

# Associations Incorporation and Other Legislation Amendment Regulation 2022

## 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, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Associations Incorporation and Other Legislation Amendment Regulation 2022* (Amendment Regulation) made under the *Associations Incorporation Act 1981* (AI Act) and the *Collections Act 1966* (Collections Act).

In my opinion, the *Associations Incorporation and Other Legislation Amendment Regulation 2022*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HRA). I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The *Associations Incorporation Regulation 1999* (AI Regulation) supports the operation of the AI Act. It contains details about unsuitable names for incorporated associations, record keeping standards, and accounting requirements, as well as prescribing fees payable under the Act. Importantly, it also contains a list of matters that must be addressed in an association's rules (Schedule 3) and a best practice set of Model Rules (Schedule 4) that associations may choose to adopt.

The *Collections Regulation 2008* (Collections Regulation) prescribes matters relating to the registration or sanction of fundraising bodies and conduct of fundraising under the Collections Act.

The *Associations Incorporation and Other Legislation Amendment Act 2020* (Amendment Act) was passed on 16 June 2020 and received assent on 22 June 2020. Broadly, it amends the AI Act and Collections Act to improve the internal governance of incorporated associations and reduce the regulatory burden for incorporated associations and charitable organisations.

The Amendment Regulation supports a number of provisions contained in the Amendment Act that commenced on 22 June 2022 and are reliant on certain matters to be provided for in the AI Regulation and the Collections Regulation. These include ensuring:

- the Model Rules reflect the use of a common seal is not mandatory;
- the Model Rules reflect the secretary of an association must be an adult;
- the Model Rules reflect the new requirements for the disclosure of material personal interests by management committee members;
- the AI Regulation and the Model Rules, and the Collections Regulation, reflect the new financial reporting requirements under the AI Act and Collections Act, including the exemption for charities registered with the Australian Charities and Not-for-profits Commission, and prescribe the definitions of *accountant* and *auditor*; and

- any new terms and provisions are correctly referenced.

The Amendment Regulation also addresses a matter that poses a potential risk to the safety of individuals involved in the governing body of a charity. Section 37 of the Collections Regulation allows any person, on payment of a fee, to obtain certain information held by the Office of Fair Trading (the OFT) about authorised fundraisers. This includes the name and address of a member of the governing body of a registered charity or association. Concerns have been raised that the OFT does not have a legal basis to withhold addresses when requested by survivors of domestic and family violence whose details have been provided to the OFT for compliance purposes. The Amendment Regulation removes the address of a member of the governing body from the list of information that is obtainable under the Collections Regulation.

## Human Rights Issues

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

Section 11(2) of the HRA states only individuals have human rights. Consequently, clauses of the Amendment Regulation that affect only the operation of incorporated associations and charitable organisations, including those relating to financial reporting requirements, the business to be conducted at annual general meetings and the use of a common seal by incorporated associations, cannot engage human rights.

Minor amendments relating to the requirement that the secretary of an incorporated association is an adult and the disclosure of material personal interests by members of the management committee of an incorporated association, while relevant to human rights, are consequential to policies that already exist in primary legislation or are advisory in nature. Therefore, no human right is newly engaged by these amendments.

The amendment removing access to the address of a member of the governing body of a charity is however capable of engaging human rights.

Clause 21 of the Amendment Regulation amends subsection 37(1)(d)(iii) of the Collections Regulation to remove the address of a member of the governing body from the list of information that is obtainable. The following human rights are relevant to the Amendment Regulation:

- Freedom of expression (section 21);
- Privacy and reputation (section 25);
- Right to liberty and security of the person (section 29); and
- Right to life (section 16).

The right to freedom of expression is engaged as access to the name and address of members of the governing body of an authorised fundraiser allows interested persons to contact management committee members to request information or express views about the operations and purposes of the charity or association. However, the amendment to section 37 of the Collections Regulation does not prevent individuals from contacting members of the governing body via the charity or association's business address. Accordingly, it is considered the amendment does not limit the right to freedom of expression.

The right to privacy and reputation protects the individual from unlawful interference with their privacy, family, home or correspondence. Section 37 of the Collections Regulation currently limits the right to privacy by making it lawful for the Office of Fair Trading to disclose the address of a member of the governing body of an authorised fundraiser to a person who has paid the relevant fee. The amendment therefore enhances the right to privacy for management committee members.

The right to security of the person and right to life have each been interpreted in international law as conferring a duty on the State to take reasonable and appropriate measures to protect the physical security or life of a person in circumstances where public authorities know or ought to know of a risk to the person's security or life from the criminal activities of another person. These rights are engaged in the case where potential disclosure of an individual's address may place them at risk of domestic and family violence. However, there is no provision in the Collections Act or the Collections Regulation allowing the Office of Fair Trading to withhold personal information. The amendment to section 37 of the Collections Regulation enhances the right to security of the person and the right to life by preventing personal addresses of management committee members from being available to the public.

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

The amendment to section 37 of the Collections Regulation does not limit, restrict or interfere with the human rights identified as relevant.

**Conclusion**

I consider that the *Associations Incorporation and Other Legislation Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

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