

# Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment 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 (Specified Two-lot Schemes Module) Amendment Regulation 2020* made under the *Body Corporate and Community Management Act 1997*.

In my opinion, the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The primary object of the *Body Corporate and Community Management Act 1997* (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 comprises the owners of all lots included in the scheme. The body corporate’s 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 *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (the Specified Two-lot Schemes Module) provides simplified management arrangements designed for residential two-lot schemes that are not part of a layered arrangement of schemes and do not have a letting agent. The Specified Two-lot Schemes Module applies if the community titles scheme is a specified two-lot scheme (within the meaning of section 111C of the BCCM Act) and the community management statement for the scheme states that the Specified Two-lot Schemes Module applies to the scheme.

The policy objective of the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment Regulation 2020* (the Amendment Regulation) is to enhance the day-to-day administration of specified two-lot community titles schemes by:

- increasing obligations on body corporate managers to disclose commissions, payments or other benefits;
- clarifying a lot owner's responsibility to maintain utility infrastructure that relates only to the supply of utility services to the owner's lot;
- increasing flexibility to use email and other electronic means of communication for the giving, or serving, of documents and information to lot owners;
- changing the time for giving of particular notices to the body corporate;
- clarifying of the original owner's obligation to provide particular information to the body corporate when the original owner sells one or both lots included in a specified two-lot scheme, and changing how the information must be provided;
- requiring a body corporate to consider obtaining a defects assessment report for particular property it is required to insure; and
- at the same time a body corporate considers obtaining a defect assessment report for particular property it must insure, allowing a body corporate to organise a defect assessment report for the owners of any lots that are created under a standard format plan of subdivision if buildings on the lots do not share common walls.

## Human Rights Issues

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

In my opinion, the Amendment Regulation engages the following human rights:

- property rights (section 24); and
- privacy and reputation (section 25)

#### Property rights

The nature of property rights protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property.

Section 5 of the Amendment Regulation, which amends section 31 of the Specified Two-lot Schemes Module, promotes the property rights of lot owners and does not impose limitations on the right. Section 5 of the Amendment Regulation engages property rights of lot owners by making minor amendments to section 31 to provide contemporary examples of utility infrastructure, including utility infrastructure situated on common property, that must be maintained by a lot owner if the utility infrastructure relates only to the supply of utility services to the owner's lot.

Section 6 of the Amendment Regulation inserts new sections 31A and 31B in the Specified Two-lot Schemes Module. New sections 31A and 31B promote property rights and do not impose limitations on those rights. New section 31A requires bodies corporate, on or before the second anniversary of the scheme's establishment, to consider engaging an appropriately qualified person to prepare a defect assessment report for property (other than body corporate assets) that the body corporate must insure for full replacement value.

New section 31B allows the body corporate, at the same time it considers obtaining a defect assessment report under section 31A, to establish a voluntary defect assessment plan for owners of standard format plan lots on which there is a building having no common wall with a building on another lot. Under section 31B, owners may voluntarily opt-in to the defect assessment plan arranged by their body corporate.

In this respect, Section 6 of the Amendment Regulation promotes owners' property rights, by requiring bodies corporate to consider engaging an appropriately qualified person to prepare a defect assessment report about particular property the body corporate is required to insure. Section 6 of the Amendment Regulation also promotes owners' property rights by allowing bodies corporate to arrange for a defect assessment report to be prepared for the owners of lots that contain buildings that the body corporate is not required to insure, at the same time it considers obtaining a defect assessment report about property the body corporate is required to insure.

Section 7 of the Amendment Regulation amends section 44 of the Specified Two-lot Schemes Module. The clause engages property rights but does not impose limitations on those rights. Section 7 of the Amendment Regulation makes minor editorial amendments to section 44 to clarify the rights of owners of lots to whom rights are given under an exclusive use by-law.

