

Body Corporate and Community Management (Accommodation Module) Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Leader of the House, provide this human rights certificate with respect to the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Accommodation Module) made under the *Body Corporate and Community Management Act 1997* (BCCM Act).

In my opinion, the Accommodation Module, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The primary object of the BCCM Act is to provide flexible and contemporary communally based arrangements for the use of freehold land in Queensland. For the achievement of this object, the BCCM Act provides for the establishment, operation and management of community titles schemes.

A community titles scheme involves the subdivision of land or buildings into lots and common property. The lots can be owned separately whereas the common property is owned by all lot owners as tenants in common. Community titles schemes take a wide range of forms including townhouses, duplexes, high-rise apartment complexes, retirement villages, hotels, resorts, shopping centres, business parks, commercial offices, as well as mixed retail and residential complexes.

Specific legislation exists for community titles schemes because of the collective ownership of common property and assets by the owners of lots in the scheme. This requires a comprehensive framework for internal governance and decision-making for community titles schemes. Under the BCCM Act, a body corporate is automatically created when a community titles scheme is established and is comprised of the owners of all lots included in the scheme. The body corporate functions include administering the common property and body corporate assets for the benefit of the owners in the scheme and enforcing the community management statement (including the by-laws) for the scheme.

To accommodate the different management needs of Queensland's diverse bodies corporate, the BCCM Act provides for management processes and procedures to be prescribed by a set of regulation modules, with each module designed for a specific type of scheme. Bodies corporate may adopt a regulation module that suits the needs of their scheme provided the characteristics of the scheme meet the eligibility criteria set out in the regulation module.

The Accommodation Module is one of five regulation modules under the BCCM Act and provides management processes designed for schemes that are used predominantly for short or long-term letting purposes (including for example holiday letting or serviced apartment operations) with the need for accommodation management. Broadly, the Accommodation Module prescribes arrangements for:

- a committee to assist in the day-to-day administration and management of the body corporate;
- the making of decisions by collective voting of lot owners at general meetings of the body corporate;
- proxy voting at committee and general meetings;
- the engagement, transfer and termination of body corporate managers, service contractors and letting agents;
- financial management processes;
- property management, including maintenance of common property and assets, as well as improvements to common property;
- insurance obligations and arrangements; and
- administrative matters, including recordkeeping.

The Accommodation Module may only apply to a community titles scheme if the lots included in the scheme are predominantly accommodation lots or the lots in the scheme were intended to be predominantly accommodation lots when the first community management statement for the scheme was recorded. The Accommodation Module provides that ‘accommodation lot’ means a lot that is:

- the subject of a lease or letting for accommodation for long or short-term residential purposes, or immediately available to be the subject of a lease or letting for accommodation for long or short-term residential purposes; or
- part of a hotel.

For the Accommodation Module to apply to a scheme, the community management statement for the scheme must state that the particular regulation module applies to the scheme.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the Accommodation Module engages the following human rights:

- freedom of association (section 22 of the HR Act);
- property rights (section 24 of the HR Act); and
- privacy (section 25 of the HR Act).

Freedom of association

Section 11 of the Accommodation Module may limit the right to freedom of association, as it prevents a person from being able to be elected as a voting member of a body corporate committee if the individual has an associate relationship with a body corporate manager, service contractor or letting agent for the community titles scheme, despite that person being otherwise eligible to be a voting member of the committee.

Property rights

Section 174 of the Accommodation Module engages the property rights of lot owners in a community titles scheme by permitting the body corporate to sell or otherwise dispose of part of the common property. Common property is owned by all lot owners in the scheme as tenants in common. Section 174 also permits the body corporate for a community titles scheme to authorise the leasing or licensing of the whole or part of common property for the scheme.

In relation to the capacity for a body corporate to sell or dispose of common property, to grant a lease over the whole of the common property for a period greater than three years, or to grant a lease over part of the common property for a period greater than 10 years, the provision does not limit property rights, as decisions to dispose of an interest in common property, or to grant a lease over the whole of common property for greater than three years, or a lease over part of the common property for greater than 10 years, must be made by passing a motion by resolution without dissent at a general meeting of the body corporate. A motion may pass by resolution without dissent only if no vote is recorded as having voted against the motion. As the owners of all lots in the scheme have the right to vote on motions to be decided by resolution without dissent, and therefore, to prevent a motion to dispose of an interest in common property from passing, the provision allowing the body corporate to dispose of, lease or license common property does not arbitrarily deprive a lot owner of their interests in common property.

Section 174 also permits the body corporate for a community titles scheme to decide by special resolution to grant a lease of three years or less over the whole of the common property, or to grant a lease over part of the common property for 10 years or less. A motion to be determined by special resolution passes if at least two-thirds of the votes cast are cast in favour of the motion, and not more than 25% of the total number of votes are cast against the motion. The provision may therefore limit property rights, as a body corporate may grant a lease for a period of three years or less over the whole of common property, or a lease over part of the common property for a period of 10 years or less, notwithstanding that some lot owners do not support the granting of the proposed lease.

Section 175 of the Accommodation Module permits the body corporate for a community titles scheme to grant or accept the grant of, as well as surrender or accept the surrender of, easements over the common property for the scheme. However, the provision does not limit property rights, as a body corporate must make any decision relating to the grant or surrender of an easement by deciding a motion by resolution without dissent, which is not passed if a vote is cast against the motion. All lot owners may vote on a motion to be decided by resolution without dissent, and may therefore prevent the body corporate taking action under this provision.

Section 179 of the Accommodation Module promotes property rights by permitting bodies corporate to acquire the following for the use and enjoyment of owners and occupiers of lots in a community titles scheme:

- freehold land;
- a leasehold interest in freehold or non-freehold land;
- a licence or concession related to land; and
- personal property.

Section 180 of the Accommodation Module may limit property rights, as it permits the body corporate for a community titles scheme to authorise the disposal of a body corporate asset that is freehold land or a leasehold interest in freehold land. Section 180 also permits the body corporate to grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased. In addition, section 180 allows bodies corporate to sell or otherwise dispose of body corporate assets of a particular value that are personal property, including a licence or concession relating to freehold land.

Section 181 of the Accommodation Module promotes property rights by allowing two bodies corporate to enter into agreements about sharing the use of facilities forming part of the common property, or body corporate assets, for either community titles scheme. The provision does not limit owners' rights to use and enjoy the common property for their community titles scheme if their body corporate enters into an agreement with another body corporate about sharing the use of facilities.

Section 201 of the Accommodation Module engages property rights, but does not impose limitations on those rights, as it only imposes an obligation on lot owners to maintain their lot in a good condition.

