

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

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Yes, MBIE officials can contact me if they have a question about the content of my submission

Yes, I wish to remain anonymous in any reporting or submission analysis

Unit Titles Act Review 2016

Introduction

This submission on the Discussion Document is made on behalf of s 9(2)(a)

which is a complex of 43 unit titles comprising 32 residential and 11 commercial units. It received its Code of Compliance in March 2006.

s 9(2)(a) has been administered by its Body Corporate Committee (BCC) since March 2006, operating initially under the UTA 1972 and subsequently under UTA 2010 (Act).

The comments included in this submission relate to the experiences of the BCC in regard to operating this complex under the UTA 2010 and how the proposed Review may impact on our operations. The BCC has no other interests other than running the complex in the most efficient way for the long term benefit of the unit holders while complying with the requirements of the Act.

The submission is in two main parts, the first of which contains comments of a more general nature covering more than one aspect of the discussion document. The second has more specific responses to the Summary of Questions set out in section 7 of the discussion document.

General Comments

1. Lack of Compliance with Act

1.01 There are comments of cases of lack of compliance with the Act with discussion on options to address this. It has been our experience that the principal reason for such actions is because the current Act has no real incentive to comply. Those who choose to comply do so as being 'good corporate citizens' and generally comply with the law, while a small minority will always look for a way around noncompliance.

Changing the Act will not change this behaviour unless the Act includes some incentive (penalty).

1.02 To address this matter of noncompliance, we would support the establishment of a separate dedicated entity under the umbrella of Government (MBIE?). The entity could operate along similar lines to the Incorporated Societies/ Companies Office and maintain a Register of Bodies Corporate. The Act would require all Bodies Corporate to register with this entity and each year to submit to the entity basic information such as the last AGM minutes, a set of the last financial statements and some certification they have an operating Long term Maintenance Plan. Failure to submit the required documentation by due date (e.g. IRD returns) would incur a fine and could result in suspension of registration if noncompliance persists.

We would envisage this would apply to all Bodies Corporate irrespective of size.

2. Function of the Body Corporate Manager

2.01 The discussion document makes numerous references to the 'Body Corporate Manager' and their proposed scope of works. We are unclear about how this person fits into the current Act and the relationship to both the Body Corporate Chairman and the Chair of the BCC. At present there is no definition of the Body Corporate Manager in the context of the Act which confuses how these three parties are expected to interact within the Body Corporate.

At present S89(2) of the Act requires the election of a Body Corporate Chairman and Reg10 and 11 set out the process and duties of this Chairman, who by the Regulations must be an owner of a principal unit.

If a body Corporate 'must' contract a Body Corporate Manager to perform the functions of the Body Corporate Chairman, this totally changes the dynamics from the current situation where the Body Corporate Chairman together with his BCC carry out the functions delegated to them by the Body Corporate. As owners of units these persons have a vested interest in ensuring decisions and actions are focused on the best interests of the unit owners.

A contracted manager who must be answerable to the Body Corporate does not always have the same focus on some issues as the unit owners.

A further issue to be resolved would be the function of the BCC and the extent to which a Body Corporate would be prepared to delegate functions to an organisation (instead of the BCC) which is an external entity rather than one comprising unit owners.

We are unable to understand how a contracted Body Corporate Manager is able to fit into the framework of the current Act as an external entity.

3. Disclosure Documents

3.01 There seems to be some differences in interpretation of the S146, 147 & 148 of the Act. We have not had a problem with these and have applied them on the basis set out that the onus is on the Seller to provide the disclosure information. The Body Corporate has made the specific unit information available to the selling owner for inclusion in 'their' disclosure document. The disclosure documents are from our interpretation of the Act, the responsibility of the selling owner, not the Body Corporate.

Our experience has been that many owners do not understand this, but neither do many Real estate agents and conveyance lawyers. It is our experience that there needs to be a better understanding of these processes as set out in the Act by these other agencies. Perhaps this could be highlighted as an item on the MBIE website as a general information item relating to UTA.

On a similar theme, we suggest consideration of deleting Reg 33(f) from the Pre-contract Disclosure Document, and including it also on the MBIE website. The reason is this is basic general information to which the public should have access if considering investment in a unit title and does not serve a function relating to a specific unit sale.

By removing this sub clause from Reg 33, it makes the amalgamation of Regs 33 and 34 much tidier.

3.02 In regard to Reg 35 on the Additional Disclosure Statement, we again have a different view on how the current Act is portrayed in the discussion document.

S148(2) states that the request may be made at any time before... (a) and (b). This can be read to mean a buyer can request an additional disclosure statement at any time prior to an agreement or settlement and hence can have access to that information before committing to a purchase.

We do not therefore understand the need for any change here.

The payment of up to \$2,000 for such a document seems extreme, but in our experience would be substantially less and be related directly to the scope of the information requested by the unit owner.

We have some reservations over the earlier release of all the information set out in Reg 35, as some clauses contain sensitive information that could also be subject to privacy issues. In particular Reg 35 (g) contains commercial details of prices and terms of contract which is confidential information between the Body Corporate and the contracting parties. It is questionable as to whether sub-clauses in Reg 35(g) (iii) & (iv) could be released to a third party at all without breaching commercial confidentiality.

4. Long Term Maintenance Plan (LTMP)

4.01 The preparation of an appropriate LTMP is a task that requires a person with reasonable technical skills who is able to understand costing of equipment and services, and access information of the life span of items that make up the plan. If this is loaded into a spreadsheet, the addition of costing information can be made to extend out for whatever duration is required, be it 10, 20 years or beyond.

