



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

Review of the Unit Titles Act 1972

**Summary of Submissions**

July 2006

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## **BACKGROUND**

The Department of Building and Housing is undertaking a review of the Unit Titles Act 1972.

In May 2006 a second discussion document, Options for Change, was released for public consultation. Options for Change elaborated on the first discussion document and proposed a number of ways the Unit Titles Act could be enhanced to promote better and more transparent community living. Public consultation closed on 2 June 2006. The discussion document, Options for Change, can still be accessed on the Department of Building and Housing website.

A total of 148 submissions were received on Options for Change. They were of a high standard and were specific and specialist to each submitter's area of knowledge.

Submissions were received from a comprehensive cross-section of the sector, including unit title holders; bodies corporate; body corporate managers; local and regional authorities; developers; surveyors; lawyers; lobby groups; other government departments; and professional institutions such as the New Zealand Law Society, the New Zealand Institute of Surveyors, the New Zealand Institute of Building Surveyors, the Insurance Council of New Zealand, the Real Estate Institute of New Zealand, the New Zealand Property Investors Federation, and the Property Council of New Zealand.

The Summary of Submissions Report is a summary of the submissions received during public consultation. It reflects the wide range of opinions represented in the submissions and endeavours to show which issues were most important to submitters.

The submissions on Options for Change will be used to formulate decisions on what will be covered in the new Unit Titles Act. The issues raised in the submissions will be instrumental in developing the finer detail of the proposals that were outlined in the discussion document, and will inform government decision-making.

The public will have further opportunity to comment by making a submission on the draft bill when it goes before the Select Committee.

This report does not necessarily reflect the views of the Department of Building and Housing and does not represent official government policy.

The Department of Building and Housing would like to thank all submitters for their contributions.

## **EXECUTIVE SUMMARY**

### **Widening the Purpose of the Act**

There was majority support for the proposal to widen the purpose of the Act.

Several submitters suggested incorporating the use of models (such as small, mixed use and commercial) into the Act's purpose statement.

Another key issue was the suggestion that the Act be split into two parts – one dealing with title and survey matters, the other dealing with community management.

A third key issue was promoting better integration with other linked legislation, including the Building Act 2004, the Resource Management Act 1991 and the Retirement Villages Act 2003.

### **Title and Survey Matters**

There was majority support for the proposed definition of principal and accessory units; the extended definition of common property; and the proposals for staged developments, easements and covenants, leasehold land and cross-leases and flat owning companies.

Several submitters were concerned that the definition of principal units may not encompass such units as car parks, which are currently able to be surveyed using the open space concept.

There was some discussion as to whether accessory units should be able to be transferred outside or even within developments. Issues concerning security for residents and whether accessory units should have independent certificates of title were raised.

Submitters commented that the definition of common property needs to be prescriptive to prevent confusion, although some respondents felt common property should be minimal and should not include anything within a unit's boundaries. There was support that common property definitions should be linked to the size of the development.

Submitters identified staging the consent process of staged developments as a key issue. There was support for a prohibition on developer's ability to create covenants on early unit sales to obtain power of attorney or voting rights to effect change more easily; and furthermore that a prescriptive definition of minor boundary change be developed.

There was support for the ability to be able to create easements on common property and the underlying reversionary interest. Some submitters suggested that giving the body corporate a legal identity would be effective in dealing with some of the problems relating to the creation and cancellation of easements and covenants.

Several submitters suggested applying the proposals in the discussion document to cross-leases and flat-owning companies. Many submitters felt that mandatory conversion should be effected. Several submitters commented that no further cross-leases should be created, and that these forms of ownership could be exploited by those wanting to circumvent the provisions of any new Unit Title Act.

### **Treating Expenses Fairly**

There was majority support for the proposed dual unit entitlement scheme, flexible review of unit entitlements and fairer proportioning of insurance based on risk.

Some submitters commented that a unit entitlement part based on use of facilities would likely cause disputes among unit owners. There was some support for the status quo to remain.