Section 202 of the Accommodation Module may limit property rights of lot owners, as it permits the body corporate for a community titles scheme to carry out work that a lot owner or occupier is required to carry out (including work required by the BCCM Act or the Accommodation Module, work required by order of an adjudicator, a court or the Queensland Civil and Administrative Tribunal (QCAT), or work required under another Act), and to recover the reasonable costs of carrying out the work from the owner of the relevant lot as a debt.

Privacy

Section 58 of the Accommodation Module may limit privacy rights, as the provision requires a voting member of the body corporate committee to declare to a committee meeting a direct or indirect interest in an issue being considered by the committee. If the member declares an interest on an issue being considered by the committee, that member is precluded from voting on a motion involving the issue.

Section 69 of the Accommodation Module may limit privacy rights, as the provision precludes a committee member from receiving a direct or indirect benefit from a caretaking service contractor or service contractor unless the body corporate has authorised the receipt of the benefit, or unless the benefit is a permitted benefit. To enable the body corporate to authorise the member receiving a benefit, a committee member must disclose details of the benefit for consideration of the body corporate at a general meeting.

Section 86 of the Accommodation Module may limit privacy rights, by requiring the original owner of a community titles scheme (normally the developer) to provide particular documents and information to the body corporate at the first annual general meeting for the scheme.

Section 103 of the Accommodation Module may limit privacy rights, as the provision requires the secretary for the body corporate to make particular information available for inspection by attendees at a general meeting, including the body corporate roll (containing the name and contact details of owners and other relevant parties), a list of people having the right to vote at the meeting, copies of all proxy forms relating to the meeting, and all hard copy and electronic votes.

Section 144 of the Accommodation Module may limit privacy rights. If a body corporate is considering engaging a person to provide goods or services to the body corporate, the provision requires the body corporate manager or caretaking service contractor to disclose details of any associate relationship they have with the person the body corporate is considering engaging, prior to the body corporate entering into an engagement with the person.

Section 145 of the Accommodation Module may limit privacy rights. If a body corporate is a party to a contract with a person for the supply of goods or services, the provision requires a body corporate manager or caretaking service contractor to disclose to the body corporate any relationship they have with the contracted person.

Section 146 of the Accommodation Module may limit privacy rights. If a body corporate is considering entering into a contract with a person for the supply of goods or services, the provision requires a body corporate manager or caretaking service contractor to disclose to the body corporate, before the body corporate enters into the contract, any payment or other benefit the body corporate manager or caretaking service contractor is entitled to receive as a result of the body corporate entering into the contract with the person.

Section 192 of the Accommodation Module may impact privacy rights. The provision requires the owner of a lot to give the body corporate for a community titles scheme details of any improvements made to the owner's lot or the common property, if those improvements may increase the premium payable by the body corporate for required insurance for the community titles scheme.

Section 197 of the Accommodation Module may impact privacy rights. The provision requires the owner of a lot to give details of the use of their lot to the body corporate, if the use of their lot may increase the premium payable by the body corporate for required insurance for the community titles scheme.

Section 212 of the Accommodation Module may impact privacy rights. The provision requires particular persons to provide a notice outlining details of specified events accompanied by particular contact details, including a residential or business address and address for service, within 1 month after the specified event occurs. A specified event includes, for example, a person becoming the owner of a lot in the scheme, or a mortgagee entering into possession of a lot.

Section 221 of the Accommodation Module may limit privacy rights, as it permits any member of the body corporate committee to inspect the records of the body corporate, which may include lot owner contact details, such as postal or email addresses, as well as telephone numbers.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*) – Freedom of association

(a) the nature of the right

Section 22(2) of the HR Act provides that every person has the right to freedom of association with others, including the right to form and join trade unions. It is aimed at protecting the rights of individuals to freely associate with others without discrimination based on that associate relationship.

The right to freedom of association allows people to pursue common interests (e.g. sporting, politics, trade) in formal groups.¹ The legal form of an association is unrestricted—except for those founded by law or an administrative act (e.g. public corporations, institutions). At international law, states have a positive obligation to provide legal frameworks for associations to incorporate, if they wish to. The freedom of association may also protect the right of individuals to carry out the activities of the association, and individuals have the right to choose which associations to be part of, or to form new ones. A policy or statutory provision that treats people differently on the basis of their membership of a group or association or a policy or statutory provision that prohibits membership in a group or association with certain persons, is said to limit the right to freedom of association.

Section 11 of the Accommodation Module may limit the right to freedom of association, as it declares that a person is ineligible to be elected as a voting member of a body corporate committee if the individual is an associate of a body corporate manager, service contractor or letting agent for the community titles scheme.

The BCCM Act (section 309) defines ‘associate’ relationships as relationships of the following types:

- marriage, de facto relationship or civil partnership;
- the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;
- partnership;
- the relationship of employer and employee;
- a fiduciary relationship;
- the relationship of persons, one of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;
- the relationship of a corporation and executive officer of the corporation; and
- the relationship of a corporation and a person who is in a position to control or substantially influence the corporation’s conduct.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation imposed by section 11 of the Accommodation Module on associates of body corporate managers, service contractors and letting agents is aimed at preventing any real or perceived bias, influence or conflict that may arise in relation to the committee decision-making process.

The committee for a body corporate generally consists of eligible owners (or their representatives) who are elected by the owners of lots included in the scheme at each annual general meeting of the body corporate. The committee is generally responsible for undertaking the administrative duties of the body corporate, making particular decisions on behalf of the body corporate, and for putting the lawful decisions of the body corporate into effect. Voting members are obligated to act in the best interests of the body corporate when performing their duties as a voting member (BCCM Act, schedule 1A).

¹ Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 162.

Body corporate managers, service contractors and letting agents are prohibited from being voting members of the committee because of the risk that those members will act in their own interests, rather than acting in the best interests of the body corporate. As body corporate managers, service contractors and letting agents have a commercial relationship with the body corporate for a community titles scheme, it is considered that limiting their right to be voting members of the committee is consistent with a free and democratic society based on human dignity, equality and freedom.

