

Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023

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1st November 2023

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane Qld 4000

By email: SDRIC@parliament.qld.gov.au

Dear Committee Secretary,

Re: Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

Thank you for the opportunity to provide comments on the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 (**Bill**) which proposes make amendments to several legislative instruments relating to planning in Queensland for the purpose of improving the Government's response to current housing needs, including affordable housing and improving the operational efficiency of Queensland's planning regime. Given the significant amount of Aboriginal and Torres Strait Islander individuals that are experiencing homelessness and overcrowded living arrangements, we are broadly in support of measures that will expedite the development and availability of affordable housing in Queensland provided such measures are closely aligned with the targets and obligations relating to housing which are contained in the National Agreement on Closing the Gap.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We

now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

Aboriginal and Torres Strait Islander persons are significantly overrepresented in the numbers of Australian individuals that are experiencing homelessness and who live in overcrowded living arrangements.

According to the Australian Bureau of Statistics, on the night of the latest Census undertaken in 2021:

- Aboriginal and Torres Strait Islander individuals represented 20.4% of the total people experiencing homelessness in Australia, which amounted to 24,930 Aboriginal and Torres Strait Islander persons;
- of this number, 26.6% were young Aboriginal and Torres Strait Islander persons aged between 12 and 24 years;
- the number of female Aboriginal and Torres Strait Islander individuals experiencing homelessness slightly exceeded their male counterparts with 12,633 females to 12,298 males; and
- 60% of Aboriginal and Torres Strait Islander peoples experiencing homelessness were living in “severely” crowded dwellings.¹

¹ Australian Bureau of Statistics, *Estimating Homelessness: Census, 2021 – Housing Statistics for Aboriginal and Torres Strait Islander Peoples* (2021) <<https://www.abs.gov.au/articles/aboriginal-and-torres-strait-islander-peoples-experiencing-homelessness>>.

Additionally, according to statistics from the Australian Institute of Health and Welfare (AIHW), in the year of 2021-22, 15,100 Aboriginal and Torres Strait Islander individuals received support from specialist homelessness services².

We broadly support measures that will expedite much needed development of infrastructure and affordable housing in Queensland to address the existing housing crisis and contribute to meeting targets 9a and 9b of the National Agreement on Closing the Gap which are extracted below:

- *By 2031, increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88 per cent.*
- *By 2031, all Aboriginal and Torres Strait Islander households:*
 - *within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard*
 - *in or near to a town receive essential services that meet or exceed the same standard as applies generally within the town (including if the household might be classified for other purposes as a part of a discrete settlement such as a “town camp” or “town based reserve”).*

We note, however, that in order to have the best chance of impact on the figures outlined earlier, the location of the proposed sites for affordable housing will be critical. Locations with the most urgent need for affordable housing should be prioritised. Additionally, in the context of the obligations under the National Agreement on Closing the Gap, the Queensland Government should work with relevant Aboriginal and Torres Strait Islander housing organisations, such as, Aboriginal and Torres Strait Islander Housing Queensland (Peak Body) in relation to this work.

Comments on particular provisions in the Bill

Clause 43 – Insertion of new ch 7, pt 2, div 2 (Taking of land by State)

The proposed amendments, if enacted, will confer a new power to the State to acquire (or purchase) land and/or create easements for planning purposes to facilitate the delivery of *development infrastructure*, as defined in the *Planning Act 2016* (Qld) (**Planning Act**). In consideration of the unique connection that Aboriginal and Torres

² Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework – 2.01 Housing* (2021-22) <<https://www.indigenoushpf.gov.au/measures/2-01-housing>>.

Strait Islander peoples have to the land, we note the State Government's obligations under the *Human Rights Act 2019* (Qld), in particular, to ensure that any decision-making relating to the acquiring or purchasing of land and/or creation of easements is compatible with the human rights enshrined therein, including the Aboriginal and Torres Strait Islander Cultural Rights contained in section 28.

Clauses 38, 81 and Schedule 1, clauses 1 and 2 (Removal of the requirement to publish public notices in hardcopy newspaper)

Currently, under Chapter 2 of the Planning Act, the Minister, or local government in certain circumstances, is obligated to publish a public notice in relation to the following things in a hardcopy newspaper circulating in the affected area:

- the making or amending of, or minor amendments to, State planning instruments;
- the making or amending of planning schemes;
- the making or amending of temporary local planning instruments (TLPis);
- the repeal of TLPis; and
- the review of planning schemes.

Many of the above matters involve a public consultation process and the Planning Act requires, in those circumstances, that the public notice contains information regarding the ability to make submissions and instructions on how to make a submission.

The Bill proposes to dispense with the requirement to publish these public notices in a hardcopy newspaper circulated in the affected area, instead relying on the publication of such notices on the internet. The Explanatory Notes justify this change on the basis of "widespread availability and use of the internet by most Australians"³. However, this does not appear to acknowledge nor consider the fact that in remote and regional communities, there is limited and inconsistent internet. Many Aboriginal and Torres Strait Islander community members reside in remote and regional communities in Queensland.

We refer to section 15 of the *Human Rights Act 2019* (Qld) (**HR Act**) which enshrines the right of an individual to recognition and equality before the law and note that these proposed amendments will unfairly impact individuals who live in such communities as those individuals might have a lesser chance being informed of proposed and actual changes to planning instruments and planning schemes in their local area than individuals that live in urban areas, for example, with consistent availability and use of

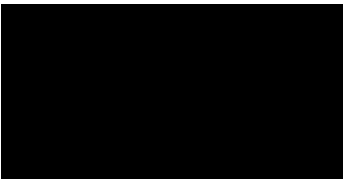
³ Explanatory Notes, Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 (Qld) 4.

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the internet. In our view, these proposed amendments could result in reduced transparency in the planning process and, accordingly, there is potential to erode the trust of residents of such communities in the State Government. Accordingly, we recommend that the requirement be retained, at least for remote and regional communities, or that alternative notification methods be explored, such as, the use of radio advertisements, notices in the local post offices and longer lead times, to ensure that residents of remote and regional communities have the best opportunity to be kept informed of, and the ability to be involved in public consultation processes about, planning matters that will affect their local communities. Furthermore, we recommend that amendments be included in the Bill to allow for the acceptance of submissions past the stipulated deadline where notice of the public consultation was not brought to the attention of the submitter.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,



Gregory M. Shadbolt
Principal Legal Officer
A/Chief Executive Officer