

Building Units and Group Titles and Other Legislation Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 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 make this statement of compatibility with respect to the Building Units and Group Titles and Other Legislation Amendment Bill 2022.

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The *Body Corporate and Community Management Act 1997* (BCCM Act) applies to most community titles developments in Queensland. However, its predecessor, the *Building Units and Group Titles Act 1980* (BUGT Act) continues to apply to certain developments established under specialised planning laws (known as ‘specified Acts’), including the *Mixed Use Development Act 1993* (MUD Act).

The Bill amends the BUGT Act and MUD Act to make body corporate governance arrangements more transparent and fairer for proprietors (for example, unit owners) in relevant developments. Amendments contained in the Bill, many of which are based on existing provisions of the BCCM Act, aim to:

- improve government support by empowering the chief executive to provide information and education services to assist proprietors in BUGT Act related developments;
- make the dispute resolution service under the BUGT Act more accessible and flexible;
- require bodies corporate and body corporate committees to act reasonably when carrying out their functions;
- expand and enhance eligibility requirements for people seeking to represent a subsidiary body corporate on overarching community/precinct bodies corporate;
- prevent conflicts of interest influencing decisions of executive committees and committees;
- support financial viability of bodies corporate by ensuring proprietor contributions are paid in money and not ‘off-set’ arrangements, except in limited circumstances;
- enhance debt recovery by imposing a specific timeframe within which subsidiary bodies corporate must commence proceedings to recover outstanding proprietor contributions;
- preserve rights of unfinancial subsidiary bodies corporate to participate in decision making of community/precinct bodies corporate where the subsidiary is unfinancial due to the failure of the owners of undeveloped land in the subsidiary to pay required contributions;
- impose an express obligation on community and precinct bodies corporate that arrange utility services for proprietors to take all reasonable steps to ensure continuity of essential utilities (for example, by carrying out any repair and maintenance of utility infrastructure or ensuring that a service contractor carries out necessary repairs and maintenance); and

- increase transparency and accountability in body corporate governance.

Additionally, the Bill makes unrelated amendments to the *Fair Trading Act 1989* (Fair Trading Act) to enable the Office of Fair Trading (OFT) to issue infringement notices for breaches of gift card requirements in the Australian Consumer Law (ACL). The Fair Trading Act mirrors the Commonwealth's ACL infringement notice regime, in order to provide a nationally consistent infringement notice regime for the ACL.

Human Rights Issues

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

Amendments to BUGT Act and MUD Act

In my opinion, the human rights that are relevant to the amendments to the BUGT Act (Parts 2 and 5 of the Bill) and MUD Act (Parts 4 and 5 of the Bill) are:

- Peaceful assembly and freedom of association (section 22 of the Human Rights Act);
- Property rights (section 24 of the Human Rights Act); and
- Privacy and reputation (section 25 of the Human Rights Act).

Peaceful assembly and freedom of association

Clause 11 of the Bill (which amends the BUGT Act) may limit the right to freedom of association, as it prevents a person from being able to be elected as a voting member of a body corporate committee, if the individual has a defined type of associate relationship with particular persons, those being:

- a person who owes a body corporate debt to the body corporate (or another body corporate within the development);
- a person who is a body corporate manager for the body corporate (or another body corporate within the development); or
- a person who is a party to a service or letting arrangement or similar agreement with the body corporate (or another body corporate within the development).

Clause 39 of the Bill makes comparable amendments regarding executive committee eligibility under the MUD Act and may similarly limit the right to freedom of association.

Property rights

Clause 18 of the Bill may limit the right to property as it enables a referee to make a costs order (up to \$2,000) against a dispute resolution applicant, if the referee considers that an application is frivolous, vexatious, misconceived or without substance.

Privacy and reputation

Clause 15 of the Bill, which amends the BUGT Act, may limit the right to privacy and reputation in two respects. New section 45B (Conflict of interest) requires a committee member to disclose to the committee any direct or indirect interest the member has in relation to a matter being considered by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the matter.

New section 45C (When committee member may receive particular benefits) precludes a committee member from receiving a direct or indirect benefit from a party to a service arrangement with the body corporate unless the benefit is approved by the body corporate (obtaining this approval necessarily requires the committee member to disclose details of the benefit to the body corporate).