Restrictions are also imposed on associates of those people because of the risk that those associates may not fulfil their obligations to act in the best interests of the body corporate, particularly in light of the commercial nature of the relationships body corporate managers, service contractors and letting agents have with their respective bodies corporate.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Section 11 of the Accommodation Module limits the right to freedom of association by preventing a member of the body corporate who is an associate of a body corporate manager, service contractor or letting agent from being a voting member of the committee. The limitation is directly relevant to the purpose of the provision, in that it seeks to prevent persons being elected to the committee as voting members, where the person may be unable to fulfil the obligation imposed on voting members of the committee to act in the best interests of the body corporate due to any real or perceived bias, conflict or influence resulting from the associate relationship.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The Accommodation Module separately imposes an obligation on voting members of the committee to disclose a direct or indirect interest in an issue being considered by the committee. If a voting member discloses an interest in relation to an issue, the member is prohibited from voting on a decision in relation to the issue. While the obligation to disclose a direct or indirect interest is aimed at ensuring voting members of the committee are not placed in a position where they are unable to vote in the best interests of the body corporate, it is not considered the obligation would sufficiently achieve the purpose in relation to an associate of a body corporate manager, service contractor or letting agent. It is considered a complete prohibition on people who have an associate relationship with body corporate managers, service contractors and letting agents is the only appropriate regulatory option, particularly in light of the commercial nature of the relationship between bodies corporate and body corporate managers, service contractors and letting agents.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

While section 11 of the Accommodation Module may impact on the right to freedom of association, it is important that voting members of the committee make decisions that are in the best interests of the body corporate. The provision achieves its purpose in removing any risk that a voting member of the committee will be unable to vote in the best interests of the body corporate because that person has an associate relationship with a body corporate manager, service contractor or letting agent. For this reason, it is considered the limitation imposed by section 11 of the Accommodation outweighs the importance of preserving the right, in this instance.

It is also important to note rights are only limited in relation to eligibility for positions as voting members of a committee. The rights of members of the body corporate that are associates of body corporate managers, service contractors or letting agents to attend and vote at general meetings (as either a lot owner or representative of a lot owner) are not restricted.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*) – Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others, and that a person must not be arbitrarily deprived of the person's property.

The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term 'deprived' is not defined by the HR Act, however, deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation. The concept of arbitrariness in the context of the right to property carries a human rights meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.² Whether a deprivation of property is arbitrary therefore needs to be considered in light of the elements of proportionality, as set out below. Relevantly, in the context of this regulation, property has been held as the right to use common property equally with other lot owners. However, it is said to be a 'lesser right' than that of the right to property³.

Section 174 of the Accommodation Module may limit property rights of lot owners, as it permits the body corporate to decide by special resolution to grant a lease or licence for three years or less over the whole of the common property, or to grant a lease or licence for 10 years or less over part of the common property, even if not all lot owners in the scheme have voted in support of the lease or licence. Owners of lots in a community titles scheme own the common property for the scheme as tenants in common in proportionate shares. As such, any limitation of property rights imposed by section 174 is intended to permit a significant majority of lot owners in a scheme to decide to grant a lease or licence over the common property for which they are joint owners.

² *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing)

³ *Owners Corporation No. 1 SP37133 v Jand Investments Pty Ltd & Ors (Owners Corporation)* [2012] VCAT 1164

Section 180(1)(b)(ii) may limit property rights of lot owners, as it permits the body corporate to decide by special resolution to grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased, if the period of the lease is for 10 years or less. Body corporate assets are held by the body corporate beneficially (see BCCM Act, section 45).

Section 180(1)(b)(ii) permits bodies corporate to grant a lease of 10 years or less over body corporate assets that are freehold land, or are otherwise capable of being leased, even if not all lot owners in the scheme have voted in support of the lease or licence. Any limitation of property rights imposed by section 180(1)(b)(ii) is intended to permit a significant majority of lot owners in a scheme to decide to grant a lease over body corporate assets.

Section 180(1)(c) may also limit property rights of lot owners, as it permits the body corporate to sell or otherwise dispose of particular body corporate assets that are personal property (not including body corporate assets that are freehold land, leasehold interests in freehold land, or any other body corporate asset capable of being leased, but including a licence or concession relating to freehold land) if authorised by special resolution, if the market value of the asset is more than the greater of \$1,000, or the *asset dealing limit* for the scheme (an amount that is worked out by multiplying the number of lots in the scheme by \$200, or another amount that is set by special resolution of the body corporate).

Section 180(1)(c) permits bodies corporate to sell or otherwise dispose of particular body corporate assets that are personal property, even if not all lot owners in the scheme have voted in support of the lease or licence. Any limitation of property rights imposed by section 180(1)(c) is intended to permit a significant majority of lot owners in a scheme to decide to sell or otherwise dispose of particular body corporate assets that are personal property.

Section 202 of the Accommodation Module may limit property rights of lot owners and occupiers, as it permits the body corporate to carry out the work that a lot owner or occupier is obligated to carry out (i.e. work required to be carried out under the BCCM Act or the Accommodation Module, work required to be carried out under another Act, work required to be carried out pursuant to an order of a court, QCAT or an adjudicator), and also permits the body corporate to recover the reasonable cost of carrying out the work from the owner of the lot as a debt.

The provision enables bodies corporate to carry out work that the owner or occupier would ordinarily be obligated to carry out, including work the owner or occupier would be required to carry out to ensure their lot is maintained in a good condition. The provision is aimed at ensuring scheme land is maintained appropriately, including that individual lots are maintained to a reasonable standard. The provision is also aimed at ensuring that the condition of common property or body corporate assets is not jeopardised as a result of the failure of an owner or occupier to carry out particular work.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Section 174 may limit property rights by permitting bodies corporate to grant a lease or licence of three years or less over the whole of the common property, or grant a lease or licence of 10 years or less over part of the common property, without the unanimous support of all lot owners. As owners of lots own common property as tenants in common, the purpose of the provision is to allow a significant majority of owners to enter into a short-term lease or licence in relation to the common property. The provision may impact the property rights of owners who are not supportive of the grant of a lease or licence, despite a majority of owners favouring the grant.

Sections 180(1)(b)(ii) and (c) may limit property rights by permitting bodies corporate to grant a lease of 10 years or less over body corporate assets, as well as sell or otherwise dispose of particular body corporate assets that are personal property, without the unanimous support of all lot owners. The purpose of the provisions is to allow a significant majority of owners to enter into a short-term lease in relation to some body corporate assets, or to sell or otherwise dispose of particular body corporate assets that are personal property. The provisions may impact the property rights of owners who are not supportive of the grant of a lease or the selling or disposal of particular body corporate assets, despite a majority of owners favouring the grant of the lease, or sale or disposal of body corporate assets.

