



Major Sports Facilities Amendment Bill 2022

**Report No. 33, 57th Parliament
Economics and Governance Committee
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Economics and Governance Committee

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Contents

Abbreviations	2
Chair’s foreword	3
Recommendations	4
Executive Summary	5
1 Introduction	6
1.1 Policy objectives of the Bill	6
1.2 Government Consultation on the Bill	7
1.3 Should the Bill be passed?	7
2 Examination of the Bill	8
2.1 Commercial outcomes for major sports facilities	9
2.2 Required qualifications or experience of SQ Board directors	9
2.3 Eligibility to be a Board member	10
2.4 Remuneration and the number of annual board meetings	10
2.5 Dealing with property	11
2.6 Service provision to other facilities and land	12
2.7 Minister’s power to give directions	12
2.8 Transitional arrangements	13
3 Compliance with the <i>Legislative Standards Act 1992</i>	13
3.1 Fundamental legislative principles	13
3.1.1 Rights and liberties of individuals – clear and precise	13
3.2 Explanatory notes	14
Compliance with the <i>Human Rights Act 2019</i>	14
3.3 Human rights compatibility	15
3.3.1 Taking part in public life	15
3.4 Statement of compatibility	17
Appendix A – Outstanding Taskforce recommendations requiring amendment to the Act	18
Interim Report	18
Final Report	18
Appendix B – Consultation, inquiry process and officials at public departmental briefing	19
Inquiry process	19

Abbreviations

Bill	Major Sports Facilities Amendment Bill 2022
committee	Economics and Governance Committee
DTIS	Department of Tourism, Innovation and Sport
Final Report	Stadium Taskforce Final Report
GIC	Governor in Council
HRA	<i>Human Rights Act 2019</i>
Interim Report	Stadium Taskforce Interim Report
LSA	<i>Legislative Standards Act 1992</i>
Act	<i>Major Sports Facilities Act 2001</i>
SQ	Stadiums Queensland
SQ Board	Stadiums Queensland Board
Taskforce	Stadium Taskforce

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Major Sports Facilities Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank the Department of Tourism, Innovation and Sport and I also thank our Parliamentary Service staff.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1

That the Major Sports Facilities Amendment Bill 2022 be passed.

Executive Summary

The *Major Sports Facilities Act 2001* (the Act) establishes Stadiums Queensland (SQ) as the Authority responsible for managing, operating, using, developing and promoting facilities in Queensland. These facilities are used for the staging of national and international sports, recreational, entertainment or special events.

SQ is governed by a board of directors (the Board) who are responsible for the overall corporate governance of the authority. The Board consists of no more than seven directors.

In April 2018, the then Minister for Sport established the Stadium Taskforce (the Taskforce) to review the pricing and practices of SQ.

Later in 2018, the Taskforce delivered its Interim and Final Reports to the Queensland Government which contained a total of 53 recommendations designed to improve the commercial agility and governance of SQ, with some recommendations requiring legislative amendments to the Act.

In 2019, the Government supported or supported in-principle all recommendations in its response to the reports.

Of the 53 recommendations, 16 of 17 recommendations from the Interim Report have been completed, with 29 recommendations completed and seven in progress from the Final Report.

If passed, the Major Sports Facilities Amendment Bill 2022 (the Bill) will implement all outstanding Taskforce recommendations requiring legislative amendments to the Act. This will enable developmental opportunities at SQ venues to generate additional sources of revenue for SQ or its leaseholders and provide broader benefits to the community.

The Bill will also support SQ to become a more contemporary, agile and responsive agency.

1 Introduction

1.1 Policy objectives of the Bill

The policy objectives of the Major Sports Facilities Amendment Bill 2022 (the Bill) are to:

- implement Government-supported recommendations arising from the Stadium Taskforce Interim Report (Interim Report) (Recommendation 1.3) and Stadium Taskforce Final Report (Final Report) (Recommendations 1.1, 1.2, 1.3, 1.4 and 1.6) that require legislative amendment¹
- support Stadiums Queensland (SQ) to become a more contemporary, agile and responsive agency.²

The Bill proposes to:

- amend the functions of SQ to develop, or support the use of, land declared under the *Major Sports Facilities Amendment Act 2001* (the Act) and facilities associated with major sports facilities for commercial outcomes and where a compatible social or community benefit can be demonstrated³
- provide for the required qualifications or experience of a person who may be appointed as a director to the SQ Board⁴
- provide that statutory minimum yearly board meetings be reduced from at least 12 times a year to at least nine times a year⁵
- clarify that a spent conviction does not disqualify a person from becoming, or continuing as, a director of the SQ Board⁶
- amend the powers stipulated in the Act to allow the Responsible Minister to deal with property in lieu of Governor in Council (GIC). This will allow the Responsible Minister to approve SQ's acquisition of a sports, recreation, entertainment or event/exhibition facility for its declaration as a major sports facility⁷
- approve SQ's acquisition of freehold land to undertake the development of a sports, recreation, entertainment or event/exhibition facility for its declaration as a major sports facility under the Act⁸
- approve and impose conditions on SQ's sale of an estate in fee simple in facility land⁹

¹ Appendix A, Outstanding Taskforce recommendations requiring amendment to the *Major Sports Facilities Act 2001*.

² Explanatory notes, p 1.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, p 2.

⁹ Explanatory notes, p 2.

- amend the functions to allow SQ to provide services (e.g., grounds keeping or facility maintenance) in relation to the operation and management of other facilities or land held or administered by the department administering the Act¹⁰
- provide that the Minister may give SQ a written direction about the performance of its functions, or exercise of powers, if satisfied it would be in the public interest to do so¹¹
- provide that the direction may require SQ to give the Minister information, including commercial-in-confidence information¹²
- provide that before giving the direction, the Minister must consult with the SQ Board¹³
- provide that SQ must comply with the direction¹⁴
- provide that SQ must outline in its annual report, prepared under the *Financial Accountability Act 2009*, a summary of each direction given during the financial year as well as a statement about how SQ complied with each direction¹⁵
- provide for transitional arrangements in relation to existing GIC approvals, existing requests for GIC approvals and existing directors.¹⁶

There are no anticipated costs to government to implement the recommendations from the Interim and Final Reports.¹⁷

1.2 Government Consultation on the Bill

In 2018, the Stadium Taskforce (the Taskforce) consulted a comprehensive list of stakeholders and examined SQ business and operating models, Queensland Government policies and hirer activities, operating models, usage and the financial performance of SQ.

SQ and the SQ Board were consulted on the Bill.¹⁸

1.3 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed. The committee recommends the Bill be passed.

Recommendation 1

The committee recommends the Major Sports Facilities Amendment Bill 2022 be passed.

¹⁰ Explanatory notes, p 2.

¹¹ Explanatory notes, p 2.

¹² Explanatory notes, p 2.

¹³ Explanatory notes, p 2.

¹⁴ Explanatory notes, p 2.

¹⁵ Explanatory notes, p 2.

¹⁶ Explanatory notes, p 3.

¹⁷ Explanatory notes, p 3.

¹⁸ Explanatory notes, p 3.

2 Examination of the Bill

SQ was established under the Act as the ‘statutory body whose functions are to manage, operate, use, develop and promote major sports facilities in Queensland’.¹⁹ These facilities stage national and international sports, recreation, entertainment or special events.²⁰

SQ is governed by a board of directors and is currently responsible for the following major sports facilities declared under the Major Sports Facilities Regulation 2014:

- Brisbane Cricket Ground (The Gabba)
- Brisbane Entertainment Centre
- Brisbane Stadium (Lang Park or Suncorp Stadium)
- Carrara Stadium (Metricon Stadium)
- Queensland Sports and Athletics Centre (QSAC)
- Queensland Tennis Centre
- Robina Stadium (CBUS Super Stadium)
- Sleeman Sports Complex
- Townsville Stadium (Queensland Country Bank Stadium)

On 22 April 2018, the Taskforce was established to review the pricing and practices of SQ.²¹ The Taskforce also investigated how those models impacted hirers, patrons, major event attraction, and the costs and benefits to the Queensland community.²² Two reports were delivered – the Interim Report in July 2018 and the Final Report in November 2018.

The Interim Report contained 17 recommendations ‘relating to commercial opportunities and financial considerations for several SQ venues, transport and parking matters that impact stadiums on the Gold Coast, integrated ticketing, as well as the commissioning of the North Queensland stadium’.²³

The Final Report contained 36 recommendations. The Department of Tourism, Innovation and Sport (DTIS) considers the Final Report ‘identified that the overall governance and accountability arrangements under the Act were working well, however, proposed some legislative amendments’.²⁴

DTIS advise the proposed amendments in the Bill are ‘to ensure SQ can operate in an effective, contemporary, commercially agile and responsive manner to achieve Government objectives particularly as Queensland prepares to host the Brisbane 2032 Olympic and Paralympic Games’.²⁵

¹⁹ Explanatory notes, p 1.