By marrying this with financial information, you can have a dynamic planning tool which can instantly provide information for budgeting, highlighting future cash flow constraints and hence a mechanism for establishing Body Corporate fees.

Once prepared the spreadsheet requires minimum input to update and provides key planning information for the BCC for each ensuing year.

Our view is that this type of tool is so invaluable that all Bodies Corporate should invest to get it set up in a manner applicable to their individual assets, irrespective of the size of the complex. Once in place it is not onerous to modify or adjust to match specific item changes, so the suggestion to require an update on an annual basis is not only feasible, but desirable from a Body Corporate management perspective.

The matter on whether or not it is mandatory for Bodies Corporate to utilise a member of a professional group should be the subject of further discussion. This could impose unnecessary cost on some unit owners where the required level of skills may be available in-house. For others there may be no choice other than to contract people for this task. We created our LTMP in-house and it has become an invaluable management tool over the past few years.

Specific Answers to Summary of Questions.

1. Re Section 3.1
 - Agree with proposal on reporting of delegated powers. The process is largely covered already by S114 and Reg 22 (1) (c).
 - Do not see contracting a body corporate manager (which we have investigated) as providing any benefit to our unit owners. The operations are controlled by the BCC with delegated powers under the chairmanship of the body corporate chairman. A facilities manager answerable to the body corporate chairman is contracted to run all the external trades providing services to the complex. Financial accounts are under the control of the Treasurer, with the handling and processing of accounts and the collection of dues provided by an external contractor. Authorisation for payment of accounts and access to body corporate funds is restricted to nominated members of the BCC.
 - Agree to the proposal for the LTMP to be signed by the body corporate chair. Regarding also by a 'qualified person' refer to our general comments in 2 above.
 - Agree to provide funding to finance the LTMP.
 - Agree to have body corporate accounts and funding audited annually.
2. No comment
3. Re Section 3.2
 - See our comments in 3.01 above where we have suggested where MBIE could provide general information on the website rather than in Regulations.
 - See our comments in 1.02 above on the matter of a separate dedicated entity.
4. Re Section 4.1
 - Agree Regs 33 and 34 could be amalgamated but with Reg 33 (f) deleted. See our comments in 3.01 above.
 - Agree to the additional requirements being included in the disclosure statements. Most are already included in the current Regulations.
 - We do not agree that the body corporate should certify the contents of the disclosure information, other than for the information it provides on specific units to their respective owners. Refer to our comments in 3.01 above that it is the seller's responsibility to provide the disclosure documents.
5. Re Section 4.2
 - We have no specific views on the questions in this section except for question 9. We have not been able to access the Queensland's Code of Conduct for committee members so have no knowledge of the impact this may have on our operations.
6. Re Section 4.3
 - Q 13, 14 We agree in general that the existence of industry bodies has the potential to improve the professionalism of body corporate management. We are not convinced that this will necessarily improve the outcomes for the unit owners as indicated in our comments in 2.01 above
 - Q 15 We do not agree that making body corporate managers mandatory would necessarily provide a positive benefit for all unit owners.

- Q 16 We do not agree with the proposal for the functions of body corporate managers to be set out in the UTA for a number of reasons in addition to our comments set out in 2 above. These include that the body corporate manager must in our view be answerable to the Body Corporate and if they are a contracted party, the final terms and conditions of the contract arrangement are likely to be negotiated between the parties around the defined scope of works. As each body corporate is likely to vary due to their respective configuration, any table of functions in the UTA could only be general and may be restrictive in arriving at the best outcome.
- Q 17 We would consider that the ability to access funds of the body corporate and make payment authorisations from funds, should be prohibited from being contracted out to the body corporate manager
- Q 18 We would wish to see more details of the proposed relationship between the body corporate manager and the body corporate, the body corporate chairman and the BCC before being able to make further useful comment on this item. As noted in our response (second item) to Section 3.1 above, we do not see how benefits would accrue to our unit owners through the engagement of such a body corporate manager.

7. Re section 4.4

- Q 19 As noted in our comments in 4 above we recognise that the preparation of a comprehensive LTMP requires certain skill sets. Not all bodies corporate will possess these in-house, however to make the use of other professional groups mandatory on all bodies corporate could be an unnecessary financial burden on many. Even the cost to engage a professional group to review an established plan may be significant. Our plan works well and is reviewed annually by the BCC. If we were required to have the plan certified by a professional group, this would be an expense with effectively no benefit that would be imposed on the unit owners.
- Q 20 We already present our LMTP for discussion at the AGM.
- Q 21 The template can really only act as a guide, as each facility is different. To customise a list and append the meaningful data requires the skills referred to earlier.
- Q 22 A LTMP needs to be a live document rolling forward to encompass the lifecycle of the various components. It can be detailed for the first 10 years, but should consider items of significant financial outlay beyond that, out to 20, 30 or more years. This could apply to a major refurbishment of outer cladding or re-roofing of the building incurring significant cost for which financial provision needs to be made.
- Q 23 We agree that funding provision to finance the LTMP is required, especially to cover the significant future costs referred to above. We would like to see more detailed proposals on how it is envisaged the funding would be structured.

- Q 24 As noted earlier we see no reason why LTMP should not be reviewed annually.
- Q 25 We are unclear of the intention of this question. The LTMF would be audited annually as part of the financial accounts of the body corporate for presentation to the AGM.

8. Re Section 4.5

Q 26, 27, 28. We have no concerns with the proposals in these questions.

End of submission