

Body Corporate and Community Management and Other Legislation Amendment Regulation 2023

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* (Human Rights Act), I, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Body Corporate and Community Management and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *Body Corporate and Community Management Act 1997* (BCCM Act) and the *Building Units and Group Titles Act 1980* (BUGT Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The objective of the Amendment Regulation is to increase the fees payable for dispute resolution applications under the BCCM Act and the BUGT Act.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office) provides information and education services and dispute resolution services to those who live, invest or work in community titles schemes established under the BCCM Act and developments to which the BUGT Act applies.

The BCCM Act provides for the establishment, operation and management of community titles schemes in Queensland, and the majority of community titles type schemes are governed by this legislation. Under the BCCM Act, the BCCM Office provides a dispute resolution service comprising conciliation, and if necessary, adjudication for parties to certain disputes in community titles schemes.

The BCCM Act's predecessor, the BUGT Act, continues to apply to certain developments established under specialised planning laws (known as 'specified Acts'). The BUGT Act provides a framework for governance of parts of these developments, and for certain disputes to be determined by a 'referee'. BCCM Act adjudicators located in the BCCM Office are administratively appointed as referees for disputes under the BUGT Act. Since 1 December 2022, the BCCM Office also provides an information and education service to assist proprietors understand rights, responsibilities, and dispute resolution options under the BUGT Act.

The community living sector that utilises the services on the BCCM Office is consistently increasing in size, and is expected to continue to grow. The nature of body corporate disputes

is also becoming more complex due to this increasing size and complexity of schemes, and also as a result of legislative changes that expand protections for owners.

The delivery of services by the BCCM Office attracts significant costs, which are subsidised by the Queensland Government. Dispute resolution application fees are not set on a full cost recovery basis, as the dispute resolution services provided by the BCCM Office are designed to be inexpensive and informal in nature.

To provide a small offset to increasing costs associated with operating the BCCM Office's information, education and dispute resolution services, the Amendment Regulation increases the fees payable for dispute resolution applications under the BCCM Act and BUGT Act by 20%. The amendments will commence on 29 January 2024.

Human Rights Issues

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

In my opinion, the human rights protected under the Human Rights Act that are relevant to the Amendment Regulation are property rights (section 24, Human Rights Act).

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

(a) the nature of the right

Section 24 of the Human Rights 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.

Property includes real and personal property, and encompass economic interests in a broad sense, including money.

The term 'deprived' is not defined by the Human Rights Act. However, deprivation in this sense is considered to include the substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The concept of arbitrariness in the context of the right to property carries a meaning of capriciousness, unpredictability, injustice, and unreasonableness – in the sense of not being proportionate to the legitimate aim sought. Whether a deprivation of property is arbitrary therefore needs to be considered in light of the elements of proportionality, as set out below.

The Amendment Regulation, by increasing the fees payable for dispute resolution applications under the BCCM Act and BUGT Act, limits property rights of a person who wishes to resolve a dispute within their community titles scheme or development using the dispute resolution services provided by the BCCM Office.

(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

Safe and harmonious community living in community titles schemes and developments require effective information and education services, to assist residents and interested parties to resolve their disputes themselves. Where resolution of disputes through information and education is not possible, effective (timely) and accessible dispute resolution services are important to ensure community safety and harmony.

Substantial growth in the community titles sector in recent years has resulted in increased demand for the BCCM Office's information and dispute resolution services, which has impacted on service delivery.

The purpose of the increase to dispute resolution fees is to enable the BCCM Office to provide effective information and education services and dispute resolution services to support safe and harmonious community living in community titles schemes and developments.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it contributes to.

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

The increase in dispute resolution application fees under the BCCM Act and BUGT Act is rationally connected to achieving the purpose of providing effective information and dispute resolution services to those who live, invest or work in community title schemes and developments.

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

There are no less restrictive and reasonably available ways to achieve the purpose.

Setting dispute resolution application fees at a full cost recovery level is not considered appropriate given the BCCM Office is intended to be an inexpensive and informal avenue for the resolution of bodies disputes in community titles schemes and developments.

Of note, the *Body Corporate and Community Management Regulation 2008* and the *Building Units and Group Titles Regulation 2008* allow the waiver of a dispute resolution application fee for an individual on the basis of financial hardship. This will reduce the risk that an applicant would be deterred from accessing the BCCM Office dispute resolution service by the increased fees.

(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

On balance, the importance of ensuring the dispute resolution application fees facilitate the provision of information and education services and dispute resolution services in a fiscally responsible way outweighs the limitations on the right to property.

Conclusion

I consider that the Amendment Regulation is compatible with the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

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