

Brisbane Olympic and Paralympic Games Arrangements and Other Legislation 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* (Human Rights Act), I, the Honourable Jarrod Bleijie MP, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations make this statement of compatibility with respect to the Brisbane Olympic and Paralympic Games Arrangement and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Brisbane was elected as host of the 2032 Olympic and Paralympic Games by the International Olympic Committee (IOC) in July 2021. Under the Olympic Host Contract (host contract), the IOC entrusts the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games (corporation), the State of Queensland, Brisbane City Council, and the Australian Olympic Committee with the planning, organising, financing, and staging of the Brisbane 2032 Olympic and Paralympic Games (Games), in accordance with the terms of the host contract and the IOC's Olympic Charter.

The Bill amends the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Act) to:

- change the name of the Games Venue and Legacy Delivery Authority to the Games Independent Infrastructure and Coordination Authority (Authority) to improve alignment with the response to the IOC Future Host Commission Questionnaire during the bid for the 2032 Olympic and Paralympic Games and make clear that the Authority is independent of government and has a key role in coordinating generational infrastructure for the benefit of Queensland communities;
- clarify the Authority's role in planning and assessing infrastructure that may be used during the Games;
- require the Authority undertake a review of Games-related infrastructure projects, and any other matters related to Queensland's preparation for the Games as directed, within 100 days;
- ensure Queensland's regional areas receive legacy benefits from the Games;
- provide the Authority with an appropriate degree of flexibility in preparing a transport and mobility strategy and games coordination plan, and entering into a funding agreement with the State;

- ensure the Authority’s chairperson is provided latitude in their ability to enter into a memorandum of understanding with Games Delivery Partners;
- ensure the Authority’s board contains an appropriate number of members and regional representation to enable the Authority to carry out its functions effectively;
- clarify when the President of the corporation Board can attend board meetings of the Authority;
- streamline the process to appoint the Authority’s board of directors, interim chief executive officer and chief executive officer; and
- clarify that the interim chief executive officer of the Authority has the same power, functions and delegations as the chief executive officer.

The Bill inserts transitional provisions into the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act) to provide for:

- the repeal of the *Path to Treaty Act 2023* (Path to Treaty Act), which established the Treaty Institute (Institute) and the Truth-telling and Healing Inquiry (Inquiry);
- abolishing the Institute and the Inquiry, and removing their members from office;
- the State to take responsibility for any outstanding business of the Institute, including transfer of assets and liabilities, records and documents, contracts and other agreements and legal proceedings;
- the transfer of records and documents from the Institute and the Inquiry to the State;
- the saving of provisions relating to protection from civil liability and confidentiality; and
- a transitional regulation-making power to resolve any unforeseen issues arising from the repeal.

The Bill also amends the *Work Health and Safety Act 2011* (WHS Act) and the *Electrical Safety and Other Legislation Amendment Act 2024* to give effect to key work health and safety (WHS) priorities and reduce the regulatory burden for businesses and industry under the WHS legislative framework, while maintaining suitable protections for the health and safety of Queensland workers.

The amendments will:

- reintroduce a requirement for WHS entry permit holders to provide at least 24 hours’ notice of entry before entering a workplace to investigate a suspected contravention of the WHS Act or *Electrical Safety Act 2002*, except in circumstances where there is an imminent risk to the health and safety of workers;
- clarify that health and safety representatives are empowered to issue cease work notices directly to a worker and not the person conducting a business or undertaking; and
- not proceed with commencing new rights/powers introduced in the recent *Electrical Safety and Other Legislation Amendment Act 2024* for WHS entry permit holders and health and safety representatives to take photos, videos, measurements and conduct tests which would have commenced on 1 January 2025.

The Bill also amends the *Planning Act 2016* (Planning Act) and the *Planning and Environment Court Act 2016* (P&E Court Act). The objective of the amendments is as follows:

- to address unforeseen circumstances arising in the relatively new process for State facilitated development (SFD). The current process does not allow for consideration of changes that can occur prior to or during assessment of relevant applications, as defined in s 106A of the *Planning Act*, declared to be for SFD, and
- to allow for the amendment or repeal of a declaration that a development application, proposed development application, change application or proposed change application is an application for SFD.

The Bill also amends the *Public Sector Act 2022* (PS Act) to increase the independence of the Public Sector Commissioner (the Commissioner), and by extension the Public Sector Commission (PSC), by limiting the ability to terminate the Commissioner's employment.

