporation sole, means the holder of the office constituted as the corporation sole.
- (2) For the purposes of these regulations, a subsidiary body corporate is to be treated as the unit owner of the principal unit that was subdivided to create the subsidiary unit title development.
- (3) Terms defined in the Act have the same meaning in these regulations as they have in the Act, unless the context otherwise requires.

Firstly, it would be helpful to have an interpretation for “not a natural person”. See Clause 3, Section 10.

Secondly, what are the reasons why eligibility for chairmanship apparently has been restricted to only two categories? (See clause 4 above which appears to exclude trustees and representatives). If trustees and representatives and others are able to be members of the Body Corporate, and vote, why are they not good enough to be a Chairman if members of the Body Corporate so wish. The category of the person is immaterial. It is the willingness of the person to act, and their ability and acceptability that is important.

Thirdly, as the Act and Regulations have been drafted it is obvious that the writers are apparently ignorant of the proper role of a Chairman. Nobody in their right mind would offer to stand for the position of Chairman in view of the intimidating list of duties specified in Regulation Section 11 set out below.

**Regulation Section 11                      Duties of chairperson**

- (1) Subject to subclauses (2) and (3), a chairperson has the following duties:
  - (a) to maintain the register of unit owners; and
  - (b) to prepare the agenda for each general meeting; and
  - (c) to chair each general meeting (unless it is agreed at the start of a general meeting that another person will chair that meeting); and
  - (d) to prepare minutes of each general meeting; and
  - (e) to record resolutions voted on and whether they were passed; and
  - (f) to keep financial accounts and records; and
  - (g) to submit, on behalf of the body corporate, the body corporate's financial statements to an independent auditor under [section 132\(2\)\(a\)](#) of the Act; and
  - (h) to receive reports from the body corporate committee and distribute them to unit owners; and
  - (i) to sign documents on behalf of the body corporate; and
  - (j) to prepare and issue notices of resolutions to be passed without a general meeting; and
  - (k) to notify unit owners of the result of any vote on a resolution to be passed without a general meeting; and
  - (l) to notify the body corporate committee of any delegation of a duty or power by the body corporate to the body corporate committee under [section 108](#) of the Act; and
  - (m) any other duties relating to the administration of the body corporate that the body corporate has decided by ordinary resolution to confer on the chairperson.
- (2) A chairperson has all of the duties specified in subclause (1)(a) to (m) except to the extent that the body corporate has delegated any of the duties to the body corporate committee under [section 108\(1\)](#) of the Act.
- (3) The duties specified in subclause (1) are in addition to those conferred elsewhere by these regulations or by the Act.

None of the duties listed relate to the role of a Chairman, but are management and operational matters which should be ascribed to the Body Corporate Manager. I note that the review is of the same mind. If, as the review states, the duties of Body Corporate Manager are the same as presently listed for the Chairman, I assume that the intention is to replace the present list of duties for the Chairman with those that relate to Governance such as –

The Chairman shall-

- ensure that the operation of the Body Corporate is in accordance with the Legislation;
- preside at the Annual General Meeting and at meetings of the Committee;
- ensure that decisions taken at the Annual General Meeting and by the Committee are implemented;
- ensure that the Rules of the Body Corporate are observed;
- ensure that the duties of the Body Corporate Manager are being efficiently undertaken; etc

I hope that these important matters are not overlooked and be remedied.

s 9(2)(a)

February, 2017

