

Manufactured Homes (Residential Parks) Amendment Bill 2024

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, Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works make this statement of compatibility with respect to the Manufactured Homes (Residential Parks) Amendment Bill 2024 (Bill).

In my opinion, the Manufactured Homes (Residential Parks) Amendment Bill 2024 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 implements Action 18 of the *Queensland Housing and Homelessness Action Plan 2021-2025*, which committed to address concerns about site rent increases and unsold manufactured homes in residential parks. *Homes for Queenslanders* commits to continuing to modernise the housing legislative framework to improve consumer protections in residential parks, while making sure it is still viable for investors and operators to provide this housing option.

In residential parks, consumers own their manufactured home but rent the land it is sited on from a park owner. Unpredictable and large site rent increases which compound over time and become unaffordable have been a problem for many home owners, most of whom are older Queenslanders on fixed incomes such as the age pension.

Modern manufactured homes in purpose-built parks cannot be moved without significant inconvenience and expense and are unlikely to be accepted into other parks. If a home owner faces unaffordable site rent increases, they may have no option but to sell their home, while remaining liable for site rent until their home is sold and having no control over matters which affect the sale such as the standard of maintenance and amenity in the park and the affordability of the site rent for incoming home owners.

The Manufactured Homes (Residential Parks) Amendment Bill 2024 (Bill) will amend the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) to improve outcomes for consumers and ensure community confidence in residential parks as a housing option. The Bill will require fairer and more predictable bases for increasing site rent; improving information so consumers can make a more informed choice when considering whether to buy into a residential park; and incentivising park owners to maintain standards in parks and help ensure that manufactured homes can be resold in a timely way.

The Bill achieves these objectives by:

- prohibiting market rent reviews in new and existing site agreements with provision for site agreements to transition onto more predictable rent increase mechanisms
- capping annual general rent increases at the higher of CPI or 3.5%
- requiring approved bases to be used for increasing site rent in new site agreements
- defining CPI when used in site agreements to mean the weighted average of eight capital cities all groups consumer price index, and requiring this definition to be used for CPI-based increases to ensure consistency and create the greatest possible alignment of site rent increases and age pension indexation
- ensuring home owners are given a choice of options for paying site rent, including at least one option that does not include additional fees
- providing a mechanism for site rent to be adjusted to market rates when a home is resold, to help ensure site rents can be incrementally realigned to market conditions
- introducing an 18-month buyback and site rent reduction scheme for unsold vacant homes where those homes were originally developed or sold on site by a park owner
- ensuring prospective home owners can research and compare residential parks through requirements for park owners to publish a residential park comparison document
- requiring park owners to prepare maintenance and capital replacement plans and make these available to home owners.
- strengthening registration requirements for residential parks to ensure more information about parks is available to the community and the regulator.

Human Rights Issues

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

In my opinion, the human rights engaged by the Bill are:

- freedom of movement (section 19 of the *Human Rights Act 2019*)
- property rights (section 24 of the *Human Rights Act 2019*) and
- privacy and reputation (section 25 of the *Human Rights Act 2019*).

Freedom of movement (section 19 of the Human Rights Act 2019)

1 Termination of site agreements—order for vacant possession

The right to freedom of movement includes the right of an individual to choose where they live.

Clauses 7 and 8 of the Bill repeal the existing right of a park owner, under section 38(1)(f) of the MHRP Act, to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order terminating a site agreement if the park owner wants to use the residential park land on

which a manufactured home is located for another purpose. Clause 8 of the Bill re-enacts that right by inserting a new section 39 into the MHRP Act. Clause 8 also repeals existing sections 39 and 40 of the MHRP Act, and inserts replacement provisions that give QCAT power to make an order requiring a manufactured home owner who is a party to a terminated site agreement to give the park owner vacant possession of the site, or subject to the home owner's consent, vacant possession of the manufactured home on or before the termination day.

The Bill does not introduce any new grounds for termination, but does introduce a range of relevant considerations QCAT may take into account when considering a termination order, including consideration of 'fair and reasonable' compensation for home owners. Where an order requires a home owner to transfer ownership of a home to the park owner, the home owner's consent is required.

These amendments therefore engage the right of individuals to choose where to live.

Property rights (section 24 of the Human Rights Act 2019)

2 Buyback scheme for unsold manufactured homes

Clause 12 of the Bill provides for establishment of a buyback and site rent reduction scheme for manufactured homes in certain circumstances. To be eligible for the buyback and site rent reduction scheme, a manufactured home must have been originally purchased from the park owner, or a previous park owner, on site. An eligible home owner can opt-in to the buyback and site rent reduction scheme where the park owner has had an opportunity to sell the home and the property remains unsold after six months. To opt into the scheme, the home must be vacant and parties must agree on a sale value for the home. Six months after a home owner opts in to the scheme, if the home remains unsold, site rent must be discounted by 25 per cent, and after 12 months a park owner must purchase the manufactured home from the home owner at the agreed price.

The new buyback scheme has the potential to limit property rights of a park owner in so far as the requirement to buyback a manufactured home which sits on a park owner's property, but is not owned by the park owner, could represent a restriction on a person's use or enjoyment of their property and force them into a purchase which is against their interests.

