

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

## 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*, I, Steven Miles, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Infrastructure make this statement of compatibility with respect to the Planning and Other Legislation Amendment Bill 2023.

In my opinion, the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 (the Bill) is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

The objective of the Bill is as follows:

- to amend the *Planning Act 2016* (Planning Act) to optimise the planning framework's response to the current housing challenges through a suite of tools for use in any growth area across Queensland. Amendments are also required to the *Planning and Environment Court Act 2016* (P&E Court Act), the *Economic Development Act 2012* (ED Act) and to the *Acquisition of Land Act 1967* (Acquisition of Land Act) to give effect to the changes in the Planning Act; and
- to amend the Planning Act, the P&E Court Act, the ED Act, the *Integrated Resort Development Act 1987* (IRDA), and the *Sanctuary Cove Resort Act 1985* (SCRA) to ensure these Acts are operating efficiently and are clear in their intent for provisions.

Amendments to other statutory instruments including the Planning Regulation 2017 (Planning Regulation), Minister's Guidelines and Rules (MGR) and the Development Assessment Rules (DA Rules) are necessary to give effect to some of the changes in the Bill. These amendments will be progressed post-introduction and are intended to commence to coincide with relevant provisions.

## Human Rights Issues

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

I have considered each of the rights protected by Part 2 of the HR Act. In my opinion, the human rights that are relevant to the Bill are:

- section 15 – recognition and equality before the law
- section 16 – right to life

- section 19 – freedom of movement
- section 21 – freedom of expression
- section 22 – peaceful assembly and freedom of association
- section 23 – taking part in public life
- section 24 – property rights
- section 25 – privacy and reputation
- section 26 – protection of families and children
- section 27 – cultural rights — generally
- section 28 – cultural rights — Aboriginal and Torres Strait Islander peoples
- section 29 – right to liberty and security of person
- section 31 – right to a fair hearing
- section 36 – right to education

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

- Clause 13 – Insertion of new sections 171JA to 171JM of the ED Act introducing new Temporary Use Licence provisions.
- Clause 28 – Insertion of new chapter 3, part 1, division 2 of the Planning Act introducing new Temporary Accepted Development provisions.
- Clause 38 – Amendment of definition of public notice and properly made submission.
- Clause 43 – Insertion of new sections 263A to 263D in the Planning Act to enable the State to take land and create easements.
- Clause 52 – Insertion of new sections 275LA to 275LM of the Planning Act introducing new Temporary Use Licence provisions.
- Clause 60 – Insertion of new sections 358 to 360 in the Planning Act introducing new Development Control Plan provisions.
- Clause 63 – Amendment to section 30 of the Planning Act to ensure that rezoning to an Urban Investigation Zone (UIZ) is not an adverse planning change, requiring compensation
- Clause 74 – Insertion of new chapter 3, part 6A of the Planning Act to provide for state facilitated applications
- Clause 78 – Amendment of section 267 (Making or renewing registrations) relevant to the urban encroachment provisions of the Planning Act
- Clause 80 – Insertion of new sections 268A to 268C in the Planning Act introducing new Urban Encroachment provisions.
- Clause 81 – Amendment of section 269 to update public notice requirements, relevant to the urban encroachment provisions.

- Clause 82 – Insertion of new sections 269A requiring an owner of a registered premises to give notice about additional land in an affected area, relevant to the urban encroachment provisions.
- Clause 86 – Amendment of section 274 (Restriction on legal proceedings) relating to a new or amended authority, relevant to the urban encroachment provisions.
- Clause 87 – Insertion of new section 274A (Provisions relating to new or amended authority for registered premises) in the Planning Act, relevant to the urban encroachment provisions.
- Clause 92 – Insertion of new definition for relevant online newspaper, relevant to urban encroachment provisions.
- Clause 94 – Insertion of new section 26A (Power of Minister to direct particular amendment of planning schemes) in the Planning Act.
- Clause 96 – Amendment of section 43 (Categorising instruments) relating to development on a local heritage place that is also a Queensland heritage place (dual listed heritage place).
- Clause 98 – Amendment of section 45 (Who must prove case) of the P&E Court Act.
- Clause 100 – Amendment to section 11 of the P&E Court Act to limit appeal rights for state facilitated applications to the assessment manager who may appeal for matters that were done, to be done or should have been done in relation to the Minister’s declaration of a state facilitated application.
- Clause 107 – Amendment of schedule 10 (development assessment) to prohibit particular development in a UIZ.
- Schedule 1, Clause 1 – Amendment of section 99 of IRDA relating to publishing notices.
- Schedule 1, Clause 1 – Amendment of section 55 of SCRA relating to publishing notices.

