



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

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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](mailto: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.**

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### 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 LTMFs audited annually.

Do you agree? If no, why?

MRANZ believes it is important for all bodies corporate to report on performance of delegated powers and have a LTMF. Only medium-large bodies corporate should require a body corporate manager and have LTMP's signed off.

We query the size thresholds. Smaller bodies corporate in our mind are those that are 5 or less. Bodies corporate that are "medium" should only be able to opt out of these requirements if sized between 5 and 20.

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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 commented above we believe the threshold above should be set at a different level and that complexes between 5 and 20 units should not be able opt out. However small complexes should still have a long term maintenance fund.

#### 3.2 Improving Government Services to the UTA Sector

Please comment on :

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- 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.

We do not believe a separate dedicated government entity is warranted.

## 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 we believe disclosure should be consolidated into one step. Building managers, who we represent, are not currently heavily involved in disclosure. Building managers do have concerns that body corporate managers/chairpersons/committee members instruct them not to bring matters to the attention of all owners.

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, the additional requirements seem sensible.

Proposal 3: Require a statutory warranty on all disclosure statements

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Do you agree that bodies corporate should certify all disclosed information is complete and correct? If no, why?

Yes. Refer comment at 4.

## 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 we agree this would be useful. A big concern is the level of conflict of interest between those on the committee and/or the chairperson and/or the body corporate managers who endeavour to pursue 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?

We agree with this submission. Transparency is necessary and severely lacking at present. Refer also to comments at 4.

### 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?

We agree with these proposals. We believe committee members should discharge their duties with care and in the best interests of the body corporate.

### 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?

We think proxy farming is an issue but we are not sure that limiting the number proxy votes is appropriate. Our members are involved with a number of offshore owners and if they were not able to appoint a manager they trust as a proxy then their interests may not be represented. Would it be better to require those seeking proxies to declare any conflict of interest? In addition, opening up the manner in which votes might be able to be made could also assist.

### 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?

We strongly disagree. Our members are resident and non-resident building managers. Many purchased their building management agreement from the developer many years ago in the last development cycle.

We think amending the UTA further will only penalise those who have acquired contracts from developers and paid developers for such contracts. The real issue that is seeking to be regulated here is structures that are inappropriate as between the needs of the developer and the needs of the ultimate owners.

Our view is that the duties in section 139 of the Act are precluding behaviour of this type already. Anecdotally new long term management contracts are not being created in this current development cycle because of this provision.

In addition, over the past few years since the *Sentinel* decision our members have renegotiated terms with bodies corporate, often as part of the sale of an existing business or the renewal of the term. Most of the current contracts also have clear clauses allowing termination where there is default also so the bodies corporate have existing contractual rights available to exit if the manager is not performing.

Separately an argument can be made that a long-term contract in fact encourages long term thinking. Building managers have a wealth of knowledge about the building and the owners. Typically, they undertake work above and beyond that for which they are contracted to do and paid for. Focusing only on term ignores the broader issue which is about contracts which are inappropriate and/or unbalanced. Section 139 properly focuses attention on the developers and is working.

We query whether the focus is on different types of structures that are not properly service contracts. If encumbrances or leases are registered against titles then these are interests in land. It is not appropriate to interfere with these now, many years after the fact, when the perpetrators no longer benefit. If that is the concern then focus attention on the establishment of structures and ensure s139 is wide enough to govern future behaviour, rather than focus on term.

In the vein, it is important to consider the increased disclosure requirements and the rights buyers have. A buyer has the ability to ask a developer what is intended as to term contracts at the outset. Personal responsibility is also important here.

If these proposals are not accepted, then our submission is that as a minimum existing contracts should be grandfathered. It is inappropriate to interfere with existing contracts, especially in circumstances where monies have been paid for these businesses. There will be a transfer of wealth from one group of innocent people (the managers) to the owners. That is patently unfair given owners had the opportunity at the outset to view the contracts and or determine the type of building they were purchasing into.

#### 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?

We agree with these proposals. In particular we think it is very important that only those who have paid levies should be entitled to vote.

### 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?

Yes we agree that industry bodies have the ability to increase professionalism and help address body corporate management issues. We support this initiative.

- 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?

We support requiring body corporate managers to be members of a professional group and being subject to the codes of practice of the group. We do believe this is an area that warrants some level of involvement given the complexities of bodies corporate and the sums of money at stake. We are encouraged by ARAMA (a sister organisation) as to the benefits of this approach in Australia.

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?

We believe it is important for owners to be able to choose. Having said that given the complexities of unit titles it is difficult to contemplate that a medium or large complex could be self-managing and comply with the act without that being a recipe for conflicts and/or vesting control in 1 person.

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 this would be useful. There is a lot of confusion as to owners as to what a body corporate manager actually is and who the body corporate is. Likewise what a building manager is and what their role is. Both are important in larger complexes.

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

It is important to ensure a body corporate manager is not controlling owners' decision making. This is critical. Owners trust a body corporate manager as they do not always understand all the technicalities. This position of trust is open to abuse. Managers must not be entitled to advise owners on issues that conflict with their own business interests. Our members often experience this – a body corporate manager advising a committee to remove the building manager, so that the body corporate manager can expand their own business to include the building management role.

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

Yes we support additional requirements for body corporate managers and believe building managers might also be open to this.

#### 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 we do agree that an appropriately qualified person should sign off on the long term maintenance plan. However we think “guaranteeing the accuracy and completeness” creates potential issues for those undertaking the sign off process.

**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?

We think this is a better role for the committee than the chairperson. Guaranteeing accuracy seems inappropriate. We would prefer that to the best of their knowledge there is no issues with the building currently that are not included in the long-term maintenance plan. That is to guard against owners protecting their investment by not letting owners be told about current issues.

#### 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, we think 30 years is an appropriate timeframe.

#### 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?

We think 3 years is an appropriate timeframe.

#### 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?

We think bodies corporate from 5 units or bigger should be required to have a long term maintenance fund. It is important to ensure that the ownership costs are sitting fairly on owners and by choosing not to have a fund that is not occurring. It is also important to ensure maintenance is done. Our members' experience is owners prefer to defer work as much as possible.

#### 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?

We think large should be audited annually. Smaller complexes could be less frequent.

## 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 believe reducing the fees is a good suggestion.

**27** Would you consider using mediation if the above option was adopted? If no, why?

Yes our members tell us they would consider this option.

### 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 the name change could be useful but we do not believe it is essential.