

Review of Unit Titles Act 2010

Political working group

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Potential size thresholds for more rigorous legislative requirements

Proposed size thresholds for more rigorous requirements

Objective: Address the risks to unit owners related to the size and budget of their development, without putting onerous compliance requirements on small complexes.

Proposals:

Small complexes (under 10 units)

Minimal requirements

Medium complexes (10 – 29 units)

Rigorous requirements apply unless body corporate resolves to opt out by special resolution

Large complexes (30 units and over)

Rigorous requirements apply

Recommendations: Potential size thresholds for more rigorous legislative requirements

- Agree that there should be some differences in legislative requirements
- Consider size is not the only method of defining groups
 - A terraced housing development has different risks and issues than an apartment block
 - A mixed-use development has different risks and issues than a fully residential development
- If size thresholds are retained, then changes suggested:
 - Small = 1-9 units
 - Medium = 10-20 units
 - Large = 21+ units
- Opt-out provisions for medium units are supported
 - If thresholds are changed as above
 - If minority relief provisions are maintained (to mitigate majority block voting)

Improving the Disclosure Regime

Improving the disclosure regime

Objective: Ensure that at the various stages in the decision making process, purchasers have the best information available to them about the unit, the development, and the activities of the body corporate.

Proposals:

Amalgamate the current requirements of the pre-contract, pre-settlement and additional disclosure statements into a single step

Add further requirements in disclosure statements

Require bodies corporate to verify all disclosure information is complete and correct

Recommendations: Improving the Disclosure Regime

- Agree that the current pre-contract, pre-settlement and additional disclosure steps should be consolidated into one step
 - purchasers fully informed up-front
 - cheaper for vendor as they only have to pay one fee
- Agree that additional requirements should be included in disclosure statements including:
 - Weather-tightness
 - Current legal proceedings by the body corporate
 - Local authority rates are payable on top of body corporate levies
 - Major upcoming capital expenditure
- Agree that body corporates should certify that all disclosed information is complete and correct
 - Recognise significant liability and insurance risk
 - Who would want to certify such information?

Strengthening Body Corporate Governance

Body Corporate Governance

Objective: To enable communities of owners to make decisions regarding their development, and empower owners to exercise their property rights.

Proposals:

Add provisions to the UTA that address conflicts of interest modelled on the provisions in the Incorporated Societies Bill

Require body corporate committees of medium and large complexes to report on the performance of their delegated powers at all general body corporate meetings

Limit the impact of unfair contracts

Include more provisions on the duties of a body corporate committee

Limit the number of proxy votes an individual can hold

Clarify governance terms

Recommendations: Strengthening Body Corporate Governance

- Agree with additional provisions dealing with conflicts of interest
- Agree with mandatory reporting on the performance of delegated powers, for large complexes
 - Consider this reporting should be every 6 months minimum
- Agree with additional provisions similar to Queensland's Code of Conduct
 - Ensure that there are provisions for members to record dissension
- Agree to limit the number of proxy votes held by one person
 - 3 is more appropriate than 1
 - ensures more fairness in voting
- Agree to limit service contract timeframes and specify a specific renewal period for service contracts
 - Protection for body corporates where providers are under performing
 - However, also benefit in having long term service providers for large assets such as roads
 - Case by case assessment required

Recommendations: Strengthening Body Corporate Governance cont.

- Consider changes are required to section 80(i) to include specific reference to “building elements” and “infrastructure”

*“must not make any additions or structural alterations to the unit that materially affect any other unit or the common property **or the building elements or infrastructure** without the written consent of the body corporate”*

Professionalism in Body Corporate Management

Body Corporate Management

Objective: Ensure the UTA provides a strong, clear governance framework and promotes professionalism in body corporate management, while allowing bodies corporate to manage their own affairs well.