²⁰ Public briefing transcript, Brisbane, 29 August 2022, p 1.

²¹ Stadium Taskforce, Stadium Taskforce Interim Report, 16 July 2018, p 2.

²² Public briefing transcript, Brisbane, 29 August 2022, p 2.

²³ Public briefing transcript, Brisbane, 29 August 2022, p 2.

²⁴ Public briefing transcript, Brisbane, 29 August 2022, p 2.

²⁵ DTIS, correspondence, 26 August 2022, p 2.

DTIS also advise that ‘it is timely to revisit the role of this important statutory body in the lead-up to the Brisbane 2032 Olympic and Paralympic Games’.²⁶

2.1 Commercial outcomes for major sports facilities

In its Interim Report, the Taskforce referred to a proposal to establish an early learning centre and childcare training college within the Metricon Stadium land parcel at the Gold Coast, and supported development of the project.

The Taskforce subsequently found that ‘there may be development opportunities at SQ venues that could potentially be utilised to generate additional sources of revenue from operations that are compatible with SQ’ business’.²⁷ The Taskforce considered that ‘if commercial use of declared land in the Act is permitted, then the use needs to be a compatible social or community benefit’.²⁸

As a result, the Taskforce made recommendation 1.3: ‘That land declared under the Act may be used for commercial outcomes by SQ or leaseholders, where a compatible social or community benefit can be demonstrated’.²⁹

The Bill proposes to implement recommendation 1.3 by amending ‘the functions of SQ to develop, or support the use of, land declared under the Act or facilities associated with major sports facilities for commercial outcomes for the Authority, or major sports facilities leaseholders, where a compatible social or community benefit can be demonstrated’.³⁰ DTIS advise ‘the amendment will provide SQ with improved commercial agility by allowing for projects in the future that offer commercial and community benefits’.³¹

DTIS describe the childcare centre at the Metricon Stadium as ‘a great example of SQ diversifying the use of their land at its venues to provide commercial and community benefit into the future’, and said ‘this amendment will provide SQ improved commercial agility by allowing for similar projects in the future that support its statutory responsibilities under the act’.³²

In terms of how SQ will identify social or community benefit and how that will be recorded, measured and determined, DTIS advise ‘the department will work with stadiums to come up with that process to make sure it then complies with the definitions in the act’.³³

2.2 Required qualifications or experience of SQ Board directors

In its Final Report, the Taskforce found that ‘Due to the nature of the SQ business with over \$1.8 billion in major sports facility assets, skills such as asset management, legal, commercial, construction, property development, event and governance are beneficial on the SQ Board’.³⁴

²⁶ Public briefing transcript, Brisbane, 29 August 2022, p 1.

²⁷ Stadium Taskforce, Stadium Taskforce Interim Report, 16 July 2018, p 18.

²⁸ Stadium Taskforce, Stadium Taskforce Interim Report, 16 July 2018, p 18.

²⁹ Stadium Taskforce, Stadium Taskforce Interim Report, 16 July 2018, p 18.

³⁰ Explanatory notes, p 1.

³¹ DTIS, correspondence, 26 August 2022, p 2.

³² Public briefing transcript, Brisbane, 29 August 2022, p 2.

³³ Public briefing transcript, Brisbane, 29 August 2022, p 4.

³⁴ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19.

As a result, the Taskforce recommended the Act 'be amended to specify the skills and experience required for individuals to be appointed to the SQ Board'.³⁵

The Bill addresses this recommendation by specifying the required qualifications or experience of a person who may be appointed as a director to the SQ Board. The explanatory notes state:

The qualifications or experience listed are consistent with the objects of the Act and would specify that a person may be appointed as a director to the SQ Board only if they hold qualifications or have at least three years' experience in one or more of the following areas: asset management; building and construction; commercial enterprise operations; event promotion; financial administration; law; property development; sports administration; or has other knowledge and experience the GIC considers appropriate for appointment.³⁶

In response to committee questioning, DTIS advised future appointments to the SQ Board will be in line with Auditor-General recommendations³⁷ and will continue to consider Queensland Government diversity targets.³⁸

2.3 Eligibility to be a Board member

Section 14 of the Act currently provides that a person is not qualified to be or continue as a director if the person is insolvent under administration or is or has been convicted of an indictable offence. However, this section does not clarify whether this includes spent convictions.