Submitters suggested engaging valuers, or even the original developer, to calculate unit entitlement based on use of facilities. Several respondents suggested that prescriptive rules for how this part would be calculated would be beneficial.

There was wide support for a limit on the number of unit entitlement reviews that could be undertaken.

There was support for exempting stand alone units from insurance provisions. Many submitters also suggested that unit owners be informed of all insurance matters. Several submitters also commented that the ability to acquire indemnity insurance needed to be tightly controlled.

One submitter commented that apportioning insurance premiums to individual units was impractical.

### **Rules and Responsibilities for Management and Decision-making**

There was majority support for the proposed governance structure of bodies corporate, the way tenants should be dealt with, voting provisions and flexible operational rules.

There was some support for the ability to elect proxy members to stand on bodies corporate, and for the ability to give tenants speaking rights on bodies corporate. Many submitters commented that disputes with tenants should be heard through the Tenancy Tribunal, and there was support for the suggestion that the body corporate be able to deal directly with tenants.

Several submitters recognised the need for body corporate committee members to have indemnity insurance.

Many submitters suggested that small developments be able to opt out of the governance structure as it would be too onerous.

There was some support for unanimity to be retained for certain matters and that the 75/75 percent vote was too low. Many submitters felt that a provision for postal voting should be made. Other suggestions included clarifying the voting rights of defaulters and limiting the number of proxy votes held by one unit owner.

Some submitters commented that core operational rules should be embodied in the Act. There was also some discussion as to how to prevent the situation whereby owners move into a development with a set of operational rule only to have them changed too easily. Suggestions included increasing the voting requirement and stipulating that only owner-occupiers able to vote on operational matters.

### **Financial and Asset Management**

There was majority support for the proposed financial management and maintenance plans, and mixed support for self-regulation of body corporate managers.

Several submitters felt that small developments should be able to opt out of the financial management and maintenance plans, or at least have reduced levels of compliance. There was some support that such plans be optional, as they are currently. There was also support for an upper limit to be placed on long-term maintenance funds to prevent unnecessary accumulation of funds. Several submitters suggested that auditing be optional.

Many submitters felt that self-regulation of body corporate managers would not work, and that membership of a regulatory body is essential. There was support for minimum standards and formal training to be implemented.

## **Information and Education Services**

There was majority support for a government agency to dispense information about living in a unit title development.

There was support for the suggestion that this service be extended to cross-leases and flat-owning companies.

Many submitters commented that the kind of information that would be provided by such a service is already publicly available. Several submitters also commented that real estate agents and solicitors already dispense this information and that such a service would be unnecessary bureaucracy.

## **Disclosure**

There was majority support for the proposed disclosure regime.

Several submitters commented that the handover procedure by developers to bodies corporate requires clarification.

There was support for the suggestion that section 36 certificates be expanded to include disclosure information between vendors and buyers. Some submitters commented that publicly accessible information should not be provided.

Many submitters felt that disclosure should be undertaken pre-purchase during due diligence, and that a cooling off period be provided for.

One issue raised with regard to penalties was that it should require intention to deceive.

## **Dispute Resolution**

There was majority support for the four-tiered dispute resolution model.

One key issue identified was that any resolution service should have provisions to discourage petty disputes. Several submitters suggested that awarding costs should be allowed.

Many submitters felt that mediators and adjudicators should be required to have minimum qualifications, or possibly specialist knowledge of unit title matters.

Some submitters suggested that the District Court be the court of first instance for all unit title matters.

## **Transition Provisions**

There was majority support for the proposed transition period.

There was some discussion regarding the lead in time for the new Act. Whereas some submitters suggested a shorter lead in time, there was a large proportion that felt a longer lead in time was required especially for existing bodies corporate.

Many submitters felt that existing developments must comply with all the proposed provisions and that opting out should only be in special circumstances.

Several submitters commented that retrospective disclosure by developers would not be practical.