Limiting the ability to remove the Commissioner, as the head of the PSC, will support the Commissioner to act independently when providing advice and performing functions of the office, without fear of reprisal.

To achieve this, the Bill amends arrangements dealing with appointment and termination of the Commissioner. Through these amendments, the Commissioner will no longer be required to enter into a contract of employment with the Minister (being the Premier). Currently, the Commissioner's contract of employment may contain terms and conditions not provided for by the PS Act. By permitting additional terms and conditions in the contract of employment, the potential exists to include the ability to terminate the contract without reason.

In removing the requirement for a contract with the Minister, the ability to terminate the appointment of a commissioner without reason will not exist. While the Governor in Council may include terms and conditions in the instrument of appointment, these will be limited to arrangements not included in the PS Act. As the Act will specifically limit grounds for removal, there will no longer be an avenue to create additional grounds to unilaterally terminate.

The current termination arrangements, which enable the Governor in Council to terminate the Commissioner's employment without reason, will be amended to limit the ability to terminate the Commissioner's employment only on grounds of misconduct; or physical or mental incapacity; neglect of duty or incompetence. As the amendments will provide greater security of employment for the Commissioner, the amendments enhance the human right to participate in public life.

The Bill preserves existing arrangements for the current Commissioner including conditions and entitlements, however from commencement of the amendments, the current Commissioner is immediately protected from being dismissed unilaterally and is not subject to additional arrangements under the PS Act which enable termination or ending of employment.

Applying the termination grounds at section 215(2) to the current Commissioner will not adversely affect the Commissioner's right to participate in public life.

The amendments do not engage any other human right.

Human Rights Issues

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

Amendments to the *Brisbane Olympics and Paralympic Games Arrangements Act 2021*, *Work Health and Safety Act 2011*, and *Electrical Safety and Other Legislation Amendment Act 2024*

Human Rights principles informed the development of the Bill. Human rights under the Human Rights Act engaged by the Bill include:

- Freedom from forced work (section 18) – relevant to clause 7 in relation to the expansion of the Authority’s functions which may impact the requirement for chief executives to give information, documents or assistance to the Authority; and
- Taking part in public life (section 23) – relevant to clause 13 in relation to the composition of the board including regional representation.
- Privacy and reputation (section 25) – relevant to clause 30 in relation to omitting recently introduced powers and/or rights for health and safety representatives and WHS entry permit holders to take photos, videos, measurements and conduct tests.

Freedom from forced work (section 18)

The proposed legislation expands the scope of the functions of the Authority which may impact obligations on a public sector chief executive to give information, documents and assistance that the Authority reasonably requires to perform its functions (section 53CL).

The expansion of the Authority’s functions in this way is not considered to limit a public sector chief executive’s right to freedom from forced work since this work is considered within the reasonable requirements of a chief executive in performing their role.

Taking part in public life (section 23)

The proposed legislation:

- adds a requirement for the Authority to ensure the Games deliver legacy benefits for all of Queensland, including regional areas in performing its function, and
- requires that at least one director of the board must be considered to represent the interests of a regional area.

These provisions may, if enacted, limit or otherwise affect the right to take part in public life. However, as outlined in the analysis below, any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate.

(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.

Participation in the conduct of public affairs is a broad concept and covers all aspects of public administration. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office.

The right protected by section 23(2)(b) of the Human Rights Act is drawn from Art 25(c) of the International Covenant on Civil and Political Rights (ICCPR). The explanatory notes to the Human Rights Act state that this section provides every eligible person with a right to have access, on general terms of equality, to positions in public office.

The right in section 23(2)(b) of the Human Rights Act is limited to 'eligible persons'. According to the explanatory notes to the Human Rights Act, this allows for legislative limitations and could allow for eligibility for membership to a body to be prescribed.

(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

Amendments to section 53BF provide that at least one director of the board must be considered to represent the interests of a regional area by the Minister.

Requiring at least one regional representative on the Board will assist the Authority in ensuring that the Games deliver legacy benefits for all of Queensland, including regional areas (new subsection 53AE(b)).

The purpose of this amendment, which if enacted, could limit a person's right to take part in public life, is to support good governance by ensuring that the Authority's board has the representation required to act in the best interests of the Authority. 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 new subsection 53BF(2) may limit the right of access to public service and public office in section 23(2)(b) of the Human Rights Act because people who do not meet the specified eligibility criteria will be ineligible for one of the positions on the board.