### **Privacy and reputation**

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

Section 4 of the Amendment Regulation amends section 21 of the Specified Two-lot Schemes Module. The amendments made to section 21 may limit privacy rights. The amendments enhance disclosure requirements, by requiring a body corporate manager to disclose to the body corporate the monetary value of a commission, payment or other benefit (to the extent the commission, payment or benefit is monetary) that the body corporate manager is entitled to receive in association with a contract that the body corporate is considering entering into. The disclosure must take place before the body corporate enters into the contract.

Section 12 of the Amendment Regulation amends section 67 of the Specified Two-lot Schemes Module. The amendments made to section 67 may limit privacy rights, by requiring the original owner of a community titles scheme to provide particular documents and information to the body corporate after the original owner stops owning one or both lots included in the scheme.

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

### (a) the nature of the right

Section 25(a) of the *Human Rights Act 2019* 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. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender). Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. The concept of arbitrariness in the context of the right to privacy carries a human right meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'<sup>1</sup>.

Section 4 of the Amendment Regulation amends section 21 of the Two-lot Schemes Module. The amendments to section 21 may limit privacy rights, by requiring the body corporate manager to disclose to the body corporate personal or commercial information in the form of the monetary amount of a commission, payment or benefit in particular scenarios.

Section 12 of the Amendment Regulation, which amends section 67 of the Specified Two-lot Schemes Module, may limit privacy rights. The amendments require the original owner of a community titles scheme to give particular documents and information to the body corporate after the original owner stops owning one or both lots included in 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.

### (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

Body corporate managers commonly source quotes from contractors on behalf of the body corporate as part of their role. The purpose of the limitation imposed by section 4 of the Amendment Regulation is to ensure that the body corporate is aware of any monetary amount the body corporate manager may be entitled to receive as a result of the body corporate engaging a person to provide goods or service. 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.

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<sup>1</sup> *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing)

The purpose of the limitation imposed by section 12 of the Amendment Regulation is to ensure the body corporate is provided with documents and information by the original owner that are relevant to the ongoing administration and management of the community titles scheme, after the original owner no longer owns one or both lots in the scheme. The limitation on privacy rights is consistent with a free and democratic society, as it is designed to assist bodies corporate carry out their role in administering and managing the community titles scheme for the benefit of the lot owners.

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

Section 4 of the Amendment Regulation amends section 21 of the Specified Two-lot Schemes Module to require a body corporate manager to disclose details of the monetary amount of any commission, payment or benefit 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 which is to assist the body corporate in being aware of whether the body corporate manager may benefit personally or commercially from a decision of the body corporate.

The potential limitation imposed by section 12 of the Amendment Regulation directly supports the purpose of section 67 of the Specified Two-Lot Schemes Module, which is to ensure the body corporate is provided with 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.

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

In relation to the amendments section 4 of the Amendment Regulation makes to section 21 of the Specified Two-lot Schemes Module, 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 a monetary amount a body corporate manager is entitled to receive in relation to a contract the body corporate is considering entering into.

In relation to the amendments section 12 of the Amendment Regulation makes to section 67 of the Specified Two-lot Schemes Module, 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 after the original owner no longer owns one or both lots in the scheme.

(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

The amendments to section 21 ensure greater transparency about body corporate manager conflicts of interests, by ensuring the body corporate is informed of monetary amounts a body corporate manager will receive if the body corporate enters into a contract for goods or services. This enhanced disclosure 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 and the disclosure is critical to ensuring 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 the amendments to section 21 outweighs the importance of preserving the right to privacy, in this instance.

The purpose of the amendments to section 67 is to ensure the body corporate is provided with documents and information in the possession of the original owner that are relevant and necessary to the ongoing administration and management of the scheme.

It is important for a body corporate to maintain records relevant to the community titles scheme, including records relating to the original owner's dealings in establishing the scheme and 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 the amendments to section 67 outweighs the important of preserving privacy rights, in this instance.

## Conclusion

I consider that the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment 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  
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