

New Laws for Commercial and Industrial Assets within Unit Title Developments

MICHELLE HILL
Partner
Dentons Kensington Swan



Many high density commercial and industrial precincts have been created under the Unit Titles regime. As such, owners and occupiers alike of such assets should keep watch on the current, and long awaited, overhaul of the Unit Titles Act 2010. This has moved one step further with the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill having received its first reading in Parliament in March this year and is currently (at the time of writing) sitting at Select Committee stage and open for submissions until 29 April 2021.

The new Bill addresses a number of issues that were identified in a 2016 MBIE consultation paper as needed to bring the Act into line with modern practice. Key changes contained within the proposed legislation are:

Strengthening body corporate governance

A number of changes are to be introduced with a view to strengthening body corporate governance and decision making. These include:

- Limiting proxies so that a proxy may only vote on behalf of one principal unit (if there are less than 20 principal units) and no more than 5% of the total number of units (if there are more than 20 principal units).
- Enabling remote body corporate meetings by attendance and voting using some form of remote access facilities such as a telephone or audio visual link.
- A regime for notifying, and keeping a record of, any conflicts of interest.
- New accountability requirements for body corporate committees and their members. These include requiring the members of a body corporate committee to comply with a code of conduct. The rules of that code of conduct include:
 - › A commitment to acquiring an understanding of the Act and regulations.
 - › Acting honestly, fairly and maintaining confidentiality.
 - › Acting in the body corporate's best interests.
 - › Taking reasonable steps to ensure the committee member complies with the Act in performing their duties.
 - › Disclosing to the committee any conflict of interest.

The code is modelled on that contained in Queensland's Body Corporate and Community Management Act 1997. The Bill also sets out how conflicts of interest of body corporate committee members are to be dealt with.

- The Bill also provides that the chairperson of the body corporate is to be the chairperson of the body corporate committee (if any) as a default position (unless the body corporate decides otherwise).

Body corporate management

There are new terms relating to the role of the body corporate manager. This includes setting out the matters relating to the functions and duties of a manager and requiring them to act in the best interests of the body corporate.

Ensuring that planning and funding of long term maintenance projects is adequate and proportionate to the size of the complex concerned

The Bill requires the body corporate's long term maintenance plan to also identify any defects in or repairs required to the unit title development and an estimate of the costs involved in rectifying the situation.

Variable compliance requirements relating to size of complex

There are special provisions relating to residential unit title developments characterised by the number of principal units (those with at least 30 principal units are regarded as 'large residential developments' and those with between 10 and 29 principal units are regarded as 'medium residential developments'). (Medium residential developments may opt out of complying with the obligations if the body corporate resolves by special resolution to do so). The special provisions include requirements to engage a body corporate manager, additional reporting requirements for body corporate committees and additional requirements for long term maintenance plans for large residential developments. Large residential developments are also required to have a long term maintenance fund (as a mandatory requirement) and have those funds audited.

Better disclosure rules at the time of purchase

Information provided to buyers prior to entering into an agreement to purchase a unit title property is to be certified by the body corporate as being correct. The seller is under an obligation to discuss any issues arising with the buyer. A buyer may cancel or delay settlement if the information disclosure is late, incomplete or not made at all.

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Flexibility with cost allocation

Owners in a body corporate development are liable for costs based on their 'utility interests' (or 'ownership interests' in the case of certain capital expenses). The Bill introduces the ability to have multiple sets of utility interests, each targeted at a particular service or amenity. This will allow for apportioning utility interests so that costs of particular utilities can be fairly divided based on use. An example is the sharing of costs relating to a lift which is only used by the upstairs floors and those owners should be responsible for a larger share of the operating costs than those on the ground floor.

Improving the accessibility of dispute resolution

The Bill aims to ease unit title disputes by including the body corporate manager as one of the people who may attend the Disputes Tribunal (which has jurisdiction to hear unit title disputes).

What does this mean for you?

If passed into law, this Bill should provide owners and occupiers within unit title developments clearer rules as to their obligations and give greater flexibility for the management of body corporate complexes. The additional compliance requirements may increase the costs of managing bodies corporate, which may flow through to opex payable by commercial tenants. Although the Bill aims to strike a balance between these and the benefits that would flow from the additional compliance requirements, now is the time to have your say by making a submission.

Michelle is a real estate partner for Dentons Kensington Swan, one of New Zealand's leading national commercial law firms. The firm combined with Dentons, the world's largest law firm, in early 2020. Dentons leads the way in advancing change for the benefit of clients and is proud to be one of the three best known and most favoured firms in the world, according to the Thomson Reuters Acritas "Global Elite Brand Index", the annual ranking of law firms judged by leading general counsel.

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