

Body Corporate and Community Management (Body Corporate Certificate Fees) and Other Legislation Amendment Regulation 2025

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* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, provide this human rights certificate with respect to the *Body Corporate and Community Management (Body Corporate Certificate Fees) and Other Legislation Amendment Regulation 2025* (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 HR 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 prescribe fees relating to a request for a body corporate certificate under section 205 of the BCCM Act and section 40AA of the BUGT Act and remove fees relating to existing certificates under the BCCM Act and BUGT Act.

The body corporate certificate forms part of the seller disclosure scheme for the sale of existing lots in Queensland to be introduced by the *Property Law Act 2023* (Property Law Act). The seller disclosure scheme will simplify and consolidate the disclosure process for sales of existing lots and empower prospective buyers to make informed decisions to purchase.

The seller disclosure scheme will require that, before a contract for the sale of a lot is signed by the buyer, the seller must give the buyer a disclosure statement and each prescribed certificate applicable to the lot. A body corporate certificate will be a prescribed certificate for the sale of an existing lot in a community titles scheme under the BCCM Act, or in a plan under the BUGT Act (a BUGTA scheme).

The body corporate certificate will contain general information about owning a lot in a community titles scheme or a BUGTA scheme, including financial obligations, and will also include specific information about the lot and scheme that are relevant to the buyer's purchasing decision.

As part of establishing the supporting framework for the seller disclosure reforms, the Property Law Act will amend the BCCM Act and BUGT Act to replace various existing disclosure statements and information certificates under those Acts with the new body corporate certificate.

The BCCM Act and the BUGT Act, as amended by the Property Law Act, will provide that an interested person may ask the body corporate for a body corporate certificate, and the body corporate must give the person a body corporate certificate for the lot in the approved form within five business days after receiving a request. A request made under the BCCM Act must be accompanied by the fee prescribed by the regulation module applying to the community titles scheme and a request made under the BUGT Act must be accompanied by the fee prescribed by regulation.

The Amendment Regulation will amend the regulation modules under the BCCM Act and the BUGT Regulation to prescribe that the following fee must accompany a request for a certificate under the BCCM Act or the BUGT Act:

- if the person requesting the certificate has requested and been given a certificate for the same lot within the previous three months— 65.24 fee units;
- otherwise—76.75 fee units.

The Amendment Regulation will also amend the regulation modules under the BCCM Act and the BUGT Regulation to provide that a fee of 27.35 fee units is payable for a request for the certificate to be given within 24 hours. The body corporate must refund the fee if the certificate is not given within 24 hours.

Human Rights Issues

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

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

The Amendment Regulation may engage and limit property rights by depriving a person of property (money) by prescribing a fee that must be paid by an interested person who requests a body corporate certificate, as well as a priority fee if the interested person requests the certificate to be provided within 24 hours.

In most cases, a person seeking a body corporate certificate will be the owner of a lot included in the scheme who is selling their lot, and is requesting the certificate to meet their disclosure obligations under the seller disclosure scheme. However, other interested persons who may request a certificate include the buyer of a lot, the mortgagee of a lot, another person who establishes a proper interest in the information being sought, and the agent of a person who may request a certificate.

Consideration of reasonable limitations on human rights (section 13 HR Act)

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

The term 'deprived' is not defined by the HR 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.

(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 requiring an interested person to pay a fee for obtaining a body corporate certificate is to ensure that the body corporate which is required to provide the certificate is compensated for costs it may incur in preparing the certificate.

The body corporate is required to prepare the body corporate certificate within five business days of receiving a request for a certificate. The body corporate receives no direct benefit from preparing the certificate, but may incur monetary costs, as well as time costs in preparing the certificate.

In many cases, it is anticipated that bodies corporate will engage a body corporate manager or strata search agent to prepare the body corporate certificate. The fee paid by the interested person to obtain a certificate can be used by the body corporate to recoup the fee it pays to a body corporate manager or strata search agent for preparing the certificate.

A body corporate's expenses are funded through body corporate contributions levied on the owners of all the lots included in the scheme. Without the fee for the body corporate certificate, lot owners would have to pay additional body corporate contributions to fund the costs of preparing body corporate certificates. Therefore, the fee for the body corporate certificate protects the property rights of the owners of lots included in the scheme by not depriving them of money.

If lot owners were required to pay additional body corporate contributions to fund the costs of preparing body corporate certificates, then the financial viability of bodies corporate could be negatively impacted. The financial viability of bodies corporate is important to ensure the body corporate can meet its obligations in relation to the scheme, including requirements to insure particular buildings and the common property, and to maintain the common property in good condition.

The purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom because it supports the sustainable operation of community titles schemes and BUGTA schemes.

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

The fees relating to the body corporate certificate are intended to compensate the body corporate for preparing the body corporate certificate.

The extent to which the fees reimburse the body corporate for the costs associated with preparing a body corporate certificate will vary between bodies corporate. It is anticipated that certificates will be prepared by volunteer members of the body corporate committee in some cases and by a body corporate manager or strata search agent engaged by the body corporate in other cases. Body corporate managers and search agents may charge bodies corporate different amounts for preparing the body corporate certificate depending on factors, including whether the manager or agent prepares the certificate using automated or manual processes.

The fees relating to the body corporate certificate are close to the fees currently in place in relation to existing certificates under the BCCM Act and BUGT Act as it is considered that the costs for a body corporate associated with preparing the new body corporate certificate will be broadly comparable to the costs for preparing the existing certificates.

While increased information must be included in the body corporate certificate compared to existing certificates, it is considered there will only be limited increases in time taken for a body corporate to prepare the body corporate certificate because the additional information to be included should be readily available from the body corporate records and, as much of the additional information relates to the scheme as a whole, the information will not vary between certificates and can be re-used.

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

Imposing a fee of a lesser amount for obtaining a body corporate certificate may be a less restrictive option to achieve the purpose of the provision. However, this would mean a body corporate is unlikely to recoup the costs it may incur in preparing a body corporate certificate and would not be reasonable.

Of note, the Amendment Regulation provides for a reduced fee for a subsequent certificate if an interested person has obtained a body corporate certificate for the same lot within the previous 3 months. This reduced fee for a subsequent certificate acknowledges that while the body corporate would still need to check the information contained in the subsequent certificate, there would typically be less work arising due to a reduced need to enter data into a subsequent certificate.

- (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

It is likely that interested persons will only seek to obtain a body corporate certificate infrequently (for example, when they are selling a property), meaning that the fees relating to the certificate will not be frequently paid by an individual interested person. The fee amounts are not considered to impose a significant adverse impact on an interested person to the extent it would substantially deprive an individual of the use of property (money).

On balance, I consider that the limitation on property rights resulting from the fees relating to the body corporate certificate are outweighed by the importance of ensuring the body corporate can recoup the costs associated with preparing the certificate. Ensuring the body corporate is appropriately compensated for the costs of preparing the body corporate certificate will protect the property rights of the lot owners in the scheme and contribute to the sustainable operation of community titles schemes and BUGTA schemes.

Conclusion

I consider that the Amendment Regulation is compatible with the HR 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.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity

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