

Housing 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, Leanne Enoch, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts make this statement of compatibility with respect to the Housing Legislation Amendment Bill 2022.

In my opinion, the Housing Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Housing Act 2003* (Housing Act) and the Housing Regulation 2015 to establish a charitable donation deed model in Queensland. The Bill also amends the *Retirement Villages Act 1999* (RV Act) to increase transparency, accountability, and consistency of financial reporting in Queensland retirement villages.

Amendment of the Housing Act

The Bill amends the Housing Act to enable the recording of an Administrative Advice on land titles to serve as a reminder of the existence of a donation deed (a voluntary agreement to donate upon resale of the property) to enable Homes for Homes Limited (Homes for Homes) to operate in Queensland as it does in other jurisdictions.

Amendment of the RV Act

The Bill amends the RV Act to address current limitations ensuring that more transparent and consistent financial statements and budgets will be provided to village residents and the Department of Communities, Housing and Digital Economy.

The Bill contains a separate head of power for a regulation to prescribe the form and content for village financial documents (budgets, financial statements, audit reports and quantity surveyor reports), including for types of information, standards or principles, presentation of financial information, operator statements or declarations, and disclosure notes. This will allow a regulation to increase disclosure about expenses shared between a village with other business (such as an on-site café or hairdresser) or co-located aged care service or corporate head offices, surplus and deficits, related-party transactions, operator liabilities to former residents and related matters.

The Bill also inserts a new object in the RV Act ‘to maintain public confidence in the retirement village industry by enhancing the financial transparency in the operation of villages and the accountability of scheme operators and includes a provision for the chief executive to make and publish non-binding guidelines.

Human Rights Issues

Section 24 – Property rights

Section 24 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. The right includes the protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

Amendment of the Housing Act

Section 24 rights could be viewed as being engaged by establishment of the Homes for Homes donation deed model in so far as it relates to a land owner's right to dispose of and profit from their property. But this right will not be limited, as the scheme is voluntary and participants can withdraw from a donation deed and remove an Administrative Advice at their discretion and with no or minimal financial impost.

The Homes for Homes donation deed model aims to increase charitable donations for the purpose of increasing the supply of social and affordable housing in Queensland and is consistent with the values of a free and democratic society because it is voluntary and seeks to promote prosperity, create connections and opportunities for vulnerable Queenslanders to fully participate in social and economic life, consistent with the *Queensland Housing Strategy 2017-2027*.

Amendment of the Retirement Villages Act

Under the retirement village model, residents make a significant initial financial investment for a right to reside or purchase price for their unit. A resident's right to reside in their unit is commonly held under licence or leasehold, with fewer units held under freehold tenure. Residents also pay ongoing fees for general services, including for staff and village operations, and for village maintenance. Replacement of capital items is funded in part from the residents' ongoing contributions paid to the operator. The levying of the ongoing fees is on a cost-recovery basis, with the operator's profit taken when the resident departs in the form of an 'exit fee' and any capital gain (as provided in the residence contract) on the resale of the unit.

Amending the RV Act to enable increased transparency, accountability and consistency of financial reporting in retirement villages is compatible with the *Human Rights Act 2019* and does not limit human rights.

The right to property is protected and promoted by these amendments. The improved transparency of financial statements and budgets brought into effect by the amendments will give retirement village residents a clearer line of sight and scrutiny over how their fees and charges are allocated and spent on services and on the operation of the village. Residents will be better able to determine if increases to fees and charges are reasonable. Residents will be able to more easily determine if appropriate funds are allocated and expended for maintenance, repair, and replacement of retirement village property, including communal areas and facilities. This helps ensure that village amenity and residents' financial investment in the retirement village is maintained.

Other amendments will provide the Department of Communities, Housing and Digital Economy with sufficient information to ensure operators comply with their obligations under the RV Act.

Conclusion

In my opinion, the Housing Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it does not limit any human rights.

LEEANNE ENOCH MP
MINISTER FOR COMMUNITIES AND HOUSING
MINISTER FOR DIGITAL ECONOMY
MINISTER FOR THE ARTS

© The State of Queensland 2022