



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

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

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 LTMPs audited annually.

Do you agree? If no, why?

We believe all Corporate Bodies should have a LTMP and report on performance.

Only medium-large bodies should require a BC Manager and have LTMP's signed off however.

We believe the sizes should be reduced:

Small - 5 or less but must still have a LTMP

Medium 5 to 20 – opt out if they desire to do so by vote

Large over 20 - cannot opt out

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?

As above

3.2 Improving Government Services to the UTA Sector

Please comment on :

3

- 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.

Not necessary to have a separate government entity

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 disclosure should be consolidated into the one step

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?

Yes we agree

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?

Absolutely.

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?

Yes this would be useful and would assist in areas where clear conflicts of interest exist or individuals pursuing their own personal agendas.

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?

Agree as transparency must be there for all interested parties. Large complexes criteria should be reduced to 20 & over (not 30 and over)

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?

Agree. Committee members have an obligation to conduct their duties with due diligence and in the best interests of the Body Corporate representing its owners.

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?

Whilst we can understand the desire for this the fact remains that in a lot of larger complexes overseas or non-local domicile investors are the owners. They may only know or have trust with 1 person. Usually either their Property Manager, Building Manager, or Chairman/Committee Member. To limit this would be an issue at a practical level.

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?

Strongly disagree.

Property Managers, such as ourselves, purchased Management Rights on a Commercial basis and that investment needs to be protected for their term and the ability to on-sell a viable business. It makes no difference whether they are new complexes or existing rights changing hands.

Certain determinations in the courts have already been made such as 'exclusive' rights not being fair and those determinations along with better practise in disclosure etc should be all that is required. If a Property or Building Manager is in breach of their contract ways to remove them already exist....if you feel this is too light then that aspect could arguable be tightened up on.

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?

Yes and especially the fact that only those that have paid levies should be entitled to vote.

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 agree.

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 agree.

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?

For large complexes only noting the criteria we are suggesting is 20 and over.

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 and also include the roles of Building Managers as confusion exists

17

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

They are there to support; gather information and report. Decision making should lie with the Committee. Full disclosure of any vested interests is a must.

18

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

Yes agree.

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 suitably qualified person but difficult to 'guarantee' anything.

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. This should be signed off by the Committee with a quorum and minuted as such. The Chairman could put his signature to that on their behalf as a practical step.

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?

Yes agree

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 agree

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?

This should be required for all BC's with 5 units or more however not necessary to have them signed off by a professional person unless the complex size was 20 units or more.

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?

All BC's over 20 units should be audited annually unless they choose not to by resolution.

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?

We support the new fee levels and introduction of an application fee

- 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?

Tenancy Tribunal deals with more than just 'Unit Titles' and therefore perhaps "Tenants & Proprietors Tribunal" would be a more appropriate title - better balance between Tenant & Owner?

(Proprietors are often represented by appointed Property Managers adhering to the BC rules and their respective agency contract with the owners and tenants).