3 Site rent reductions for unsold manufactured homes

The proposal to apply a 25 per cent reduction under Clause 12 of the Bill could also restrict the use and enjoyment of a park owner's property through limiting the park owner's ability to derive a financial return from their property under the terms of a site agreement.

4 General limitation on site rent increases

Clause 18 of the Bill introduces a prohibition on market reviews of site rent. Market reviews of site rent are a common basis used by park owners to increase rent in accordance with rents charged in other residential parks and based on a valuation prepared by a registered valuer. The

prohibition on market rent reviews would apply to both new site agreements and existing site agreements between park owners and home owners.

Clause 15 of the Bill introduces a limit on the size of general site rent increases each year to a maximum of 3.5 per cent or CPI, whichever is higher.

Clauses 15 and 18 of the Bill could potentially restrict a park owner's ability to derive a financial return from their property under a site agreement with a home owner.

5 Refusal to enter into site agreement with prospective home owner

Clause 33 of the Bill inserts a new section 31 into the MHRP Act, which provides that a park owner must not unreasonably refuse to enter into a site agreement with a prospective home owner. The new section gives a prospective home owner who considers a park owner has unreasonably refused to enter into a site agreement with the prospective home owner the ability to apply to QCAT for an order requiring the park owner to enter into the site agreement. This amendment potentially limits park owners' rights to use and enjoy their property as they wish. This provision already exists in the MHRP Act.

6 Restriction on assignment of site agreements and sale of manufactured home subject to existing site agreement

Presently, part 7 of the MHRP Act gives home owners the right to completely assign existing site agreements to an incoming home owner who is buying their home, including the terms governing the site rent amount and site rent increases bases.

Clause 34 of the Bill repeals part 7 of the MHRP Act. Clause 33 replaces part 5, division 2 of the MHRP Act and includes a new section 31E, which provides that where a manufactured home is sold but continues to be located in the same residential park, the terms of the site agreement between the park owner and the new home owner in relation to utilities included in the site rent, communal facilities and services and other amenities included in the site rent, and any matter prescribed by regulation, must be the same as between the park owner and the outgoing home owner. Home owners will continue to have the right to assign site agreements in limited circumstances.

These amendments potentially limit the property rights of both home owners and park owners. The value a home owner can derive from selling their manufactured home may be reduced if the home owner cannot assign the existing site agreement and all its terms to the incoming home owner, while park owners will be restricted from negotiating some site agreement terms with incoming home owners. Park owners will be able to vary the site rent amount after the resale of a manufactured home through a new site agreement with the buyer to enable the setting of site rent at market rates in acknowledgement of new restrictions on site rent increases while home owners are living in the residential park.

7 Termination of site agreements—order for vacant possession

Clause 7 and 8 of the Bill concern the termination of site agreements in residential parks; the compensation which might be due to home owners as a result of termination; and matters which

should be considered by QCAT regarding termination and compensation. These provisions engage the right of manufactured home owners not to be arbitrarily deprived of their property.¹

They also potentially engage the property rights of park owners, because under the proposed amendments, QCAT will have power to make higher compensation orders and compensation orders in more circumstances than previously apply. This potentially engages the right not to be arbitrarily deprived of property. In particular, under the transitional provisions in the Bill, the amended termination and compensation provision will apply to termination applications made, but not decided, before the amendments take effect. This means that park owners who have applied for a termination order under the existing provisions may be ordered to pay compensation where a compensation order could not have previously been made, or pay a higher compensation for additional factors than was the case when they made their application.

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 *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

8 Prohibition on operation of, and other activities in relation to, unregistered residential parks

Clause 48 of the Bill repeals existing part 19A of the MHRP Act, which provides that the chief executive may keep a record of residential parks. It is an offence under existing part 19A for residential park owners to fail to provide, or update, park information in the chief executive’s record.

Clause 31 of the Bill inserts new registration requirements for residential park owners and makes it an offence to operate an unregistered residential park, to induce a person to reside in or purchase a manufactured home located on a site in an unregistered residential park or to enter into a site agreement or pay site rent for a site in an unregistered residential park. The new provisions also give the chief executive the ability to deregister a residential park if the chief executive reasonably believes the park is no longer operating.

These amendments potentially limit the right of park owners to deal with their property as they wish.

9 Requirement to implement maintenance and capital and replacement plan

Clause 46 inserts new sections 86B to 86E into the MHRP Act regarding maintenance and capital replacement plans for residential parks. Under the new provisions, park owners must, unless exempted from the requirement, ensure there is a maintenance and capital replacement plan for their residential parks and give a copy of it to the park’s home owners committee. New section 86C provides that park owners must take reasonable steps to comply with a maintenance and capital replacement plan, with specific actions that are ‘reasonable’ able to

¹ In *Burleigh Town Village Pty Ltd (3)* [2022] QCAT 285, the QCAT member held that preventing persons aged under 50 from owning a home in a manufactured home park would limit those persons’ right to own property in section 24(1) of the *Human Rights Act 2019*.

be prescribed by regulation. Implementing a plan of this kind will likely require the park owner to spend money and therefore potentially limits the park owner's property rights.