The Bill amends the Act to clarify that a spent conviction does not disqualify a person from becoming or continuing as a director of the SQ Board.³⁹ Two new definitions for 'conviction' and 'spent conviction' are provided for in the Bill.⁴⁰

2.4 Remuneration and the number of annual board meetings

The Chairperson of the SQ Board currently receives \$35,000 per annum and directors receive \$15,000 each per annum. This level of remuneration is in accordance with Governance Level 2 under the Remuneration Procedures for Part-time Chair and Members of Queensland Government Bodies.⁴¹

In its Final Report, the Taskforce found that the rates of remuneration for the SQ Board chairperson and directors are significantly lower than those for similar interstate bodies.⁴² As a result, the Taskforce recommended 'The rates of remuneration for the SQ Board chairperson and members be increased to a level comparable with the rates paid to the boards of Venues New South Wales and VenuesWest and be consistent with the SQ board's role, function and risk profile'.⁴³

³⁵ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19.

³⁶ Explanatory notes, p 2.

³⁷ Public briefing transcript, Brisbane, 29 August 2022, p 5.

³⁸ DTIS, correspondence, 26 August 2022, p 2; Public briefing transcript, Brisbane, 29 August 2022, p 5, p 7.

³⁹ Explanatory notes, p 2.

⁴⁰ Public briefing transcript, Brisbane, 29 August 2022, p 2.

⁴¹ DTIS, correspondence, 26 August 2022, p 3.

⁴² Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19; Public briefing transcript, Brisbane, 29 August 2022, p 5.

⁴³ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19.

The Bill addresses this recommendation in the immediate term by reducing the minimum number of board meetings from at least 12 times a year to at least 9 times a year.⁴⁴ When introducing the Bill, the Honourable Stirling Hinchliffe MP, Minister for Tourism, Innovation and Sport and Minister Assisting the Premier on Olympics and Paralympics Sport and Engagement (the Minister) stated that reducing the number of meetings will ‘improve governance efficiencies and contemporise meeting arrangements in the immediate term’.⁴⁵

DTIS consider the ‘reduction in the number of statutory meetings is not anticipated to impact administrative or operational arrangements for the Board, nor will it affect the ability for a quorum of members to ask the Chair to call a meeting’.⁴⁶ In response to committee questioning on the rationale of the reduction of the meetings, DTIS advise that it will be ‘the quality of the meetings versus the quantity of the meetings that is going to get the best governance and probity et cetera for the board’.⁴⁷

2.5 Dealing with property

The Taskforce’s Final Report referred to the Act’s provisions that do not currently allow SQ to buy or sell property without prior approval from GIC, and found ‘Executive Council processes for this approval take up to eight weeks, potentially restricting SQ’s ability to obtain the best commercial outcome from land dealings’. Therefore, the Taskforce recommended the Act ‘be amended to provide that the Minister can approve the sale or purchase of property by SQ’.⁴⁸

The Bill implements this recommendation by providing that the Minister can approve SQ’s property transactions, rather than requiring GIC approval. This will allow the Minister, rather than the GIC, to approve:

- SQ’s acquisition of a sports, recreation, entertainment or event/exhibition facility for its declaration as a major sports facility under the Act
- SQ’s acquisition of freehold land to undertake the development of a sports, recreation, entertainment or event/exhibition facility for its declaration as a major sports facility under the Act
- and impose conditions on SQ’s sale of an estate in fee simple in facility land.⁴⁹

The Minister advised this ‘will improve the Authority’s ability to achieve the best results in the commercial property market outside the timeframes involved with securing GIC approval’.⁵⁰

The Responsible Minister will still need to meet existing approval conditions under the *Statutory Bodies Financial Arrangements Act 1982* which prescribes that the Treasurer’s approval is required when a statutory body enters into certain types of financial arrangements.⁵¹

⁴⁴ Explanatory notes, p 2; DTIS, correspondence, 26 August 2022, p 3.

⁴⁵ Queensland Parliament, Record of Proceedings, 17 August 2022, p 2055.

⁴⁶ DTIS, correspondence, 26 August 2022, p 3.

