



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 YES
- I wish to remain anonymous in any reporting or submission analysis NO

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:

1

- 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?

I AREE WITH THIS REQUIREMENTS APART FROM POINTS 2 AND FIVE.

POINT 2. I HAVE NOT BEEN ABLE TO ASCERTAIN WHAT THE SPECIFIED FUNCTIONS OF A BODY CORPORATE MANAGER ARE, DESPITE TRYING TO CHECK ONLINE.

POINT 5. IDEALLY SO, BUT AUDITING IS EXPENSIVE.

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?

I DO NOT AGREE BECAUSE I DOUBT THAT A MAJORITY, FOR EXAMPLE 29 OWNERS, WOULD AGREE TO IT.

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

4

Do you agree that the pre-contract, pre-settlement and additional disclosure step should be consolidated into one step? If no, why?

I THINK THERE IS ENOUGH EXISTING LEGISLATION BUT I WOULD CERTAINLY AGREE THAT THE ENFORCEMENT FOR INCORRECT OR INCOMPLETE DISCLOSURE BE RIGOROUSLY ENFORCED.

Proposal 2: Add further requirements in disclosure statements

5

Do you agree that these additional requirements should be included in disclosure statements? Do you consider any other requirements should be included?

IT SHOULD BE MADE ABSOLUTELY CLEAR THAT ANYONE PROVIDING INCORRECT OR INCOMPLETE DISCLOSURE WILL BE PENALISED.

A STATUTORY WARRANTY COULD BE EFFECTIVE BUT COULD BE DRAWN OUT AND EXPENSIVE.

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?

YES I CERTAINLY THINK THIS SHOULD HAPPEN WITH THE PROVISIO, AS THEY SAY IN AN AUDIT STATEMENT, IT CAN ONLY BE CERTIFIED 'ACCORDING TO INFORMATION SUPPLIED'.

4.2 Strengthening Body Corporate Governance

Proposal 1: Address conflicts of interest

7

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.

Proposal 2: Increase reporting of delegated powers

8

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?

YES, THIS IS ESSENTIAL AND SHOULD BE ENFORCED.

Proposal 3: Duties and responsibilities of body corporate committees

9

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?

WITHOUT HAVING READ THE ENTIRE QUEENSLAND CODE OF CONDUCT. I AGREE WITH THE POINTS YOU MENTION.

Proposal 4: Limit the number of proxy votes an individual can hold

10

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?

YES, I AGREE, TO ENSURE THAT NO SINGLE PERSON IS ABLE TO CARRY THE VOTE.

Proposal 5: Limit the impact of unfair service contracts

11

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?

YES I AGREE. I ALSO THINK THERE SHOULD BE REGULATIONS AROUND THE QUESTION OF BODY CORPORATE MANAGEMENT COMPANIES RENAMING THEIR SECRETARIES AS MANAGERS, WITHOUT THEIR HOLDING ANY RELEVANT QUALIFICATIONS.

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?

YES, THIS IS A GOOD PROPOSAL. THE MEANING OF 'MATERIALLY AFFECT' NEEDS TO BE CLARIFIED, FOR EXAMPLE, THE REMOVAL OF FLOOR COVERINGS CAN CREATE CONSIDERABLE NOISE AND DISTURBANCE, PARTICULARLY BETWEEN THE HOURS OF 10PM AND 6AM. THIS SHOULD ALSO APPLY TO SHOWERS AND BATHS AND LAUNDRY USE.

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?

I THINK THAT AT PRESENT SOME BODY CORPORATE MANAGEMENT COMPANIES ARE NOT QUALIFIED TO EFFECTIVELY OPERATE AND MANAGE APARTMENT COMPLEXES. THERE DO NOT SEEM TO BE ANY REGULATIONS AROUND THE QUALIFICATIONS REQUIRED TO BE HELD BY SECRETARIES (NOW KNOWN AS MANAGERS). I BELIEVE THAT REGULATIONS SHOULD BE PUT IN PLACE TO ENSURE THAT ALL STAFF OF THESE COMPANIES ARE SUITABLY QUALIFIED FOR THE JOBS THEY HOLD.

I AGREE WHOLEHEARTEDLY THAT INCREASED PROFESSIONALISM IS REQUIRED TO PROTECT BODIES CORPORATE AND OWNERS, AND THE LEGISLATIVE AND REGULATORY FRAMEWORK MUST BE STRENGTHENED. SELF REGULATION SHOULD NOT BE PERMITTED. HOWEVER ANY VOLUNTARY PROGRAMMES TO IMPROVE PROFESSIONALISM SHOULD BE ENCOURAGED.

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 AS LONG AS THE CODES OF PRACTICE ARE DRAWN UP FIRST AND ARE SUFFICIENT.

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?

NO I DO NOT THINK IT SHOULD BE MANDATORY, SUBJECT TO VOTING AT ANNUAL GENERAL MEETINGS.

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, AND ALL UNIT TITLE HOLDERS SHOULD BE AWARE OF THEM.

17

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

THEY SHOULD BE RESTRICTED FROM ARRANGING ALL SERVICE CONTRACTS.

18

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

YES, ALTHOUGH IT IS NOT CLEAR WHAT THEY WOULD BE.

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, HOWEVER, CONDITIONS WILL VARY CONSIDERABLY, FOR EXAMPLE IN THE CASE OF OLD BUILDINGS AND LEAKY BUILDINGS. UNFORSEEN PROBLEMS CAN ARISE WHICH MAY HAVE TO TAKE PREFERENCE OVER THE PROVISIONS OF THE LONG TERM MAINTENANCE PLAN.

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 I DON'T, BECAUSE SUCH A PERSON CAN AND PROBABLY WILL CHANGE WELL BEFORE THE LONG TERM MAINTENANCE PLAN IS IMPLEMENTED.

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 I DON'T THINK IT IS POSSIBLE TO PRESCRIBE A FORMAT.

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?

NO, I DO NOT THINK THAT 30 YEARS IS AN APPROPRIATE TIMEFRAME. IT SHOULD BE NO MORE THAN 10 YEARS, WITH REGULAR REVIEWS.

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, REGULAR REVIEWS MUST BE REQUIRED, BUT TO AN UNSPECIFIED 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?

YES I AGREE.

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?

YES, THE LTMFs MUST BE AUDITED ANNUALLY.

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?

NO, I DO NOT SUPPORT THE PROPOSED DECREASE IN FEES AS I BELIEVE IT WOULD LEAD TO VEXATIOUS AND FRIVOLOUS USE OF THE SERVICE.

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

WE WOULD USE IT IF NECESSARY REGARDLESS OF THE DECREASE IN FEES, WHICH WOULD NOT BE A FACTOR.

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?

I HAVE NO OPINION ON THAT.