10 Residential park website and comparison documents

Clause 31 inserts new sections 18G to 18L into the MHRP Act. These provisions 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 require park owners to spend money 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 *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Privacy and reputation (section 25 of the Human Rights Act 2019)

11 Residential park register

Clause 31 inserts new section 18A into the MHRP Act. New section 18A is mostly a re-enactment of the existing section 139C, although it requires more information than is presently required to be given under section 139C. Both the existing section 139C and new section 18A require the name and contact details of the park owner to be provided for inclusion in the register of residential parks. This register will be available for inspection by the public, on the payment of a prescribed fee.

For park owners who are 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.

12 Sale of home by home owner

Clause 36 of the Bill inserts new section 56C into the MHRP Act. New section 56C provides that if the seller of a manufactured home positioned on a site in a residential park is not the park owner, the seller must give the park owner notice of the buyer's details. This potentially limits the privacy of individual buyers.

13 Termination of site agreements—order for vacant possession

Clauses 7 and 8 repeal the existing right of a park owner, under section 38(1)(f) of the MHRP Act, to apply to QCAT for an order terminating a site agreement if the park owner wants to use the residential park land on which a manufactured home is located for another purpose. Clause 8 of the Bill re-enacts that right by inserting a new section 39 into the MHRP Act. Clause 8 also repeals existing sections 39 and 40 of the MHRP Act, and inserts replacement provisions that give QCAT power to make an order requiring a manufactured home owner who is a party to a terminated site agreement to give the park owner vacant possession of the site or, subject to the home owner's consent, the manufactured home on or before the termination day. The

amendments do not introduce any new grounds for termination, but rather provide a range of additional considerations QCAT might take into account when considering a termination order, including additional consideration of compensation for home owners.

These amendments engage the right in section 25(a) of the *Human Rights Act 2019* not to have one's home unlawfully or arbitrarily interfered with. In Victoria, 'home' in the corresponding provision in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Victorian Charter) has been broadly interpreted and is not limited to a home in which a person has a legal or equitable right to reside. It can include social housing and rented premises.²

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Freedom of movement (section 19 of the Human Rights Act 2019)

Section 19 of the *Human Rights Act 2019* provides that individuals lawfully in Queensland have the right to enter and leave Queensland, move freely within Queensland and the freedom to choose where to live. The corresponding right in the Victorian Charter has been held to be one of the most qualified rights.³ This is presumably because an unfettered right to free movement and choice of living place would interfere with the rights of other individuals including property and privacy rights.

Property rights (section 24 of the Human Rights Act 2019)

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 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.

Property includes real and personal property (for example, interests in land, chattels, and money), including contractual rights, leases, shares, patents, and debts. Property can also include statutory rights and non-traditional or informal rights and other economic interests. The term 'deprived' is not defined by the *Human Rights Act 2019*. However, deprivation in this sense is considered to include the substantial reduction of 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).

² *Director of Housing v Sudi* (2010) 33 VAR 139.

³ *Director of Public Prosecutions v Kaba* (2014) 44 VR 526 at [117] citing *Kerr v Attorney-General* (1996) HRMZ 270 at 274.

Privacy and reputation (section 25 of the Human Rights Act 2019)

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 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
- relate to handling personal information for research or statistics.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Freedom to choose where to live (section 19 of the Human Rights Act 2019)

1 Termination of site agreements—order for vacant possession

One purpose of the limitation is to enable park owners to use their residential park land for other purposes, and prevent them being restrained from doing so by a refusal or failure of a manufactured home owner to vacate the site or the manufactured home. The common law has always recognised the special importance of real property, and ensure that land owners can freely deal with this land consistent with a free and democratic society based on human dignity, equality and freedom. The other purpose sought to be achieved by giving QCAT power to order park owners to pay greater amounts of compensation and to pay compensation to home owners in a greater variety of circumstances, is ensure that the termination regime is not unfairly weighted in favour of park owners and that manufactured home owners can be properly compensated for the disruption to their home life and financial position. Protecting the rights of home owners who do not have the security of owning the land on which their home is situated is consistent with a society based on human dignity, equality and freedom.

Property rights (section 24 of the Human Rights Act 2019)

2 Buyback scheme for unsold manufactured homes

The buyback obligation is proposed because manufactured homes are situated on land owned by the park owner, and many manufactured homes, especially those in purpose-built residential

parks, are costly and impractical to move to another site. Some home owners who experienced delays in selling their home have indicated that delays were at least partly the result of park owners lacking incentives to:

- help facilitate a prompt sale, especially where they have their own housing stock to sell and while home owners have to continue paying site rent while their home is on the market
- maintain park amenities to an attractive standard after all homes within a park have been sold, and
- maintain site rents at levels that are affordable for existing and prospective new home owners.

