Unit Titles Act review – submission to MBIE

I am writing to express my views on a number of proposed amendments.

My background

s 9(2)(a)

Proposed compliance based on unit numbers' thresholds

I consider this proposal is flawed for many reasons. The number of units in a Body Corporate does not indicate any inherent complexity. Furthermore it is the style of units rather than number of them that can make a difference. For example a block of four high rise units can impose issues not present in larger numbers of townhouses where the units are separate and only share a party wall. In this kind of building structure there is no common building area to manage, no lift, no need for BWOF and no possible problem with water leaks from apartments above.

At the time of the new legislation a few years ago I made a submission about the proposed mandatory audit of Bodies Corporate of more than eight units. As a result of the submission I spoke to the Social Services Select Committee. A committee member expressed concern that some members could be bullied on the basis of unit numbers. If this is a reason for the numbers issue, there is a huge misunderstanding. There is greater scope for bullying in smaller complexes as it is easier to create a majority. The most dysfunctional entity I have been involved in was a three member company. Two owners were related and had absolute power. All meetings were held with lawyers present and there was a history of arbitration and dispute. I have more recently been involved in an entity with five members. Basically they are paralysed by lack of unity because of the domination of certain individuals. In larger entities this cannot occur.

Another problem with the proposal to legislate by unit size is that the majority of Bodies Corporate are small complexes which would therefore either not be bound by these provisions or would be able to opt out by resolution. To have a law that applies to a small percent of the entire Body Corporate complexes in the country doesn't make a lot of sense.

I believe size should not matter and the proposed threshold system should be abandoned. All rules and opt out provisions, for example in the case of audit, should apply to all.

Proposed management by independent companies

I believe management choice must always be entirely optional in every case. There is no reason whatsoever to impose this requirement on a well-run Body Corporate with owners who are willing to continue this role.

In addition I have a great deal of concern about these companies.

Recently I bought into a Body Corporate and settlement was a nightmare on account of the sheer incompetence of a well-known company managing the entity. First they seriously under estimated the pre contract disclosure. Then the pre settlement disclosure details conflicted with other information given so I queried it. A series of correcting statements and correspondence ensued. Because I knew what to look for and check, I realised that something was seriously wrong. I used my powers under the act to defer settlement for five days but I was still not satisfied with the disclosure provided. The management company claimed that levies were paid two months in advance yet the financial statements did not reflect this. I had previously had some correspondence with the Chair so asked him and he immediately confirmed when the levies were paid to and, as I had suspected, they were not paid in advance. Once clarified, I still had to draft the disclosure for the company as they simply didn't understand what they were doing. Although I handled this myself I still incurred $350 additional legal fees. The additional levies I would have paid had I not queried this amounted to $1,200. This entire fiasco was a nightmare, I had no one to turn to for assistance and have no idea how I could have resolved the situation has I not been able to contact the Chair, and found him to be helpful.

The key issue with this sorry saga is that I knew what to look for. Other owners buying in rely on their solicitors who simply accept the disclosures provided. I have no doubt that my problem was not an isolated case.

As a result of this experience our Body Corporate has recently approached three well known management firms with a very clear brief for service proposals with the intention to replace the current firm. All companies approached submitted proposals for an entire package (not what we had specified) but indicated they would negotiate according to individual requirements. I have since asked for copies of contracts and a generic form of financial statements. More than two weeks later I am still waiting to receive these.

From my experience management companies are dependent on sophisticated software packages and they do not understand what they are doing. Much like a child using a calculator for arithmetic. Because of the work I do I know how to complete financial statements and clearly the firm that this Body Corporate uses does not. For example no gross tax is shown, RWT is shown as a charge along with administrative and miscellaneous costs. Tax refunds and insurance proceeds have been shown as income. The presentation is sloppy and in-house codes are included – this is of no interest to anyone other than the producer of the documents.

Everything produced by management companies seems to include a disclaimer.

Part of the problem is most management companies tend to be off-shoots of real estate agents/ letting agents. In my experience they don't understand the basic issues or have any legal background or understanding which is essential. It is interesting to note that most residential companies use accountants not property management companies.

An important issue is that there is no accreditation of management companies. There has been discussion about achieving this but I cannot see how this is possible. Who would set examinations and mark them? I cannot see how this can happen in practice.

I believe there should be no mandatory provision of management company engagement.

Disclosure system

I believe that the disclosure system is flawed. Sections 146, 147, 148 and 150 are the responsibility of the seller yet tend to be provided by the Body Corporate manager even though they are signed by the seller. The Body Corporate has to provide a certificate to accompany the Sec 147 disclosure. This is where there is a conflict of interests – I don't believe they should be provided by the same source. Under no circumstances should a Body Corporate via Chair or management company be allowed to attach a disclaimer to this certificate because it renders it pointless.

There seems to be a myth that Bodies Corporate are responsible for all disclosures. I think this is at least in part because management companies tout for this service just as they tout for rental administration.

I believe the disclosure system needs refining and additional information such as seismic status should be added to the pre contract disclosure. I do not consider that due diligence e.g. automatic provision of meeting minutes and financial statements should be merged with disclosure requirements as this imposes an unnecessary cost on Bodies Corporate. Many residential companies still exist and there is no disclosure requirement for these sales.

Dispute resolution

I believe the Tenancy Tribunal is not appropriate for disputes relating to Bodies Corporate and a separate and cost effective service is required.

General

I am opposed to unnecessary restrictions as this incurs cost and complexity which in turn has a negative impact on the entity's value. I believe Long Term Maintenance Plans should be optional. Prospective purchasers are protected by disclosure provisions and due diligence.

s 9(2)(a)