**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 19 – freedom of movement
- section 21 – freedom of expression
- section 23 – taking part in public life
- section 24 – property rights
- section 26 – protection of families and children
- 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.

### *Publication of notices*

Clauses 38, 81, and Schedule 1 clauses 1 and 2 of the Bill modernise the requirements for publishing public notices by removing the requirement that they be circulated in hardcopy newspaper. The amendment provides for the state government to publish notices in the gazette and on its website. This change aligns with changes made to the *Financial Accountability Act 2009* in 2021 which override the Planning Act requirement for the state to publish public notices in hardcopy newspapers. This process improvement has been extended to other provisions in the Planning Act and planning legislation including the IRDA and the SCRA.

Older members of the community may be less likely than other persons to have access to, and be comfortable using, electronic media and may therefore be more affected by this change than other persons. Age is a protected attribute under the *Anti-Discrimination Act 1991* and the change therefore potentially limits the rights of these individuals to equal protection against discrimination.

(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

The nature of the purpose of the limitations are consistent with a free and democratic society based on human dignity, equality and freedom. The change:

- ensures that public notices will be made available even if there is no print newspaper circulating in a relevant area; and
- for local governments, provides flexibility in how they reach affected or interested persons.

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

The limitation helps to achieve the purpose by mandating publication of notices, but in a modernised form that will reach affected or interested persons, including in areas where there is no print newspaper circulating.

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

I consider there are no less restrictive or reasonably available ways to achieve the purpose of these amendments. The declining availability of hard copy newspapers necessitates this statutory requirement be removed. For local governments, the removal of the requirement means that they have flexibility, even if there is a print newspaper circulating in the area, to decide how best to reach their communities.

(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

Without this change, there is a risk a person or entity would be unable to comply with the legislative requirements to publish the notice where no hard copy newspaper circulates in the area. The limitation is minor, given the widespread availability and use of the internet by most Australians. In addition, the limitation is balanced by the increased reach notices published online may have.

I am therefore satisfied the provisions strike a fair balance between the benefits gained by the public by enabling local governments to determine how best to reach their community, for example by online publication, and the limitation on the right to equal and effective protection against discrimination.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right to equal and effective protection against discrimination stated in section 15 of the HR Act because the limitations on the right are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

***Section 19 – Freedom of movement***

(a) the nature of the right

*Growth areas—UIZ*

Section 19 of the HR Act recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live. The right is limited by clause 107 of the Bill, which prohibits certain types of development in a new zone, called a UIZ and therefore limits the rights of persons who own and occupy land within a UIZ to choose whether they live on the land.

(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

*Growth areas—UIZ*

The prohibition associated with the UIZ aims to ensure that pre-emptive development does not occur where this may compromise the future detailed land use and infrastructure planning for that area, and to assist local governments in prioritising resources to land which is ‘development ready.’

Urban planning is important for a free and democratic society based on human dignity, equality and freedom because it improves amenity and therefore quality of life for individuals. It also assists in ensuring that essential services and infrastructure are located in appropriate places to support increased population.

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

*Growth areas—UIZ*

The UIZ is being introduced, partly in response to feedback from local government about the difficulties they are experiencing in trying to manage land use and infrastructure planning across multiple growth fronts without power to stop pre-emptive development. The UIZ will help achieve orderly development in local government growth areas. The UIZ will also be complimented by changes to the definition of the Emerging Community Zone, requiring it to be a ‘development ready’ zone with infrastructure planning in place. This change would be made through an amendment to the Planning Regulation.

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

*Growth areas—UIZ*

The prohibition on certain development in a UIZ is the only way to adequately protect land from pre-emptive development applications because:

- local governments cannot prohibit development under their planning schemes, unless prescribed by the Planning Regulation; and
- other tools such as Ministerial direction powers or a Ministerial temporary local planning instrument are also unable to prohibit development.

A UIZ can only be applied once the local government has followed a process in the MGR under the Planning Act, including:

- preparing a report exploring other alternatives to using the zone;
- justifying that the zone remains the preferred option;
- consulting with affected stakeholders about the proposed UIZ;
- providing opportunity for state review by state agencies; and
- gaining approval from the Planning Minister.

I am therefore satisfied that the UIZ is the least restrictive way reasonably available to achieve the purpose.

(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

*Growth areas—UIZ*

In my opinion, the provisions strike a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of movement that may result.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right to freedom of movement because the limitations on the right are reasonable and demonstrably justifiable in accordance with section 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.

*Growth areas—UIZ*

Clause 63 of the Bill relates to the prohibition associated with the UIZ described above. The right to freedom of expression may be restricted because of the prohibitions on certain development applications within a UIZ. Development applications have associated appeal rights for the applicant. The prohibition of certain development applications within a UIZ removes the right to make an application and therefore any corresponding appeal rights.