3 Site rent reductions for unsold homes

The purpose of limiting the property rights of park owners by mandating a 25 per cent reduction in site rent where the owner of a manufactured home in the residential park has opted into the buyback scheme and the home remains unsold after six months is to provide home owners with financial relief in circumstances where they have vacated their homes but are still required to pay site rent. Many manufactured home owners are on fixed incomes (such as the age pension) and the continuing obligation to pay rent while meeting the costs of their new housing outside of the park is significant. Providing financial relief to persons in these circumstances is consistent with a free and democratic society based on human dignity, equality and freedom.

4 General limitation on site rent increases

Manufactured homes in residential parks have an unusual tenure type in which the home owner owns the structure, while the park owner owns the land, however the purchase price of the manufactured home is often higher than the value of the structure alone, reflecting the value of the amenity and location of the park, the siting of the home within the park, and the saleability of the home. As a result, when a person purchases a manufactured home, they buy not just the dwelling but the package of rights that attaches to it under the MHRP Act and their site agreement.

To the extent that unexpectedly high site rent increases can limit a home owner's right to use and enjoy the property they own, these provisions can be seen to be reasonable safeguards to preserve the property rights of home owners.

The prohibition of market rent reviews responds to ongoing concerns raised by home owners that site rent increases arising out of market reviews are arbitrary and unpredictable and therefore impossible for home owners to plan and budget for at the time of entering a park, as well as difficult for home owners to understand or dispute. Similarly, the limit on site rent increases to the higher of 3.5 per cent or CPI seeks to stabilise site rent at more sustainable levels over the medium-to-long term.

The purpose of these provisions is to rebalance the rights and obligations of home owners and park owners and to provide certainty and stabilise site rents while home owners are living in the residential park. As part of this rebalancing, Clause 33 of the Bill allows for site agreement

terms about site rent and increase bases to be changed in a new site agreement on resale of the manufactured home.

5 Refusal to enter into site agreement with prospective home owner

The purpose of giving QCAT power to order a park owner to enter into a site agreement with a prospective home owner if QCAT considers the park owner has unreasonably refused to do so is two-fold. First, it addresses the risk that a home owner may be effectively ‘trapped’ in an existing site agreement, unable to sell their home and move on, because the park owner is unwilling to accept any prospective buyer. Second, it reduces the risk of park owners refusing prospective buyers on an unreasonable basis, limiting the prospective buyers’ accommodation options during an unprecedented period of housing demand.

6 Restriction on assignment of site agreements and sale of manufactured home subject to existing site agreement

The purpose of the limitation on park owners is to ensure beneficial terms in relation to utilities, services or other matters can be passed from a departing home owner to a new home owner, mitigating against less beneficial terms and/or additional charges being imposed on incoming home owners regarding utilities, services or other matters.

The purpose of the limitation on home owners is to allow park owners to ‘reset’ site rent amounts to a market rate after the re-sale of a home, encouraging them to set rent at a level sufficient to cover costs and ensure profit, and considering the restrictions on site rent increases included in the Bill which will benefit existing home owners.

Limitations on the assignment of existing site agreement terms contribute to the broader purpose of rebalancing the financial risk borne by park owners and home owners, with both groups deriving a benefit from the proposed reforms.

7 Termination of site agreements – order for vacant possession

The purpose of these amendments is generally explained above. In the case of the transitional provisions requiring the amended termination and compensation provisions to apply to termination applications made but not decided before the amendments commence, the purpose is to ensure that QCAT has the full suite of powers necessary to fairly decide all termination orders before it, and make appropriate compensation orders, regardless of the timing of the application.

8 Prohibition on operation of, and other activities in relation to, unregistered residential parks

The purpose of the prohibition on operating an unregistered residential park or engaging in the other prohibited activities stated in new section 18P is to give the chief executive, as the regulator, the ability to impose reasonable controls on residential park operators, including assessing the suitability of residential park operators for registration. Having sufficient regulatory powers to protect the interests of potentially vulnerable manufactured home owners through having oversight of park owners, is consistent with a free and democratic society based on human dignity, equality and freedom.

9 Requirement to implement maintenance and capital replacement plan

The purpose of new section 86C is to ensure that park owners maintain the park facilities and amenities to a reasonable standard, rather than allowing home owners' standard of living to deteriorate through neglect and poor planning. Ensuring that people have proper amenities and services in the parks in which their homes are sited is consistent with a society based on human dignity, equality and freedom.

10 Residential park website and comparison documents

The purpose of these amendments is to ensure existing and potential 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 prospective home owners to compare different parks. This information helps prospective owners to make informed decisions about their living conditions and is consistent with a free and democratic society based on human dignity, equality and freedom.

Privacy and reputation (section 25 of the Human Rights Act 2019)

11 Residential park register

The chief executive already maintains a record of residential parks that includes much of the information that park owners will be required to provide to be included in the residential park register under new section 18C and which is made available through the Queensland Government Open Data Portal. The purpose of requiring park owners 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 and make inquiries about the park owner's history of park operations. This is a consumer protection measure consistent with a free and democratic society based on human dignity, equality and freedom.