The purpose for the limitation on the right in section 202 is to allow bodies corporate to carry out work that a lot owner has failed to carry out in order to maintain scheme land in good condition. The limitation on lot owner property rights is also intended to allow bodies corporate to ensure the scheme is maintained in good condition so as to prevent injury to other owners, occupiers and visitors to the scheme. In this respect, the limitation on owner property rights is intended to allow bodies corporate, in appropriate cases, to carry out work that protects the right to life and security of the person. The limitation on an owner's property rights also permits bodies corporate, in appropriate cases, to carry out work that protects the property rights of other owners in the community titles scheme.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps achieves the purpose

Section 174 achieves its purpose, by ensuring the will of the majority of owners in relation to the grant of a lease or licence for three years or less over the whole of the common property, or the grant of a lease or licence for 10 years or less over part of the common property, is able to be implemented by the body corporate. Similarly, section 180(1)(b)(ii) and (c) ensures the will of the majority of owners in relation to the grant of a lease for 10 years or less over a body corporate asset, or the sale or disposal of particular body corporate assets that are personal property, are able to be implemented by the body corporate.

Section 202 empowers bodies corporate to carry out work that would ordinarily be the responsibility of an owner or occupier of a lot. In this respect, it imposes a limit on the rights of owners or occupiers to carry out work they are obligated to carry out (either under relevant legislation, or by order of a court, QCAT or an adjudicator) within their own lot. The limitation is directly related to the purpose of the provision in that it gives bodies corporate rights to carry out work that a lot owner has failed to carry out in order to maintain scheme land in good condition.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

In relation to the possible limitation of property rights imposed by section 174, there is no less restrictive way to achieve the purpose other than requiring the consent of all lot owners. A provision that requires the consent of all lot owners would not be reasonable, as it is considered that the support of a significant majority of owners (rather than all) is sufficient for a short-term lease or licence.

Section 174 allows bodies corporate to grant a lease or licence over common property with less than unanimous support of lot owners. However, in recognition of the fact that some lot owners may not agree with the grant of a lease or licence, the provision limits the period of time that the lease or licence may apply to the whole of the common property to a maximum of three years. Similarly, the provision limits the period of time that the lease or licence may apply to part of the common property to a maximum of 10 years. For the grant of a lease or licence for greater than three years over the whole of the common property, or greater than 10 years for part of the common property, owners must pass a motion at a general meeting by resolution without dissent (i.e. the motion will not pass if any lot owner votes against the motion).

In relation to the possible limitation of property rights imposed by section 180, there is no less restrictive way to achieve the purpose other than requiring the consent of all lot owners. A provision that requires the consent of all lot owners would not be reasonable, as it is considered that the support of a significant majority of owners (rather than all) is sufficient for a short-term lease of body corporate assets, or the sale or disposal of particular body corporate assets that are personal property.

Section 180 allows bodies corporate to grant a lease over body corporate assets with less than unanimous support of lot owners. However, in recognition of the fact that some lot owners may not agree with the grant of a lease over body corporate assets, the provision limits the period of time that the lease may apply to a maximum of 10 years. For the grant of a lease over body corporate assets for greater than 10 years, owners must pass a motion at a general meeting by passing a motion by resolution without dissent (that is, the motion will not pass if any lot owner votes against the motion).

Section 180 also allows a body corporate to sell or otherwise dispose of particular body corporate assets that are personal property with less than unanimous support of lot owners. The provision limits the ability to sell or dispose of body corporate assets by special resolution to particular body corporate assets that are personal property. For the sale or disposal of a body corporate asset that is freehold land, or a leasehold interest in freehold land, the body corporate must authorise the sale or disposal by resolution without dissent, in recognition of the significant impact that the sale or disposal may have on lot owners' property rights.

In relation to the limitation imposed by section 202, the BCCM Act provides options for bodies corporate to commence disputes with lot owners about contraventions of the body corporate legislation. There is capacity for a body corporate to seek an enforceable order of an adjudicator under chapter 6 of the BCCM Act in relation to an owner's failure to carry out work they are obligated to carry out. However, seeking an order and subsequently taking action to enforce that order is potentially costly and time-delays in relation to any dispute process may result in additional issues, including that the scheme may fall into disrepair, until an order can be obtained.

Further, it is considered the need for the work is clearly established, as section 202 states that the body corporate may only carry out work required under the BCCM Act, the Accommodation Module, another Act or under an order from a court, QCAT or a departmental adjudicator. For this reason, permitting the body corporate to carry out the work without having to commence dispute action (or further dispute action after the need for the work has already been established by a relevant order of a court, QCAT or an adjudicator) is considered to be a reasonable approach to ensure scheme land is maintained in good condition.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

As stated above, owners of lots in a community titles scheme jointly own common property as tenants in common in proportional shares. It is important for lot owners to be able to use and enjoy common property for the scheme, including by making decisions relating to the potential use of the common property. Section 174 does not impose an arbitrary or unreasonable limit on property rights, as a decision to grant a lease or licence passed by a special resolution threshold reflects that the majority of lot owners support granting a lease or licence. Also, in recognition of the implications of the grant of a lease or licence, the provision only permits the grant of a lease or licence for three years or less over the whole of the common property, or 10 years or less over part of the common property, if a motion is passed by special resolution. A grant of a lease or licence of more than three years over the whole of the common property, or more than 10 years over part of the common property, requires a motion to be passed by resolution without dissent (where no votes may be recorded as voting against the motion). For these reasons, it is considered the purpose of the limitation imposed by section 174 outweighs the importance of preserving the right, in this instance.

It is also important for owners to be able to use and enjoy body corporate assets for the scheme, including by making decisions relating to the potential use, sale or disposal of those assets. Section 180 does not impose an arbitrary or unreasonable limit on property rights, as a decision passed by a special resolution reflects that the majority of lot owners support the grant of a lease over a body corporate asset, or the sale or disposal of particular body corporate assets. Also, in recognition of the implications of the grant of a lease, section 180 only permits the grant of a lease for 10 years or less if a motion is passed by special resolution. A grant of a lease or licence of more than 10 years over a body corporate asset requires a motion to be passed by resolution without dissent (where no votes may be recorded as voting against the motion).

Similarly, the provision only permits the sale or disposal of particular body corporate assets that are personal property by a special resolution threshold. For the sale or disposal of a body corporate asset that involves freehold land, which is likely to have a more significant impact on lot owners' property rights, a decision must be passed by a resolution without dissent. For these reasons, it is considered the purpose of the limitation outweighs the importance of preserving the right, in this instance.

It is important for lot owners to use and enjoy their lot without unreasonable interference from other parties, including the body corporate for the scheme. It is not considered that section 202 of the Accommodation Module imposes arbitrary or unreasonable limitations on the individual property rights of owners and occupiers. It only empowers bodies corporate to carry out work that an owner or occupier would ordinarily be obligated to complete if that owner or occupier fails to comply with their obligations in relation to that work. For this reason, it is considered the purpose of the limitation outweighs the importance of preserving the right, in this instance.