Clause 43 makes comparable amendments in regard to receiving benefits for members of executive committees under the MUD Act and may similarly limit privacy rights.

Amendments to Fair Trading Act

In my opinion, the human rights that are relevant to the amendments to the Fair Trading Act (Part 3 of the Bill) are:

- Property rights (section 24 of the Human Rights Act).

Clauses 26 and 27 of the Bill relating to gift card infringement notices may limit property rights to the extent that the issuing of an infringement notice may deprive a person of property, as it requires the person to pay an amount, within a stipulated time, to comply with the penalty payable under the infringement notice

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

Amendments to the BUGT Act and MUD Act

Peaceful assembly and freedom of association (section 22 of the Human Rights Act)

(a) the nature of the right

Section 22(2) of the Human Rights Act provides that every person has the right to freedom of association with others, including the right to form and join trade unions. The right protects individuals from arbitrary interference when associating with others. The right to freedom of association allows people to pursue common interests (for example, sporting, politics, or trade) in formal groups, and protects the economic right to join trade unions.

Clause 11(2) of the Bill (Amendment of section 42 of the BUGT Act), which is supported by clause 10 of the Bill (new section 41B of the BUGT Act) and clause 13 of the Bill (Amendment of section 43 of the BUGT Act), indirectly limits the right of freedom of association by making a person ineligible to be voting member of a committee, if an associate of the person:

- owes a body corporate debt to the body corporate or another body corporate in the development;
- is a body corporate manager for the body corporate or another body corporate in the development; or
- is a party to a service or letting arrangement with the body corporate or another body corporate in the development.

The types of associate relationships captured by the restriction are set out in new section 26B of the BUGT Act (Associates) (see clause 5) of the Bill.

The Bill contains similar amendments for executive committee eligibility under the MUD Act. Specifically, clause 39 of the Bill (amendment of section 185 of the MUD Act), which is supported by 31 of the Bill (new section 166C of the BUGT Act) and clause 41 (amendment of section 186 of the MUD Act), indirectly limits the right of freedom of association by making a person ineligible to be voting member of a committee, if an associate of the person:

- owes a body corporate debt to the body corporate or another body corporate in the development;
- is a body corporate manager for the body corporate or another body corporate in the development; or
- is a party to a service or letting arrangement with the body corporate or another body corporate in the development.

The types of associate relationship captured by the restriction are set out in existing section 214E of the MUD Act (Associates).

Arguably, the restrictions on committee eligibility do not prevent any person associating with another person. However, given that in some cases, an associate relationship may prevent a person being eligible to be a voting member of a body corporate committee, it is also arguable that the restrictions place a limitation on the right to freedom of association. Accordingly, it is necessary to consider the proportionality of the restriction in the context of the purpose of the limitation on human rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

Committees (under the BUGT Act) and executive committees (under the MUD Act) have an important role in the governance of a body corporate and make many significant decisions affecting the interests of proprietors in the development. In that respect, it is critical for committee decision making to be free from conflicts of interest and for committee decisions to be in the interests of the body corporate as a whole. Given that committee members make decisions on behalf of the body corporate (including in relation to debt recovery matters), it is also important that committee members (and their associates) have met their own financial obligations to the body corporate (for example, by paying their required contributions to body corporate expenses).

The purpose of the limitation on the right to freedom of association is to protect proprietors and bodies corporate by ensuring that committee members do not have associate relationships that may cause an actual or perceived conflict of interest in the carrying out of their role as a committee member. The limitation assists in ensuring that committee members act in the best interests of the body corporate, and that their decisions are not influenced by the interests of persons who owe debts to the body corporate (for example, in relation to outstanding contributions) or the commercial interests of parties to service and letting arrangements with the body corporate.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to freedom of association has a direct and rational link to the purpose of the restriction, which is to ensure committee members act in the interests of the body corporate as a whole and are not influenced by actual or perceived conflicts of interest due to their relationship with a person who owes a body corporate debt, or their relationship with a party to a service or letting arrangement with the body corporate. The limitation assists in ensuring confidence and transparency in committee decision making and body corporate governance more broadly.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The Bill (and the existing MUD Act) do contain provisions requiring committee members to disclose a direct or indirect interest they have in a particular matter being considered by the committee. However, while important, this intervention only applies in relation to particular matters being considered by the committee, may have limited effectiveness where a member is particularly determined to avoid disclosure, and does not provide more general assurance that committee members are not influenced by another party's debt issues or commercial considerations, when making decisions on behalf of the body corporate as a whole. Accordingly, it is not considered that there are less restrictive ways of achieving the purpose of the limitations on freedom of association imposed by the Bill.