## **PART 1 – WIDENING THE PURPOSE OF THE ACT** *(page 5 of the discussion document)*

### **Proposals** *(P1 in the discussion document)*

The proposal in this section covers the purpose and principles of the new Act. It will create a purpose statement that is easy to understand and widens the application of the Act.

### **Questions** *(Q1 in the discussion document)*

Submitters were asked if they agreed with this proposal and if there were any further matters that should be covered.

### **Summary of Responses**

There was majority support for the proposal to widen the purpose of the Act.

Of 148 submissions:

- 68 submitters agreed
- 6 disagreed
- 57 did not respond
- 21 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Thirteen respondents suggested that the necessity to be able to choose models for different forms of unit title ownership (eg: residential, commercial, mixed use) should be included in the purpose statement.
- Two respondents suggested that the Act should be split into two parts – one part dealing with the creation and administration of title and survey matters, the second part dealing with community management, dispute resolution and disclosure.
- Three respondents suggested that the purpose statement should promote a better integration between the Unit Titles Act, the Building Act 2004 (including the Building Code and Regulations) and the Resource Management Act 1991. One further respondent suggested that better integration with the Retirement Villages Act 2003 should be promoted.
- One respondent suggested that environmental sustainability should be promoted in the purpose statement, particularly relating to energy efficiency.

## **PART 2 – TITLE AND SURVEY MATTERS** *(page 6 of the discussion document)*

### **Proposals** *(P2-P26 in the discussion document)*

The proposals in this section cover the definition of a principal unit, common property and how it is defined, rules for staged developments, rules for creating easements and covenants, and management of leasehold land.

### **Questions** *(Q2-Q17 in the discussion document)*

Submitters were asked if they agreed with the proposed definition of principal and accessory units, if open space units should be allowed, if they agreed with the extended definition of common property, if the proposed definition of common property would remove confusion as to who is responsible for maintenance, and if they agreed with the proposals for staged developments, easements and covenants, leasehold land and cross-lease and flat owning companies.

### **Summary of responses**

#### **Principal and accessory units** *(Q2 in discussion document)*

There was majority support for the proposed definition of principal and accessory units.

Of 148 submissions:

- 41 submitters agreed
- 18 disagreed
- 65 did not respond
- 24 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Nine respondents suggested that the proposed definition of a principal unit would not cover such uses as car parks, billboards, commercial olive groves, market stalls and other instances in which a principal unit may not be able to be referenced to a building, but are not able to be designated as an accessory unit because they need to be able to be traded.
- Two respondents suggested that integration between the Unit Titles Act, the Building Act 2004 and the Resource Management Act 1991 could be better, particularly in relation to the car parking issue, raised above.
- Five respondents suggested that accessory units should not be able to be transferred without consent of the Local Authority to ensure that District Plan rules were complied with.
- Four respondents suggested that rules should be in place for leasing or transferring accessory units, particularly where they are car parks, to ensure that there is no security risk to residents. Two respondents suggested that accessory units should have an independent certificate of title. Two respondents suggested that accessory units should be able to be sold outside of the development, while one further respondent suggested that accessory units should be able to be leased outside of the development. Two respondents suggested that accessory units should not be able to be transferred at all.
- Nine respondents suggested that unit owners should be required to obtain Body Corporate consent before undertaking any alterations to their unit. One respondent suggested that only the affected unit owners should be required to consent to alterations.

#### **Open Space units** *(Q3 in discussion document)*

There was mixed support for retaining the ability to create open space principal units.

Of 148 submissions:

- 24 submitters agreed that open space units should be allowed
- 23 disagreed
- 93 did not respond
- 8 made suggestions and raised other issues.

The majority of those that wanted open space units to be allowed cited the car parking issue as the main reason.

- Fifteen respondents suggested that car parks that are created as tradable commodities would be required to be surveyed as open space units.
- Three respondents suggested that if open space units were allowed it would be easier to make alterations and expansions to principal units.
- Two respondents suggested that principal units should be able to be partly made up of open space, and that the general geometric shape of the unit should be sufficient detail for the unit plan.
- One respondent suggested that it would be difficult to define an open space principal unit in three dimensions and thus it would be difficult for purchasers to know exactly what they were buying.