Consideration of reasonable limitations on human rights (section 13 Human Rights Act 2019) – Privacy

(a) the nature of the right

Section 25(a) of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The intent of section 25(a) is to protect individuals from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Like the right to property, the right to privacy has an internal limitation to the right in that it imposes a negative obligation on the State not to *arbitrarily* interfere with the right. As stated above, the concept of arbitrariness in the context of the right to privacy carries a human rights meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought⁴.

Section 58 of the Accommodation Module may limit privacy rights, as the provision requires a voting member of the body corporate committee to declare to a committee meeting a direct or indirect interest in an issue being considered by the committee. If the member declares an interest on an issue being considered by the committee, that member is precluded from voting on a motion involving the issue.

Section 69 of the Accommodation Module may limit privacy rights. It provides that a committee member may only receive a benefit from a caretaking service contractor or service contractor for the scheme if the body corporate has authorised the receipt of the benefit by ordinary resolution at a general meeting of all owners; if the benefit is received as part of the services the caretaking service contractor or service contractor provides to the body corporate; or if the benefit is paid for at market price by a committee member who is the owner of a lot.

Section 69 requires members of the committee to disclose details of benefits they intend to receive to the body corporate for authorisation (unless the benefit is received as part of the services the caretaking service contractor or service contractor provides to the body corporate, or the benefit is paid for at market price by a committee member who is the owner of a lot).

Section 86 of the Accommodation Module may limit privacy rights. It requires the original owner of a community titles scheme to give particular documents and information to the body corporate at the first annual general meeting for the scheme. While it is unlikely, personal or commercial information about the original owner, or other people relevant to the community titles scheme, may be included in some of the documents and information required to be given to the body corporate by the original owner.

Section 103 of the Accommodation Module may limit the right to privacy, as it requires the secretary to make particular information available for inspection by attendees at a general meeting, including the body corporate roll (which contains the name and contact details for each lot owner), a list of individuals eligible to vote at the meeting, proxy forms and all hard copy and electronic votes.

⁴ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing)

Section 144 of the Accommodation Module may limit privacy rights by requiring the disclosure to the body corporate of commercial or personal relationships a body corporate manager or caretaking service contractor has with another person. The provision provides that, if a body corporate is considering entering into an agreement with a provider for the supply of goods or services, a body corporate manager or caretaking service contractor is required to disclose to the body corporate any relationship the body corporate manager or caretaking service contractor has with the person prior to the body corporate entering the agreement to engage the person.

Section 145 of the Accommodation Module may limit privacy rights by requiring the disclosure of commercial or personal relationships a body corporate manager or caretaking service contractor has with another person. If a body corporate is a party to a contract for the supply of goods or services from a particular provider, the provision requires a body corporate manager or caretaking service contractor to disclose to the body corporate any associate relationship they have with the particular provider, if the body corporate has not previously been informed of the associate relationship.

Section 146 of the Accommodation Module may limit privacy rights. If a body corporate is considering entering into a contract with a person for the supply of goods or services, the provision requires a body corporate manager or caretaking service contractor to disclose to the body corporate, before the body corporate enters into the contract, any commission, payment or other benefit the body corporate manager or caretaking service contractor is entitled to receive as a result of the body corporate entering into the contract with the person.

Section 192 of the Accommodation Module may limit privacy rights. The provision requires the owner of a lot to give the body corporate for a community titles scheme details of any improvements made to the owner's lot or the common property, if those improvements may increase the premium payable by the body corporate for required reinstatement insurance for the community titles scheme.

Section 197 of the Accommodation Module may limit privacy rights. The provision requires the owner of a lot to give details of the use of their lot to the body corporate, if the use may increase the premium payable by the body corporate for required insurance for the community titles scheme.

Section 212 of the Accommodation Module may limit privacy rights. The provision requires particular individuals or persons (including lot owners) to provide a notice outlining details of specified events (for example, the details of how the person came to own the lot) accompanied by their contact details, including a residential or business address and address for service, within 1 month after the specified event occurs.

Section 221 of the Accommodation Module may limit privacy rights, as it permits a member of the body corporate committee reasonable access to the records of the body corporate.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation in section 58 is to ensure voting members of the committee adhere to their responsibility to act in the best interests of the body corporate. The limitation is necessary to ensure a voting member of the committee that holds a direct or indirect interest in an issue being considered by the committee does not vote in relation to the issue. The limitation is consistent with a free and democratic society, as committee members are obligated to make decisions that are in the best interests of the body corporate.

The purpose of the limitation in section 69 is to ensure members of the committee are not influenced by caretaking service contractors or service contractors in relation to their responsibilities to act in the best interests of the body corporate. The limitation in section 69 is also necessary to ensure all lot owners are informed of a benefit that a member of the committee is receiving to enable lot owners to decide whether to vote in favour of a motion to approve the benefit. The limit imposed on the privacy rights of members of the committee is consistent with a free and democratic society, as it is expected committee members vote in the best interests of the body corporate (in relation to voting members of the committee), and otherwise act in the best interests of the body corporate, free from any influence of a caretaking service contractor or service contractor.

The purpose of the limitation in section 86 is to ensure the body corporate is provided with documents and information by the original owner at the first annual general meeting that are relevant to the ongoing administration and management of the community titles scheme, after the original owner no longer has responsibility for the management of the scheme.

The purpose of the limitation in section 103 is to ensure those present at the general meeting may conduct their own enquiries in relation to whether the people present at the meeting have the right to cast a vote at the meeting, and to also ensure the meeting is conducted transparently.

It is common for body corporate managers and caretaking service contractors to source quotes from contractors (either formally or informally) as part of their role. The purpose for the limitation in section 144 is aimed at ensuring the body corporate is aware of whether a person it is considering engaging to supply goods or services has a commercial or personal relationship with the body corporate manager and caretaking service contractor. The limitation is consistent with a free and democratic society, as it ensures the body corporate may make a decision that is in its best interests in relation to engaging a person to supply goods or service to the body corporate.

The purpose of the limitation in section 145 is ensuring the body corporate is aware of any relationship a body corporate manager or caretaking service contractor has with another party the body corporate has engaged to provide services that arises after the person has been engaged by the body corporate.

The limitation imposed by section 145 is consistent with a free and democratic society, as the intent of the disclosure is to ensure the body corporate can make informed decisions if a person that provides goods or services to the body corporate forms a commercial or personal relationship with the body corporate manager or caretaking service contractor after the person is contracted by the body corporate.