The limitation will be effective to meet the purpose of the limitation as they will support good governance by ensuring that the board has the representation needed to act in the best interests of the Authority.

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

It is essential to the purpose of the Bill that regional representation on the board is required. Alternative methods to using legislation would not be able to achieve this purpose to the same extent.

Accordingly, I do not consider there is any other less restrictive and reasonably available way to achieve the purpose of the proposed legislation.

- (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

As outlined above, if enacted, new subsection 53BF(2), insofar as it sets eligibility requirements for the board of the Authority, may limit the right to take part in public life.

The Authority is a statutory body tasked with:

- (a) investigating and planning for potential venues and villages, and related infrastructure, for the Brisbane 2032 Olympic and Paralympic Games, including, for example—
 - i. conducting investigations of sites and existing or proposed facilities; and
 - ii. preparing project validation reports for the sites and facilities; and
- (b) delivering venues in time for the Games and within budget allocations, including managing effects on users of the venues during their development;
- (c) monitoring and ensuring the delivery of villages in time for the Games; and
- (d) coordinating and integrating the delivery of State, Commonwealth and local government obligations under the host contract.

Additionally, the Authority is required to ensure the Games deliver legacy benefits for all of Queensland, including regional areas under new subsection 53AE(b), among other requirements, therefore, any limit on those rights is reasonable and justified when balanced against the need to apply principles of good governance to ensure the integrity of the Authority and the people who comprise it.

- (f) any other relevant factors

Nil.

Right to privacy and reputation (section 25)

A person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. An interference with the right to privacy is permissible provided it is not arbitrary or unlawful. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to the legitimate policy objective. The right to reputation protects individuals from unlawful attacks on their reputation.

The Bill amends the WHS Act to remove a proposed right and/or power for WHS entry permit holders and health and safety representatives to take photos, videos, measurements and conduct tests in performing their duties under the WHS Act, before the relevant provisions come into effect on 1 January 2025.

In doing so, the Bill provides greater privacy protections for workers, employers and others whose privacy may have been limited if potentially captured in photos or videos taken by WHS entry permit holders or health and safety representatives when exercising their powers, particularly as this may have occurred without prior consent.

The Bill, therefore, promotes the right to privacy and reputation.

Repeal of the *Path to Treaty Act 2023*

Proposed section 100 to be inserted into the JLOM Act repeals the Path to Treaty Act. The Path to Treaty Act currently promotes several human rights, particularly:

- the cultural rights of Aboriginal and Torres Strait Islander peoples in sections 27 and 28 of the Human Rights Act,
- the right to freedom of expression in section 21 of the Human Rights Act, and
- the right to take part in public life in section 23 of the Human Rights Act.

Repealing the Path to Treaty Act may negatively impact the enjoyment of those rights.

Section 27 of the Human Rights Act recognises the cultural rights of people with a particular background. More specially, section 28 recognises the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples, including their right to maintain and strengthen their cultural heritage and traditional knowledge and the rights to strengthen their material and economic relationship with lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom. Arguably, the Inquiry allowed First Nations people to have some measure of control over their heritage and their knowledge of the past, while the Institute gave them a forum through which to negotiate for closer material and economic relationships with their lands and resources.

Bringing the Inquiry and the Institute to an end will not deny First Nations people either the ability to control their cultural heritage and their past or their ability to continue dialogue with governments and the general community about their economic future. They will still be free to do so outside of the framework of the Inquiry and the Institute. Sections 27 and 28 of the Human Rights Act state that the right to enjoy one's culture must not be 'denied'. Denial is a higher threshold for limitation of the rights in sections 27 and 28 compared to other rights.

However, article 27 of the *International Covenant on Civil and Political Rights*—upon which sections 27 and 28 was based—has been interpreted as requiring the state to take positive steps to protect Indigenous cultural rights. For example, according to the UN Human Rights Committee, article 27 requires the state to establish an adequately resourced Indigenous representative body.¹ As noted below, even if ending the Inquiry and the Institute limits cultural rights, that limit would be justified. Accordingly, I will presume a limit on the rights in sections 27 and 28 for the purposes of this statement.