#### **Common Property** *(Q5-Q6 in discussion document)*

There was majority support for the proposed definition of common property.

Of 148 responses:

- 49 agreed
- 12 disagreed
- 72 did not respond
- 15 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Six respondents suggested that the Act be prescriptive as to what elements are defined as common property to mitigate potential confusion. Three further respondents suggested that the definition needed expanding to include elements such as windows and skylights. Two respondents suggested that the definition of common property should differentiate between ownership and management of common property. One respondent suggested that common property should be minimal to reduce the responsibilities of bodies corporate, who could be ineffective and uneducated as to how to maintain common property. One respondent suggested that common property should not include any elements that are within a principal unit.
- Five respondents suggested that the definition of common property should be linked to the size and scale of the development, particularly small developments and developments where units are stand alone rather than interdependent.
- One respondent suggested that common property should have a certificate of title. One further respondent suggested that the body corporate should be a legal entity that is capable of owning the common property, which would make responsibility for maintenance more transparent.
- Four respondents suggested retaining and addressing section 33 of the current Act, which states that the body corporate can levy individual unit owners for repairs that will only benefit those unit owners. Two further respondents suggested retaining section 11 of the current Act, which deals with incidental rights relating to use of services, and access to light and apertures.
- Two respondents suggested that the inclusion of elements within a unit as common property could be construed as an intrusion of property rights.
- One respondent suggested that there should be a requirement for unanimous consent for changes to common property.

- There was majority agreement that the extended definition of common property would reduce confusion as to who is responsible for maintenance. Of 148 submissions, 35 agreed; 13 disagreed; 81 did not respond and 19 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- One respondent suggested that unit owners should have the obligation of reporting any damage to the common property as soon as they are aware of it. One further respondent suggested that unit owners be able to commission repair work if the body corporate failed to act.
- Two respondents suggested that maintenance of utilities needs to be made clear as to whether it is the responsibility of the body corporate or the local authority. One further respondent suggested that services affecting only one unit should be the responsibility of that unit owner.
- Three respondents commented that there could be some bias in terms of allocation of body corporate funds for maintenance.

#### **Staged Developments** *(Q9 in discussion document)*

There was majority support for the proposed changes to the way staged developments are managed.

Of 148 submissions:

- 37 agreed
- 11 disagreed
- 80 did not respond
- 20 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Seven respondents suggested that future development units be levied and given limited voting rights on the body corporate.
- Eight respondents suggested that staging consent processes and financial contributions for staged developments would be beneficial. Two further respondents suggested that better integration between the Building Act 2004 and the Resource Management Act 1991 would be beneficial. Two respondents suggested that a time limit be placed on depositing stage unit plans.
- Six respondents suggested that developers be prohibited from placing covenants on early stage unit sales requiring the unit owner to give the developer power of attorney or voting rights in order to be able to effect changes to the unit plan more easily.
- Six respondents suggested that a definition of what constitutes a minor change should be included in the Act. One further respondent commented that a series of minor changes could have a major impact on the development as a whole. One respondent suggested that a process be implemented for reviewing unit entitlement when boundary changes are made.
- One respondent suggested that Statements of Future Development be registered. One further respondent suggested that Statements of Future Development should have a prescribed format.
- Nine respondents commented that a 75/75 percent vote for approving changes is too low.

#### **Easements and Covenants** *(Q12 in discussion document)*

There was majority support for the proposals relating to easements and covenants.

Of 148 submissions:

- 39 agreed
- 2 disagreed
- 96 did not respond
- 11 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Two respondents suggested that easements should be able to be created on common property. Three respondents suggested that easements should be able to be created on the underlying reversionary interest. Two respondents suggested that the creation of easements should only have to be agreed to by the unit owners it affects.
- Eight respondents suggested that the body corporate be given a legal identity so they could hold interest in the land, which would make creation of easements and covenants on common property easier. One submitter suggested that bodies corporate should be able to gain commercially from easements, for example in the instance of compensation for access.
- Three respondents suggested that the concept of shared ownership of lots be expanded to cover other instances rather than just shared access ways. One respondent commented that access ways are an inferior way of gaining access. One respondent queried how shared lots would be maintained and how costs would be apportioned.
- Two respondents suggested that easements that are created in order to comply with the Building Act 2004 should not be able to be lifted without consent of the local authority.
- Two submitters suggested that the 75/75 percent vote was too low.

