



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

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X 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](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 agree that small bodies corporate should not be subject to greater levels of regulation. We comment on the specific changes below, including whether these proposals are appropriate for small, medium and large bodies corporate.

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, we do in the most part. The one area we query is whether a complex should be able to contract out of the requirement for a long term maintenance fund. We believe this is critical to ensure preventative maintenance is funded and undertaken.

#### 3.2 Improving Government Services to the UTA Sector

Please comment on :

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- 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.

We have found MBIE are well informed in this area and do not believe a separate entity is warranted.

## 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?

Yes we believe disclosure should be consolidated into one step so as to ensure it is effective. Currently the pre-contract disclosure statement does not provide any meaningful assistance to buyers and material information is received at the “pre-settlement disclosure statement” stage, when it is too late to be of use. Additional disclosure statements are hardly requested by buyers, largely because of the expense we believe.

However that is with one large caveat. We do not believe it is appropriate for “sales of units off the plan” to be subject to the same disclosure requirements. There is no way for a developer to comply otherwise. During the consenting, design and construction process changes can occur. There must be a separate form of pre-disclosure statement for developers. The necessary consumer protection is better advanced by this approach also. Consumers otherwise will receive a document with spaces “to be confirmed” (as is the approach currently for sales off the plan), which provides no assistance to the purchase decision. If the disclosure statement was made specific for developments then there could be spaces for:

- Estimated Body Corporate annual budget
- Draft long term maintenance plan
- Expected number of units
- Proposed long term contracts for the body corporate

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?

We agree that the current requirements as to weather tight issues are inadequate. However, we believe it will be difficult to assess whether a building has “weather tight” issues. Conceptually it is almost impossible for a building to be completely weather tight. Even a standalone property might leak when the rain comes from a particular direction. “Earthquake prone” suffers from the same complexities of definition. In other ways these definitions are too narrow also. What if for example a building had a foundation issue caused by erosion? Or the lift required replacement? We believe a better approach might be to identify any material works required and ensure there is proper disclosure of the experts’ reports.

We believe adding details of any proceedings the body corporate is involved in is appropriate. There are standard warranties given by a vendor about this, but we believe most vendors do not turn their mind to this when signing an agreement for sale and purchase.

We agree adding the body corporate manager’s details are a good idea.

We believe adding financial statements and audit reports for the past 7 years is not warranted. This information will not add a great deal to the knowledge a purchaser has.

We believe adding notices, minutes and agendas and all supporting information for the past 3 years (with redacted committee items) is of benefit to purchasers. We suggest however this is provided

via the body corporate manager, as part of their certificate, rather than by the vendor. It will be difficult for a vendor to ensure a complete package is provided. Timing can be an issue here, e.g. a unit sold in April when the AGM was end of March and no minutes are currently available. That requires consideration to ensure the duty on the vendor is not overly burdensome.

These new proposed items are good examples of matters that are of no relevant when selling units off the plan. These changes make no difference to the level of information provided to purchasers in this situation and would all need to be answered "Nil" or "No information available".

#### 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?

We agree that is appropriate where the information is held by and provided by the body corporate manager where there are appropriate systems in place to ensure disclosure is full and accuracy is maintained. There is a difficulty here for complexes without a body corporate manager. The certifying currently can be problematic in small complexes.

## 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?

This is an important area but also an area to take care to ensure committee members keep volunteering. All committee members will have a conflict as they all must be an owner of a unit. Greater transparency over the committee process is preferred to new rules which will create too great a burden on committee members.

#### 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?

We agree. Transparency is necessary.

#### 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?

We agree with these proposals.

#### 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?

No, we do not and we think any limit will be arbitrary.

#### 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?

We disagree.

Section 139 is adequate and is doing its job at the present time to ensure “service contracts” are appropriate. We act for a number of developers, all of whom are mindful of and careful of their duties to the body corporate when creating new structures. The industry is “growing up” and behaving better than it has in the past.

Any change would therefore be focused on old, existing arrangements. Existing contracts and arrangements should be grandfathered. We believe intervention is inappropriate because of a number of fundamental principles:

- The indefeasibility of a registered interest in land
- The estate of leasehold
- The sanctity of a contract where there has been consideration paid

As to existing long term contracts, we have also acted for both bodies corporate and service providers with long term contracts. The existing legal framework creates sufficient incentive for the parties to negotiate a solution. There are remedies for bodies corporate that truly are disadvantaged by contractual structures that are improper and the barristers who practice in this area have shown that with *ultra vires* and other actions that have succeeded.

We also believe that as a policy long term contracts are not necessarily inappropriate so a focus only on term is misguided.

#### 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?

We agree the minority relief makes clear who the appropriate decision maker is.

We agree that the “alteration of units” sections require amendment. We note section 65 is being amended separately.

We agree the “quorum” requires clarification and that members should not vote unless levies are paid.

We believe section 101 should be amended. We read that Act currently that resolutions are ordinary unless expressly special, but the wording of section 101 is problematic.



### 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?

We agree that industry bodies have the ability to increase professionalism. We believe that unit titles have grown in complexity and greater education for managers, members and others that interact with bodies corporate is needed. Industry bodies can deliver that better than regulatory authorities.

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, we do. A code of practice would be a very useful tool to ensure there is a point of reference to assist bodies corporate and those interacting with them.

#### 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, we do. In our experience large bodies corporate need a body corporate manager.

#### 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. Many confuse the body corporate manager with the "body corporate". Describing their role would assist and create a clearer framework.

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

Decision making must stay with the owners. In practice body corporate managers chair the meetings, draft the agendas, arrange the service contractors etc. That is an administrative convenience that should be allowed to continue. Managers must also be obligated to report, act in the best interests of the body corporate. We believe adding this to the UTA rather than leaving it all to be a matter of contract would be useful to ensure the proper legal framework is created.

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

Yes. See comments above.

#### 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?

Yes. However “guaranteeing accuracy” may not be insurable so service providers providing the plan may not provide that. Duties such as “to the best of their knowledge there are no other issues not included in the long term maintenance plan” or that they have used “all reasonable skill and care” preparing the plan would be more appropriate.

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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?

The committee should sign off on the LTMP, not the chairperson.

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.

No

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?

Yes, 30 years is an appropriate timeframe for medium and large complexes.

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?

Yes, 3 years is an appropriate timeframe.

#### 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, we believe this is essential. Owners are currently incentivised to defer maintenance.

#### 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?

The amounts in the LTMF might be more or less than the amounts in ordinary accounts. We believe audits are useful but would not want to overly burden bodies corporate with costs.

### 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?

Yes, reducing the fees is a good suggestion.

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

Yes.

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

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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.