# **STATEMENT OF COMPATIBILITY**

***Charter of Human Rights and Responsibilities Act 2006***

**Owners Corporations and Other Acts Amendment Bill 2019**

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the ‘Charter’), I make this Statement of Compatibility with respect to the Owners Corporations and Other Acts Amendment Bill 2019.

In my opinion, the Owners Corporations and Other Acts Amendment Bill 2019 is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

# **Overview**

The Bill primarily amends the *Owners Corporation Act 2006* (the **Principal Act**) to: modify the structure, powers and duties of owners corporations; amend certain processes and eligibility requirements relevant to owners corporations; and confer some additional powers on the Victorian Civil and Administrative Tribunal to make certain orders. The Bill also makes some necessary consequential amendments to the *Retirement Villages Act 1986* and the *Subdivision Act 1988.*

# **Human Rights Issues**

***Right to privacy***

Section 13(a) of the Charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The Bill contains provisions that may give rise to interferences with the right to privacy; however, in my view, any such interferences will be neither unlawful nor arbitrary and therefore do not limit this right.

*Inspection of documents*

Clause 59 amends section 146 of the Principal Act to require owners corporations to provide a copy of any records of the owners corporation to a person who is entitled to inspect the record at their request. A lot owner, mortgagee of a lot, purchaser of a lot or representative of a lot owner, mortgagee or purchaser is entitled to inspection. To the extent that the records may contain personal information, such as the full names and addresses of each lot owner, new section 146 may therefore give rise to minor interferences with the right to privacy. However, as the provision of information is prescribed by law, appropriately confined and relates to persons who have chosen to purchase property with respect to which there is an owners corporation (and may therefore be expected to anticipate that their information may be shared in this manner), in my view the clause is neither unlawful nor arbitrary and therefore does not limit the right to privacy.

*Power of owners corporation to authorise entry*

Clause 26 inserts section 50(2) into the Principal Act, which provides that an owners corporation may authorise a person to enter a lot or a building on a lot where necessary to carry out repairs, maintenance or other works on its behalf on the common property. Common property means land shown as common property on a plan of subdivision or a plan of strata or cluster subdivision.

In addition, clause 67 inserts section 165(1)(n) into the Principal Act, which provides that in determining an owners corporation dispute, VCAT may make any order it considers fair, including an order requiring an occupier to grant entry to a lot or a building on a lot to a person authorised by an owners corporation for the purpose of carrying out repairs, maintenance, or other works.

These clauses engage section 13(a) of the Charter as they require an occupier to grant entry to premises in circumstances where they may not wish to do so. However, any such interference will be lawful and not arbitrary. With respect to clause 25, directions can only be given for specific and reasonable purposes, being the carrying out of necessary works on common property, are exercised for the benefit of lot owners as a whole, and relate to property that is shared and therefore carries an expectation that entry may be required from time to time. With respect to clause 67, VCAT will only make such an order if it considers it appropriate to do so in all the circumstances. Further, section 167 of the Principal Act provides that when VCAT makes an order, it must consider the conduct of the parties, any actual or proposed act or omission by a party, the impact of a resolution or proposed resolution on lot owners as a whole, whether a resolution or proposed resolution is oppressive to, unfairly prejudicial to or unfairly discriminates against lot owners and any other matter it thinks relevant.

*Disclosure of potential conflicts of interest*

Clause 51 inserts two new provisions into the Principal Act that require managers of owners corporations to disclose particular matters. New section 122A provides that managers must disclose certain beneficial relationships with suppliers to the chairperson of an owners corporation. For example, a manager must disclose if the supplier is a corporation of which the manager is an executive officer. A failure to disclose constitutes a breach of the duty of a manager under section 122.

New section 122B provides that a manager must disclose any commission, payment or benefit paid to the manager related to a contract for the supply of goods or services to an owners corporation to the chairperson of the owners corporation.

These provisions serve the important purpose of promoting transparency and avoiding conflicts of interest. The obligation to disclose is limited to specific conflicts of interest.

In addition, a manager of an owners corporation has a reduced expectation of privacy due to voluntarily assuming the duties of their role, which includes undertaking an obligation not to make improper use of the manager position to gain an advantage for themselves or for another. Accordingly, I believe that any interference with the right to privacy is lawful and not arbitrary.

***Property rights***

Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public, and are formulated precisely.

Clause 28 inserts a new Division 5A into the Principal Act to provide for the disposal of goods abandoned on common property. New section 53A provides that an owners corporation may dispose of abandoned goods on the common property in accordance with the Division, and requires compliance with sections 60 to 65 and 70 to 73 of the *Australian Consumer Law and Fair Trading Act 2012* (**ACLFT Act**).

The powers of disposal in new Division 5A are strictly confined by the requirements in the Division and by the relevant provisions of the ACLFT Act. The relevant provisions in the ACLFT Act require particular amounts of time to have lapsed and attempts at location of the owner of goods before disposing of goods. Similarly, the relevant provisions in the Bill require notice to be given to the person who abandoned the goods or a person with a publicly registered interest in the abandoned goods. New section 53B provides that a notice of the owners corporation's intention to dispose of abandoned goods is to be given to the person who abandoned the goods either personally or be left or sent by post to the person's last known address. Section 53B(3) also provides that a notice is taken to have been given to a person with a publicly registered interest in the abandoned goods if sent by post to the person's address in the register.

In my view, any deprivation of property resulting from the disposal of goods authorised under new Division 5A will be in accordance with law and therefore not amount to any limitation of the right to property.

***Right to equality***

Section 8(3) of the Charter provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

Clause 35 of the Bill amends section 68 of the Principal Act so that 'associates' of persons who own relevant land cannot be appointed as a manager of an owners corporation or vote on any resolution of the owners corporation that relates to a defect in a building on a plan of subdivision. 'Associate' is defined to include, for example, a spouse, domestic partner or parent of the land owner.

As these provisions impact persons based on attributes that are protected under the *Equal Opportunity Act 2010* (namely, marital status and parental status), the right to equality is relevant.

However, in my view any limit is reasonable and justified in the circumstances to ensure fairness and avoid potential conflicts of interest in the decisions and management of owners corporations. The provisions are therefore compatible with the right to equality.

**The Hon. Marlene Kairouz MP
Minister for Consumer Affairs, Gaming and Liquor Regulation**