#### **Leasehold Land** *(Q15 in discussion document)*

There was majority support for the proposals relating to leasehold land.

Of 148 submissions:

- 30 agreed
- 3 disagreed
- 104 did not respond
- 11 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Two respondents suggested that it be prohibited to charge a premium on top of the ground rental. Two further respondents suggested that it be made clear that the body corporate is responsible for the payment of ground rental.
- Two respondents suggested that current restrictions on lessor right of re-entry and termination be retained.
- One submitter asked how the rights and responsibilities of the lessor could be dealt with in the body corporate rules.

#### **Cross-leases and Flat-owning Companies** *(Q17 in discussion document)*

There was support for the proposal to not make any changes to cross lease properties and flat-owning companies.

Of 148 submissions:

- 23 agreed
- 14 disagreed
- 94 did not respond
- 17 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Seven respondents suggested that the proposals relating to unit title properties be applied to cross lease properties and flat-owning companies.
- Five respondents suggested that mandatory conversion be implemented to prevent further disputes and confusion. Thirteen respondents suggested that it be prohibited to create any more cross-leases or flat-owning companies. Two respondents commented that the controlling right of entry benefit of flat-owning companies could be dealt with in better ways. Two respondents suggested that the conversion provisions in the current Act be retained.
- Four respondents commented that these forms of ownership could be exploited by those wanting to circumvent the responsibilities created by the proposals in the discussion document.

### **PART 3 – TREATING EXPENSES FAIRLY** *(page 11 of the discussion document)*

#### **Proposals** *(P27-P32 in the discussion document)*

The proposals in this section cover how unit entitlement will be worked out and how insurance premiums will be divided on a fairer and more proportional basis.

#### **Questions** *(Q18-Q23 in the discussion document)*

Submitters were asked if they agreed with the concept of dual unit entitlement, if they agreed that review of unit entitlements should be more flexible and if they agreed that the share of insurance premiums should be based on individual circumstances.

#### **Summary of Responses**

##### **Unit Entitlement** *(Q18 in discussion document)*

There was support for the concept of dual unit entitlement and a flexible review system for unit entitlements.

Of 148 submissions:

- 37 agreed
- 22 disagreed
- 67 did not respond
- 22 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Fourteen respondents commented that the second part of unit entitlement would likely cause disputes among unit owners. Two respondents suggested that unit entitlements remain as they are. One further respondent commented that the existing scheme establishes certainty and stability. One respondent suggested that this concept of unit entitlement should not apply to existing developments. Two respondents commented that this concept of unit entitlement would act as a disincentive to renovate units.
- Three respondents suggested that a valuer could determine the basis for the second part of unit entitlement based on use of shared facilities. One respondent suggested the developer could fill this role. Three respondents suggested that there be prescriptive rules in the Act for how use of shared facilities will be calculated. One further respondent suggested that this could be done in the body corporate rules.
- One respondent suggested that the default (if second part based on use not adopted by body corporate) should be that all owners pay an equal share, rather than relative value. One respondent suggested that the second part based on use should be mandatory.
- Thirteen respondents suggested that there should be a limit on unit entitlement reviews on a yearly basis. Two respondents commented that the ability to review unit entitlements could result in a change in asset and capital value of the property. One respondent commented that unit entitlement review would be unfair to those on a fixed income. One further respondent suggested that any review should be subject to a body corporate vote.

##### **Insurance** *(Q21 in discussion document)*

There was majority support for payment of insurance premiums to be based on individual circumstances.