Section 21 of the Human Rights Act protects freedom of expression, which includes 'the freedom to seek, receive and impart information and ideas of all kinds' in the way one wishes. Ending the Inquiry will prevent people from imparting ideas through that medium.

Section 23 protects the right to take part in public life, which includes the right to participate directly in the conduct of public affairs. Removing the Inquiry removes one avenue by which people will be able to do that.

¹ Concluding Observations, Australia, CCPR/C/AUS/CO/5, [13]; Concluding Observations, Mexico, CCPR/C/MEX/CO/5, [22]; Concluding Observations, Suriname, CCPR/CO/80/SUR, [21]; Concluding Observations, Honduras, CCPR/C/HND/CO/2, [46]-[47].

Any limit on these human rights is reasonable and justified under section 13 of the Human Rights Act for the following reasons.

(a) the nature of the right

What is at stake in human rights terms is the ability of people—especially First Nations people—to share their stories and participate in the conduct of public affairs through the Inquiry.

(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 Government is committed to ending the Inquiry and Institute and refocusing on practical solutions to provide First Nations peoples with opportunities and reduce disadvantage. To support this, funding for Path to Treaty will be redirected to measurable actions.

(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

Repealing the Path to Treaty Act and ending the Inquiry and Institute will be effective to achieve the purpose.

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

There is no alternative way to free the resources required for other measures and initiatives, while the Path to Treaty Act remains in force. The Path to Treaty Act requires the establishment and existence of the Institute and Inquiry. Accordingly, there is no less restrictive alternative available to achieve the purpose.

(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

Removing the Inquiry will not prevent Aboriginal peoples and Torres Strait Islander peoples from continuing to tell their stories and having control over their cultural heritage and traditional knowledge. It will only prevent that from occurring through the specific mechanism of the Inquiry. Similarly, dissolving the Institute will not prevent Aboriginal peoples and Torres Strait Islander peoples from continuing to advocate for their objectives. On the other side of the scales, it is important that limited government resources be allocated where they can most immediately, directly and effectively benefit the community, including for the purpose of better investing in First Nations communities across Queensland. This is particularly the case during a significant cost of living crisis. Ultimately, the need to use limited government resources to achieve the best possible practical outcomes for the community outweighs any impact on human rights.

Accordingly, repealing the Path to Treaty Act is compatible with human rights.

Removing officer-holders

Proposed section 102 to be inserted into the JLOM Act will remove each member of the Treaty Institute Council (Council) from office and provide that no compensation is payable for their removal.

Proposed section 109 will remove each member of the Inquiry from office. Each member of the Inquiry will be entitled to a one-off payment equivalent to 4 weeks of their remuneration package, but no compensation is otherwise payable for their removal.

Removing officer-holders has the potential to limit:

- the right of equal access to public office in section 23(2)(b) of the Human Rights Act,
- the right to property in section 24 of the Human Rights Act, and
- the right to privacy in section 25(a) of the Human Rights Act.

Section 23(2)(b) protects a right to have access, on general terms of equality, to the public service and public office. Removing a person from public office such as the chairperson and members of the Inquiry will engage this right.

Section 24(2) provides that a person must not be arbitrarily deprived of their property. Property is a broad concept and would include remuneration and other payments that the chairperson and members have a legitimate expectation of receiving. Whether that property is deprived arbitrarily will depend on whether the entitlements are removed in a way that is capricious, unjust or unreasonable in the sense of being disproportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the Human Rights Act, it will not be arbitrary. Accordingly, whether any deprivation of property is arbitrary will be addressed below when considering the factors in section 13.

Section 25(a) protects unlawful or arbitrary interference with a person's privacy. In the context of human rights, a person's private life extends to a sphere of autonomy which can include aspects of a person's work. However, this right will only be limited if the interference is unlawful or arbitrary, in the sense of being disproportionate to a legitimate aim sought. Again, that question will be considered below in the context of section 13 of the Human Rights Act.

Any limit on these human rights is reasonable and justified under section 13 of the Human Rights Act for the following reasons.

(a) the nature of the right

What is at stake in human rights terms is the livelihood of members of the Council and the Inquiry.

(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 Government is committed to ending the Inquiry and Council, and focus on issues that matter to First Nations Queenslanders, and initiatives that offer practical solutions. To support this, the funding for Path to Treaty will be redirected, to provide measurable actions.

