

Body Corporate and Community Management (Small Schemes 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 (Small Schemes Module) Regulation 2020* (Small Schemes Module) made under the *Body Corporate and Community Management Act 1997* (BCCM Act).

In my opinion, the Small Schemes 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 Small Schemes Module is one of five regulation modules under the BCCM Act and contains deregulated management processes designed for smaller community titles schemes. Broadly, the Small Schemes Module prescribes arrangements for:

- a committee comprising a secretary and treasurer 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 general meetings;
- the engagement, transfer and termination of body corporate managers and service contractors;
- 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 Small Schemes Module may only apply to a community titles scheme if:

- the scheme is a basic scheme;
- there is no letting agent for the scheme; and
- there are no more than six lots in the scheme.

For the Small Schemes Module to apply to a scheme, the community management statement for the scheme must state that the Small Schemes 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 Small Schemes 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 Small Schemes Module may limit the right to freedom of association, as it prevents a person from being able to be elected as the secretary or treasurer if the individual has an associate relationship with a body corporate manager or service contractor for the community titles scheme, despite that person being otherwise eligible to be elected as the secretary or treasurer.

Property rights

Section 103 of the Small Schemes 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 103 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, or to grant a lease or licence over the whole or part of the common property for a period greater than three years, the provision does not limit property rights, as decisions to dispose of an interest in common property, or grant a lease or licence for more than three 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 owner 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 from passing, the provision allowing the body corporate to dispose of common property, or grant a lease or licence over the whole or part of the common property for more than three years, does not arbitrarily deprive a lot owner of their interests in common property.

Section 103 also permits the body corporate for a community titles scheme to decide by special resolution to grant a lease or licence of three years or less over the whole or part of the common property. 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 common property, notwithstanding that some lot owners do not support the granting of the proposed lease.

Section 104 of the Small Schemes 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 108 of the Small Schemes 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 109 of the Small Schemes 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 109 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 109 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 110 of the Small Schemes 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 130 of the Small Schemes 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 131 of the Small Schemes 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 Small Schemes Module, work required by order of an adjudicator, a court or 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 22 of the Small Schemes Module may limit privacy rights, as the provision prevents an office holder (defined as person who is the secretary, treasurer, or secretary and treasurer) from making a decision on an issue if the office holder has a direct or indirect interest in the issue, unless the office holder has been authorised by the body corporate to make a decision on the issue.

Section 29 of the Small Schemes Module may limit privacy rights, as the provision precludes a committee member from receiving a direct or indirect benefit from a 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 44 of the Small Schemes 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 53 of the Small Schemes 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 evidence of all votes cast for the meeting.

Section 75 of the Small Schemes Module may limit privacy rights. If a body corporate is considering entering into a contract with a person to provide goods or services to the body corporate, the provision requires the body corporate manager to disclose details of any associate relationship they have with the person, prior to the body corporate making its decision to enter into the contract.

Section 76 of the Small Schemes 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 to disclose to the body corporate any relationship they have with the contracted person.

Section 77 of the Small Schemes 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 to disclose to the body corporate, before the body corporate enters into the contract, any commission, payment or other benefit the body corporate manager is entitled to receive as a result of the body corporate entering into the contract with the person.

Section 121 of the Small Schemes 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 126 of the Small Schemes 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 140 of the Small Schemes 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 147 of the Small Schemes Module may limit privacy rights, as it permits the secretary and treasurer reasonable access to 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 Small Schemes Module may limit the right to freedom of association, as it declares that a person is ineligible to be elected as the secretary or treasurer if the individual is an associate of a body corporate manager or service contractor 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;

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

- 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 Small Schemes Module on associates of body corporate managers and service contractors 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, which consists only of a secretary and treasurer under the Small Schemes Module, 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).

