

# Manufactured Homes (Residential Parks) Amendment Bill 2024

## Statement of Compatibility

FOR

**Amendments moved during consideration in detail by the Honourable Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works.**

**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, Minister for Housing, Local Government and Planning and Minister for Public Works make this statement of compatibility with respect to amendments during consideration in detail to be moved to the Manufactured Homes (Residential Parks) Amendment Bill 2024 (the Bill).

In my opinion, the amendments to be moved to the Bill are 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 amendments

The amendments to be moved to the Bill will:

- extend the timeframe for parties to agree on the resale value of a home (when the home owner joins the scheme, six months after joining the scheme, and nine months after joining the scheme) under the buyback and site rent reduction scheme
- clarify that a park owner will not have committed an offence by failing to buyback a manufactured home where there is an unresolved dispute about removing the home from the scheme due to non-compliance
- clarify that applications to extend the buyback period under the buyback and site rent reduction scheme are exempt from alternative dispute resolution processes
- clarify the frequency at which CPI increases which replace market rent reviews may be undertaken
- clarify that direct debit is an approved way of paying site rent and establishing a regulation making power to prescribe other approved ways of paying site rent
- clarify that requirements to carry over specific terms of a former site agreement into a new site agreement are subject to any changes made in accordance with the *Manufactured Homes (Residential Parks) Act 2003* (the Act), such as changes to utility charges
- resolve technical issues to ensure cooling-off provisions apply appropriately to the sale of pre-owned manufactured home
- correct minor typographical and technical issues.

## Human Rights Issues

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

Amendments 1- 3 extends the timeframe for a home owner and park owner to agree on the resale value of a home under the proposed buyback scheme in sections 62J, 62K and 62L from 7 days to 14 days.

Amendment 5 confirms that a park owner does not commit an offence in relation to the buyback scheme where the manufactured home in question is the subject of a dispute relating to possible non-compliance with the scheme by a home owner.

Amendment 6 specifies that applications for exemptions from the proposed buyback scheme for manufactured homes are not covered by the three-stage alternative dispute resolution process in section 116 of the Act, consistent with the policy intent of the Bill and administrative simplicity.

Amendment 7 applies where a rent increase based on CPI replaces a market rent review clause due to the prohibition of market reviews under Clause 24 of the Bill, and because there is no alternative method in the agreement for increasing site rent. In this circumstance, the Bill allows for a CPI-based increase (a default CPI increase). Amendments to the Bill clarify that default CPI increases can occur annually. This ensures that the Bill cannot be read as only allowing the CPI increase on the same schedule as the market rent review.

Amendments 8-11 clarifies that direct debit, a common type of transaction used for payment of site rent from home owners to park owners, is an approved way of paying site rent in the Bill by providing it as an example. This avoids ambiguity over whether direct debit is included in provisions which make payment into a bank account nominated by a park owner an approved payment method. The amendments also allow for a regulation to prescribe other approved ways of paying site rent.

Amendments 12-16 clarify that requirements for a buyer's new site agreement to include certain prescribed terms from a sellers' old agreement will include any variations to the sellers site agreement made in accordance with the Act, such as changes to utility charges where utilities become separately metered and measured.

Amendment 17 amends Clause 33 of the Bill to specify that section 34 of the Act, which provides for the automatic termination of a sale agreement when a cooling-off right is exercised, applies where, in conjunction with the site agreement, a prospective home owner and seller of a manufactured home enter into a sale agreement for the purchase of the home. The amendment clarifies that the seller and park owner do not need to be the same party for this section to apply and replaces references to the park owner with references to "the seller" throughout the section.

These amendments provide clarification and minor improvements and do not change the human rights considerations previously addressed in the Statement of Compatibility that was tabled with the Bill.

In my opinion, the human rights that are relevant to the amendments to be moved to the Bill are as follows:

- Property rights (section 24)

For the reasons outlined below, I am of the view that the amendments to be moved to the Bill are compatible with human rights.

Section 24 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. The right includes protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

As the Statement of Compatibility tabled with the Bill outlined, the proposed buyback scheme for unsold manufactured homes, limitations on site rent increases, including the prohibition of market rent reviews, and restrictions on the assignment of site agreements between new and outgoing home owners engage property rights under Section 24 of the *Human Rights Act 2019*.

The 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.

However, the amendments to be moved to the Bill in relation to the buyback scheme (amendments 1,2, 3, 4, 5, 6) do not limit the property rights of park owners and home owners beyond potential limitations identified in the Statement of Compatibility tabled with the Bill. The provisions clarify the application of the Bill to avoid ambiguity and deliver on the Bill's original intent.

The prohibition of market rent reviews under Clause 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. The amendment to be moved to the Bill (amendment 7) clarifies that default CPI increases can occur annually, and not on the same schedule as the market rent review. This maintains the original policy intent of the provisions and prevents alternative interpretations of the section which would only allow default CPI increases on the same schedule as the market rent reviews (often once every 3-5 years). This is important because CPI increases, as defined in the Bill, can only consider the annual change in CPI and not the change in CPI since the last rent increase. As such, without the amendment, park owners' ability to derive financial return from their property could be more restricted than intended by the original Bill and considered in the previous Human Rights Statement of Compatibility.

Requirements for park owners to ensure that home owners have multiple payment options in the Bill was not found to engage human rights. Amendments 8-11 clarify that direct debit is an approved payment method and allows a regulation to prescribe other payment methods are similarly unlikely to engage human rights.

Amendments included in the Bill which streamline the sales process and limit the assignment of site agreements potentially limit the property rights of home owners, prospective 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. These limitations were considered in the Human Rights Statement of Compatibility for the Bill.

Amendments 12-16 to be moved to the Bill relate to these streamlined sales processes and clarifies that terms which must be carried over from an old site agreement to a new site agreement are subject to any changes to that agreement which subsequently occur in accordance with the Act. This resolves ambiguity and does not involve any further limitation on property rights beyond what was considered in the Human Rights Statement of Compatibility for the Bill.

Amendment 17 also relates to the streamlined sales process and ensures that cooling-off provisions which allow home owners to terminate their site agreement (and automatically terminate their sale agreement) applies to all sales as intended, and not only to sales between the buyer and the park owner. This supports the property rights of home owners by avoiding interpretations of the Act which could result in a buyer remaining liable for the purchase of a manufactured home where there is no site agreement permitting the home to be sited in the park.

## Conclusion

In my opinion, the amendments moved to the Manufactured Homes (Residential Parks) Amendment Bill 2024 are compatible with human rights under the *Human Rights Act 2019* because they do not limit any human rights.

**Meaghan Scanlon MP**  
Minister for Housing, Local Government and Planning and  
Minister for Public Works