12 Sale of home by home owner

The purpose of new section 56C is to enable the park owner to give the purchaser of a manufactured home located on a site within the residential park copies of the disclosure documents. The disclosure documents contain important information the buyer should have an opportunity to consider before deciding whether to proceed with the purchase. New section 56C is therefore a consumer protection measure that is consistent with a free and democratic society.

13 Termination of site agreements – order for vacant possession

The purpose of these amendments is explained above.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Freedom of movement (section 19 of the Human Rights Act 2019)

1 Termination of site agreements—order for vacant possession

In cases where a manufactured home owner refuses or fails to vacate, thereby preventing the park owner from being able to use the land for another purpose, giving QCAT the power to order the home owner to vacate the site or, subject to the home owner's consent, vacate the manufactured home, will be effective to allow the park owner to proceed to deal with the land according to the owner's preferred purpose.

The amendments also reflect the nature of modern, purpose-built residential parks, where it is usually very costly and impractical for home owners to provide vacant possession of a site by relocating their home. Giving QCAT the power to make a termination order which requires a park owner to sell a home and provide the proceeds to the home owner, subject to the home owner's consent to transfer ownership to the park owner, achieves the purpose of greater consumer protection and appropriate compensation for home owners affected by park closure.

Property rights (section 24 of the Human Rights Act 2019)

2 Buyback scheme for unsold manufactured homes

Requiring park owners to purchase unsold manufactured homes when the home owner has opted into the buyback scheme will be effective in solving the problem that manufactured home owners face when they are unable to sell their homes.

3 Site rent reductions for unsold manufactured homes

Reducing site rent payable by manufactured home owners who have opted into the buyback scheme and whose homes remain unsold after six months will significantly alleviate the financial strain experienced by home owners, who may also be paying for other accommodation outside the park. It may also serve as an incentive to park owners to increase efforts to sell the manufactured home, which will further alleviate the financial burden on the home owner by enabling the home owner to access the capital they have invested in that home.

4 General limitation on site rent increases

Removing the ability of park owners to increase site rent through a market review mechanism and imposing a cap on rental increases will give manufactured home owners greater certainty about their financial position and reduce the risk that they will be priced out of their homes.

5 Refusal to enter into a site agreement with a prospective home owner

Giving QCAT the power to order a park owner to enter into a site agreement with a prospective home owner if QCAT considers the park owner has unreasonably refused to do so will be effective to ensure that home owners are not indefinitely locked into site agreements when they wish to move and have identified a suitable new owner and to ensure the accommodation options of suitable prospective home owners are not irrationally or unreasonably limited.

6 Restriction on assignment of site agreements and sale of manufactured homes subject to existing site agreement

Restrictions on the assignment of terms from existing site agreements are related to provisions in the Bill which restrict the amount by which site rent can increase under existing site agreements, including the prohibition of market rent reviews and the ‘cap’ on site rent increases. Permitting park owners to ‘reset’ the site rent amount upon the sale of a home, subject to conditions contained in the Bill, will allow the park owner to set site rent to an amount reflecting market conditions and achieve the purpose of requiring park owners to set an initial site rent amount which reflects expected costs and generates profit, rather than relying on site rent increase mechanisms for existing home owners to achieve this.

The limitation on site agreement terms that can be assigned between seller and buyer will ensure new home owners benefit from beneficial terms in relation to utilities, services and other matters enjoyed by the previous home owner and other existing owners in the park, while enjoying greater certainty in relation to site rent through a starting rent amount which reflects market conditions.

7 Termination of site agreements—order for vacant possession

As stated above, these amendments will generally be effective to achieve their purpose. In the case of the transitional provisions requiring termination applications made but not decided before the amendments commence to be decided under the amended provisions, the transitional provisions ensure QCAT is bound to proceed in this way and will therefore be effective to achieve the purpose.

8 Prohibition on operation of, and other activities in relation to, unregistered residential parks

Persons who operate unregistered residential parks or carry on other activities prohibited by new section 18P will be liable to a penalty. This amendment will therefore be effective to give the chief executive power to prevent the operation of unregistered parks.

9 Requirement to implement maintenance and capital replacement plan

Imposing a legal obligation on park owners to plan for reasonable and consistent maintenance of park facilities and amenities will help ensure those facilities and amenities are maintained to a reasonable standard for home owners.

10 Residential park website and comparison documents

Imposing a legal obligation on park owners to maintain a website and provide park comparison documents will be effective in ensuring home owners and potential home owners have access to up-to-date information about the services and amenities offered by the park and the costs of living there.

Privacy and reputation (section 25 of the Human Rights Act 2019)

11 Residential park register

Including the name and contact details of park owners in the register will be effective to achieve the purpose, by giving potential park manufactured home owners the ability to consider the park's history, and contact the person with whom they are considering entering into a significant and long-term financial arrangement.

12 Sale of home by home owner

When the seller of a manufactured home gives the park owner details of a prospective buyer, new section 56C requires the park owner to give the disclosure documents to the prospective buyer. The limitation on the prospective buyer's right to privacy is therefore effective to achieve the purpose of enabling the buyer to receive the disclosure documents.

