

Manufactured Homes (Residential Parks) Amendment Regulation 2024

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, Meaghan Scanlon, Minister for Housing, Local Government and Planning and Minister for Public Works provide this human rights certificate with respect to the *Manufactured Homes (Residential Parks) Amendment Regulation 2024* (Amendment Regulation), made under the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Manufactured Homes (Residential Parks) Regulation 2017* (MHRP Regulation) to improve the transparency and accountability of residential parks under the MHRP Act and to require park owners to provide information to assist consumers to make informed decisions about purchasing a manufactured home and living in a residential park. The Amendment Regulation does this through implementing requirements regarding park comparison documents and the registration of residential parks.

The Amendment Regulation contributes to meeting the Government's commitment to deliver improvements for residential (manufactured home) parks and to address concerns about site rent increases and unsold manufactured homes in residential parks under Action 18 of the *Queensland Housing and Homelessness Action Plan 2021 – 2025*.

Homes for Queenslanders also commits to modernising the housing legislative framework to improve consumer protections in residential parks while making sure it's still viable for investors and operators to provide this housing option.

This Amendment Regulation forms part of the suite of reforms flowing from amendments made to the MHRP Act by the *Manufactured Homes (Residential Parks) Amendment Act 2024* (Amendment Act).

Park comparison documents

Buying a manufactured home in a residential park is a significant commitment with long term consequences for manufactured home owners. Because of this, it is important that prospective home owners can make informed decisions based on accessible and relevant information. The MHRP Act requires precontractual disclosure by park owners to help ensure consumers can receive and consider information before buying a manufactured home. However, prospective home owners often do not receive critical information until they have already decided on a park, spoken to the park owner (or the park owner's salesperson) and commenced the process of buying a manufactured home.

The late stage at which key information about the residential park is provided makes it difficult for consumers to compare different residential parks (or compare a residential park with other housing options) and select a park which offers the best value for money and best meets their needs.

New section 18H of the MHRP Act prescribes information that must be included in the comparison document. This includes a declaration about the site rents payable for new home owners under section 70B; the communal facilities, services and amenities available in the park and included in the site rent; the frequency of and bases for increasing site rent; and any other details prescribed by regulation.

Additional information for the comparison document specified in the Amendment Regulation includes details likely to be important to home owners such as:

- contact details and information about on-site management;
- the range of site rents in the park, the general increase day for site rent increases and other costs payable by home owners;
- any known restrictions on installation or use of solar panels on homes;
- accessibility, security and safety features of the park;
- whether the park has a home owners committee; and
- whether park rules include any restrictions, for example in relation to pets.

Register of residential parks

Prior to commencement of the relevant provisions of the Amendment Act, the MRHP Act required that park owners notify the chief executive within 28 days of opening a residential park and give the chief executive information about the park in the approved form. New provisions in the MHRP Act establish a new registration scheme which will require park owners to apply to register a park before it commences operation, with the amendments also making it an offence to operate an unregistered residential park.

New section 18A of the MHRP Act provides that a park owner may register a residential park by making an application in the approved form that is accompanied by the fee prescribed by regulation. The application must include the information listed in 18A(3). This includes, for example the contact details of the park owner; details of the land on which the sites in the park will be located; the communal facilities, services and amenities available to home owners; a list of all proposed bases on which site rent may be increased; and any other information prescribed by regulation.

Additional details to be included in an application to register a park prescribed in the Amendment Regulation include matters that will provide a more detailed overview of the park, such as:

- copies of templates for site and sales agreements;
- the estimated (at the point of application) range of site rents;
- whether the park will contain only owner-occupied manufactured homes (a purpose-built park) or a mix of manufactured homes and other dwellings such as caravans (mixed-use); and
- whether the park owner owns other parks.

New section 18C of the MHRP Act provides that the chief executive must keep a residential park register. The register may include the information listed in section 18C(2). This includes the name and address of the park and park owner; details of the land on which sites are located; the number of manufactured homes; the communal facilities, services and amenities available; details of bases on which site rent may be increased; a copy of the emergency plan and park rules and other key information about the park. As well as the information listed in section 18C, the register may include other information prescribed by regulation.

The additional information that may be kept on the register under the Amendment Regulation includes the information contained in an application to register a residential park or contained in a park comparison document, and whether the park has commenced operating and the date when it commenced operating. Details contained on the register will be able to be inspected by members of the public.

Human Rights Issues

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

The following human rights are relevant to the Regulation:

- property rights (section 24 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

Nature of the rights:

Property rights

Section 24 under the HR Act states that—

- a) All persons have the right to own property alone or in association with others.
- b) A person must not be arbitrarily deprived of the person's property.

In this context, property is likely to include all real and personal property interests recognised under general law including interests in land, contractual rights, money, and shares. It may also include some statutory rights including traditional aspects of property rights such as to use, transfer, dispose and exclude.