Section 146 requires the disclosure of commercial or personal information about a commission, payment or other benefit a body corporate manager or caretaking service contractor is entitled to receive in return for the body corporate engaging a person to provide goods or services to the body corporate. The purpose of the limitation is to ensure a body corporate is informed that the body corporate manager or caretaking service contractor may benefit personally or commercially from a decision of the body corporate. This limitation on privacy rights is consistent with a free and democratic society, as it ensures a body corporate can make a decision that is in its best interests in relation to the engagement of a person to provide goods or services to the body corporate.

The purpose of the limitation in section 192 is to ensure that improvements made by a lot owner that are likely to increase the premium for required insurance for the scheme are disclosed to the body corporate, primarily to ensure the scheme is adequately insured. The limitation is consistent with a free and democratic society, as it ensures the body corporate is aware of improvements made by lot owners and can obtain insurance that appropriately provides for the reinstatement of the scheme in the event that an insurable event occurs.

The purpose of the limitation in section 197 is to ensure the body corporate is informed of activities that may result in an increase in insurance costs of the body corporate. For example, the provision would require a commercial lot owner to disclose to the body corporate that the activities carried out on the lot include the handling and packaging of potentially harmful chemicals.

Section 197 may limit privacy rights by requiring a lot owner to disclose to the body corporate details of activities carried out within the lot. The limitation is consistent with a free and democratic society, as it ensures the body corporate is made aware of activities carried out within an owner's lot that are likely to result in an increase in insurance costs. The provision allows the body corporate to adequately insure the scheme, including by sourcing quotes for insurance from appropriate providers that are willing to offer suitable insurance.

The purpose of the limitation in section 212 is to ensure the body corporate has a current residential or business address, and address for service, for particular people involved in the scheme to allow the body corporate to send necessary notices and other information to the person in accordance with its statutory obligations. The information provided to the body corporate pursuant to section 212 forms part of the body corporate records for the scheme, and is accessible under section 205 of the BCCM Act by interested persons, or by committee members under section 221 of the Accommodation Module.

The purpose of the limitation in section 221 is to ensure members of the committee have reasonable access to the records of the body corporate in light of their responsibility to act in the best interests of the body corporate (including when making decisions), and to put the lawful decisions of the body corporate into effect.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation in section 58 prevents a voting member of the committee from voting in relation to an issue if the voting member of the committee discloses a direct or indirect interest in the issue being considered by the committee. The limitation is rationally connected to its purpose, which is to ensure voting members of the committee comply with the obligation to vote and act in the best interests of the body corporate. The limitation is necessary to ensure voting members of the committee that do hold a direct or indirect interest in an issue being considered by the committee do not vote in relation to the issue.

The limitation in section 69 prevents a member of the committee from receiving a benefit, unless the body corporate approves by ordinary resolution the receipt of the benefit, or the benefit is paid for by a committee member who is a lot owner at market price. In this way, the limitation is rationally connected to its purpose of ensuring caretaking service contractors or service contractors do not provide benefits to members of the committee as a means to influence decisions made by the committee, or to otherwise receive favourable treatment from committee members. The limitation is also necessary to ensure all lot owners are informed of a benefit that a member of the committee is receiving to enable lot owners to decide whether to vote in favour of a motion to approve the benefit.

The limitation in section 86 is directly related to the purpose of the provision, which is to ensure the body corporate is provided documents and information in the possession of the original owner that are relevant and necessary to the ongoing administration and management of the scheme. Although it is unlikely that personal information will be included in the documents and information to be provided by the original owner, all of the information (including any personal or commercial information) is relevant to the ongoing administration of the scheme. In this respect, it is likely that any personal or commercial information provided in the documents and information given by the original owner would ordinarily be required to be kept as a record of the body corporate pursuant to its general statutory obligation to keep records relevant to the administration and management of the scheme.

The limitation in section 103 is directly related to the purpose of the provision, in that it enables people present at the meeting to inspect the roll, a list of people entitled to vote at the meeting (who will not necessarily own a lot in the scheme), as well as the completed votes received for the meeting. Permitting owners and other meeting attendees to access this information at the meeting ensures the meeting is conducted transparently and people are able to confirm who is entitled to vote, particularly as meeting attendees will not necessarily own a lot in the scheme (for example, a meeting attendee may vote at the meeting under a power of attorney given to them by the owner of a lot).

The limitation in section 144 is rationally connected to the purpose of the provision, which is to ensure the body corporate has all relevant information so that it can make a decision that is in its best interests. As body corporate managers or caretaking service contractors may source quotations on behalf of the body corporate for the provision of goods and services, the provision ensures the body corporate is aware of any commercial or personal relationship that may exist prior to making a decision to enter into a contract for the provision of goods or services.

The limitation in section 145 is rationally connected to the purpose of the provision, which is to ensure that the body corporate is aware of any personal or commercial relationship a body corporate manager or caretaking service contractor has with a person the body corporate has contracted to provide goods or services to the body corporate, primarily where the associate relationship is formed after the person has been contracted by the body corporate.

Similarly, section 146 requires a body corporate manager or caretaking service contractor to disclose details of commissions, payments or other benefits they will receive to ensure the body corporate can make a reasonable decision that is in the best interests of the body corporate. In this way, the provision is rationally connected to the purpose of assisting the body corporate in being aware of whether body corporate managers or caretaking service contractors may benefit personally or commercially from a decision of the body corporate.

Section 192 requires a lot owner to disclose details of improvements the owner has made to their lot or the common property if the improvements are likely to result in an increase in insurance costs the body corporate is obligated to pay. In this way the limitation in section 192 is rationally connected to the purpose of the provision, which is to ensure the body corporate is provided with all relevant information that may impact mandatory insurance the body corporate is required to put in place under the legislation.

Section 197 requires an owner to disclose to the body corporate details of the activities carried out within the lot if those activities are likely to result in an increase in insurance costs for reinstatement insurance or public risk insurance required to be put in place by the body corporate. In this way, the limitation is rationally connected to the intent of the provision, which is to ensure the body corporate has information required to ensure that the scheme is adequately insured.

Section 212 requires particular people to disclose to the body corporate their name, contact details (residential or business address and address for service) and details of a specified type of event, within one month after the event occurs. For example, within one month after a person becomes the owner of a lot, the person must give the body corporate a notice detailing their name, residential or business address, address for service, and details of the way in which they became the owner of the lot (for example, a sale process). The limitation is rationally connected to the purpose of the provision, which is to ensure the body corporate has the name and contact details of owners and other people relevant to the scheme. Disclosing these details to the body corporate ensures the body corporate can send notices and other information to owners and other parties in accordance with its statutory obligations, and to ensure that owners and other relevant persons receive notices and information relevant to the operation of the scheme required to enable them to participate in decision-making of the body corporate.