13 Termination of site agreements—order for vacant possession

As stated above, these amendments will be effective to achieve their purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The Bill is based on an extensive consultation process, including:

- public release of an issues paper inviting community feedback and a survey of home owners in 2022 and
- the C-RIS and further consultation with park owners and home owners through public fora and a further survey to respond to the C-RIS in 2023.

Regulatory measures including maintaining the status quo and some light-touch responses were considered through this process, including improving the market rent review process rather than prohibiting market rent reviews and a range of improvements to the operation of the regulatory framework, rather than introducing more significant regulatory reforms.

While light-touch regulatory measures were broadly supported by industry stakeholders, they were deemed to be insufficient to adequately address the concerns of home owners and achieve the purpose of more appropriately balancing financial risks between home owners and park owners.

While the specific regulatory measures chosen to rebalance risks between park owners and home owners might be considered excessive by some stakeholders, and will be subject to review within three years of commencement, a significant regulatory intervention is necessary to achieve the purpose. The alternative measures favoured by some stakeholders would not achieve the purpose of achieving a more equitable share of risk.

The C-RIS included evidence supporting the need for the proposed regulatory interventions, including outcomes from a survey of home owners which found that:

- more than half of home owners are on low incomes, most commonly the age pension
- 41% of home owners indicated a site rent increase in their park had affected their ability to afford essential items, for example food, transport, medical care or utilities
- 61% of home owners indicated they were unhappy with the conduct of a market review of site rent they had been subject to, including a majority of these respondents who indicated site rent had increased by an excessive amount
- of those park owners who experienced difficulties selling their home, approximately half indicated it was due to issues with the park owner and/or selling agent
- only 1% of home owners indicated that they had relocated a manufactured home, while approximately the same proportion indicated they had ever considered the possibility of relocating a home.

Freedom of movement (section 19 of the Human Rights Act 2019)

1 Termination of site agreements—order for vacant possession

Under the MHRP Act, a home owner could be ordered to provide vacant possession of the site their home occupies, effectively forcing them to relocate their home, where a park closes and/or the land is repurposed. While this is rare, the proposed amendment recognises that it is very costly and impractical for a manufactured home owner to relocate their home, and therefore provides QCAT with the ability to order that the home owner either provide vacant possession of the site, or transfer ownership of the home to the park owner and provide vacant possession of the home, where the home owner consents to this occurring. The amendments then provide expanded guidance to QCAT on the matters that may be included in a compensation order, to ensure home owners are fairly compensated based on the individual circumstances in each case.

If a manufactured home owner refuses or fails to vacate the home after a site agreement is terminated, it is appropriate for the park owner to be given recourse through QCAT. Considering the impact of the situation on each party, this is the fairest way that the manufactured home owner can be evicted from the park in these circumstances.

New section 39C includes a list of factors to which QCAT may have regard in making a compensation order based on whether the home will remain in the park or be relocated, including the costs and practicality of relocating the manufactured home, the likelihood of the manufactured home selling in the residential park and the amount of the home's value that may be lost if the home owner is required to give vacant possession, and the market value of the home if it were resold by the park owner. QCAT may also have regard to what it considers to be fair and reasonable in the circumstances. In addition, under new section 40B, QCAT may postpone the day the termination order would otherwise take effect if satisfied that postponement is just and equitable having regard to the particular circumstances of the case.

Accordingly, although the amendments are a significant limitation on the home owner's right to freely choose where to live, the safeguards included make this the least restrictive way reasonably available to achieve the purpose of the limitation.

Property rights (section 24 of the Human Rights Act 2019)

2 Buyback scheme for unsold manufactured homes

The buyback obligation on park owners, along with the cost of purchasing the home, could be taken to represent a ‘substantial reduction of a person’s use or enjoyment of their property’.

However, this restriction is balanced with the interests of the home owner who, in the event of experiencing delays in the sale of their home, continues to be liable to pay site rent to the park owner. Residential parks offer a unique, and to most people, an unfamiliar tenure type and the MHRP Act seeks to balance the property rights of park owners to profit from their land and home owners who purchase their home on the park owner’s land with the expectation of fairness, security and sufficient upkeep to the park to ensure their home retains value. Many home owners also rely on park owners to facilitate sale of their home as a selling authority when it is time to move on. Accordingly, a further purpose is to promote the human rights of home owners, in particular, their right to choose where to live (*Human Rights Act 2019*, section 19) and their property right to freely dispose of their property (*Human Rights Act 2019*, section 24).

The requirement for a park owner to buy back a manufactured home only applies in certain limited circumstances, including where the park owner or a previous park owner is the original seller of the home. If a park owner would experience financial hardship, or where other factors may affect the sale of a property, park owners are able to apply to QCAT for an extension of the period before the buyback requirement applies. These safeguards have been included to ameliorate potential hardship for park owners.

Without the proposed amendment, manufactured home owners would continue to bear a disproportionate share of risk, remaining liable for site rent payments while their home is on the market for an unlimited period, while park owners possess few incentives to facilitate the sale of a home, either directly or indirectly, while continuing to receive site rent from unoccupied unsold homes.

