

Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020

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*, I, Michael de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport, provide this human rights certificate with respect to the *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020* (the Regulation) made under the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) and *COVID-19 Emergency Response Act 2020* (COVID Act).

In my opinion, the Regulation, as tabled in the Legislative Assembly, 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 Subordinate Legislation

The COVID-19 public health emergency has had a significant impact on Queenslanders, including those living in manufactured homes in residential parks.

In residential parks, a person buys their manufactured home (commonly from the park owner or a departing home owner) and rents the land their home is sited on from the park owner. It is expensive and impractical to relocate a manufactured home to another residential park, which can create a power imbalance in favour of the residential park owner. The MHRP Act aims to regulate, and promote fair trading practices in, the operation of residential parks, including by managing the relationship between park owners and home owners.

Owners of manufactured homes in residential parks are typically older Queenslanders of retirement age, with many living on a limited, fixed income such as the age pension. The capacity of manufactured home owners to absorb substantial increases in living costs such as the site rent that they pay, is low if the rate of increase outstrips the rate of pension increase.

On 25 May 2020, the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Justice Amendment Act) received assent and amended the MHRP Act to create a temporary emergency regulation-making power to modify or suspend particular processes for COVID-19 response measures, including modifying or suspending the processes for increasing or reducing site rent, or modifying the processes for disputing a proposed increase in site rent.

The regulation-making power was established to address the significant impacts of COVID-19 and problems identified by both industry and consumer representatives with the process of undertaking market reviews of site rent. These problems have included:

- Home owners being unable to involve themselves in the consultation process during the preparation of a market valuation which identifies the increase amount for the market review.
- Home owners being unable to dispute site rent increases in the ordinary timeframes, due to the public health restrictions or the stress and anxiety caused by the pandemic.
- Home owners feeling unable to meet, plan and organise among themselves during the pandemic resulting in substantially reduced ability to negotiate collectively.
- Home owners facing financial impacts due to the loss of income through COVID-19 impacts on employment.
- Home owners facing significant market rent review increases accompanied by park owner offers for reduced (but still significant) increases in exchange for giving up their rights to seek a review of the market rent review process and increase, during a period of great anxiety and stress.
- Increases in site rent despite reductions in services or amenity due to closure of facilities due to COVID-19.

The Regulation provides for a number of time-limited COVID-19 response measures, including the following:

- Manufactured home owners who had a market review between **19 March and 24 May 2020**, will have enhanced dispute resolution rights that take into account the disruption caused by COVID-19. These home owners have until 20 November 2020 to initiate a dispute if they believe the market review was excessive. If the dispute is determined by the Queensland Civil and Administrative Tribunal (QCAT), the tribunal is empowered to consider the circumstances that have arisen during COVID-19 when determining if the market review of site rent was excessive.
- If a park owner concluded a market rent review between **25 May 2020 and commencement of the Regulation**, and **gave the general increase notice to home owners before 8 June 2020**:
 - the market review stands and the increase is payable provided the park owner provides formal notice (a ‘site rent increase continuation notice’) within 14 days to home owners that the market review stands and refunds to home owners the increase amount (being the amount already paid and that would be paid until 31 December 2020) by 6 November 2020. This has the effect of deferring the market rent increase for these home owners until 1 January 2021.
 - home owners have access to enhanced dispute resolution considerations described above, and may dispute the site rent increase within 56 days of receiving the site rent increase continuation notice.
 - if the park owner does not provide such formal notice within 14 days, the increase is suspended.
- Market reviews which occurred between **25 May 2020 and commencement of the Regulation** which are not the subject of a ‘site rent increase continuation notice’ are suspended and automatically replaced by an increase reflecting the annual change in the Consumer Price Index (CPI).
- Where market reviews are replaced by a CPI increase, any additional amounts paid by home owners over this amount must be refunded to home owners by 6 November 2020.
- Market reviews between **commencement of the Regulation and 31 December 2020** will not be permitted.
- Park owners who would have had their market review during this period can impose a CPI increase by providing a notice to home owners in compliance with this regulation.

- Where a market review has been suspended in 2020, it can be undertaken in 2021 despite any statement to the contrary in the site agreement. The market review must be done at least one year from the date the suspended market review would have taken place.
- To mitigate longer-term impacts on market review schedules, consultation for market reviews which are scheduled to occur in early 2021 can begin in late 2020.
- The Regulation will also clarify that meetings directly or indirectly required by the MHRP Act may be done via audio or audio-visual communication. This is retrospective to 19 March 2020 to ensure any meetings (including dispute negotiation) which has occurred are valid.