Body corporate managers and service contractors 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 and service contractors 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 and service contractors have with their respective bodies corporate

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

The provision limits the right to freedom of association by preventing a member of the body corporate who is an associate of a body corporate manager or service contractor from being the secretary or treasurer. The limitation is directly relevant to the purpose of the provision, in that it seeks to prevent persons being elected as the secretary or treasurer, where the person may be unable to fulfil the obligation imposed on the secretary and treasurer 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 Small Schemes Module separately imposes an obligation on the secretary and treasurer to disclose a direct or indirect interest in an issue being considered by the committee. If the secretary or treasurer 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 the secretary or treasurer are not placed in a position where they are unable to make decisions 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 or service contractor. It is considered a complete prohibition on people who have an associate relationship with body corporate managers or service contractors is the only appropriate regulatory option, particularly in light of the commercial nature of the relationship between bodies corporate and body corporate managers and service contractors.

- (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 the provision impacts on the right to freedom of association, it is important that the secretary and treasurer make decisions that are in the best interests of the body corporate. The provision achieves its purpose in removing any risk that a secretary or treasurer 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 or service contractor. For this reason, it is considered the limitation imposed by the provision is justified.

It is also important to note rights are only limited in relation to eligibility for positions as the secretary or treasurer. The rights of members of the body corporate that are associates of body corporate managers and service contractors 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 sought². 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 property.³

Section 103 of the Small Schemes 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 or part of 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. Any limitation of property rights imposed by section 103 is intended to permit a significant majority of lot owners in a scheme to decide to grant a lease or licence for three years or less over the common property for which they are joint owners.

Section 109(b)(ii) of the Small Schemes Module 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 three years or less. Body corporate assets are held by the body corporate beneficially (see BCCM Act, section 45).

Section 109(b)(ii) permits bodies corporate to grant a lease of three 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. Any limitation of property rights imposed by section 109(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 109(c) of the Small Schemes Module may also limit property rights of lot owners, as it permits the body corporate to decide by special resolution 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) with a market value of more than the greater of \$1,000, or an amount worked out by multiplying the number of lots included in the community titles scheme by \$200.

Section 109(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 disposal. Any limitation of property rights imposed by section 109 (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.

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 131 of the Small Schemes 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 Small Schemes Module, work required to be carried out under another Act, or 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 103 may limit property rights by permitting bodies corporate to grant a lease or licence of three years or less over 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.

Section 109(b)(ii) and (c) may limit property rights by permitting bodies corporate to grant a lease of three 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 assets, despite a significant 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 131 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 103 achieves its purpose, by ensuring the will of the majority of owners in relation to the grant of a lease or licence over common property for three years or less is able to be implemented by the body corporate.

Similarly, the limitation imposed by section 109(b)(ii) and (c) ensures the will of the majority of owners in relation to the grant of a lease for three years or less over body corporate assets, or the sale or disposal of particular body corporate assets that are personal property, are able to be implemented by the body corporate.

Section 131 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 and, in appropriate cases, to protect the right to life and security of a person in relation to other owners, occupiers and visitors on scheme land, by ensuring scheme land is maintained 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 103, 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 103 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 a maximum of three years. For the grant of a lease or licence for greater than three years, 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 109, 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 109 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 three years. For the grant of a lease over body corporate assets for greater than three 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 109 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 131, 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 a 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 131 states that the body corporate may only carry out work required under the BCCM Act, the Small Schemes 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. 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 103 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 if a motion is passed by special resolution. A grant of a lease or licence of more than three years 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 103 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 109 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 that are personal property. Also, in recognition of the implications of the grant of a lease, the provision only permits the grant of a lease for three years or less if a motion is passed by special resolution. A grant of a lease or licence of more than three 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 131 of the Small Schemes 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 22 of the Small Schemes Module may limit privacy rights, as the provision prevents a secretary or treasurer who has a direct or indirect interest in an issue being considered by the committee from making a decision on that issue, unless specifically authorised by the body corporate for the scheme.

Section 29 of the Small Schemes Module may limit privacy rights. It provides that a committee member may only receive a benefit from a 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 contractor provides to the body corporate; or if the benefit is paid for at market price by a committee member who is a lot owner.

