



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

December 2016

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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.

3.2 Improving Government Services to the UTA Sector

3	<p>Please comment on :</p> <ul style="list-style-type: none">– 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.
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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

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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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

The proposed changes, and my view that these should be extended to all sizes of BC has cost implications. Whilst LTMP and funding provide value my experience of management companies is they do not.

A management company does not improve the standard of management and governance by default

Our small body corporate is better managed, more compliant and financially better off self-managed that with the previous management companies. In our transition into self-management we have lost some of our records as the companies have been unwilling to provide detailed records. They were also lax in ensuring the BC was managed in a compliant manner and challenging us for the decisions we were making (we had no chair for a lengthy period, operational budgets were insufficient to meet basic costs, the LTMP was poor at best, maintenance work was not being completed and LTMF was being used for operational purposes).

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I'd like to see there being training available to BCs to ensure that on each BC there is an individual who has a prescribed level of understanding of the requirements and legislation. Whilst I'd expect there would be a cost associated with this I believe this would be more cost effective than compulsory management companies or the risk of poor governance and management. Many careers provide skills required in BC management so where a BC can assemble a team with the knowledge (supported by the training suggestion above)and skills amongst the owners then I believe they should be able to self-manage.

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

Where a professional manager is used they should be regulated and members of the BC should be able to hold them to account for the required standard of management. The manager should be liable for the BC maintaining the required level of governance and management (in the same way an auditor is required to stand by the financial statements of a business)

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?

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?

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

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

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?

Absolutely agree that the preparation of a LTMP should involve a professional, However I believe this should be for all BCs, without the option to opt out. A BC should have a duty of care to all owners to maintain the property and therefore the owners value to a high standard. Dominant or established groups within the BC can make this challenging.

The current DIY approach and generic spreadsheets is inadequate in ensuring BC are well managed

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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?

Proposal 2: Develop a new online template for LTMPs

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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

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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?

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?

_____ **It**
should be subject to a periodical review, say every 4-5 years.

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?

Not maintaining a fund is a significant risk for any BC. We often find financial legislation is put in place during the good times, where the possible downsides are not given sufficient weight, or at the bottom of the cliff when it is too late for many.

Where there is no or insufficient funding there is a risk that owners will be called upon to make ad-hoc levy contributions and in some cases this may be with some urgency. Not maintaining a fund assumes that all owners will be able to make this payment on demand.

I'd like to see the regulations changes to make funding a LTMF compulsory for all BC with no option to opt out. The fund is owned by the owners so is part of their property asset and if well managed can also make a return for the BC rather than just being cash in the bank. For example we have ours in a notice account

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?

4.5 Accessibility of the Disputes Resolution Regime

Proposal 1: Fee settings

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

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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)

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?