It is also important to note that in relation to the restriction on a person's eligibility to be a voting member of the committee where the person is associated with someone who owes a body corporate debt, the types of 'associate' relationships that apply do not include personal or family relationships. In that respect, the limitation on the right to freedom of association is somewhat mitigated in that relevant 'associate' relationships are largely limited to business and commercial relationships when it comes to assessing whether an associate of a potential committee member owes a body corporate debt.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitations on freedom of association imposed by the Bill described above, and the direct and rational connection the limitation has in relation to improving body corporate governance practices, I consider that the limitations on freedom of association are outweighed by the protections and benefits for bodies corporate and individual proprietors that will be achieved by ensuring committee members are not influenced by debt issues and commercial considerations of their associates when making decisions on behalf of the body corporate.

Property rights (section 24 of the Human Rights Act)

- (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. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality, and freedom.

Property includes real and personal property (for example, interests in land, chattels, and money), including contractual rights, leases, shares, patents, and debts. Property can also include statutory rights and non-traditional or informal rights and other economic interests.

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 property rights under the Human Rights Act are subject to an internal limitation in that a person must not be *arbitrarily* deprived of their property. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable. The Human Rights Act does not provide a right to compensation for a person deprived of property.

The BUGT Act contains provisions for the resolution of certain types of disputes arising in relation to bodies corporate governed by the BUGT Act. Principally, the BUGT Act provides for the resolution of disputes through orders of a 'referee'. Individual proprietors, bodies corporate and particular other parties can apply for referee orders to resolve disputes.

Clause 18 of the Bill (new section 94C of the BUGT Act) limits property rights as it enables a referee to make a costs order against an applicant if the referee considers that an application is 'frivolous, vexatious, misconceived or without substance'. The purpose of a costs order is to compensate the respondent, body corporate or other affected party for loss resulting from the application. The total amount of costs that can be ordered under the provision is \$2,000.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

Provision of easily accessible body corporate dispute resolution services promotes property rights by ensuring that property owners in community titles-based developments (which typically involve individual ownership of lots and communal ownership of common property) can resolve disagreements and other issues that may otherwise detrimentally affect the value of proprietors' property and wellbeing. However, there can be costs and loss for proprietors and bodies corporate (for example, costs of obtaining legal advice) when responding to an application for referee orders and participating in dispute resolution processes.

Empowering a referee to make a costs order against an applicant necessarily results in applicants being deprived of property (money) as a costs order will compel an applicant to pay up to \$2,000 to other parties affected by the dispute. However, the purpose of the limitation is to protect proprietors, bodies corporate and other parties that would be adversely impacted by dispute resolution applications that are frivolous, vexatious, misconceived or without substance by establishing a reasonable disincentive for people to make these types of applications. Balancing the rights and interests of parties to disputes in this way is consistent with a free and democratic society based on human dignity, equality, and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights contained in clause 18 has a direct and rational connection with the purpose, which is to balance the rights and interests of parties to disputes and protect parties from dispute resolution applications that are frivolous, vexatious, misconceived or without substance. A reasonable, limited power for referees to order costs assists with balancing the rights and interests of parties by creating a financial disincentive for people to make applications that are frivolous, vexatious, misconceived or without substance.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive ways of balancing the rights and interests of parties to disputes, and protecting parties from applications that are frivolous, vexatious, misconceived or without substance, than a limited power for referees to make costs orders, as described in clause 18. Other potential approaches (for example, prohibiting a person that has previously made an application that was frivolous, vexatious, misconceived or without substance from making further applications) are likely to involve more significant adverse impacts on a person's property rights by making dispute resolution inaccessible.