Of 148 submissions:

- 41 agreed
- 6 disagreed
- 85 did not respond

- 16 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Three respondents suggested that stand alone units should be able to opt out of the insurance provisions and have individual insurance options. One respondent commented that varied cover is not available and that insurers would have to be consulted. One respondent commented that it is impractical to base premiums on individual units as the broker will assess building as a whole.
- Two respondents suggested that insurers should advise the body corporate of the base premium for all units. Four respondents suggested that the body corporate should inform unit owners of all matters relating to insurance. One further respondent suggested that the body corporate should be informed of any unit's change of use. Two respondents commented that change of use could vary frequently.
- Seven respondents suggested that the ability to acquire indemnity insurance, rather than replacement insurance, needed to be tightly controlled.

## **PART 4 – RULES AND RESPONSIBILITY FOR MANAGEMENT AND DECISION-MAKING**

*(page 12 of the discussion document)*

### **Proposals** *(P33-P53 in the discussion document)*

The proposals in this section cover the powers and duties of a body corporate, how a body corporate will make decisions and operational rules.

### **Questions** *(Q24-Q30 of the discussion document)*

Submitters were asked if they agreed with the proposed structure for body corporate governance, the purpose and functions of bodies corporate, a more flexible approach to decision-making, rules for dealing with tenants, the replacement of unanimous voting with a '75/75 percent vote', what the body corporate can and can't vote on and operational rules.

### **Summary of Responses**

#### **Governance and management of tenants** *(Q24 in discussion document)*

There was majority support for the proposed body corporate structure, powers and duties, and how tenants in a unit title development could be managed.

Of 148 submissions:

- 61 agreed
- 16 disagreed
- 50 did not respond
- 21 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Three respondents suggested that body corporate contact person should be made clear to all unit owners and anyone who may need to contact the body corporate. Two respondents suggested that the body corporate should not be able to employ its own members.
- Two respondents suggested that unit owners should have the ability to nominate a proxy to stand on the body corporate or body corporate committee. One respondent suggested that body corporate managers should only be delegated secretary and treasurer duties. One further respondent suggested that the Act should prescribe what responsibilities can be delegated to the body corporate committee. Two respondents suggested that tenants be given speaking (but not voting) rights at body corporate meetings.
- Six respondents suggested that any disputes with tenants should be handled by Tenancy Services. Two further respondents suggested that the body corporate should be able to take action directly against tenants. Two respondents suggested that the body corporate be able to liaise directly with tenants. Two further respondents suggested that body corporate involvement with tenants should be a last resort. Two respondents commented that powers given to the body corporate in relation to tenants could be abused.
- Five respondents suggested that body corporate committee members be given indemnity insurance cover.
- Eight respondents commented that small developments should be able to opt out of these provisions as they would be too onerous. Two further respondents suggested that alternative proposals be developed for transient accommodation and timeshares.
- One respondent suggested that a method for effecting payment of levies should be developed. One respondent commented that bodies corporate needed an effective way of recovering debts from defaulter. One further respondent suggested that payment of debts could be demanded from mortgagees.

### **Voting** *(Q27 in discussion document)*

There was majority support for the proposal that unanimous voting be replaced by a 75/75 percent vote, and a 51 percent majority vote for operational matters.

Of 148 submissions:

- 53 agreed
- 15 disagreed
- 59 did not respond
- 21 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Ten respondents suggested retaining the requirement for unanimous voting. A further three respondents suggested that unanimity be retained for certain decisions, such as title. One respondent suggested that “resolution without dissent” be adopted for certain decisions, such as title. Six respondents commented that 75/75 percent was too low a requirement.
- Three respondents suggested that the voting system would be too loose if only those present would have their votes counted. Seven further respondents suggested that provisions should be made for postal voting.
- Three respondents suggested that rules should be implemented regarding voting rights of defaulters.
- Two respondents suggested that the number of votes held by any one unit owner in the development should be limited.
- Four respondents suggested that some provision be made for voting in timeshare week situations.

### **Operational rules** *(Q29 in discussion document)*

There was majority support for a more flexible system for body corporate operational rules.