3 Site rent reductions for unsold manufactured homes

To be eligible for a site rent reduction, home owners must have provided vacant possession of their home to the park owner in expectation of a sale, and therefore have ceased residing in the park and enjoying the use of park amenities and/or services.

4 General limitation on site rent increases

The stricter controls on site rent increases are offset by other provisions of the Bill. Clause 23 would require that the prohibition of market rent reviews and limits on other site rent increases, among other matters, be subject to a review that must start within three years of commencement of the relevant clauses, ensuring any potential adverse impacts on home owners and park owners are identified and alternative proposals for regulating site rent increases are considered.

The proposed ‘cap’ on site rents has been set at a level which ensures park owners can continue to cover cost increases in managing residential parks and derive a profit. The cap also increases

the onus on park owners to set initial site rents for manufactured home owners at a level which will ensure on-going viability and profit, rather than setting a low initial rent amount and subsequently using mechanisms like market rent reviews to increase rent once all homes in the park are sold.

Park owners will be able to reset site rent upon the sale of a home and through a new site agreement with the incoming home owner. It is only after a site agreement is in force that limits on site rent increases apply. The requirement for the assignment of key site agreement terms to new home owners is considered reasonable in this context.

An alternative to the prohibition of market rent reviews involving improvements to the market review process was considered but deemed to not achieve the purpose of addressing the potential for unpredictable, unaffordable and unsustainable site rent increases as a result of market reviews.

5 Refusal to enter into site agreement with prospective home owner

The power to determine if a park owner's refusal to enter into a site agreement with a prospective home owner is given to QCAT, which is an independent tribunal that will consider the relevant facts and circumstances before ordering the park owner to enter into the site agreement. Giving the decision-making power to QCAT ensures that any limitation on the park owner's property rights will be independently assessed and is therefore the least restrictive way reasonably available to achieve the purpose of new section 31.

6 Restriction on assignment of site and agreements and sale of manufactured home subject to existing site agreement

The limitations regarding the assignment of terms affecting both home owners and park owners relate to provisions in the Bill concerning restrictions on site rent increases for existing home owners, with the limitation for the purpose of encouraging park owners to set appropriate initial site rent amounts while allowing some beneficial terms to carry over between home owners. Home owners continue to have some rights to assign a site agreement in full, including to a relative of the home owner (if the park owner consents), to a beneficiary of a deceased estate or subject to an order by QCAT. The combined effect of these amendments is the least restrictive way reasonably available to achieve a balance between the property rights of park owners and home owners.

7 Termination of site agreements—order for vacant possession

The reasons why these amendments are the least restrictive way reasonably available to achieve the purpose of the limitation is explained above. In the case of the transitional provisions, consideration was given to allowing termination applications made but not decided before the amendments commence to be decided under the existing provisions in the MHRP Act. However, given the amendments are intended to modernise the existing provisions so that they reflect current manufactured home arrangements, it was thought preferable not to deprive home owners and park owners of the benefits of the new regime simply because of the timing of a termination application.

8 Prohibition on operation of, and other activities in relation to, unregistered residential parks

The alternative to the new section 18P is to retain the existing arrangements under part 19A of the MHRP Act, and impose penalties for failure to provide certain information about a residential park to the chief executive. However, given the concerns raised by manufactured home owners in the consultation process, it was deemed that even if the penalties for failing to provide or update information were increased, this would not be sufficient to deter the operating of substandard parks without necessary amenities and services. The creation of an offence of operating an unregistered park is the only means by which the chief executive can effectively ensure parks meet basis standards and is therefore the least restrictive way reasonably available to achieve the purpose of the limitation.

9 Requirement to implement maintenance and capital replacement plan

There is no reasonable alternative to requiring park owners to produce maintenance and capital replacement plans, as the status quo creates the risk that home owners' quality of life and access to amenities as well as the value invested in their homes and paid for in their site rent will deteriorate over time through a lack of planning by a park owner. New section 86E provides for residential parks to be exempt from the requirement if they satisfy prescribed criteria. It is expected the prescribed criteria will include exemptions where developing maintenance and capital replacement would be overly onerous due the size and type of manufactured home park.

10 Residential park website and comparison documents

Park owners are the only people who have access to the relevant information to be provided to prospective home owners and there is no reasonable alternative to imposing on them the obligation to provide the information and in a publicly accessible way.

Privacy and reputation (section 25 of the Human Rights Act 2019)

11 Residential parks register

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.

12 Sale of home by home owner

The obligation to give the disclosure documents could be imposed on the seller of the manufactured home, who will already have the prospective's buyer's details. However, this would transfer the disclosure obligations from the park owner, who is operating a residential park business, to private individuals. It was considered unreasonable to impose such obligations on consumers who are selling a home but not operating the residential park it is sited in. It was also considered unreasonable to create a risk that prospective buyers might not receive the documents from a selling home owner. Once the selling home owner has moved out of the park, it may be difficult for the buyer to find them if the buyer wishes to seek relief

for failure to disclose. Accordingly, the amendment is the least restrictive way reasonably available to achieve the purpose.