⁴⁷ Public briefing transcript, Brisbane, 29 August 2022, p 6.

⁴⁸ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19.

⁴⁹ Explanatory notes, p 2.

⁵⁰ Queensland Parliament, Record of Proceedings, 17 August 2022, p 2055.

⁵¹ Queensland Parliament, Record of Proceedings, 17 August 2022, p 2055; explanatory notes, p 2.

2.6 Service provision to other facilities and land

In its Final Report, the Taskforce recommended the Act 'be amended to enable SQ to tender for third party contracts associated with venue management and operations of SQ and other assets owned by the shareholding Minister's department, where it does not affect SQ's core business'.⁵²

This recommendation was made as the Taskforce considered SQ could 'better utilise its expertise and improve its commercial position by tendering for contracts to undertake work on land it does not own', such as tendering 'for contracts for grounds or venue maintenance'.⁵³ The Bill implements this recommendation by amending the Act to allow SQ to:

provide services (e.g., grounds keeping or facility maintenance) in relation to the operation and management of other facilities or land held or administered by the department administering the Act and used for sport, recreational, or entertainment purposes or events, or special events (such as major concerts, public assemblies, religious events and exhibition/convention events), where these services do not adversely affect the performance and primary functions of SQ.⁵⁴

DTIS advise 'this could allow SQ to provide venue management and maintenance services at commercially competitive rates at venues like the Townsville Sports Precinct which also sits in the shareholding Minister's portfolio'.⁵⁵

2.7 Minister's power to give directions

In its Final Report, the Taskforce found the Act 'provides SQ with a higher level of independence than similar authorities in other states', and that other jurisdictions afford Ministers and governments more power to control and direct government bodies established to manage state sports facilities.⁵⁶

The Taskforce raised concerns that 'the Act's lack of ministerial powers and reporting obligations raises potential risks, should a situation arise where SQ's interests and those of the State diverge'.⁵⁷ Therefore, the Taskforce recommended (recommendation 1.6) that the Act be amended to provide the Minister with powers to:

- provide a charter letter to SQ related to the strategic management of the State's major sports facilities
- provide the Minister with the power to direct SQ on matters of public interest
- seek information or reports on matters of State interest and ministerial responsibility.⁵⁸

The Taskforce also recommended this amendment 'should specifically preclude the Minister from directing the SQ Board on any contractual matters where liability could be transferred to the State as a result of the directive'.⁵⁹

⁵² Queensland Parliament, Record of Proceedings, 17 August 2022, p 2055.

⁵³ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 19.

⁵⁴ Explanatory notes, p 2.

⁵⁵ Public briefing transcript, Brisbane, 29 August 2022, p 3.

⁵⁶ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 42.

⁵⁷ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 42.

⁵⁸ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 42.

⁵⁹ Stadium Taskforce, Stadium Taskforce Final Report, 28 November 2018, p 42.

The Bill accordingly provides that:

- the Minister may give SQ a written direction about the performance of its functions, or exercise of powers, if satisfied it would be in the public interest to do so (e.g. a direction to use major sports or event facilities to support major events such as the Commonwealth Games or Olympic and Paralympic Games, or to support emergency responses)
- the direction may require SQ to give the Minister information, including commercial-in-confidence information
- before giving the direction, the Minister must consult with the SQ Board about the direction, allowing the SQ Board to advise the Minister on potential consequences, including commercial implications of any Ministerial direction
- SQ must comply with the direction
- SQ must outline in its annual report, prepared under the *Financial Accountability Act 2009*, a summary of each direction given during the financial year as well as a statement about how SQ complied with each direction given during that financial year.⁶⁰

2.8 Transitional arrangements

The Bill also provides for transitional arrangements in relation to existing GIC approvals and existing requests for GIC approvals, allowing those approvals to be taken as approvals by the Minister.

Transitional arrangements are also made for a person who holds office as a director immediately before the commencement to continue as a director after the commencement, despite the qualifications for appointment as provided for in the Bill.⁶¹

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals⁶²
- the institution of Parliament.⁶³

The committee examined the application of the fundamental legislative principles to the Bill.

3.1.1 Rights and liberties of individuals – clear and precise

Fundamental legislative principles require legislation has sufficient regard to rights and liberties of individuals, which depends on, for example, whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.⁶⁴

⁶⁰ Explanatory notes, p 2.