As described above, the new zone can only be applied once the local government has followed a process in the MGR including consultation with affected stakeholders, state agency review and approval by the Planning Minister.

*Growth areas—state facilitated applications*

Clause 74 of the Bill relates to the state facilitated applications. The right to freedom of expression may be restricted by the state facilitated application process as there are no applicant or third party appeal rights associated with the development decision (for example, approval, conditions or refusal) to the Planning and Environment Court (P&E Court).

The removal of appeal rights is consistent with similar forms of reserve Ministerial powers including Ministerial call in powers and Ministerial Infrastructure Designation. The assessment manager (typically the local government) may appeal to the P&E Court, for matters that were done, are to be done or should have been done in relation to the Minister's declaration of a state facilitated application.

*Urban encroachment—registration renewal*

The urban encroachment provisions in the Planning Act protect existing businesses from civil and/or criminal proceedings relating to nuisance (such as air, light and noise emissions) from property owners and occupiers within an affected area, when the business is complying with its development approval and/or environmental authority. The protection is through a registration of the premises and an affected area which identifies the area the registration relates to. Statutory immunity is provided for a period of 10 years, after which the registered premises is required to renew the registration if continued protection is required.

Clauses 78 and 79 relate to amendments to the renewal of a registration of premises under chapter 7, part 4 of the Planning Act, where there is no change to the affected area. The provision may limit freedom of expression as there is no requirement for public consultation in this circumstance.

*Urban encroachment—new or amended authorities*

Clauses 80, 82, 86 and 87 of the Bill relate to a premises for which there is a new or amended development approval or environmental authority (termed a 'new or amended authority') that has undergone the relevant approvals processes prescribed under the Planning Act or the *Environmental Protection Act 1994* (EP Act). The current provisions require the owner of the premises to re-register the premises, including undertaking public consultation, and give affected persons appeal rights in relation to the re-registration decision. Those requirements are removed, which therefore limit the right to freedom of expression.

Clause 87 of the Bill requires the owner of the premises to publish a notice about the greater emissions within 20 business days after the new or amended authority starts applying in a relevant online newspaper and on the website for the premises (if applicable).

*Temporary accepted development*

Clause 28 introduces a head of power for the Planning Regulation to declare that a particular material change of use of a premises is ‘temporary accepted development’ for a stated period and does not require development approval. This may limit freedom of expression in circumstances where the material change of use is categorised as impact assessable development, which requires public consultation, under a local planning scheme.

However, the amendment will ensure that development intended to fulfill an interim need is limited to being temporary; and that at the end of the stated period, the use rights afforded under the declaration will cease. At that time the use rights will revert to what was in place prior to the declaration. Alternatively, if required under the relevant planning scheme, a person may apply for a development approval for the material change of use while the declaration is in place. If this is the case and public consultation is required as part of that process, the public will have an opportunity to make a submission about the development.

Temporary accepted development declarations will be considered on a case-by-case basis, requiring approval by the Planning Minister and Governor in Council through the regulation making process. The Planning Regulation may also identify conditions that must be met to be accepted development, for example the conditions may include locational requirements such as being outside a flood or bushfire area, or to minimise impacts on surrounding uses.

- (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

*Growth areas—UIZ*

The purpose of the amendments relating to the UIZ is discussed above in relation to the right to freedom of movement.

*Growth areas—state facilitated application process*

The state facilitated application process provides for a streamlined and expedited development assessment process to ensure that development that is an identified priority for the state, for example affordable housing, is not delayed. Ensuring that development which is a priority for the state can be delivered, is also compatible with a free and democratic society based on human dignity.

*Urban encroachment—registration renewal and new or amended authorities*

Modernising the urban encroachment provisions will give greater certainty to existing hard to locate industrial uses operating within in urban areas. This is consistent with a democratic society as registration requirements including consultation must be balanced with protecting the ongoing viability of businesses lawfully operating within their approved authority.



*Temporary accepted development*

Having the power to declare temporary accepted development under the Planning Regulation ensures there is a mechanism through which the government can respond to urgent and emerging issues to achieve positive community outcomes in a timely manner.

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

*Growth areas—UIZ*

How the UIZ helps achieve its purpose is explained above in relation to the right to freedom of movement.

*Growth areas—state facilitated application process*

The limitation on appeals for state facilitated applications achieves the purpose of ensuring that if a development approval is issued, this approval is certain and can be acted on quickly.

*Urban encroachment—registration renewal and new or amended applications*

The provisions will help achieve their purpose by:

- giving business certainty for registrations in which there is no change since the initial registration; and
- when there is an authority in place which has undergone the necessary approvals process under planning and environment legislation.