13 Termination of site agreements—order for vacant possession

The reasons why these amendments are the least restrictive way reasonably available to achieve the purpose of the limitation is explained above.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Freedom of movement (section 19 of the Human Rights Act 2019)

1 Termination of site agreements—order for vacant possession

The Bill includes safeguards to protect the interests of a home owner when a termination order is sought including expanding the situations in which a compensation order can be made and providing QCAT with guidance on the appropriate considerations in making termination and compensation orders. I am therefore satisfied that to the extent the amendments limit a home owners' right to choose where to live, the balance between the limitation (protecting the property rights of the park owner) and purpose sought to be achieved is proportionate.

Property rights (section 25 of the Human Rights Act 2019)

2 Buyback scheme for unsold manufactured homes

On balance, and noting safeguards in the Bill, I consider the potential limitations on the property rights of residential park owners is outweighed by the need to create greater obligations and incentives for park owners in the sales process for manufactured homes and to enhance the property rights of manufactured home owners, which currently rely on good practice by park owners rather than obligations under the MHRP Act.

3 Site rent reductions for unsold homes

On balance, and noting safeguards in the Bill, I consider the potential limitations on the property rights of residential park owners is outweighed by the need to rebalance the financial risk borne by home owners and park owners in the case of unsold manufactured homes, increase incentives for park owners to facilitate prompt sales and maintain the services and amenity of parks, and provide financial relief to home owners, many of whom are pensioners on low fixed incomes, who have vacated their home in the residential park.

4 General limitation on site rent increases

On balance, and noting safeguards in the Bill, I consider the potential limitations on the property rights of residential park owners is outweighed by the need to rebalance the financial risk borne by home owners and park owners in relation to site rent increases.

5 Refusal to enter into site agreement with prospective home owner

New section 31 appropriately balances the various rights and interests of existing home owners, prospective home owners and park owners.

6 Restriction on assignment of site and agreements and sale of manufactured home subject to existing site agreement

The Bill includes significant safeguards to protect the interests of home owners in relation to site rent and other consumer protections which offset any impact on limitations regarding the assignment of existing site agreements. The limitations provide a benefit to park owners through permitting an increased level of site rent, subject to conditions contained in the Bill, upon the re-sale of a home and removing the right of home owners to assign existing site agreement in full. On balance, I consider the limitations regarding the assignment of existing site agreement terms appropriately balance the interests of home owners and park owners.

7 Termination of site agreements—order for vacant possession

The Bill includes significant safeguards for the interests of a home owner when a termination order is sought and includes additional safeguards where the home owner is forced to give the park owner vacant possession of the manufactured home. I am therefore satisfied that to the extent the amendments limit the property rights of manufactured home owners, they strike a fair balance. In relation to the transitional provisions, while it is true that park owners may be liable to larger compensation orders and compensation orders in a wider variety of circumstances, both park owners and home owners will benefit from the application of an updated termination and compensation regime that has been created by reference to the contemporary realities of manufactured home living.

As the limitation on property rights are proportionate and not arbitrary, the rights are not limited by the amendments.

8 Prohibition on operation of unregistered residential parks

Given the risks to home owners of inadequate regulation of residential parks and the relatively low impact on the property rights of residential park owners caused by the requirement to register and provide information to the chief executive, the amendments strike a fair balance and are proportionate.

9 Requirement to implement maintenance and capital replacement plan

New section 86C is a potentially significant limitation on park owners' property rights. However, this is considered reasonable given that park owners are operating a business and should expect to plan for the meeting of replacement costs to ensure home owners continue to enjoy services and amenities of an appropriate standard in the park. In addition, new section 86E provides for the possibility of exemptions. In the circumstances, the amendments strike a fair balance between the rights of park owners and manufactured home owners.

10 Residential park website and comparison documents

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 homes, the amendments are reasonable and proportionate.

Privacy and reputation (section 25 of the Human Rights Act 2019)

11 Residential park register

The requirement to include an individual park owner's name and contact details in the residential park register is a small limitation on an individual's right to privacy, as information of that kind is rarely confidential or sensitive. The limitation is therefore reasonable when balanced against the importance of prospective home owners being able to identify and contact persons with whom they are considering entering into an important financial arrangement.

12 Sale of home by home owner

Providing contact details for a prospective buyer is a small limitation on the buyer's right to privacy, in circumstances where the buyer is contemplating entering into a commercial arrangement with the park owner in any case. The consumer protection benefits of the limitation therefore outweigh the limitation on the right.

13 Termination of site agreements—order for vacant possession

The Bill includes significant safeguards for the interests of a home owner when a termination order is sought and includes additional safeguards where the home owner is forced to give the park owner vacant possession of the manufactured home. I am therefore satisfied that to the extent the amendments limit the rights of manufactured home owners to enjoy their home, they strike a fair balance.

As the limitations on privacy rights are proportionate in each case, they are not arbitrary and the right to privacy is not limited.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Manufactured Homes (Residential Parks) Amendment Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

MEAGHAN SCANLON MP

MINISTER FOR HOUSING, LOCAL GOVERNMENT AND PLANNING AND
MINISTER FOR PUBLIC WORKS

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