It is important to note that costs orders described in clause 18 are subject to inherent limitations and protections against arbitrariness in that referees are independent decision makers (employed under the *Public Service Act 2008*) and may only order costs if an application is frivolous, vexatious, misconceived or without substance. In addition, similar to other referee orders, an aggrieved applicant would be entitled to appeal against a referee's costs order to a tribunal (Magistrate's Court).

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitations on property rights imposed by clause 18 (new section 94C of the BUGT Act), and the direct and rational connection the limitation has on balancing the rights of parties to dispute resolution processes, I consider that the limitations on property rights for applicants is outweighed by the protections and benefits for proprietors, bodies corporate and other parties impacted by applications that are frivolous, vexatious, misconceived or without substance.

Privacy and reputation (section 25 of the Human Rights Act)

- (a) the nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy, family, home, or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked. The scope of the right to privacy is 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. The right to privacy under section 25 of the Human Rights Act is subject to an internal limitation in that a person has the right not to have their privacy, family, home, or correspondence *unlawfully* or *arbitrarily* interfered with.

Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable.

Clause 15 (new section 45B of the BUGT Act) limits the right to privacy as it requires a voting member of a body corporate committee to disclose to the committee, the member's direct or indirect interest in an issue being considered (or about to be considered) by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.

Clause 15 (new section 45C of the BUGT Act) also limits the right to privacy as a member of committee may only receive a direct or indirect benefit from a party to a service or letting arrangement with the body corporate, if receipt of the benefit has been authorised by ordinary resolution of the body corporate (except in limited, prescribed circumstances). Obtaining authority to receive the benefit by ordinary resolution will necessarily require disclosure of the benefit to the body corporate. A similar limitation on the right to privacy is contained in clause 43 (new section 188AC of the MUD Act) which introduces similar restrictions for members of executive committees in relation to the receipt of direct and indirect benefits from parties to service and letting arrangements with the body corporate.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of the first limitation on privacy rights contained in clause 15 (new section 45B of the BUGT Act) is to promote transparency and fairness in body corporate governance by ensuring voting members of committees act in the interests of the body corporate as a whole, and not their personal interests, when making decisions on behalf of the body corporate. Committees make many decisions affecting the interests of proprietors, and in that respect, ensuring decision-making by committees is not tainted by conflicts of interest of members is consistent with a free and democratic society based on human dignity, equality, and freedom.

The purpose of the second limitation on privacy rights contained in clause 15 (new section 45C of the BUGT Act), and the similar limitation on privacy rights contained in clause 43 (new section 188AC of the MUD Act), is also to promote transparency and fairness in body corporate governance. The provisions aim to ensure that voting members of committees act in the interests of the body corporate and that committee members are not influenced by incentives or inducements provided by a party to a service or letting arrangement.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy imposed by clause 15 (new section 45B of the BUGT Act), which requires a committee member to disclose any direct or indirect interest the member has in relation to a matter being considered by the committee, is rationally connected with the objective of improving transparency and fairness in body corporate governance. The limitation on privacy rights inherent in mandatory disclosure elements of the provision assists in ensuring that conflicts of interest do not improperly influence committee decisions to the detriment of the body corporate as a whole, including individual proprietors who may be particularly affected by a committee decision.

The limitation on the right to privacy imposed by clause 15 (new section 45C of the BUGT Act), and the similar limitation on privacy rights contained in clause 43 (new section 188AC of the MUD Act), are also rationally connected with the objective of improving transparency and fairness in body corporate governance. In this case, and with certain limited exceptions, if a member of a committee (BUGT Act) or an executive committee (MUD Act) wishes to receive a benefit from a party to a service or letting arrangement with the body corporate, the benefit must be disclosed to, and authorised by, the body corporate. The limitation on privacy rights arising from the requirement for committee members to disclose (and seek body corporate approval) of benefits from parties to service and letting arrangements assists in ensuring that improper considerations (such as the receipt of personal benefits) do not influence committee members when making decisions on behalf of the body corporate. Non-disclosure of these types of benefits increases the risk that committee decisions are made (or perceived to be made) not for the benefit of the body corporate, but in the interests of the person providing benefits to committee members.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

In terms of the limitation to the right to privacy relating to clause 15 (new section 45B of the BUGT Act), there is no less restrictive way of effectively addressing potential conflicts of interest in committee decision making than requiring a committee member to disclose their direct or indirect interest in a matter being considered by the committee and requiring the committee member to refrain from voting on the matter. Allowing a committee member to withhold information about their potential conflicts of interest is contrary to fair and transparent governance principles. The new requirements contained in the Bill will provide clarity and certainty for committee members about their obligations when considering and making decisions on behalf of the body corporate.