Section 29 requires a committee member 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 service contractor provides to the body corporate, or the benefit is paid at market price by a committee member who is a lot owner).

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

Section 44 of the Small Schemes Module may limit privacy rights. It requires the original owner of a community titles scheme to give particular documents and material 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 material required to be given to the body corporate by the original owner.

Section 53 of the Small Schemes 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 evidence of all votes cast in accordance with the permitted ways to vote for the meeting.

Section 75 of the Small Schemes Module may limit privacy rights by requiring the disclosure to the body corporate of commercial or personal relationships a body corporate manager has with another person. The provision provides that, if a body corporate is considering entering into a contract with a provider for the supply of goods or services, a body corporate manager is required to disclose to the body corporate any relationship the body corporate manager has with the person, prior to the body corporate making its decision to enter into the contract.

Section 76 of the Small Schemes Module may limit privacy rights by requiring the disclosure of commercial or personal relationships a body corporate manager 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 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 77 of the Small Schemes 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 to disclose to the body corporate, before the body corporate makes its decision to enter into the contract, any commission, payment or other benefit the body corporate manager is entitled to receive as a result of the body corporate entering into the contract.

Section 121 of the Small Schemes 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 126 of the Small Schemes 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 140 of the Small Schemes 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 147 may limit privacy rights, as it permits the secretary or treasurer 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 22 is to ensure the secretary and treasurer adhere to their responsibility to act in the best interests of the body corporate. The limitation is necessary to ensure a secretary or treasurer who holds a direct or indirect interest in an issue being considered by the committee does not make a decision on the issue, unless specifically authorised to do so by the body corporate for the scheme. The limitation is consistent with a free and democratic society, as the secretary and treasurer are obligated to make decisions that are in the best interests of the body corporate.

The purpose of the limitation in section 29 is to ensure members of the committee are not influenced by service contractors in relation to their responsibilities to act in the best interests of the body corporate. The limitation in section 29 is also necessary to ensure all lot owners are informed of a benefit that a member of the committee may receive 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 service contractor.

The purpose of the limitation in section 44 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 53 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 to source quotes from contractors (either formally or informally) as part of their role. The purpose for the limitation in section 75 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. 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 services to the body corporate.

The purpose of the limitation in section 76 is ensuring the body corporate is aware of any relationship a body corporate manager 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 76 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 after the person is contracted by the body corporate.

Section 77 requires the disclosure of commercial or personal information about a commission, payment or other benefit a body corporate manager is entitled to receive in relation to a contract the body corporate is considering entering into. The purpose of the limitation is to ensure a body corporate is informed that the body corporate manager 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 121 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 126 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 126 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 140 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 140 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 the secretary or treasurer under section 147 of the Small Schemes Module.

The purpose of the limitation in section 147 is to ensure voting 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 22 prevents a secretary or treasurer from making a decision about an issue, unless specifically authorised by the body corporate for the scheme, if the secretary or treasurer have 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 the secretary and treasurer comply with the obligation to vote and act in the best interests of the body corporate. The limitation is necessary to ensure a secretary or treasurer that holds a direct or indirect interest in an issue being considered does not vote in relation to the issue, unless specifically authorised to do so by the body corporate.

The limitation in section 29 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 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 44 is directly related to the purpose of the provision, which is to ensure the body corporate is provided documents and material 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 material 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 material 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 53 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 75 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 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 associate relationship that may exist between a body corporate manager and a person that the body corporate is considering entering into a contract with, before the body corporate makes its decision to enter into the contract. The limitation in section 76 is rationally connected to the purpose of the provision, which is to ensure that the body corporate is aware of any associate relationship a body corporate manager 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 77 requires a body corporate manager 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 may benefit personally or commercially from a decision of the body corporate.

Section 121 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 121 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 126 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 140 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 147 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 22, there is no less restrictive way to achieve the purpose of the provision, which is to ensure a secretary or treasurer with a direct or indirect interest in an issue being considered by the committee does not vote on that issue, unless specifically authorised to do so by the body corporate for the scheme. Allowing a secretary or treasurer to decide an issue if they have a direct or indirect interest in an issue risks a decision being made by the secretary and/or treasurer that is not in the best interests of the body corporate.

