



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

December 2016

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- MBIE officials can contact me if they have a question about the content of my submission
- X 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. 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?

I agree with all of the above. In particular, that Body Corporate accounts should be audited. Currently the Village where I live, has not had a financial audit for 10 years. Clause 132(2) states that the Body Corporate MUST; submit its financial statements to an independent auditor.... Our Body Corporate Manager claims that the accounts are "checked" internally so no need for an audit. Clause 132(8) has been applied for the past 10 years. I believe that the intent of clause 132(8) was to be used as an exception when several years of MUST audit showed no problems. E.g. 5 years all OK, 6th year clause 132(8) can be applied. Clause 132(8) should not be used continuously.

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?

NO I live in a UTA Village and if the above standards are not adhered to, it causes considerable problems.

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.

There should be more scope in the Retirement Villages Act to be able to help Villages that do not qualify to be registered. These unregistered Villages are allocated to the UTA which covers wide range of situations of accommodation and their specific issues. E.g. Multi story apartment blocks have different issues to LifeStyle Villages. It is impossible for one act to cover all of the issues adequately.

There needs to be an Ombudsman as an alternative path for settling disputes.

Village Managers should be subject to vetting by Police as they are in contact with vulnerable older people. People working with persons under the age of 18 have to be vetted under the Vulnerable Children Act

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" gives an opportunity to assess risks early. One step may not be adequate protection.

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?

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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?

YES

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 I agree absolutely

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, I agree

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, absolutely

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. I live in a UTA Village and I do not believe that there are just results in voting procedures; this is partly because of the practice of canvassing for proxy votes by a small number of persons.

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. The current contract with the Village Manager is for 10 years (started in 2005) with an automatic "roll over" of another 10 years. There is NO provision in the contract for a review. There is a dispute at present in that the Village Manager has decided that he does not want to carry out some clauses of the contract and has stopped doing those tasks. We are still paying the full levy which includes the Village Manager's contract fee. The dispute is dragging on too long causing many of the older residents to be under stress and very unhappy with not getting the issue resolved.

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?

NO. They do not have the ability and/or wish to increase professionalism. They need to be regulated by an outside authority. At the present time, there is no authority to go to when an issue arises with a Body Corporate Manager. There should be a set of criteria that Body Corporate Managers must meet before they can practice as BC Managers.

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, absolutely

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

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?

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. Most of the committee have no experience of maintenance planning

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, unless the Body Corporate Chair is a qualified person with experience with maintenance plans. The LTMP should be signed off by a qualified person

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.

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?

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

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?

YES

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, providing that an independent and qualified mediator is used

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