⁶¹ Explanatory notes, p 3.

⁶² *Legislative Standards Act 1992*, s4(2)(a)

⁶³ *Legislative Standards Act 1992*, s4(2)(b)

⁶⁴ *Legislative Standards Act 1992*, s 4(3)(k).

The Act provides for the functions of SQ.⁶⁵ The Bill expands one of the Act's existing functions 'to manage, operate, use and promote major sports facilities'⁶⁶ to include after facilities 'facility land, including for a community purpose'.⁶⁷

The Bill also inserts a new function requiring SQ 'to provide services in relation to the operation and management of other facilities or land held or administered by the department' and used for: sport, recreational or entertainment purposes or events; or special events.⁶⁸

The explanatory notes state the reason why the Bill expands SQ's functions is to:

... provide services in relation to the operation and management of other facilities or land held or administered by the department (i.e., not declared under the Act) where this does not adversely affect the performance of SQ's primary functions. Whilst this Clause expands SQ's powers under section 7 of the Act, the provision of these services will be for those provided on other facilities or land used for sport, recreational, or entertainment purposes or events, or special events (such as major concerts, public assemblies, religious events and exhibition/convention events).⁶⁹

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

3.2.1.1 *Committee comment*

Section 23 of the LSA requires the information about the Bill included in explanatory notes to be in clear and precise language. The committee considers the explanatory notes could have been more succinct and precise in presenting the information relating to several matters including the expansion of SQ's functions and amendment of the Authority's powers.

On 29 August 2022 at the public briefing on the Bill, the committee questioned DTIS officials on these issues and was satisfied its questions were answered fully.

Compliance with the *Human Rights Act 2019*

The *Human Rights Act 2019* (HRA) protects fundamental human rights drawn from international human rights law.⁷⁰

Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

⁶⁵ *Major Sports Facilities Act 2001* (the Act), s 7.

⁶⁶ The Act s7,(1)(a)

⁶⁷ Clause 3 of the Bill amends the Act, s 7(1)(a).

⁶⁸ Clause 3 of the Bill amends the Act, s 7(1)(c).

⁶⁹ Explanatory notes, p 4.

⁷⁰ The human rights protected by the HRA are set out in sections 15 to 37. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included or is only partly included (s 12).

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.⁷¹

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁷²

The committee has examined the Bill for human rights compatibility.

3.3 Human rights compatibility

3.3.1 Taking part in public life

Clause 7 of the Bill replaces the existing section 14 of the Act to specify qualification requirements for board directors of SQ. The section also allows individuals to be appointed if they have other knowledge and experience the GIC considers appropriate.

The statement of compatibility explains that the human right relevant to the provisions of the Bill is the right to take part in public life under section 23 of the HRA.⁷³

Nature of the human right

Section 23(2)(b) of the HRA provides that:

- (2) Every eligible person has the right, and is to have the opportunity, without discrimination⁷⁴:
 - (b) to have access, on general terms of equality, to the public service and to public office.

This means that the criteria and processes for appointment, promotion, suspension and dismissal within the public service must be objective, reasonable and non-discriminatory.⁷⁵ It is particularly important that persons do not suffer discrimination in the exercise of their right, for instance on the grounds of race, colour, sex or religion.⁷⁶ However, the right does not guarantee a job in the public service, but only the opportunity to secure such a job subject to any legitimate qualifications.⁷⁷

⁷¹ HRA, s 39.

⁷² HRA, s 8.

⁷³ Statement of compatibility, p 2.

⁷⁴ Discrimination is defined to include direct and indirect discrimination as defined under the *Anti-Discrimination Act 1991*, HRA, schedule 1. Section 7 of the *Anti-Discrimination Act 1991* lists attributes in relation to which discrimination is prohibited, including, for example, age, impairment, political activity, religious belief or religious activity.

⁷⁵ Human Rights, Respect Protect Promote Guide: Nature and scope of human rights in the *Human Rights Act 2019*, p 68. UN Human Rights Committee, General Comment 25, the right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh Session, 1996) UN Doc CCPR/C/21/Rev.1/Add7 (1996) paras 23-24.

⁷⁶ UN Human Rights Committee, General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh Session, 1996) UN Doc CCPR/C/21/Rev.1/Add7 (1996), para 24.

⁷⁷ Alistair Pound and Kelly Evans, *Annotated Victorian Charter of Rights* (Lawbook Co, 2nd ed, 2019), p 176.