Section 221 permits committee members to access the records of the body corporate. By inspecting the body corporate records, a committee member may obtain contact details for lot owners, correspondence between the body corporate and other parties, and financial information of the body corporate. The limitation is rationally connected to the purpose of the provision, which is to ensure members of the committee, who are obliged to act in the best interests of the body corporate and to put the decisions of the body corporate into effect, have reasonable access to the records of the body corporate.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

In relation to section 58, there is no less restrictive way to achieve the purpose of the provision, which is to ensure voting members of the committee with a direct or indirect interest in an issue being considered by the committee do not vote on that issue. Allowing a voting committee member to withhold information about their direct or indirect interest in an issue, and subsequently voting on that issue in their capacity as a voting member, is not considered an appropriate option, particularly given the obligation imposed on voting committee members to act in the best interests of the body corporate.

In relation to section 69, there is no less restrictive way to achieve the purpose of the provision which is to ensure that members of the committee do not receive a benefit (other than a permitted benefit, or a benefit paid for at market price) from a caretaking service contractor unless approved by ordinary resolution of the body corporate.

While the Accommodation Module also requires voting members of the committee to declare a conflict in relation to an issue being considered by the committee, and for body corporate managers and caretaking service contractors to disclose details of any commissions, payments or benefits they are entitled to receive if a body corporate enters into a contract with a person to provide goods or services to the body corporate, these provisions do not have the same effect as requiring a member of the committee to disclose any benefit they may receive from a caretaking service contractor or service contractor to the body corporate for approval.

In relation to section 86, there is no less restrictive way to achieve the purpose of the provision, which is to ensure the original owner gives copies of documents and information relevant to the ongoing administration and management of the scheme to the body corporate at the first annual general meeting.

In relation to section 103, there is no less restrictive way to achieve the purpose of the provision which is to ensure the meeting is conducted transparently and people are able to confirm who is entitled to vote at the meeting, particularly as meeting attendees will not necessarily own a lot in the scheme. While owners may access records, including the body corporate roll, under the BCCM Act (section 205) upon payment of a prescribed fee, this would not achieve the same result, as an inspection of records is not able to be conducted at a general meeting. For this reason, meeting attendees would not be able to satisfy themselves, at a general meeting, that the meeting has been conducted transparently. Allowing inspections of the body corporate roll and the list of voters at the meeting gives owners the right to conduct their own inquiries in relation to conduct of the meeting, including by identifying the people present at the meeting who are entitled to vote despite not owning a lot in the scheme (for example, a lot owner may have appointed a proxy to attend and vote at the general meeting on their behalf).

In relation to section 144, there is no less restrictive way to achieve the purpose of the provision which is to ensure information about an associate relationship that may impact on a body corporate decision about the engagement of a person to provide goods or services to the body corporate, is disclosed to the body corporate. Similarly, in relation to section 145, there is no less restrictive way to achieve the purpose of the provision, which is to ensure the body corporate is aware if, after contracting a person to provide goods or services to the body corporate, the person forms an associate relationship with the body corporate manager or caretaking service contractor.

It is considered that imposing obligations on body corporate managers and caretaking service contractors to disclose details of a personal or commercial relationship with a person the body corporate has engaged, or is considering engaging, to provide goods or services to the body corporate is the only way to ensure the body corporate may make informed decisions. In the absence of these disclosure requirements under sections 144 and 145, the body corporate would not be aware of any associate relationship, unless it conducted its own enquiries to determine if an associate relationship exists between a person and the body corporate manager or caretaking service contractor.

In relation to the limitation imposed by section 146, it is considered there is no less restrictive way to achieve the purpose of the provision, which is to ensure the body corporate is aware of the details of any commission, payment or other benefit a body corporate manager or caretaking service contractor may receive if a person is engaged to provide goods or service to the body corporate. It is common for body corporate managers and caretaking service contractors to source quotes for the supply of goods and services on behalf of the body corporate. Requiring disclosure of details of a commission, payment or other benefit a body corporate manager or caretaking service contractor is entitled to receive ensures the body corporate may make an informed decision, which is in the body corporate's best interests, about engaging a person to supply goods or services to the body corporate.

In relation to the limitations imposed by sections 192 and 197, it is considered there is no less restrictive way of achieving the purpose of the provisions, which is to ensure the body corporate may adequately insure the community titles scheme. If owners were not required to disclose details about improvements, or about activities carried out within the lot, that are likely to result in an increase in insurance costs, the body corporate may take out insurance cover that is not adequate for the scheme.

In relation to section 212, there is no other less restrictive way to achieve the purpose of the provision, which is to ensure the body corporate has the name and contact details for owners and other people relevant to the community titles scheme, to enable the body corporate to provide information and notices about the affairs of the body corporate (e.g. meeting notices) to all owners and other relevant parties (e.g. mortgagees in possession).

In relation to section 221, in the absence of an explicit right of members of the committee to access body corporate records, it would be possible for those members to rely on their right under the BCCM Act (section 205) to access records. However, this option would likely result in delays in committee member access to records that may be necessary to ensure they are able to carry out statutory duties of the body corporate and committee. An inspection of records under section 205 of the BCCM Act permits the body corporate to provide access to records any time within seven days after a written request accompanied by the prescribed fee is received by the body corporate. Also, given the committee is responsible for managing the routine administrative activities of the body corporate, it is necessary to ensure committee members have ready access to the body corporate's records.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Section 58 may limit privacy rights by requiring voting members of the committee to disclose to a committee meeting a direct or indirect interest in an issue being considered by the committee. Where a voting committee member declares a direct or indirect interest, they are not permitted to vote on the issue. This limitation is necessary to ensure committee members adhere to their obligation to act in the best interests of the body corporate. Holding a direct or indirect interest in an issue being considered by the committee is likely to impact on the ability of a voting member to vote on the issue in a way that represents the best interests of the body corporate. In most cases, a voting committee member volunteers to be on the committee (except in schemes with a small number of lot owners), so the limitation is important to ensure voting members do not vote in a way that may conflict with the interests of the body corporate on an issue. For these reasons, it is considered that the purpose of the limitation imposed by section 58 outweighs the importance of preserving the right, in this instance.

While section 69 impacts privacy rights of members of the committee by requiring them to disclose details of benefits they will receive from a caretaking service contractor or service contractor to the body corporate, the limitation is necessary to enable the body corporate to decide whether to approve any benefit the committee member may receive. Without the requirement to disclose the information required by section 69, and to seek the body corporate's approval, it may be perceived that a member of the committee is in receipt of a benefit in return for carrying out their duties in a way that favours the interests of the caretaking service contractor or service contractor.