- (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

Removing the Council and Inquiry members from office and providing that limited or no compensation is payable for the removal will ensure the Government's limited resources are preserved and can be made available for other measures and programs.

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

There is no alternative way to preserve the Government's resources while still allowing the members to retain their positions or providing for greater compensation. Accordingly, there is no less restrictive alternative available to achieve the purpose.

- (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

The impact on the members of the Inquiry will be minimised by providing for a one-off payment equivalent to 4 weeks of their remuneration package, in lieu of notice. A similar payment is not required for members of the Council as their role as a member of the Council is not a full-time occupation, with members paid on a part-time basis.

Ultimately, it is considered that any impact on the human rights of the members is outweighed by the need to focus on practical solutions to impact living conditions, especially in circumstances where the Government indicated its intention to repeal the Path to Treaty Act prior to members being appointed.

Because any interference with property and privacy would be proportionate, it would not be arbitrary. That means that the rights to property and privacy in sections 24 and 25 of the Human Rights Act would be engaged but not limited. Any limit on the right of equal access to public office in section 23(2)(b) is justified.

Accordingly, removing the members of the Council and the Inquiry from office is compatible with human rights.

Transferring records to the State

Proposed sections 105 and 110 to be inserted into the JLOM Act provide that the records and other documents of the Institute and the Inquiry become records and documents of the department.

Aboriginal peoples and Torres Strait Islander peoples may have provided testimony to the Inquiry on the basis that their testimony would be held by the Inquiry. Arguably, transferring the records to the State may impact their cultural rights in sections 27 and 28 of the Human Rights Act to have control over their cultural heritage and traditional knowledge. It may also interfere with privacy in section 25(a) of the Human Rights Act, which encompasses a right to share personal information on whatever terms one wishes.

Changing the terms after the information has been shared may interfere with privacy. Transferring records to the State could also, arguably, deprive people of intellectual property, and therefore engage the right to property in section 24 of the Human Rights Act. The rights to

property privacy in sections 24 and 25 will only be limited if the interference is arbitrary, meaning capricious, unjust or unreasonable in the sense of being disproportionate to a legitimate aim sought. If the interference is proportionate under section 13 of the Human Rights Act, it will not be arbitrary. Accordingly, whether any interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

Any limit on these human rights is reasonable and justified under section 13 of the Human Rights Act for the following reasons.

(a) the nature of the right

What is at stake in human rights terms is control over testimony and other information provided by Aboriginal peoples and Torres Strait Islander peoples and others.

(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 transferring the records and other documents to the department is to ensure safe custody of those records and documents in accordance with public records legislation.

(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

Proposed sections 105 and 110 will help to achieve that purpose.

(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 ensure safe custody of the records of the Institute and the Inquiry, especially taking into account the safeguards already in place in public records legislation. Further, the repeal of the Path to Treaty Act will not affect the confidentiality obligations that had been imposed by sections 63 and 91 of that Act. That is made clear by the proposed section 111 of the JLOM Act.

(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

The need to ensure the safe custody of the records and other documents of the Institute and Inquiry outweighs any minor impact on cultural rights, property and privacy, especially taking into account the safeguards that are in place to protect privacy.

Because any interference with property and privacy would be proportionate, it would not be arbitrary. That means that the rights to property and privacy in sections 24 and 25 of the Human Rights Act would be engaged but not limited. Any limit on cultural in sections 27 and 28 is justified.

Accordingly, transferring the records and other documents of the Treaty Institute Council and the Inquiry to the department is compatible with human rights.

Other safeguards

Proposed sections 106 to 108 to be inserted into the JLOM Act will preserve property rights by transferring any liability from the Institute to the State. That will promote the right to property in section 24 of the Human Rights Act.

Amendments to the *Planning Act* and *Planning and Environment Court Act*

The human rights that are relevant to the Bill are:

- section 15 — recognition and equality before the law
- section 21 — freedom of expression
- section 23 — taking part in public life
- section 28 — cultural rights — Aboriginal and Torres Strait Islander peoples
- section 31 — right to a fair hearing

The features of the Bill that are relevant to these rights are:

- Insertion of a new chapter 3, part 6A, division 2A into the *Planning Act* to allow the Minister to amend a declaration under s 106D that a relevant application is for SFD (SFD declaration).
- Insertion of a new chapter 3, part 6A, division 2B into the *Planning Act* to allow the Minister to repeal a SFD declaration.
- Insertion of a new s 106HE(2) in the *Planning Act* to provide for how applications are to be dealt with after the Minister repeals a SFD declaration before a decision is made on that application.
- Insertion of new ss 106HE(5) and (8) in the *Planning Act* to provide for how the repeal of a SFD declaration affects a decision notice mentioned in s 106H(5) and a deemed approval mentioned in 106HE(7).
- Insertion of a new s 106HE(6) in the *Planning Act* which has the effect of facilitating, in respect of appeals discontinued by operation of s 160H(2)(c) following a SFD declaration, a new appeal to be commenced.
- Insertion of new ss 11(5) to (7) in the P&E Court Act to provide for an applicant or assessment manager to commence declaratory proceedings about how to administer a relevant application, other than for a proposed development application or proposed change application, if a SFD declaration is repealed.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (HR Act, s 13)

The Bill will potentially limit (or interfere with) the identified human rights:

- section 15 — recognition and equality before the law
- section 21 — freedom of expression
- section 23 — taking part in public life

- section 31 — right to a fair hearing

Section 15 – recognition and equality before the law

(a) the nature of the right

Section 15 of the HR Act provides for a number of human rights relating to non-discrimination and equality before the law.

The Bill will insert a new chapter 3, part 6A, division 2B into the *Planning Act* to allow the Minister to amend or repeal a SFD declaration.

Consultation prior to amendment or repeal of SFD declaration

Under the new ss 106HB and 106HD to be inserted into the *Planning Act*, consultation, including with an applicant, is required before the Minister makes a decision to amend or repeal a SFD declaration but only where an application has been made to the chief executive under section 106I(b) or the assessment of the relevant application has begun.

This amendment engages s 15(3) of the HR Act which states that every person is equal before the law. The right to recognition and equality before the law may be relevant as the power to amend or repeal a SFD declaration will not require consultation in respect of all relevant applications. That is, relevant applications are treated differently and only some applicants will be consulted.

The right to equality before the law in section 15(3) requires consistent application of the law and will generally only be limited if a decision is devoid of objective justification. The decision is not devoid of objective justification, in allowing applications to be treated differently, as consultation is only considered to be necessary for development applications which are being actively pursued by the applicant. Accordingly, the provisions do not limit the rights stated in section 15.

Public notification of relevant application

Where a relevant application was declared to be SFD under s 106D, the chief executive was able to consider factors, other than those stated in s 53 of the *Planning Act*, such as the impact of the development or local context, in determining if public notification was suitable for applications made to the chief executive for SFD.

The chief executive was therefore able to decide that an application did not require public notification in appropriate circumstances.

Where the Minister repeals a SFD declaration, the new s 106HG provides for applications made under s 106I(b) of the *Planning Act* to be withdrawn.

An effect of these provisions is that on repeal of the SFD declaration, the chief executive is no longer able to streamline and expedite the public notification process for applications referred to in s 106I(b), for example by removing the requirement for public notification for those applications. A new application would need to be made and will need to comply with the requirements of the *Planning Act* which apply to all development applications of that type.

This amendment engages the right to non-discrimination and equality before the law and promotes, rather than limits, the right by ensuring that all development applications comply with the requirements in the *Planning Act*. To the extent that includes public notification of the development application, the public notification requirements in the *Planning Act* which in turn may allow individuals to make submissions about those applications or appeal any decision on the application.

Treatment of relevant application

On repeal of a SFD declaration, any application made to the chief executive under section 106I(b) is deemed to be withdrawn and is not required to be assessed or decided. For a relevant application that had not been decided by the assessment manager at the date of the SFD declaration, the application process restarts from a point stated in the Minister's repeal notice.

An application under s 106I(b) is treated differently from a relevant application. Accordingly, an applicant for a s 106I(b) application is treated differently from an applicant for a relevant application, which may engage s 15(3) of the HR Act which states that every person is equal before the law.

The right to equality before the law in section 15(3) requires consistent application of the law and will generally only be limited if a decision is devoid of objective justification. The Bill is not devoid of objective justification in allowing applications to be treated differently. It is appropriate for an application made to the chief executive pursuant to s 106I(b) to be withdrawn and remade to the assessment manager in circumstances where a SFD declaration has been repealed. The chief executive is not intended to assess applications made under s 106I(b) unless they relate to a relevant application declared to be a SFD. Accordingly, the provisions do not limit the rights stated in section 15.