Of 148 submissions:

- 49 agreed
- 3 disagreed
- 79 did not respond
- 18 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Five respondents suggested that core operational rules should be embodied in the Act so they are unable to be changed. Three further respondents suggested that a range of supplementary rules could be contained in the regulations and adopted by body corporate vote. Two respondents suggested that noise and behaviour rules be inflexible.
- Four respondents suggested that 51 percent was too low for operational decisions. One respondent suggested that operational decisions be voted on by owner occupiers only. One further respondent suggested that proxy voting for operational decisions should not be allowed.

## **PART 5 – FAIRER FINANCIAL AND ASSET MANAGEMENT** *(page 17 of discussion document)*

### **Proposals** *(P54-P60 in discussion document)*

The proposals in this section cover long-term maintenance plans and funds and professional standards for body corporate managers.

### **Questions** *(Q31-Q35 in discussion document)*

Submitters were asked if they agreed with the proposed regime for establishing long-term maintenance plans and funds and if they agreed with the proposal for self-regulation of the body corporate management industry.

### **Summary of Responses**

#### **Financial and Asset Management** *(Q31 in discussion document)*

There was majority support for the proposals to establish long-term maintenance plans and funds.

Of 148 submissions:

- 60 agreed
- 15 disagreed
- 50 did not respond
- 23 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Seven respondents suggested that smaller developments with limited common property should have different levels of compliance than larger developments. Fifteen further respondents suggested that small developments be exempt altogether. Two respondents suggested that such funds be optional, as they are currently.
- Five respondents commented that the Act should define what happens to contributions to such funds when a unit owner sells the unit.
- Three respondents suggested that a quantity surveyor or other professional should be engaged to undertake the long-term maintenance plan. One respondent suggested that the developer should undertake this role. Two respondents suggested that these proposals required professional management.
- Eight respondents suggested that auditing of accounts should be optional and subject to a body corporate vote. Two respondents suggested that holding such funds in trust accounts was unnecessary. Three respondents suggested that an upper limit be established for funds to prevent unnecessary accumulation of money.

#### **Body corporate managers** *(Q34 in discussion document)*

There was support for encouraging self-regulation of the body corporate manager industry.

Of 148 submissions:

- 26 agreed
- 11 disagreed
- 83 did not respond
- 28 made suggestions and raised other issues.

There were some salient issues raised by submitters.

- Ten respondents commented that self-regulation would not work. Ten further respondents suggested that a regulatory body should be established with compulsory membership. Four further respondents commented that a disciplinary body was essential.
- Fourteen respondents suggested that a code of conduct detailing minimum standards for body corporate managers should be formulated. Nine further respondents suggested that body corporate managers should have some form of certification or formal training.

## **PART 6 – INFORMATION AND EDUCATION SERVICES** *(Page 19 of discussion document)*

### **Proposals** *(P61-P66 in discussion document)*

The proposals in this section cover the role of a central government agency in offering information and access to information on the Unit Titles Act.

### **Question** *(Q36 in discussion document)*

Submitters were asked if they agreed with a supporting role from a government agency to provide guidance for those buying into unit title developments, and for those already in unit title developments who need information to dispel potential disputes.

### **Summary of Responses**

There was majority support for the proposals to provide more information to those in unit title developments.

Of 148 submissions:

- 55 agreed
- 10 disagreed
- 71 did not respond
- 12 made suggestions and raised other issues.

There were some salient issues raised by submitters.

- Four respondents suggested that an online database be established where body corporate rules could be searched. One further respondent commented that there should be controls for public ability to search this information.
- Five respondents suggested that this service be extended to include flat-owning companies and cross-leases.
- Two respondents suggested that information guides be distributed to real estate agents and lawyers.
- Two respondents commented that this kind of information is already publicly available. Five respondents commented that this would be unnecessary bureaucracy. Seven respondents commented that real estate agents and solicitors are adequately equipped to dispense this information to their clients.

