



## 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](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

**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?

We support [s 9\(2\)\(a\)](#) submission that alternatives to size thresholds need to be investigated further.

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**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?

See comment above.

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

**3** Please comment on :

- 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 agree that a more joined up approach is needed. There needs to be better public understanding of unit titles including where to find information.

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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?

We support s 9(2)(a) suggestion to have separate requirements for new developments.

We consider that s33(e) requires amendment. Increasingly other breaches of the Building Code are being discovered such as fire and structure (including earthquake issues). See:

<http://www.grimshaw.co.nz/2016/06/09/grimshaw-co-partner-warns-new-zealand-about-the-next-wave-of-building-issues/>

[http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11806807](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11806807)

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?

See above.

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. There does not appear to be a need for it.

## 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?

We agree that the general principles would apply to Unit Titles as well.

### 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?

No. Regulation 28 (2) already provides for the Body Corporate to decide on the frequency of reporting. Further guidance could be given so that bodies corporate can make better decisions in that regard.

However, circumstances can arise which warrant more frequent reporting than what was anticipated when the powers were delegated. An example is when proceedings need to be issued with urgency to prevent the claim being time-barred. One way to address that may be for the Body Corporate to require prompt reporting back of decisions which exceed a certain monetary value.

### 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?

Yes.

### 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.

### 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?

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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?

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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.

#### 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. However, minimum requirements for small complexes should also be considered.

#### 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?

We consider that there should be prohibited functions. These should be determined in consultation with stakeholders.

18

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

Yes.

## 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.

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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?

No, as the chairperson often does not have the relevant technical knowledge.

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.

The template should refer to s138 on the extent of the Body Corporate's repair and maintenance obligations. Bodies corporate should determine what s138 covers in their case. When considering long term maintenance, bodies corporate should consider both the durability provisions of the Building Code and the life expectancy of the building products used.

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?

Yes.

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?

All LTMPs should be reviewed every three years.

Proposal 5: Require large bodies corporate to have a LTMPF

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?

Small bodies corporate should also be required to do so unless they resolve not to by special resolution.

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 cost would have to be justified by the size of the fund.

### 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.

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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)

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.