*Temporary accepted development*

The temporary accepted development amendments will reduce regulatory burden and the need for consultation for development that will help to address an emergent need.

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

*Growth areas—UIZ*

The prohibition on certain development in a UIZ is the only way to adequately protect land from pre-emptive development applications because:

- local governments cannot prohibit development under their planning schemes unless prescribed by the Planning Regulation; and
- other tools such as Ministerial direction powers or a Ministerial temporary local planning instrument are also unable to prohibit development.

A UIZ can only be applied once the local government has followed a process in the MGR under the Planning Act , including:

- preparing a report exploring other alternatives to using the zone;
- justifying that the zone remains the preferred option;
- consulting with affected stakeholders about the proposed UIZ‘

- providing opportunity for state review by state agencies; and
- gaining approval from the Planning Minister.

*Growth areas—state facilitated applications*

The Bill requires consultation on state facilitated applications in accordance with the requirements that may be stated in the declaration notice for notifying and consulting with the public, given by the Planning Minister. This process ensures that stakeholders affected by the development application have the right to express their opinion about the development, and for the applicant to consider submissions received.

*Urban encroachment—new or amended authorities*

The Planning Act and EP Act are the appropriate legislative frameworks for assessing impacts of use and emission impacts. These frameworks determine the relevant approval pathway, including whether public consultation is required. As urban encroachment consultation relates only to the registration (for protection from civil and/or criminal proceedings relating to nuisance), any concerns about emissions that are raised through consultation on the registration cannot be considered under the planning and environment frameworks. Persons in the affected area will continue to have access to the complaint and enforcement mechanisms in the planning and environment frameworks. Also, the protection does not apply if the business is not operating within their development approval and/or environmental authority.

*Urban encroachment—registration renewal*

The current registration renewal process creates uncertainty for business owners and therefore stifles investment and growth. The change will ensure a simplified process for the owner of a premises for which circumstances have not changed since Planning Minister approval of the original registration.

Under s 59 of the Planning Regulation, the owner of the premises must provide information as part of the renewal application process, including (but not limited to) a technical report detailing the levels of emissions during operating hours, details of any complaints made in the previous 12 months about emissions from the premises and details about any action taken to mitigate emissions. The Planning Minister must consider this information as part of the renewal application.

*Temporary accepted development*

The provisions will ensure that development intended to fulfill an interim need is only temporary and that, at the end of the stated period, the use rights temporarily afforded under the declaration will cease. At that time the use rights will revert to what was in place prior to the declaration. Alternatively, if required under the relevant planning scheme, a person may apply for a development approval for the material change of use while the declaration is in place. If this is the case and public consultation is required as part of that process, the public will have an opportunity to make a submission about the development.

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

*Growth areas—UIZ and State facilitated applications*

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of expression that may result.

*Urban encroachment—registration renewal and new or amended authorities*

The amendments strike a fair balance between:

- the benefits gained by enabling changes to be made through local planning schemes that increase densities within existing urban areas and the needs of existing key employment-generating and hard to locate uses that are of state, regional or local importance; and
- the limitation on the right to freedom of expression that may result from the changes to the registration and renewal processes.

Further and specifically in relation to the provisions for new and amended authorities, clause 87 of the Bill requires the owner of the premises to publish a notice about the greater emissions within 20 business days after the new or amended authority starts applying in a relevant online newspaper and on the website for the premises (if applicable).

*Temporary accepted development*

The amendments strike a balance between having a simpler process for development that will help to address an emergent issue, with requiring public consultation (if the development is impact assessable development under a planning scheme) given it is only for a temporary period. Responding to an urgent need is considered to outweigh the temporary limitation on the right to free expression.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right to freedom of expression because the limitations on the right are reasonable and demonstrably justifiable in accordance with section 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 affairs directly or through freely chosen representatives.

### *Minister's powers to direct amendments to a planning scheme*

Clause 94 will insert a new s 26A in the Planning Act that allows the Planning Minister, without having given notice to a local government, to direct the local government to amend its local planning scheme to reflect:

- a state interest that has undergone adequate public consultation; or
- a matter in the Planning Regulation in which a local planning scheme must be consistent with.

Communities may expect local planning schemes to be decided by their local councillors rather than the Planning Minister. As the local government cannot make representations to the Planning Minister about the direction, this amendment may limit the right to participate in the conduct of public affairs through chosen representatives.

### *Dual listed heritage places*

Clause 96 amends section 43 of the Planning Act to prescribe that a local categorising instrument may not include assessment benchmarks about the impact of development on the cultural heritage significance of a local heritage place that is also a Queensland heritage place (dual listed heritage place).

Communities may expect local planning instruments to reflect matters relating to heritage places. As the Planning Act will remove the ability for local government to assess and make decisions about the impacts of development on a dual listed heritage place, this amendment may limit the right to participate through the conduct of public affairs through chosen representatives.