## **PART 7 – DISCLOSURE INFORMATION** *(page 20 of discussion document)*

### **Proposals** *(P67-P77 in discussion document)*

The proposals in this section cover what owners and buyers must be told, what the developer must tell the body corporate, the body corporate's right to review contracts and the penalties for not disclosing information.

### **Questions** *(Q37-Q39 in discussion document)*

Submitters were asked if they agreed with the proposed regime for disclosing information between different parties in a unit title development to promote a more transparent understanding of how unit title tenure works, and how specific developments are run.

### **Summary of Responses**

There was majority support for a regime to enhance disclosure between the various parties in unit title developments.

Of 148 submissions:

- 57 agreed
- 9 disagreed
- 55 did not respond
- 27 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Seven respondents suggested that there is a need to prescribe the procedure for handover by developer to body corporate. Six respondents suggested that the developer should disclose information relating to consents and confirm compliance with all regulations.
- Six respondents commented that the principle of "buyer beware" should be enough for prospective buyers.
- Five respondents suggested that section 36 certificates could be expanded to include disclosure information. Four respondents suggested that publicly accessible information should not be provided. Two respondents suggested that this information be provided online so prospective buyers could search for the information they require. Six respondents commented that some information may be subject to privacy, and should not be disclosed. Three respondents suggested that the latest body corporate AGM minutes also be disclosed.
- Four respondents suggested that disclosure should be provided pre-purchase during due diligence. A further four respondents suggested that a cooling off period be provided for.
- Four respondents suggested that small developments should be exempt from the disclosure requirements.
- Five respondents suggested that contract review should only be allowed in instances where the terms of the contract are harsh or oppressive, and should be performance based.
- Six respondents suggested that offences should require intention to deceive.

## **PART 8 – DISPUTE RESOLUTION** *(page 22 of discussion document)*

### **Proposals** *(P78-P86 of discussion document)*

The proposals in this section cover the establishment of a four-tier dispute resolution process.

### **Questions** *(Q40-Q43 of discussion document)*

Submitters were asked if they agreed with the establishment of a four-tiered dispute resolution process that would deal with all disputes relating to unit title matters, with different levels dealing with differing complexities of disputes.

### **Summary of Responses**

There was majority support for the creation of a four-tiered dispute resolution process.

Of 148 submissions:

- 51 agreed
- 6 disagreed
- 71 did not respond
- 20 made suggestions and raised other issues.

There were several salient issues raised by submitters.

- Four respondents suggested that means be put in place to discourage petty disputes.
- Four respondents suggested that costs be able to be awarded.
- Twelve respondents suggested that adjudicators and mediators needed minimum qualifications, possibly specialist knowledge, for dealing with unit title matters that can be complicated. One respondent suggested that decisions be made publicly available.
- Three respondents suggested that the proposed system was too complicated and could be simplified.
- Five respondents suggested that the District Court should be the court of first instance for all matters, including title matters.

## **PART 9 – TRANSITION PROVISIONS** *(page 24 of the discussion document)*

### **Proposals** *(P87-P95 in the discussion document)*

The proposals in this section cover a lead-in time for the new Act and special transition provisions.

### **Questions** *(Q44-Q46 in the discussion document)*

Submitters were asked if they agreed with a six-month lead-in time for the new Act that would apply to all unit title developments, and with special provisions for existing developments relating to disclosure, financial provisions and staged developments.

### **Summary of Responses**

There was majority support for the proposals relating to transition period of the new Act.

Of 148 responses:

- 38 agreed
- 3 disagreed
- 81 did not respond
- 26 made suggestions and raised other issues.

There were some salient issues raised by submitters.

- Three respondents suggested that there should be a shorter lead-in time. Thirteen respondents suggested that there should be a longer lead-in time.
- Eleven respondents suggested that existing developments should be required to comply with the financial and maintenance provisions and opting-out should only be granted in special circumstances.
- Two respondents suggested that an overlap period be provided for plans issued under the 1972 Act.
- Five respondents commented that it would be impractical for developers to disclose retrospectively.