Human Rights Issues

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

In my opinion, the Regulation engages section 24 of the *Human Rights Act 2019* (HR Act), namely the rights of persons to own property alone or in association with others, and a person must not be arbitrarily deprived of the person's property.

Sections 9, 14 and 16 of the Regulation engage a person's rights to property in the following ways:

- Parks owners' rights to property are limited by temporarily limiting their capacity to derive (additional) profit from the contractual arrangements for the use of their land.
- Protecting home owners' rights to use of their property (their manufactured home) from the imposition of unfair, unjustified or reasonable site rent increases during the emergency period of COVID-19.

In my opinion, the Regulation implements a minor limitation on park owner rights which is justified by the necessity of responding to COVID-19 and ensuring fairness to home owners. Further discussion on this matter is included below.

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

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

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).

In residential parks, park owners (which are often corporations, but may be an individual) own the land, and enjoy a right to derive profit from its use arising from their contractual arrangements with home owners. A corollary of this is that home owners in residential parks own their manufactured home and have a contractual right to the use of the land the manufactured home is located on, subject to their site agreement and obligations under the MHRP Act.

Manufactured homes, while moveable by definition, often cannot be relocated without significant expense and the usual practice is for manufactured homes to be bought and sold in place, particularly in seniors-focused ‘lifestyle villages’. A typical manufactured home derives a significant portion of its value from its position on a site in a residential park underpinned by the site agreement. This is reflected in the MHRP Act by limiting the circumstances in which a site agreement can be terminated by the park owner. One such circumstance is for repeated contravention of the site agreement, such as through non-payment of site rent by the home owner. The predictability and affordability of site rent is appealing for prospective home owners and current home owners. The Regulation seeks to strike a reasonable balance in this regard between protecting home owners from unfair or excessive site rent increases occurring during the COVID-19 pandemic and a park owner’s right to increase site rent.

(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 temporarily limiting a park owner’s right to property (namely to derive profit from it) by replacing market reviews of site rent with a CPI increase (which is likely to be a lesser amount) is to protect home owners from unfair, unreasonable or unjustifiable increases in site rent which they have not been able to, or may feel unable to, have input into or dispute through the ordinary processes in the MHRP Act during the COVID-19 health emergency. As described above, this recognises a home owners’ human right to enjoyment and use of their property (their manufactured home) and is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The Regulation, and the limitation it imposes on park owners, protects home owners from unfair or excessive site rent increases caused by market reviews during a time when the ordinary processes which ensure fair and reasonable increases may not be operating appropriately. This is achieved by the Regulation providing for enhanced dispute resolution, suspension and prohibition on market rent reviews (depending on when they took place or would take place), and in certain circumstances delaying these until 2021, as described in the overview above.

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

It is my opinion that the Regulation is the least restrictive way of achieving the purpose of providing protection to all home owners that would otherwise experience a market review of site rent during COVID-19.

To mitigate the impact of site rent increases, the allowance of a CPI increase to replace the market review during 2020 safeguards the financial security of park owners by ensuring that site rents in affected parks are able to keep pace with inflation.

(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

The extraordinary circumstances of the COVID-19 public health emergency necessitates measures to protect vulnerable home owners living in residential parks. The temporary limitations imposed on park owners' ability to derive increased profit from their property by the measures in this Regulation are appropriately balanced against the need to ensure the property rights of home owners are preserved and protected from unfair market reviews of site rent during the pandemic. This is achieved, in part, by allowing for alternative increases based on CPI, which reflects inflation during the relevant period, meaning that the right to derive profit from their land is maintained against increased costs, and by limiting the time period of the moratorium to the date from which park owners had notice of the proposed moratorium following Parliament's consideration of and passage of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. The Regulation also includes recognition of alternative arrangements implemented by some park owners to provide financial relief to home owners by providing a limited exemption to the moratorium for eligible park owners where they make an upfront payment equal to the increase amount until the end of 2021. As such, the limitations imposed by this Regulation are justified, proportionate and necessary for responding to the COVID-19 health emergency.

Conclusion

I consider that the Regulation is compatible with the *Human Rights Act 2019* because although it limits, restricts or interferes with a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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