

This document has been proactively released. Any redactions made to the document have been made consistent with the provisions of the Official Information Act 1982



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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

---

December 2016

Name of submitter s 9(2)(a)

Organisation: s 9(2)(a)

Contact address: s 9(2)(a)

Contact phone number s 9(2)(a)

Contact email address: s 9(2)(a)

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.

---

### 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?

Yes

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, EXCEPT for the suggestion that they have a long term maintenance fund to finance the long term maintenance plan already required under the UTA. This should be compulsory for all complexes 10 units and above as the cost of repairs can be very significant even in these 'smaller' complexes and funds should be put aside annually to meet those costs.

#### 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.

**I do not think there is any need for further government involvement / improvement and reject the idea of a dedicated entity. This would involve additional costs with no appreciable benefit**

## 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?

No. The pre-contract requirements should be extended to include full disclosure regarding long term maintenance plans / funds. The pre-settlement should be extended to include the last 3 years of AGM minutes & financial statements. Additional disclosure to remain 'as is' with the deduction of the items I have suggested be provided earlier. Full disclosure at the pre-contract stage would prejudice confidentiality as pre-contract disclosure documents are often widely circulated to any person even with only a passing interest in the Unit for sale. The only person who needs to know is a person willing to sign a conditional agreement for sale & purchase.

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 to weather tightness/ earthquake issues for which a claim has not been made – too subjective as that would be up to the 'opinion' of the person providing so could not be relied on. Yes to the next two items, financial statements / audits past 3 years (not 7) as beyond 3 years the information is fairly irrelevant. Yes to minutes etc going back 3 years.

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, as the body corporate chairperson would be required to assume liability for any errors, and as many Chairs are not professionals, and receive little or no compensation, the liability is well out of line with what should be expected of them.



## 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?

**Yes** \_\_\_\_\_

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?

**Yes** \_\_\_\_\_

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?

**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?

**Yes. It is remarkably easy for a vocal Owner to 'persuade' other Owners to give their proxy and with the 25% quorum requirement, proxy farming can enable a very few Occupiers to effectively make up the quorum and control the body corporate. I think the quorum threshold is right, but limit the proxies any one Occupier can have to no more than 10% of the Occupiers.....BUT only in complexes of 30 or more Units. Under 30, leave as is.**

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** \_\_\_\_\_

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** \_\_\_\_\_

## 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?

Yes

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, but limited to voluntary registration with an organisation such as SCANZ in line with many other industry groupings that have voluntary professional organisations.**

### 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?

**Yes, and medium size unable to opt out**

### 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?

Yes

17

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

**Final decision making on any matter that binds the body corporate, other than items that have been previously discussed and agreed by the body corporate including the annual budget.**

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

- 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?

**Yes, but ONLY for complexes with 30 or more Units. The cost of achieving the above requirement for smaller complexes would be prohibitive.**

- 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. Many body corporate chairpersons would not have the skill set or experience to sensibly do so. Also, as the positions are often voluntary, the liability this move incurs is out of all proportion**

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**

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?

**30 years is an absolute 'crystal ball' gaze and the use of such figures would be of little use. 15 years is more realistic**

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?

**Yes**

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?

**Yes and No – Medium size body corporates should not be able to 'opt out'**

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, large only – the cost is prohibitive for smaller body corporates**

## 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?

**Yes**

---

---

27 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?

**No as it is an absolute waste of time and money and would achieve little if anything.**