In my opinion, the Bill is compatible with the right to equal and effective protection against discrimination stated in s 15 of the HR Act because there is no limitation on the right or any limitations on the right are reasonable and demonstrably justifiable in accordance with s 13 of the HR Act.

Section 21 – Freedom of expression

(a) the nature of the right

Section 21 of the HR Act recognises that every person has the right to hold an opinion without interference and has the freedom of expression, through speech, art, writing (or other forms of expression) and to seek out and receive the expression of others' opinion. This includes making decisions in relation to the provision of information or restrictions on access to information.

Consultation prior to amendment or repeal of SFD declaration

Consultation, including with an applicant, is required before the Minister makes a decision to amend or repeal a SFD declaration but only where an application had been made to the chief executive under s 106I(b) of the *Planning Act* or the assessment of the relevant application has begun. This limits a person's right to freedom of expression as it prevents an individual from providing their views on a proposed repeal or amendment of a SFD declaration.

Public notification of relevant application

The right to freedom of expression may be promoted by the new s 106HE(4) to be inserted into the *Planning Act* as it provides for applications made under s 106I(b) *Planning Act* to be withdrawn and for the application process to restart from a point stated in the Minister's repeal notice for relevant applications not decided when the declaration is repealed.

An effect of these provisions is that on repeal of the SFD declaration, the chief executive is no longer able to streamline and expedite the public notification process for applications referred to in s 106I(b), for example by removing the requirement for public notification for those applications. A new application would need to be made and will need to comply with the requirements of the *Planning Act* which apply to all development applications of that type.

This amendment engages the right to non-discrimination and equality before the law and promotes, rather than limits, the right by ensuring that all development applications comply with the requirements in the *Planning Act*. To the extent that includes public notification of the development application, the public notification requirements in the *Planning Act* which in turn may allow individuals to make submissions about those applications or appeal any decision on the application.

Appeals

The new s 106HE(2) to (7) to be inserted into the *Planning Act* provides for any decision notice and deemed approval notice which stopped having effect by operation of s 106H when the SFD declaration took effect, to again have effect if the SFD declaration is repealed. The effect of the new s 106HE(4) is that a person who had commenced an appeal against a decision on the relevant application and which was discontinued by operation of s 106H(2)(c) when the SFD declaration took effect, is able to commence a further appeal against that decision if the SFD declaration is repealed.

The effect of each of these clauses is to re-enliven a person's right to appeal a decision on a relevant application if a SFD declaration is repealed.

This amendment engages the right to freedom of expression and promotes, rather than limits, the right by reinstating appeal rights in respect of relevant applications after the SFD declaration is repealed.

(b) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Consultation prior to amendment or repeal of SFD declaration

The limitation on an individual's right to express their views in respect of a proposed amendment or repeal of a SFD declaration achieves the purpose of ensuring that a SFD declaration may be quickly repealed or amended where the Minister considers that it is appropriate to do so. This may be where a relevant application has changed or no longer meets the objectives in s 106D(2) of the *Planning Act*, including that it no longer meets the priorities of the State. This is because it can be carried out without the need to undertake consultation in certain circumstances. Ensuring that development that is a priority to the State is delivered expeditiously, is compatible with a free and democratic society based on human dignity, equality and freedom because it allows the State to deliver services and infrastructure to meet

community needs.

(c) whether there are any less restrictive and reasonably available ways to achieve the purpose

Allowing an individual the right to express their views on a proposed amendment or repeal of a SFD declaration will not enable a quick decision to be made regarding the amendment or repeal of a SFD declaration in respect of relevant applications. Consultation is considered unnecessary in circumstances where a relevant application has not been assessed or actively pursued by the applicant.

I am therefore satisfied there are no less restrictive ways reasonably available to achieve the purposes.

(d) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Consultation prior to amendment or repeal of SFD declaration

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the public by amending or repealing a SFD declaration and the limitation on the right to freedom of expression that may result. The proposed amendments will ensure that developments which have changed and are no longer a priority to the State will not be expedited. The ability of members of the public to be consulted about those applications, or to appeal any decision in respect of those application (which rights may otherwise be limited if the chief executive makes a decision on an application under chapter 3, part 6A of the *Planning Act*) may be reinstated.