### *Urban encroachment—registration renewal*

Clauses 78 and 79 relate to the renewal of a registration, where there is no change to the affected area. This provision may limit a person's ability to take part in public life as there is no requirement for public consultation in this circumstance. The clause establishes a simplified registration renewal process for the owner of a premises for which circumstances have not changed since the original registration application (which included public consultation) was approved.

### *Urban encroachment—new or amended authorities*

Clauses 80, 82 86 and 87 of the Bill relate to a premises that has a new or amended authority. The current provisions require the owner of the premises to re-register the premises, including undertaking public consultation, and give affected persons appeal rights in relation to the re-registration decision. Those requirements are removed, which therefore limit the right to take part in public life.

### *Temporary accepted development*

Clause 28 introduces a head of power for the Planning Regulation to declare that a particular material change of use of a premises is 'temporary accepted development' for a stated period and does not require development approval. This may limit the human right of taking part in public life in circumstances where the material change of use is categorised as impact assessable development, which requires public consultation, under a local planning scheme.

If a change of use is ‘temporary accepted development’, people will not be able to make a submission about a proposed development and will not have appeal rights. The provisions may therefore override what is in a planning scheme, which has been through a community consultation process as well as an approval process that includes the Planning Minister and councillors.

- (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

*Minister’s power to direct amendment to a local planning scheme*

The purpose of the amendment is to ensure consistency between the planning scheme and state policy and legislative requirements, thereby providing certainty to communities about what planning controls apply to land.

*Dual listed heritage places*

The purpose of the amendment is to remove duplicate assessment relating to dual listed heritage places by state and local government, resulting in resource efficiencies particularly where the assessment is against the same matters. The state is the appropriate entity to assess the potential impact of the development on the cultural heritage significance of the Queensland heritage place as the conservation of Queensland heritage places is a state interest and the assessment is undertaken against the relevant State assessment benchmarks. The amendment will remove the potential for inconsistent decision making, thereby reducing possible subsequent court action and associated costs for state and local government and applicants.

*Other provisions*

The purposes of the limitations resulting from the urban encroachment (registration renewal and new and amended authorities) and temporary accepted development amendments are described above in the discussion of the right to freedom of expression.

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

*Minister’s power to direct amendment to a local planning scheme*

A local government that is directed by the Minister will be required to comply and therefore the amendments will achieve the purpose.

*Dual listed heritage places*

A local government will be unable to assess the impacts of development on dual listed heritage places and therefore the amendments will achieve the purpose.

*Other provisions*

The relationship between purposes of the limitations resulting from the urban encroachment (registration renewal and new and amended authorities) and temporary accepted development amendments are described above in the discussion of section 21 (Freedom of expression).

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

*Minister's power to direct amendment to a local planning scheme*

The alternative to a Ministerial direction power is to allow local governments to amend their local planning schemes at their own discretion. This could take considerable time resulting in ongoing or long-term inconsistency between local planning schemes and state policy and legislative requirements.

*Dual listed heritage places*

The provisions will remove duplicate assessment of dual listed heritage places, which ensuring the cultural heritage significance of the place continues to be assessed by the state. I am satisfied there are no less restrictive ways reasonably available to achieve the purpose.

*Other provisions*

The reasons why the provisions are least restrictive way reasonably available to achieve the purpose of the limitations are described above in the discussion of the right to freedom of expression.

(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

*Minister's power to direct amendment to a local planning scheme*

The proposed amendments strike a fair balance between the benefits gained by directing local governments to update their planning schemes with ensuring communities understand what planning controls apply to land in a timely way; and the limitation on taking part in public life that may result from the introduction of the Bill.

*Dual listed heritage places*

The amendment strikes a fair balance between the benefits gained by removing duplicate assessment, while ensuring the impact of a proposed development on the cultural heritage significance of a place continues to be assessed by the state.

The impacts of development on cultural heritage significance will continue to be assessed by the state, against the provisions set out in the State Development Assessment Provisions. Furthermore, if the development is categorised as impact assessable development under a planning scheme, communities will continue to have the ability to have their say about the proposed development and have appeal rights.

*Urban encroachment—registration renewal*

In my opinion, the limitation on the right to take part in public life resulting from the changes to the registration renewal requirements is fair, given that the initial registration application requires public consultation and the renewal will merely maintain the status quo.

*Urban encroachment—new and amended authorities*

Individuals will be able to make submissions under the Planning Act and EP Act about applications for new or amended authorities where public consultation is required as part of the assessment process under these Acts. Further, the protection against legal proceeding applies only to the extent the business is operating within approved limits. I am therefore satisfied the provisions strike a fair balance between the protection of the human right and the importance of the purpose.