The term 'deprived' is not defined by the HR Act. However, deprivation in this context is taken 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 their property or part of that property including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it. This clause does not provide a right to compensation. The protection against being deprived of property is limited to arbitrary deprivation of property.

The amendments seek to provide information about a consumer's obligations and rights in relation to the property where the manufactured home they are considering purchasing is sited. The amendments also seek to provide clarity to consumers about the important features of a new residential park to consumers, the community and the regulator. Human rights are protected and promoted by these amendments.

Residential parks are comprised of manufactured home sites, on which manufactured home owners own their home and pay rent to a park owner for occupation of the site. Residential parks also contain communal areas and facilities. The value of a manufactured home is in part based on its location in the park and the type and quality of communal areas and facilities available to home owners.

Privacy and reputation

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender; sexuality and home.

Section 25 of the HR Act could be relevant to laws, policies, acts or decisions that:

- involve collection, storage, use or publication of personal information and how that information is accessed, used or disclosed;
- regulate information held on a public register;
- provide for sharing of personal information across or within agencies;
- involve powers of entry, search, seizure, confiscation or forfeiture;
- involve a professional duty of confidentiality;
- change or create any confidentiality provisions or secrecy provisions relating to personal information; and
- relate to handling personal information for research or statistics.

Assessment of subordinate legislation against relevant human rights

The Amendment Regulation will provide consumers, the community and the department, as regulator, with transparent information to ensure residential park owners comply with their obligations under the MHRP Act, and so better protect home owner rights under the legislation, including home owners' financial and property interests.

The Amendment Regulation will also provide prospective manufactured home owners with greater information about prices, services, amenities and management arrangements within residential parks, enabling them to exercise more informed choices when considering whether a park is affordable and will meet their needs.

Amendments prescribing requirements for park comparison documents engage property rights under the HR Act, while amendments prescribing information which must form part of an application for registration of a residential park engage the right to privacy and reputation under the HR Act.

The new provisions in the MHRP Act which provide the head of power for the Amendment Regulation were the subject of a Human Rights Statement of Compatibility which was tabled in the Queensland Parliament along with the Manufactured Homes (Residential Parks) Amendment Bill 2024. The statement of compatibility that accompanied the Bill considered the introduction of requirements for park comparison documents and the registration of residential parks in terms of the overall legislative requirements, for example the potential impact of penalties for operating an unregistered residential park. This human rights certificate only considers provisions introduced by the Amendment Regulation.

Park comparison document

New sections 18G to 18L of the MHRP Act require park owners to maintain a website for their residential park and to prepare and make available residential park comparison documents. These obligations will likely impose costs on park owners and therefore have the potential to limit their property rights.

In a human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary.

The purpose of prescribing requirements in the Amendment Regulation relating to park comparison documents is to ensure prospective home owners have information about the facilities a residential park offers and the costs of living in the park, provided in a consistent format that allows them to compare different parks and other forms of accommodation. This information helps prospective owners make informed decisions about their housing and is consistent with a free and democratic society based on human dignity, equality and freedom.

Only park owners have access to the information to be provided to prospective home owners and there is no reasonable alternative to prescribing that the specified information must be provided in a publicly accessible way. The limitation on park owners’ property rights is minimal and can be considered an expected cost of operating a residential park business. When weighed against the importance of home owners and potential home owners having access to up-to-date information about services and costs relevant to their housing, the amendments are reasonable and proportionate.

Register of residential parks

The Amendment Act inserted a new section 18A into the MHRP Act. While this section replaces the previous section 139C, it requires more information than previously required including the name and contact details of the park owner and whether the park owner owns other residential parks. This information could be included in the register of residential parks and may be published or made available for inspection by the public.

For individuals (as opposed to corporations), the requirement to provide name and contact details for inclusion in a public searchable register potentially limits the right to privacy.

The chief executive already maintains a record of residential parks that includes some of the information park owners will be required to provide to be included in the residential park register which will be able to be inspected by members of the public.

The purpose of requiring park owners and other parties, where relevant, to provide their names and contact details in the publicly searchable register is to ensure that members of the public who may be considering entering into a site agreement for a particular residential park can identify the park owner, manager or land owner and make inquiries about the park and its history of operations. This information also contributes to the department’s role as regulator in providing effective oversight of the sector on behalf of consumers and the broader community.

This is a consumer protection measure consistent with a free and democratic society based on human dignity, equality and freedom. Including park owners' names and contact details in the residential park register is the only way to ensure that prospective home owners can identify the owner and contact them. There is no other reasonably available way to achieve the purpose of the limitation. Therefore, the impact of the amendments on the right to privacy as specified in this Certificate are reasonable and proportionate.

Conclusion

I consider that the *Manufactured Homes (Residential Parks) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

THE HONOURABLE MEAGHAN SCANLON MP
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND PLANNING
AND MINISTER FOR PUBLIC WORKS

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