

8 March 2017

Unit Titles Act Review
Construction and Housing Markets, BRM
Ministry of Business, Innovation & Employment
Wellington 6140

Email: UTAreview2016@mbie.govt.nz

Review of the Unit Titles Act 2010

The Institute of Directors (IoD) appreciates the opportunity to comment on the review of the Unit Titles Act 2010 (the Act). The IoD is committed to raising governance standards in all areas of New Zealand business and society and we welcome the review. Notwithstanding our comments here, the IoD may make further comment as the review progresses.

The Act is being reviewed to ensure that it is fit for purpose. Reform proposals include:

- improving the disclosure regime
- strengthening body corporate governance provisions
- promoting professionalism in body corporate management
- ensuring adequate long term maintenance plans and funding and
- improving disputes resolution processes.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,000 members drawn from NZX-listed corporations, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Overview of the Act and body corporate committees

The current Act governs how unit title complexes are created and managed and the rights of unit owners. Under the Act, bodies corporate are required to operate and manage unit title complexes.

A body corporate of a unit title complex of 10 or more principal units *must* form a body corporate committee (unless the body corporate, by special resolution, decides not to form a body corporate committee). It is optional for a body corporate of a unit title complex of 9 or fewer units to form a committee.

The committee exercises the duties and powers delegated to it by the body corporate and must report on the performance of them. Professional body corporate managers are often engaged to carry out management and administrative matters.

Body corporate governance

Good body corporate governance is important to the operation and management of unit title complexes. The review aims to strengthen body corporate governance, while ensuring the legislative

framework is flexible and appropriate for small and large bodies corporate. Below we discuss key governance related matters in the review.

Conflict of interests

Conflict of interests disclosure rules are an essential part of any governance regime. The main purpose of having such rules is to provide a process to manage actual or potential conflicts and to ensure that decisions are made (and seen to be made) without bias and for the right reasons. In the context of body corporate committees, a person may be conflicted, for example, where they serve on the committee and the committee engages them to provide maintenance or other services to the body corporate.

There are no conflicts of interest provisions in the Act. The review proposes introducing requirements based on the provisions in the draft Incorporated Societies Bill. Under the draft Bill:

- direct and indirect financial interests are covered (a person who is conflicted is referred to as being interested in a matter)
- there are specific exceptions including, for instance, where a person's interest is remote or insignificant
- societies can include in their constitutions other circumstances where a person may be interested (eg non-financial interests)
- persons who are interested in a matter have a duty to disclose the details and nature of the interest to the committee and in an interests register
- there are consequences of being interested in a matter (eg around participation in discussions and voting).

We support the introduction of conflicts of interest provisions for committee members, although these should be tailored to reflect the nature of body corporate committees.

For further detail see our [submission](#) on conflicts of interest in the draft Incorporated Societies Bill.

Increase reporting of delegated powers

Under the Act, body corporate committees are required to report annually to the body corporate on the use of their delegated powers.

MBIE proposes that committees of large unit title complexes (ie 30 units and overs) report on the performance of their delegated powers at all general body corporate meetings. More regular reporting supports good governance and the underlying principles of accountability and transparency. We support increased reporting for large unit title complexes only.

Duties and responsibilities of body corporate committees

Duties and responsibilities of committees are set out in the Act and in the Unit Titles Regulations 2011.

MBIE proposes to introduce additional provisions in the Act on the duties and responsibilities of committees, modelled on Queensland's Body Corporate and Community Management Act 1997. This legislation includes a code of conduct for committee members to (among other things):

- act honestly and fairly in performing their duties as a committee member and not disclose confidential information unless authorised
- act in the body corporate's best interests
- comply with the Act and code
- disclose conflict of interests.

Committee member duties are central to good governance. They reflect the fiduciary nature of the obligations of committee members and promote accountability. In general, we support the introduction of committee member duties (eg the duty to act in good faith and in the best interests of the organisation).

MBIE is not proposing to introduce penalties for non-compliance. We support not having penalties as action can be taken under the Tenancies Tribunal and onerous penalties would deter people from serving on committees.

MBIE proposes to introduce a requirement for committee meeting minutes to be recorded and distributed promptly. We support this requirement which is good corporate governance practice.

Proxy voting and proxy farming

Under the Act, unit owners can nominate other members of the body corporate to cast a proxy vote on their behalf. This enables, for instance, overseas or absentee owners to indirectly participate in body corporate decision making. Proxy voting is common in other contexts, such as for companies.

However, proxy voting can also lead to *proxy farming*. This is where one member collects the right to vote on behalf of other unit owners and in some circumstances they can have significant control over body corporate matters.

MBIE is considering whether the risk of proxy farming is sufficiently high to warrant changes to the Act to limit the number of proxy votes one person can hold at a time. In our view, the reform of the Act should include anti-proxy farming provisions. We are aware that Australia has introduced provisions to limit proxy farming in legislation governing unit complexes.

MBIE recognises unit owner participation in decision-making may be enhanced through electronic voting and is going to update its guidance material on postal voting to clarify that votes can be cast via electronic means. We support this and MBIE's intention to provide better guidance material and assistance to bodies corporate and committees on their rights, duties and responsibilities. The IoD has publically available governance resources relevant to the review (see for example the [conflicts of interest](#) and [board meetings](#) practice guides).

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely

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