*Temporary accepted development*

The amendments strike a balance between having a simpler process for development that will help to address an emergent issue, with requiring public consultation (if the development is impact assessable development under a planning scheme) given it is only for a temporary period. Responding to an urgent need outweighs a temporary limitation on the right to take part in public life.

(f) any other relevant factors

Nil.

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

***Section 24 – Property rights***

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

*Growth areas—land acquisition and easements*

Clause 43 of the Bill provides for planning purposes for which land can be acquired or an easement created for development infrastructure (as defined under the Planning Act) that is necessary to facilitate development. The provision will allow land to be taken from a landholder, which limits the landholder's property rights. The amendment is an outcome from a review of 75 underutilised urban footprint areas (that is, areas which have not reached their development potential) within South East Queensland, which identified that fragmented ownership was a barrier to locating infrastructure (particularly linear infrastructure) because of the need for agreement between landowners.

*Growth areas—UIZ*

The establishment of a UIZ affects the property rights of individuals who own land in the UIZ, as it limits the types of development they can undertake on the land.

*Urban encroachment—new or amended authorities*

Clauses 80, 82 86, and 87 of the Bill relate to a premises that has a new or amended authority that has undergone the relevant approvals processes prescribed under the Planning Act or the EP Act. The clauses potentially limit property rights, as they remove the right to sue where a registered premises has approved increased emissions.

*Urban encroachment—amending an affected area*

Clause 80 relates to amending a registration to include additional land in an affected area. Under this clause, the owner of a premises must give notice to the owners and occupiers of all premises within the additional land that is proposed to be included in the affected area.

Clause 82 requires that if the application is approved, the owner of the premises publishes a notice about the inclusion of the additional land in a relevant online newspaper for the affected area, and on the website for the premises if applicable.

This amendment potentially limits property rights, as it removes the right for persons in the expanded affected area to sue where a registered premises is operating within its approved authorities.

- (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

*Growth areas—land acquisition and easements*

The provisions ensure that essential services can be made available to land for residential development. Housing development will be constrained if land is cut off from essential services, worsening the current housing challenges. The provision essential services and infrastructure is necessary to facilitate land for housing, particularly affordable housing, which is essential to maintaining a free and democratic society based on human dignity, equality and freedom.

*Growth areas—UIZ*

The purpose of the limitation caused by the UIZ provisions is explained above in relation to the right to freedom of movement.

*Urban encroachment—new or amended authorities*

The purpose of the limitation is explained above in relation to the right to freedom of expression.

*Urban encroachment—amending an affected area*

Modernising the urban encroachment provisions will give greater certainty to existing hard to locate industrial uses operating within in urban areas. This is consistent with a democratic society as registration requirements including consultation must be balanced with protecting the ongoing viability of businesses lawfully operating within their approved authority. Also, persons in the expanded area will have appeal rights related to the Ministers decision.



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

*Growth areas—land acquisition and easements*

Compulsory acquisition of land for development infrastructure will be effective to achieve the purpose.

*Growth areas—UIZ*

The way in which the UIZ will help realise the purpose of the limitation they impose is explained above in relation to the right to freedom of movement.

*Urban encroachment—new or amended authorities*

How the amendments help achieve the purposes is explained above in relation to the right to freedom of expression.

*Urban encroachment—amending an affected area*

The provisions will help achieve their purpose by giving business certainty for amended registrations for an expanded affected area.

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

It is important to note that the human right stated in section 24(2) of the HR Act is subject to an ‘internal limitation’, namely that the deprivation of property must not be ‘arbitrary’. ‘Arbitrary’ in the context of human rights law means capricious, unreasonable or disproportionate to a legitimate aim sought to be achieved.

*Growth areas—land acquisition and easements*

I am satisfied that the exercise of the acquisition power will not result in arbitrary deprivation of property in the relevant sense. The use of compulsory acquisition and easements powers is a reserve power, only used where the Minister is satisfied that the development infrastructure is necessary to facilitate development and that all reasonable steps have been taken to obtain the agreement of the owner of the land to take actions on the land, to facilitate the provision of the development infrastructure, and the owner has not agreed. Further, the process, under the Acquisition of Land Act, including compensation, would continue to apply.

*Growth areas—UIZ*

I am also satisfied that establishing a UIZ does not arbitrarily deprive landowners of property. A UIZ can be established only after the process in the MGR is followed. That process provides for a landowner to be notified of and make a submission about the amendment to rezone the land to UIZ. It also requires a local government to consider all other feasible options before deciding to establish a UIZ.