(e) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right to freedom of expression because any limitations on the right are reasonable and demonstrably justifiable in accordance with s 13 of the HR Act.

Section 23— taking part in public life

(a) the nature of the right

Section 23 of the HR 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 affair's directly or through freely chosen representatives.

Consultation prior to amendment or repeal of SFD declaration

The provisions which allow a SFD declaration to be amended or repealed without consultation, including with an applicant, limit a person's right to take part in public life as they deny an individual the opportunity of participating in the decision of whether a SFD declaration is repealed or amended.

Public notification of relevant application

For the reasons referred to in the discussion on the right to freedom of expression, the new s 104HE to be inserted into the *Planning Act* may promote, rather than limit, a person's right to take part in public life as it may allow individuals to make submissions about development and change applications and to appeal decisions made on those applications.

Appeals

For the reasons referred to in the discussion on the right to freedom of expression, the new s 104HE to be inserted into the *Planning Act* engage the right to take part in public life and promote, rather than limit, the right as they have the effect of reinstating appeal rights in respect of relevant applications after the SFD declaration is repealed.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Consultation prior to amendment or repeal of SFD declaration

The purpose of the amendments is to ensure that a SFD declaration may be quickly repealed or amended where the Minister considers that it is appropriate to do so. For the reasons discussed earlier in relation to the right to freedom of expression, this is compatible with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Consultation prior to amendment or repeal of SFD declaration

The amendments will achieve the purpose as a SFD declaration will be amended or repealed without the need to carry out consultation.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Consultation prior to amendment or repeal of SFD declaration

The alternative is to allow an individual the right to express their views on a proposed amendment or repeal of a SFD declaration. This will not achieve the purpose of the amendments as it will not enable a quick decision to be made regarding the amendment or repeal of a SFD declaration in respect of relevant applications which have not been assessed or actively pursued by the applicant.

I am therefore satisfied there are no less restrictive ways reasonably available to achieve the purposes.

- (e) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Consultation prior to amendment or repeal of SFD declaration

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the public by amending or repealing a SFD declaration. As stated earlier, the proposed amendments mean that rights of members of the public that may otherwise be limited if the chief executive makes a decision on an application under chapter 3, part 6A of the *Planning Act*, can be reinstated.

In my opinion, the Bill is compatible with the right to participate in the conduct of public affairs because any limitations on the right are reasonable and demonstrably justifiable in accordance with s 13 of the HR Act.

Section 28 — cultural rights — Aboriginal and Torres Strait Islander peoples

Land use decisions can profoundly affect the cultural rights of Aboriginal peoples and Torres Strait Islander peoples identified in section 28(2) of the HR Act, in particular their connection to country and their ability to maintain and develop kinship ties and to use their languages. However, any limitation on the cultural rights is likely to have occurred when the SFD was originally declared and it is not clear that amending or repealing the SFD declaration would impose any further limitation. In addition, any decisions will be made in the context of the State and Commonwealth legislation protecting Aboriginal cultural heritage and Torres Strait Islander cultural heritage and, where relevant, the *Native Title Act 1993* (Cth). Accordingly, while the Bill may engage the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, I consider it does not limit them.

Section 31 — right to a fair hearing

Section 31 of the HR Act recognises that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

SFD application process

As referred to in the discussion on the right to freedom of expression, the effect of the new s 106HE(4) to be inserted into the *Planning Act* is to re-enliven a person's right to appeal a decision on a relevant application if the SFD declaration is repealed.

This amendment engages the right to a fair hearing and promotes, rather than limits, the right by reinstating appeal rights in respect of relevant applications after the SFD declaration is repealed.

Amendments to the *Public Sector Act 2022*

Taking part in public life (section 23)

Under section 23 of the *Human Rights Act 2019*, every person in Queensland has a right to have the opportunity, without discrimination, to have access, in general terms of equality, to the public service and to public office.

These amendments will provide the Commissioner with greater security of employment, consequently these amendments will the enhance the Commissioner's human right to participate in public life.

Conclusion

In my opinion, the Brisbane Olympic and Paralympic Games Arrangements and Other Legislation Amendment Bill 2024 is compatible with human rights under the Human Rights Act 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 in accordance with section 13 of the Human Rights Act.

Jarrold Bleijie MP
Deputy Premier
Minister for State Development, Infrastructure and Planning
Minister for Industrial Relations

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