A committee member is required to act in the best interests of the body corporate and receiving a benefit (other than those excluded from the section) from the caretaking service contractor or a service contractor has potential to generate conflicts of interest. If a committee member wants to receive a benefit, they must disclose details of the benefit for the consideration of all lot owners. This is important so that the body corporate can decide whether it is appropriate for the committee member to receive the benefit.

For these reasons, it is considered that the purpose of the limitation imposed by section 69 outweighs the importance of preserving the right, in this instance.

Section 86 may limit privacy rights by requiring the original owner of a community titles scheme to provide documents and information, which may contain personal or commercial information, that are relevant to the ongoing administration and management of the scheme to the body corporate at the first annual general meeting. It is important for the body corporate to maintain records relevant to the scheme, including records relating to the original owner's dealings in establishing the scheme, as well as their dealings as the sole member of the body corporate in the early period after scheme establishment, when the original owner has sole control of the operation of the body corporate. While some personal or commercial information may be included in the documents and information to be handed over by the original owner, these documents and information are all relevant to the ongoing administration and management of the scheme. For this reason, it is considered that the purpose of the limitation imposed by section 86 outweighs the importance of preserving privacy rights, in this instance.

Section 103 impacts privacy rights by requiring the secretary to permit meeting attendees to inspect the body corporate roll, a list of individuals eligible to vote at the meeting, proxy forms and all hard copy and electronic votes. This provision serves an important role in ensuring transparency in relation to the conduct of general meetings. As the individuals attending and voting at a general meeting will not always be lot owners (for example, they may be voting as the proxy of an owner), the provision allows owners to understand who is a voter for the meeting, as well as how those people entitled to vote have voted in relation to each motion to be decided at the meeting (through an inspection of the hard copy or electronic votes). The ability for meeting attendees to inspect the roll, proxy forms and completed votes also serves an important role in ensuring attendees can scrutinise attendees and their votes, which assists lot owners to accept body corporate decisions and avoid disputes about meeting conduct and outcomes. For these reasons, it is considered that the purpose of the limitation imposed by section 103 outweighs the importance of preserving the right, in this instance.

Section 144 may impact privacy rights by requiring a body corporate manager or caretaking service contractor to disclose details of a relationship with a person the body corporate is considering engaging to provide goods or services. The provision ensures there is transparency about conflicts of interests in the nomination of a person proposed to be engaged by the body corporate, particularly in situations where the body corporate manager or caretaking service contractor has recommended the body corporate engage a person to provide goods or services where that person shares a relationship (either personal, professional or commercial) with the body corporate manager or caretaking service contractor. This is important to ensure the best interests of the body corporate are considered as part of the body corporate decision-making processes. For these reasons, it is considered the purpose of the limitation imposed by section 144 outweighs the importance of preserving the right, in this instance.

Section 145 may impact privacy rights by requiring a body corporate manager or caretaking service contractor to disclose details of a relationship with a person the body corporate has already contracted to provide goods or services to the body corporate. The provision ensures there is transparency in relation to any conflicts of interest that may arise in relation to a person engaged by the body corporate to provide goods or services after the person has been contracted by the body corporate. This is important to ensure the best interests of the body corporate are considered as part of the body corporate decision-making processes. For these reasons, it is considered the purpose of the limitation imposed by section 145 outweighs the importance of preserving the right, in this instance.

Section 146 may impact privacy rights by requiring a body corporate manager or caretaking service contractor to disclose to the body corporate details of any payment or other benefit they will receive if the body corporate engages a person to provide goods or services. Like section 145, section 146 ensures transparency about conflicts of interests, by ensuring the body corporate is informed of payments or other benefits a body corporate manager or caretaking service contractor will receive. This is particularly important given it is common for body corporate managers and caretaking service contractors to source quotations for the supply of goods and services for the body corporate. The limitation ensures the best interests of the body corporate are considered as part of the body corporate decision-making processes. For these reasons, it is considered the purpose of the limitation imposed by section 146 outweighs the importance of preserving the right, in this instance.

Section 192 may limit privacy rights by requiring owners to disclose details of improvements, including improvements within the boundaries of their lot, if those improvements may impact on the costs of mandatory reinstatement insurance for the scheme. It is important for the body corporate to be aware of the information required to be disclosed under section 192 to ensure the body corporate can ensure it has reinstatement insurance in accordance with its statutory obligations, including that it covers the full cost of reinstating the scheme to its condition when new. Failure to be adequately insured may result in costs being imposed on lot owners to reinstate the scheme if an insurable event damages the scheme land the body corporate is required to insure, including improvements made by owners of the lots. In some scenarios, an owner's failure to adequately disclose improvements to the body corporate may also result in mandatory insurance for the scheme being voided. For these reasons, it is considered the purpose of the limitation imposed by section 192 outweighs the importance of preserving the right, in this instance.

Similarly, section 197 requires an owner to disclose details of activities carried out within a lot if those activities are likely to result in an increase in mandatory reinstatement or public liability insurance that the body corporate is required to maintain under the legislation. It is important for bodies corporate to know information about activities carried out within a lot if those activities impact insurance costs and availability. Failure to be adequately insured may result in lot owners being liable for costs if an event occurs that would ordinarily be covered by mandatory insurance. For this reason, it is considered the purpose of the limitation imposed by section 197 outweighs the importance of preserving the right, in this instance.

While section 212 requires the disclosure of personal contact details for owners and other relevant people to the body corporate, it is necessary for the body corporate to collect and maintain this information to ensure it is able to provide relevant scheme information, including notices of meetings and levy notices, to owners and other relevant people. It also ensures the body corporate may provide other relevant information to owners and other relevant people about the scheme, including information about how to participate in meetings, as well as their legal obligations as members of the body corporate (e.g. to provide notices of by-law contraventions). For these reasons, it is considered the limitation imposed by the section outweighs the importance of preserving the right, in this instance.

Section 221 may impact on privacy rights by giving members of the committee reasonable access to body corporate records. Given committee members are responsible for the day-to-day operations of the body corporate, and for putting lawful decisions of the body corporate into effect, it is important that committee members can access records of the body corporate on a reasonable basis. For these reasons, it is considered the purpose of the limitation imposed by section 221 outweighs the importance of preserving the right, in this instance.

Conclusion

I consider that the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* is compatible with the *Human Rights Act 2019* because, while it does limit, restrict or interfere with human rights, those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
LEADER OF THE HOUSE

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