In relation to section 29, 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 service contractor, unless approved by ordinary resolution of the body corporate.

While the Small Schemes Module also prevents voting members of the committee from making a decision on an issue if they have a direct or indirect interest in the issue (unless authorised by the body corporate), this provision does not have the same effect as requiring a member of the committee to disclose any benefit they may receive from a service contractor to the body corporate for approval.

In relation to section 44, 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 material relevant to the ongoing administration and management of the scheme to the body corporate at the first annual general meeting.

In relation to section 53, 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 ability 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 75, 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 a body corporate decision to enter into a contract, is disclosed to the body corporate. Similarly, in relation to section 76, 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.

It is considered that imposing obligations on body corporate managers 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 75 and 76, 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.

In relation to the limitation imposed by section 77, 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 may receive in relation to a contract the body corporate is considering entering into.

It is common for body corporate managers 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 is entitled to receive in relation to a contract ensures the body corporate may make an informed decision, which is in the body corporate's best interests, about entering into the contract.

In relation to the limitations imposed by sections 121 and 126, 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 140, 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 147, in the absence of an explicit right of voting members of the committee to access body corporate records, it would be possible for those voting members to rely on their right under the BCCM Act (see 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 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 22 may limit privacy rights by preventing a secretary or treasurer who has a direct or indirect interest on an issue from making a decision in relation to the issue, unless specifically authorised to do so by the body corporate for the scheme. This limitation is necessary to ensure the secretary and treasurer adhere to their obligation to act in the best interests of the body corporate. Holding a direct or indirect interest in an issue is likely to impact on the ability of a secretary or treasurer to vote on the issue in a way that represents the best interests of the body corporate. In most cases, a secretary or treasurer volunteers to be on the committee (except in schemes with a small number of lot owners), so the limitation is important to ensure the secretary or treasurer makes decisions in a way that may conflict with the interest of the body corporate on an issue. For these reasons, it is considered that the purpose of the limitation imposed by section 22 outweighs the importance of preserving the right, in this instance.

While section 29 impacts privacy rights of members of the committee by requiring them to disclose details of benefits they will receive from a 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 29 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 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 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 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 29 outweighs the importance of preserving the right, in this instance.

Section 44 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 44 outweighs the importance of preserving privacy rights, in this instance.

Section 53 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 evidence of all votes cast for the meeting. 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 voting, the basis for their right to vote (i.e. a lot owner, or a representative of a lot owner), 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 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 53 outweighs the importance of preserving the right, in this instance.

Section 75 may impact privacy rights by requiring a body corporate manager 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 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. 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 75 outweighs the importance of preserving the right, in this instance.

Section 76 may impact privacy rights by requiring a body corporate manager 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 76 outweighs the importance of preserving the right, in this instance.

Section 77 may impact privacy rights by requiring a body corporate manager to disclose to the body corporate details of any commission, payment or other benefit they will receive if the body corporate engages a person to provide goods or services. Like section 76, section 77 ensures transparency about conflicts of interests, by ensuring the body corporate is informed of payments or other benefits a body corporate manager is entitled to receive in relation to a contract the body corporate is considering entering into. This is particularly important given it is common for body corporate managers to source quotations for the supply of goods and services for the body corporate. The limitation supports the best interests of the body corporate being considered as part of the body corporate decision-making processes. For these reasons, it is considered the purpose of the limitation imposed by section 77 outweighs the importance of preserving the right, in this instance.

Section 121 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 121 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 elements of the scheme land that 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. It is considered the purpose of the limitation imposed by section 121 outweighs the importance of preserving the right, in this instance.

Similarly, section 126 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 126 outweighs the importance of preserving the right, in this instance.

While section 140 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 is justified.

Section 147 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 147 outweighs the importance of preserving the right, in this instance.

Conclusion

I consider that the *Body Corporate and Community Management (Small Schemes 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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