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**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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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

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:

1

- 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?

Disagree with annual audit due to cost. Perhaps the audits could be required every three years to align with the review cycle of the LTMP.

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?

Agree

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.

No suggestions

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?

Disagree – The disclosure statements need to be timely to be accurate and relevant. There should be one document for potential purchasers, and a separate document for the settlement finances – as currently exists. The Additional disclosure statement could be rolled into the Pre Contract Disclosure statement. This would allow potential purchasers more information at the right time.

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?

The documents requested in an Additional Disclosure Statement should be included in the Pre Contract Disclosure Statement. However, the Additional Disclosure document misses key information which should be included as a matter of course eg

Seismic Assessments

Building Reports

A copy of the Body Corporate Rules

Body Corporate LTMP

3 years minutes

Any disputes currently lodged

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?

No – Body Corporate Managers or Chairpersons are not qualified enough to do this eg:

to assess whether an engineer has provided a complete and correct seismic assessment

to assess whether a qualified builder has provided a complete and correct building report

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?

Agree

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?

Agree - to allow the BC to make informed decisions

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?

Agree

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?

Proxy farming is not an issue in my BC portfolio.

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 – BCs should not be held to contracts longer than 1 year. Unit owners change regularly and the option to change contractors should be available at each AGM

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?

No suggestions

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?

More oversight is better than the status quo

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?

Strongly agree

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 – but only where those managers are members of a professional group and being subject to the codes of practice, otherwise this requirement lacks purpose

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?

Holding of proxies. This is to ensure impartiality – and the appearance of impartiality which is often just as important.

18

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

Agree – more regulation needed

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?

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?

No – they are simply not qualified to do this. The responsibility is on the suitably qualified contractor who provided the report.

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 suggestions

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?

No suggestions

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?

Agree

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?

Agree – helps to ring fence funds appropriately

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?

No – too expensive. Perhaps every three years to align with the LTMP review

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?

No suggestions

27

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

No suggestions

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