

Brisbane Olympic and Paralympic Games Arrangements Amendment Bill 2024

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to amendments to be moved during consideration in detail of the Brisbane Olympic and Paralympic Games Arrangements Amendment Bill 2024 (the Bill).

In my opinion, the amendments to be moved during consideration in detail of 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 Bill amends the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (BOPGA Act) to establish the Games Venue and Legacy Delivery Authority (authority) and its board. The Bill also makes minor changes regarding the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games (corporation).

In its public submission on the Bill, the City of Gold Coast requested that clause 12 of the Bill be amended to add the Mayor of the City of Gold Coast as a director of the corporation's board given the role, responsibility and resources invested by the City of Gold Coast in the planning, preparation and delivery of the Brisbane 2032 Olympic and Paralympic Games (Games). The Committee agreed that given the resources and partnership invested by the City of Gold Coast in the Games, it is appropriate for the Government to consider amending clause 12 of the Bill to include the Mayor of the City of Gold Coast on the corporation's board.

Following introduction of the Bill, Brisbane City Council raised concerns with the drafting of clause 20, section 53AM(4)(b) of the Bill. Brisbane City Council requested amendments to the Bill to ensure that, in making the Games Coordination Plan, the authority is not able to impose an obligation on Brisbane City Council that is materially different to a relevant agreement held between Brisbane City Council and the State concerning the host contract. It is proposed that clause 20 (relating to proposed new section 53AM(4)(b)) be amended to expressly provide that the authority must ensure that the Games Coordination Plan does not impose an obligation on a games delivery partner that is materially

different to a commitment made by, or materially limits or adversely affects a right of, the partner under a relevant agreement.

The proposed amendment to clause 29 (which amends proposed section 63(4)) makes it clear that the interim chief executive officer has power to do anything necessary or convenient to be done to ensure the authority can operate and can perform its substantive functions.

Human Rights Issues

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

Consideration has been given as to whether the proposed amendments to the Bill engage certain human rights under the *Human Rights Act 2019* (Human Rights Act). Human rights under the Human Rights Act engaged by the proposed amendments to the Bill include:

- Freedom from forced work (section 18);
- Freedom of expression (section 21);
- Taking part in public life (section 23);
- Privacy and reputation (section 25);
- Rights in criminal proceedings (section 32),

each of which is relevant to the proposed amendment to clause 12 (amending clause 17 of the BOPGA Act) to appoint the Mayor of the City of Gold Coast to the board of the corporation. That person, if appointed, will become subject to the existing provisions of the BOPGA Act which apply to elected office holders who are directors of the board of the corporation and will:

- not be entitled to any remuneration or allowances as director (section 21(1));
- be required to disclose interests (in accordance with Part 3, Division 5, Subdivision 2 and 3);
- be subject to offence provisions of the Act which attract penalties (including section 30 (confidentiality of criminal history information), duty to act honestly (section 56) and use or disclosure of confidential information (section 57)).

Accordingly, the amended provision may, if enacted, limit or otherwise affect the rights of the person who is from time to time the Mayor of the City of Gold Coast (including after that person ceases in office). However, as outlined in the analysis below, any limitation of these rights is considered reasonable, demonstrably justifiable and proportionate.

No entitlement to be paid remuneration or allowances

If appointed, the person who is from time to time the Mayor of the City of Gold Coast will not be entitled to any remuneration or allowances as director (section 21(1)) of the BOPGA Act). This may, if enacted, limit or otherwise affect the right of that person to freedom from forced work (section 21, Human Rights Act). However, as outlined in the analysis below, if there is a limitation, any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate.

(a) the nature of the right

The freedom from forced work under section 18 of the Human Rights Act protects a person's right to not be held in slavery or servitude or to be made to perform forced or compulsory labour. This right means that persons should not be subject to conditions that violate individual dignity and exploit human productivity. Section 18(3) provides that work or service that forms part of normal civil obligations is not forced work. This is an internal qualification that limits the scope of the right.

(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

Under the BOPGA Act, directors who are elected office holders (or public servants) are not entitled to remuneration or allowances as a director. This reflects the public nature of the director's appointment and the existing responsibilities their respective organisations have in relation to the Games. The role of the elected office holder on the board can be regarded as part of that elected office holder's normal civil obligations, and not 'forced work' for the purposes of the *Human Rights Act 2019*. To that extent, there is no limitation on the right to freedom from forced work.

Further, the appointment of that office holder to the board of the corporation will also promote the right to take part in public life (section 23, Human Rights Act) and will contribute to a diverse and experienced board. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(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

To the extent that the role can be regarded as part of the Mayor's normal civil obligations, the right to freedom from forced work is not limited. To the extent there was a limitation, any limitation achieves its purpose by appointing the Mayor to the board on terms consistent with other elected office holders (and public servants), allowing the Mayor to contribute experience and expertise to the performance of the corporation's functions.

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

There is no less restrictive way to achieve the purpose. The Mayor will be placed in the same position as other elected office holders to the board of the corporation. Further, it is relevant that this amendment has arisen in response to a specific request from the City of Gold Coast during committee consideration, and subsequently, a recommendation of the committee.