It may be argued that the qualification and experience requirements in clause 7 of the Bill for appointment as a director of the board does not limit the right of an eligible individual (or discriminate among eligible individuals) seeking appointment, in that any eligible individual irrespective of race, colour, sex or religion has the opportunity to seek to be appointed as a director.

It may also be argued that the requirements for qualifications and skills are legitimate and reasonable, and not arbitrary – it would be unnecessary to consider whether the limitation is justified under section 13(2) of the HRA.

However, assuming there is a limitation on the right, it would be necessary to consider whether the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, having regard to the following factors under section 13(2) of the HRA.

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

The statement of compatibility explains that the purpose of the limitation is ‘to ensure that only appropriately qualified or experienced individuals become directors of [SQ] in control of substantial public assets and operations.’⁷⁸ Thereby supporting the effective management of public assets.⁷⁹

The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The statement of compatibility notes that the requirement to hold specific qualifications or experience helps achieve the purpose of effectively managing public assets as individuals who are appropriately experienced and qualified would be expected to better manage those assets.⁸⁰

Whether there are any less restrictive and reasonably available ways to achieve the purpose

The statement of compatibility explains that individuals may be appointed if they have other knowledge and experience the GIC considers appropriate, and confirms no other less restrictive and reasonably available ways to achieve the purpose were identified.⁸¹

The balance between importance of the purpose and importance of preserving the human right

The statement of compatibility states that the importance of appointing directors to the board with the ‘appropriate qualifications and experience to effectively manage a number of significant public assets, outweighs the potential limitation on the right to take part in public life’.⁸²

On balance, given the board is responsible for the way in which SQ performs its functions and exercises its powers, and that the board may decide the objectives, strategies and policies that SQ is to follow,⁸³ it would be important for the SQ board to have directors with the appropriate skills gained through either practical experience, or a recognised qualification, in the fields of expertise listed in clause 7.

⁷⁸ Statement of compatibility, p 2.

⁷⁹ Statement of compatibility, p 2.

⁸⁰ Statement of compatibility, p 2.

⁸¹ Statement of compatibility, p 2.

⁸² Statement of compatibility, p 3.

⁸³ *Major Sports Facilities Act 2001*, s 11.

Committee comment

The committee finds the Bill is compatible with human rights. The committee considers it is arguable whether clause 7 impacts on an eligible individual's right to take part in public life, and whether it is discriminatory. The committee is satisfied that any limitation on such a right is reasonable and demonstrably justified under section 13(2) of the HRA.

3.4 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

The statement of compatibility tabled with the introduction of the Bill provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Outstanding Taskforce recommendations requiring amendment to the Act

Interim Report

Recommendation 1.3 – allowing land declared under the Act to be used for commercial outcomes by SQ or leaseholders, where a compatible social or community benefit can be demonstrated.

Final Report

Recommendation 1.1 – specifying the skills and experience required for individuals to be appointed to the SQ Board.

Recommendation 1.2 – increasing rates of remuneration for the SQ Board to a level comparable with similar boards across Australia and consistent with the Board’s role, functions and risk profile to be addressed through a reduction in the minimum number of board meetings per year in the immediate term).

Recommendation 1.3 – providing that the Responsible Minister can approve the sale or purchase of property by SQ.

Recommendation 1.4 – enabling SQ to tender for third party contracts associated with venue management and operations of SQ and other assets owned by the Responsible Minister’s department, where it does not affect SQ’s core business.

Recommendation 1.6 – providing the Responsible Minister with the powers to:

- a) provide a charter letter to SQ related to the strategic management of the State’s major sports facilities
- b) direct SQ on matters of public interest
- c) seek information or reports on matters of state interest and Ministerial responsibility.

Appendix B – Consultation, inquiry process and officials at public departmental briefing

Inquiry process

On 22 August 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. No submissions were received.

The committee received a public briefing about the Bill from the Department of Tourism, Innovation and Sport on 29 August 2022. A transcript is published on the committee's web page; see below for a list of departmental officials.

Correspondence from the department and the transcript of the briefing are available on the committee's webpage.

Department of Tourism, Innovation and Sport Officials

- Mr Andrew Sly, Deputy Director-General, Sport and Recreation
- Mr Chad Anderson, Executive Director, Partnerships, Strategy and Development, Sport and Recreation.