Similarly, there is no less restrictive way of addressing conflicts of interest that could arise because of parties to service and letting arrangements with the body corporate providing committee members with personal benefits. Committee members have the option of not accepting benefits from parties to service and letting arrangements with the body corporate, in which case the disclosure obligations effectively imposed by clauses 15 (new section 45C of the BUGT Act) and clause 43 (new section 188AC of the MUD Act) will not apply. However, if a committee member wishes to accept a benefit from a party to a service or letting arrangement with the body corporate, it is fair, reasonable and in the interests of good governance for the benefit to be disclosed to, and authorised by, the body corporate.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitations on privacy rights imposed by clauses 15 and 43 and the direct and rational connection the limitations have to improving body corporate governance practices, I consider that the limitations on privacy rights for committee members inherent in new disclosure requirements are outweighed by the protections and benefits for bodies corporate and individual proprietors that will be achieved by enhancing transparency and fairness in committee decision-making.

Amendments to the Fair Trading Act (gift cards)

Property rights (section 24 of the Human Rights Act)

(a) the nature of the right

Property rights protect the right of all persons to own property (alone or with others) and provide that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests recognised under general law. Real property is land and ordinarily anything erected on, growing on, or affixed to it. Personal property, also referred to as movable property, is anything other than land that can be the subject of ownership, including stocks, money, notes, patents, and copyrights, as well as intangible property.

The gift card infringement notice amendments may limit property rights to the extent that the issuing of the infringement notice may deprive a person of property, as it requires the person to pay monies, within a stipulated time, to comply with the penalty amount owed in the infringement notice. The scope of property rights has an internal limitation. The right provides that a person has the right not to be arbitrarily deprived of their property. The word ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable, or unjust, and refers to interference which is unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of the amendments is to make consequential amendments to the existing infringement notice regime for the ACL in Queensland in the Fair Trading Act, which are necessary for the effective operation of the existing gift card provisions in the ACL.

The infringement notice regime for the ACL in Queensland operates outside of the Queensland penalty infringement notice regime.

The Queensland infringement notice regime, under the ACL (Queensland), mirrors the Commonwealth infringement notice scheme under ACL (Commonwealth). The purpose of an infringement notice with a corresponding penalty is to encourage compliance with the law.

If there is non-compliance with the existing gift card obligations in the ACL, consumers may face financial detriment. The limitations are therefore reasonable, necessary, and proportionate and not arbitrary, unpredictable, or unjust. The limitation is an effective response to non-compliance which is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The consequential amendments to the Fair Trading Act are necessary for the effective operation of the gift card obligations in the ACL as a law of Queensland.

The limitation helps achieve the purpose by allowing the issuing of an infringement notice. This may adversely affect an individual’s rights, but the possibility that a company or business

owner may be issued an infringement notice and accompanying penalty, is intended to encourage those companies and business owners who supply gift cards to consumers to comply with the existing gift card obligations in the ACL.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

It is considered there is no less restrictive and reasonably available way to achieve the purpose of regulating gift cards. OFT uses an escalating enforcement model with initial strategies including a compliance education and advice letter and issue of a warning letter. As a result, there will be a significant lead time before consideration will be given to issuing an infringement notice, as other enforcement strategies will be initiated first. In addition, a prosecution for breaches of the gift card offences is available as an alternative enforcement action, if deemed necessary or appropriate in a particular circumstance.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on property rights imposed by the gift card infringement notice amendments, as well as the necessity of allowing the issuing of an infringement notice for the effective operation of the gift card obligations in the ACL as a law of Queensland, I consider that the limitation on individual property rights is outweighed by the benefits of protecting the rights of consumers.

Conclusion

In my opinion, the Building Units and Group Titles and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom.

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