(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

In my opinion, there is no limitation on the right to freedom from forced work where the Mayor, as an elected office holder, is appointed as a director of the board. However, to the extent that the proposed amendment could be seen to place a limitation on the right to freedom from forced work, it strikes a fair balance having regard to the benefits gained by appointing the elected office holder to the board and consistent treatment with other elected office holders who are directors on the board.

(f) any other relevant factors

Nil

Obligation to disclose interests

If appointed as a director of the board of the corporation, the holder of the office of Mayor of the City of Gold Coast from time to time will be subject to the obligation to disclose interests (in accordance with Part 3, Division 5, Subdivisions 2 and 3 of the BOPGA Act).

This may limit or otherwise affect the right to take part in public life (section 23) where that person is unable to participate in decision-making, the right to privacy and reputation (section 25) and the right to freedom of expression (section 21). The right to privacy in s25(a) of the Human Rights Act includes internal limitations: the interference must be unlawful and arbitrary. In the present case, any interference will be lawful. Whether it is arbitrary will be considered in the context of the proportionality analysis below. In relation to the right to freedom of expression any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate for the reasons explained.

(a) the nature of the right

Section 23 of the Human Rights Act states that every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs directly or through freely chosen representatives.

Section 25 of the Human Rights Act protects a person's privacy and reputation. This includes the right not to have the person's privacy, family, home or correspondence (written and verbal) unlawfully or arbitrarily interfered with. Under this section, the scope of the right to privacy is broad and may include matters such as personal information, data collection and correspondence.

Under section 21 of the Human Rights Act, every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

(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

Part 3, Division 5, Subdivisions 2 and 3 of the BOPGA Act address the circumstances where a board member has a direct or indirect interest in a matter being considered by the Board that could conflict with the proper performance of their duties when considering the matter. The board member must disclose the nature of the interest at a meeting and, unless the Board otherwise directs, must not be present when the Board considers the matter.

The purpose of this limitation is to support good governance of the corporation by ensuring that conflicts of interest are appropriately managed and that board members act in the best interests of the corporation with accountability and transparency. This is consistent with a free and democratic society based on human dignity, equality and freedom.

(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

The limitation will be effective to meet the purpose by requiring the director to act in the best interests of the corporation with accountability and transparency.

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

There is no less restrictive way to achieve the purpose. As is appropriate, the obligations on the Mayor will be consistent with that of other elected office holders to the board of the corporation.

(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

It is in the public interest that obligations are imposed on board directors to disclose conflicts of interest to ensure proper and transparent decision making in the public interest.

Such provisions are common in Queensland legislation and strike a fair balance between the importance of ensuring an individual's right to take part in public life, privacy and freedom of expression, and the integrity of membership and appointments to statutory bodies. The importance of ensuring performance, transparency and public accountability outweigh the relatively minor impact on human rights.

(f) any other relevant factors

Nil

Subject to existing offences in the Act

If appointed, the holder of the office of Mayor of City of Gold Coast will become subject to provisions of the BOPGA Act which attract penalties (including section 30 (confidentiality of criminal history information), duty to act honestly (section 56) and use or disclosure of confidential information (section 57)). The obligations regarding confidentiality of information will also continue once a person ceases to be the holder of that office or appointed to the board.

This may limit or otherwise affect the right to liberty, rights in criminal proceedings and in some cases, freedom of expression of that elected office holder. However, as outlined in the analysis below, any limitation of these rights is considered reasonable, demonstrably justifiable, and proportionate.

(a) the nature of the right

Section 32 of the Human Rights Act (rights in criminal proceedings) protects a person's right to be presumed innocent until proven guilty. The right imposes the onus on the prosecution to prove the offence beyond a reasonable doubt.

Under section 21 of the Human Rights Act, every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. The freedom of expression may include the right to say nothing or the right not to say certain things.

(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

The purpose of the existing offence provisions in the BOPGA Act applying to directors of the board of the corporation is to reinforce the importance of the obligation to protect criminal history information, privacy and particular types of confidential information and to act honestly, and is consistent with a free and democratic society based on human dignity, equality and freedom.

(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

Any limitations on human rights to be imposed by these provisions achieves the purpose of deterring non-compliance with the obligations to protect certain types of information and act honestly.

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

There is no less restrictive way to achieve the purpose. As is appropriate, the obligations on the Mayor will be consistent with that of other elected office holders to the board of the corporation.

(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

Any limitations are reasonable and strike a fair balance between these rights and the importance of ensuring information is protected and the importance to the public of ensuring the integrity of the corporation.

(f) any other relevant factors

Nil

Conclusion

In my opinion, the Amendments to be moved in consideration in detail to the Brisbane Olympic and Paralympic Games Arrangements Amendment Bill 2024 are compatible with human rights under the *Human Rights Act 2019* because they limit 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 in accordance with section 13 of the *Human Rights Act 2019*.

THE HON GRACE GRACE MP
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