

Planning (Secondary Dwellings) Amendment Regulation 2022

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, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure provide this human rights certificate with respect to the *Planning (Secondary Dwellings) Amendment Regulation 2022* made under the *Planning Act 2016*.

In my opinion, the *Planning (Secondary Dwellings) Amendment Regulation 2022*, 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

Background

In June 2021, the Queensland Government released the *Housing and Homelessness Action Plan 2021-2025* (HHAP) to build on the outcomes of the *Queensland Housing Strategy* by increasing social and affordable homes across the state.

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) is responsible for the delivery of *Action 3 Delivery social and affordable housing using state planning and economic development tools* with the support of the Department of Communities, Housing and Digital Economy.

Action 3.4 of the HHAP commits DSDILGP to *Review the planning framework's approach to regulating residential development*. This proposal is being advanced under Action 3.4.

Purpose

The *Planning (Secondary Dwellings) Amendment Regulation 2022* (the Amendment Regulation) will amend the *Planning Regulation 2017* (Planning Regulation) to support housing choice and diversity by reviewing how the planning framework regulates residential development. The Amendment Regulation will amend the definitions of household, dwelling house, dual occupancy, multiple dwelling and secondary dwelling to ensure that the planning framework is not regulating private living arrangements and provide for state-wide consistency in the way a dwelling may be occupied, particularly a secondary dwelling.

Human Rights Issues

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

In my opinion the Amendment Regulation affects but does not limit the following human rights under the *Human Rights Act 2019*:

- Freedom of movement (section 19);
- Freedom of expression (section 21); and
- Property rights (section 24).

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

Freedom of movement (section 19)

(a) the nature of the right

Section 19 of the *Human Rights Act 2019* provides that every person has the right to move freely within Queensland and the freedom to choose where to live.

The Amendment Regulation removes the regulation of living arrangements from the planning framework, including amending the definition of household to ensure a secondary dwelling can be occupied by persons who are not related or associated with those persons occupying the primary dwelling on a premises.

The Amendment Regulation affects the human right but does not limit the human right.

(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 Amendment Regulation affects but does not limit this human right.

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

The Amendment Regulation affects but does not limit this human right.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions on the freedom to choose where to live.

(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 Amendment Regulation affects but does not limit this human right.

Freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The removal of the regulation of living arrangements from the planning framework may remove the assessment of some residential uses from planning schemes, however these uses are unlikely to have required consultation as part of the development assessment process.

The Amendment Regulation affects the human right but does not limit the human right.

(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 Amendment Regulation affects but does not limit this human right.

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

The Amendment Regulation affects but does not limit this human right.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(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 Amendment Regulation affects but does not limit this human right.

Property rights (section 24)

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* 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 Amendment Regulation improves a person's right to choose who lives on their property by removing regulation about who may live in a secondary dwelling on a person's property.

The Amendment Regulation affects the human right but does not limit the human right.

(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 Amendment Regulation affects but does not limit this human right.

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

The Amendment Regulation affects but does not limit this human right.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

- (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 Amendment Regulation affects but does not limit this human right.

Conclusion

I consider that the *Planning (Secondary Dwellings) Amendment Regulation 2022* is compatible with the Human Rights Act 2019 because it does not limit human rights.

STEVEN MILES MP
Deputy Premier, Minister for State Development,
Infrastructure, Local Government and Planning
and Minister Assisting the Premier on Olympics Infrastructure

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