

Manufactured Homes (Residential Parks) Amendment (Postponement) Regulation 2025

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* (HR Act), I, the Honourable Sam O'Connor MP, Minister for Housing and Public Works and Minister for Youth, provide this human rights certificate with respect to the *Manufactured Homes (Residential Parks) Amendment (Postponement) Regulation 2025* (Postponement Regulation) made under the *Manufactured Homes (Residential Parks) Amendment Act 2024* (Amendment Act).

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

Overview of the Subordinate Legislation

The Postponement Regulation extends commencement of postponed provisions under the Amendment Act due to commence automatically after 6 June 2025, which is one year after the Amendment Act received assent. Section 15DA of the *Acts Interpretation Act 1954* (AI Act) requires that if a provision of an Act that does not commence on assent (postponed provision) has not commenced within one year of the assent day, it automatically commences on the next day.

Postponed provisions of the Amendment Act for which commencement is to be extended by the Postponement Regulation include:

- streamlining the home sale and precontractual disclosure process, requirements for buyers to enter into new site agreements, and requirements for sales contracts to be in an approved form, and
- requirements for park owners to develop maintenance and capital replacement plans for their park to improve transparency and accountability to home owners and prospective home owners.

The Postponement Regulation will provide additional time to develop and refine proposed regulatory reforms to the manufactured home sales process, site agreements and maintenance and capital replacement plans. This will include analysis of potential impacts on the residential park industry, and current and prospective manufactured home owners, and will be informed by stakeholder engagement and consultation.

Human Rights Issues

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

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation includes property rights outlined in section 24.

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.

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, the type and quality of communal areas and facilities available to home owners, and the quality and frequency of park maintenance and capital replacement undertaken by park owners.

The owner of a manufactured home has the right to sell their home on the site it is positioned on but may experience difficulties selling their home due to the complex nature of the current regulatory framework, including the role of the park owner in the sales process, either directly as a selling authority or indirectly through entering a site agreement with the prospective new home owner. This may involve entering a new site agreement or the assignment of the previous owner’s site agreement to the new owner.

Assessment of subordinate legislation against relevant human rights

The Postponement Regulation will extend commencement of postponed provisions of the Amendment Act relating to the home sale process, site agreements and maintenance and capital replacement plans.

Streamlining and simplifying the sales process

Clause 33 of the Amendment Act establishes new requirements to streamline and simplify the home sale process. The new requirements consolidate current processes of entering into a new site agreement and assigning an existing site agreement into a single process that applies to most home owners and prospective home owners. Certain beneficial terms of existing site agreements can be carried over to a new site agreement between the park owner and prospective home buyer, including the utilities included in site rent payable for the site, the communal

facilities, services and other amenities included in site rent payable for the site, and any other matters prescribed by regulation.

This amendment will provide park owners with increased flexibility to negotiate the terms of site agreements, including aligning site rent amounts with market rates, with prospective home buyers and therefore protect their property rights.

Amendments provide home owners with a simpler sales process, helping to facilitate faster sales, and potentially reducing sales times which results in less time spent paying site rent when the manufactured home is for sale. However, while certain terms are carried over from the old site agreement into the new site agreement, some home owners will lose their ability to assign their existing agreements unless they are transferring their home to a family member. This reduces their control over the future site agreement terms which can influence the value of the home, such as the starting site rent for the new buyer and the basis on which site rents may increase.

The Postponement Regulation delays the commencement of these amendments for a period of up to 12 months, prolonging home owners' ability to assign their existing site agreements and may prevent park owners from offering buyers new terms of their choice. This would affect park owners' ability to derive profits from their interest in the land. This postponement is considered justified to ensure that forms and processes are developed in consultation with key industry stakeholders, and to facilitate an orderly transition to the new laws with minimal impact or regulatory burden for park owners and home owners.

Site agreements

Clause 32 amends the *Manufactured Homes (Residential Parks) Act 2003* to require site agreements to be written and in the approved form. Currently, site agreements need to be in writing and meet the criteria prescribed by regulation but do not need to be in an approved form. This change is intended to standardise site agreements, improve consistency of agreements and make it easier for legal practitioners to give advice to prospective home owners and home owners about site agreements.

This amendment does not apply to site agreements currently in force. These reforms are likely to protect and enhance home owners' ability to understand and enforce their property rights. The Postponement Regulation will delay these benefits by up to one year. This postponement is justified to ensure that forms and processes are developed in consultation with key industry stakeholders, and to facilitate an orderly transition to the new laws with minimal impact or regulatory burden on park owners and home owners.

Maintenance and capital replacement plans

The Postponement Regulation will delay commencement of amendments that will require park owners, unless exempted from the requirement, to ensure there is a maintenance and capital replacement plan for their residential parks, give a copy of it to the park's home owners committee and take reasonable steps to comply with the maintenance and capital replacement plan.

As noted by the Statement of Compatibility which accompanied the Amendment Act, 'this new requirement would be a potential 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, the new section 86E of the *Manufactured Homes (Residential Parks) Act 2003* provide the possibility of exemptions. These amendments strike a fair balance between the rights of park owners and manufactured home owners.

The Postponement Regulation will delay these benefits by up to one year. This postponement is considered justified to ensure that forms and processes are developed in consultation with stakeholders, and to facilitate an orderly transition to new laws with minimal impact or regulatory burden for park owners and home owners.

Conclusion

I consider that the *Manufactured Homes (Residential Parks) Amendment (Postponement) Regulation 2025* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE SAM O'CONNOR MP
MINISTER FOR HOUSING AND PUBLIC WORKS
AND MINISTER FOR YOUTH

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