

Planning (Rooming Accommodation) 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 (Rooming Accommodation) Amendment Regulation 2022* (Amendment Regulation) made under the *Planning Act 2016*.

In my opinion, the *Planning (Rooming Accommodation) 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 to *Deliver social and affordable housing using state planning and economic development tools*, with the support of the Department of Communities, Housing and Digital Economy (DCHDE).

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 (Rooming Accommodation) Amendment Regulation 2022* (Amendment Regulation) will amend the *Planning Regulation 2017* (Planning Regulation) to support housing diversity in lower density residential areas and clarify expectations around residential uses in residential zones. This is to be achieved by:

- providing for rooming accommodation to not be assessable against a local government's planning scheme where it meets certain requirements in the low density residential, low-medium density residential and general residential zones
- removing the ability for certain overlays to regulate development of dwelling houses and rooming accommodation
- clarifying the types of housing that can be expected in residential zones.

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 allows for certain dwelling houses and rooming accommodation to not be assessable against a local planning scheme for a material change of use; removes the ability for certain overlays to require assessment against the planning scheme for dwelling houses and rooming accommodation and clarifies what types of housing are expected and supported in different residential zones. The amendments are intended to facilitate greater housing choice by supporting rooming accommodation and other houses types in lower density zones and make more efficient use of higher zoned land in line with community expectations.

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).

Removing the requirement for certain types of housing to require assessment against the local planning scheme may remove some opportunities for public consultation where the use would have been impact assessable. It is noted that some local governments currently do not require a material change of use approval for dwelling house and rooming accommodation uses.

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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 is intended to facilitate housing choice through support for rooming accommodation uses in lower density zones. The Amendment Regulation therefore provides greater opportunity for a person to find smaller and more affordable properties to rent.

The Amendment regulation will also clarify the expected housing forms in residential zones. This includes clarifying that a dwelling house can be made assessable development under a local government planning scheme, where located within the high density residential zone or medium density residential zone. Schedule 6 of the Planning Regulation identifies development

that a planning scheme cannot make assessable development. This currently includes dwelling houses in any residential zone. By removing the high density residential zone and medium residential zone from these provisions, this means that the category of development will now be subject to the planning scheme. This may mean that dwelling houses in the high density residential zone and medium density residential will be subject to a planning assessment and potentially public notification, however the level of assessment will be set by each local government.

The Amendment Regulation engages property rights in the sense that it involves a change to the process for obtaining a planning approval to development on a person's land (potentially in the case of a dwelling house in the high density residential zone and medium density residential zone). However, it does not restrict, affect or limit property rights in any way, because the Amendment Regulation does not change the right to develop land, or any aspect of property ownership. A person will still have the right to lodge a development application over their property, including where in the high density residential zone and medium density residential zone.

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

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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

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(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 (Rooming Accommodation) 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