*Urban encroachment—new or amended authorities*

The removal of a right to bring certain proceedings in this context is not capricious, unjust or disproportionate. It is necessary to achieve the purpose of the urban encroachment provisions, namely ensuring that existing business can continue to operate effectively. Further, the restriction applies only if the owner of the registered premises has complied with stated notification requirements.

*Urban encroachment—amending an affected area*

The current registration process for amending an affected area creates uncertainty for business owners and therefore stifles investment and growth. The change will ensure a simplified process for the owner of a premises for which original owners and occupiers have been consulted with as part of the original registration. The removal of the right for persons in the expanded affected to bring certain proceedings in court is not unjust or disproportionate, noting the protection does not apply if the business is not operating within their development approval and/or environmental authority.

- (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

*Growth Areas—land acquisitions and easements and UIZ*

For the reasons stated above, I am satisfied that the land acquisition and UIZ amendments strike a fair balance between the benefits gained by the public by the prescribed planning requirements and the limitation on property rights that may result from the introduction of the Bill. It is true the Bill does not provide for owners of land in a UIZ to be compensated. However, this is reasonable having regard to the fact that the landowners retain ownership and any temporary effect on land value resulting from development restrictions may ultimately be offset by increases in value flowing from the benefits of the land's location within a properly planned environment with good amenities and access to services and facilities.

*Urban encroachment—new or amended authorities and amending an affected area*

The limitation on rights to sue is proportionate to the importance of ensuring that owners of registered premises have certainty and are able to continue operating.

- (f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the property rights stated in section 24 of the HR Act, because the limitations on the rights are reasonable and demonstrably justifiable in accordance with s 13 of the HR Act.

***Section 26 – Protection of families and children***

- (a) the nature of the right

Section 26 of the HR Act provides that families are recognised as the fundamental unit of society and are entitled to protection. Every child has the right, without discrimination, to the protection that is in their best interests as a child.

*Urban encroachment—new or amended authorities*

Clauses 80, 82, 86 and 87 of the Bill relate to a premises that has a new or amended authority which has undergone the relevant approvals processes prescribed under the Planning Act or the EP Act. These clauses may be considered to limit protection of families and children, as removing the right to sue where a registered premises has approved increased emissions may be considered to interfere with a person's ability to enjoy home life and raise a family in a healthy environment.

*Urban encroachment—amending an affected area*

Clause 80 relates to amending a registration to include additional land in an affected area, whereby the owner of a premises must give notice to the owners and occupiers of all premises within the additional land that is proposed to be included in the affected area.

This amendment may be considered to limit protection of families and children, as it removes the right for persons in the expanded affected area to take certain proceedings considered to interfere with a person's ability to enjoy home life and raise a family in a healthy environment.

- (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

The purpose of the amendments relating to new or amended authorities is explained above in relation to the right to freedom of expression.

The purpose of the limitation relating to amending an affected area is explained above in relation to property rights.

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

How the limitation relating to new or amended authorities helps to achieve its purpose is explained above in relation to the right to freedom of expression.

How the limitation relating to amending an affected area helps to achieve its purpose is explained above in relation to property rights.

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

*Urban encroachment—new or amended authorities*

Removing the right to bring proceedings is the only way to remove the risk and uncertainty that hard to locate businesses would otherwise face. Affected individuals will have the opportunity to provide submissions on the proposals in the particular circumstances provided for under the Planning Act or EP Act. Also, the limitation on the urban encroachment protections only applies where the business is operating within approved limits.

*Urban encroachment—amending an affected area*

Amending the process for when a registered premises applies to expand an affected area is the only way to remove the risk and uncertainty that hard to locate businesses would otherwise face. Owners and occupiers in the existing affected area have been consulted with as part of the original registration. Also, persons in the expanded affected area are consulted and able to appeal the Minister’s decision about the application.

(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

Taking into account that affected individuals will have the opportunity make a submission about an application for a new or amended development approval or environmental authority under the Planning Act and EP Act, where these Acts provide submission rights, and the limitation on the urban encroachment protections only apply where the business is operating within approved limits, I am satisfied that the amendments strike a fair balance between the purpose of the limitation and the preservation of the right stated in s 26 of the HR Act.

Similarly, considering the limitation on the urban encroachment protections only apply where the business is operating within approved limits, I am satisfied that the amendments strike a fair balance between the purpose of the limitation and the preservation of the right stated in section 26 of the HR Act.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the rights stated in section 26 of the HR Act, because the limitation on the rights is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

***Section 31 — right to a fair hearing***

(a) the nature of the right

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.

*Growth areas—UIZs and State facilitated application process*

Clauses 74 and 107 of the Bill potentially limit the right to a fair hearing. Clause 74 does so by providing that there are no third-party appeals rights associated with a development approval issued for a State facilitated application. This is because the applicant will be restricted from appealing a refusal or conditions and a third party will be restricted from appealing an approval. Clause 107 operates more indirectly, by preventing the making of development applications in a UIZ. The making of a development application has associated third-party appeal rights, which will therefore not be available in relation to the UIZ.