Proposals:

Body corporate managers must be a member of a professional body/group and comply with that group's code of conduct

Require medium and large complexes to contract a body corporate manager

Define body corporate managers in the UTA and introduce requirements for how they must operate in regulations

Recommendations: Professionalism in Body Corporate Management

- Agree that industry bodies would increase professionalism and help address body corporate management issues
- Agree with requirement for body corporate managers to be a member of a professional group and be subject to codes of practice
- Agree with mandatory requirement for medium and large developments to have a body corporate manager
 - Medium developments should not be able to opt-out of this requirement
- Agree that functions of body corporate managers should be set out in the UTA to avoid any confusion and to set minimum expectations
- Agree that regulations specify minimum operational requirements for body corporate managers

Ensuring Adequate Long Term Maintenance Plans (LTMP)

Long Term Maintenance Planning

Objective: Ensure the UTA promotes best accounting practices to prepare current and future owners for the costs associated with owning a unit title.

Proposals:

Guarantee the credibility of LTMPs of medium and large complexes through body corporate and expert signatories

Require medium and large complexes to review their LTMPs every three years

Extend the timeframe of LTMPs for medium and large complexes to 30 years

Develop a new online template for LTMPs

Require medium and large complexes to maintain a LTMF

Require body corporate accounts and LTMFs of medium and large complexes to be annually audited

Recommendations: Ensuring Adequate Long Term Maintenance Plans (LTMP)

- Agree that a professional should be required to guarantee the accuracy and completeness of an LTMP
 - Body corporate chairs should not be required to guarantee LTMP
- Suggest that items such as pools, gyms, children's play areas and associated infrastructure such as lighting and drainage should be included in the LTMP template
- LTMP should have a 20 year timeframe for medium developments (no opt-out ability) and a 30 year timeframe for large and mixed-use developments
- Suggest a 5-yearly review requirement for medium developments and a 3-yearly review for large and mixed-use developments
- Agree that Long Term Maintenance Fund (LTMF) be mandatory, owned by the body corporate and not refundable upon sale of units and held in a separate interest-bearing account
- Auditing of LTMF should be mandatory every 3 years, can opt-out of annual auditing through AGM resolution

Recommendations: Accessibility of the Dispute Resolution Regime

Disputes Resolution

Objective: To provide access to a cost-effective, appropriate, and timely dispute-resolution process for unit title disputes and encourage unit owners to self-resolve disputes.

Proposals:

Lowering fees and introducing a reduced fee for mediation

Revise the name of the Tenancy Tribunal to the 'Tenancy and Unit Titles Tribunal'

Recommendations: Accessibility of the Dispute Resolution Regime

- Agree to the lower fee structure which encourages use of the service
- Suggest an option to go straight to adjudication where both parties agree
- Mediation will only be useful where:
 - mediator is familiar with the UTA
 - result of the mediation is binding on both parties
 - doesn't apply to liability and legal issues – should be limited to issues such as dispute between neighbours or use of common property
- Tenancy Tribunal is not the best entity for resolving disputes under the UTA. Mediation needs to be in line with comments above and adjudicators need understanding and experience in the UTA.

Recommendations: Consideration of a separate UTA Entity

- Agree that a register of body corporates is maintained. Information held similar to that of companies or incorporated societies eg. registered office, body corporate rules
 - Create efficiencies for council and others when looking to serve documents on the complex or engage with them on development issues
- Should be a single government agency with oversight of the unit title sector
 - communications, information, advice etc.
 - be similar to the Real Estate Institute where it plays the role of a professional watchdog and has disciplinary powers

Other Recommendations

- Where there is a single owner of all units in a development, the lesser legislative requirements should apply
 - a council/CCO can be in this situation when they purchase whole blocks under the Public Works Act and are then required to manage and operate them under the UTA before selling them as surplus property
- Minority relief actions should extend to the ability for review of cost estimates for repairs
 - ability to force the hand of other owners to get better standard of work

Next Steps

Proposed timeline:

Date	Milestone
3 March 2017	Submissions due
April 2017	Report back to Minister on submissions and proposals for reform
May 2017	Seek Cabinet approval for any proposed legislative changes