*Urban encroachment—new or amended authorities*

Clauses 80, 82, 86 and 87 of the Bill relate to a premises that has a new or amended authority which has undergone the relevant approvals processes prescribed under the Planning Act or the EP Act. These clauses remove the right to sue where a registered premises has approved increased emissions and therefore potentially also limit the right to a fair hearing.

*Urban encroachment—amending an affected area*

Clause 80 of the Bill relates to amending a registration to include additional land in an affected area, whereby the owner of a premises must give notice to the owners and occupiers of all premises within the additional land that is proposed to be included in the affected area. This clause removes the right for persons in the expanded affected area to sue, and therefore may be considered to limit the right to a fair hearing.

- (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

*Growth areas—UIZ*

The purpose of the amendments relating to the UIZ is explained above in relation to the right to freedom of movement.

*Growth areas— State facilitated application process*

The purpose of these amendments is explained above in relation to the right to freedom of movement.

*Urban encroachment—new or amended authorities*

The purpose of these amendments is explained above in relation to the right to freedom of movement.

*Urban encroachment—amending an affected area*

The purpose of these amendments is explained above in relation to property rights.

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

*Growth areas—UIZ*

How the UIZ amendments help achieve the purpose is explained above in relation to the right to freedom of movement.

*Growth areas—State facilitated application process*

The relationship between the State facilitated application process and its purpose is explained above in relation to the right to freedom of movement.

*Urban encroachment—new or amended authorities*

How these amendments help achieve their purpose is explained above in relation to the right to freedom of movement.

*Urban encroachment—amending an affected area*

How these amendments help achieve their purpose is explained above in relation to property rights.

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

*Growth areas—UIZ*

For the reasons explained above in relation to the right to freedom of movement, I am satisfied that prohibiting certain types of development within a UIZ is the only way to effectively prevent pre-emptive development.

*Growth areas—State facilitated application process*

The new pathway is critical to ensuring the delivery of development that is an identified priority for the State, including affordable housing to ease the current housing shortage.

*Urban encroachment—new or amended authorities*

I am satisfied, because of the reasons set out above in relation to the right to freedom of expression, that these amendments are the less restrictive way available to ensure certainty and continuity for the operators of relevant businesses.

*Urban encroachment—amending an affected area*

I am satisfied, because of the reasons set out above in relation to the right of protection of families and children, that these amendments are the less restrictive way available to ensure certainty and continuity for the operators of relevant businesses.

(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

*Growth areas—UIZ*

The limitation on the right to a fair hearing imposed by the UIZ amendments is minimal and indirect. In light of the importance of controlling development in an appropriate way, I am satisfied the amendments strike a fair balance between the importance of the purpose and the preservation of the right to a fair hearing.

*Other provisions*

The other provisions impose more direct limitations on the right to a fair hearing than the UIZ amendments. However, given the importance of facilitating development that is an identified priority for the State, including, for example affordable housing to address the current housing shortage, and the need for operators of hard to locate businesses to have certainty (and the opportunities for affected persons to make submissions in relation to the application for a new or amended authority, where provided for under the Planning Act and the EP Act), I am satisfied the provisions represent a fair balance between the purposes and the human rights.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right stated in section 31 of the HR Act, because the limitation on the right is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

**Other human rights that are relevant to the Bill are:**

- section 15 — recognition and equality before the law
- section 19 — freedom of movement
- section 21 — freedom of expression
- section 23 — taking part in public life
- section 22 — peaceful assembly and freedom of association
- section 24 — property rights
- section 26 — protection of families and children
- section 27 — cultural rights – generally
- section 28 — cultural rights – Aboriginal and Torres Strait Islander people
- section 31 — right to a fair hearing
- section 36 — right to education

***Section 15 — recognition and equality before the law***

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

*Growth areas*

The right to recognition and equality before the law may be relevant as the application of tools such as the UIZ, and acquisition and easement powers, will affect land differently to other land in Queensland. However, place of residence is not a protected attribute for the purposes of the right to non-discrimination in section 15(2), (3) and (4) of the HR Act.

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 these areas to be zoned or treated differently for the reasons outlined above. Accordingly, the provisions do not limit the rights stated in section 15.

***Section 19 – Freedom of movement***

Section 19 of the HR Act recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live.

### *Growth areas*

Clause 74 of the Bill gives the Planning Minister a reserve power to determine that a development should be assessed as a state facilitated application where it is an identified priority for the State and meets criteria prescribed by the Planning Regulation, for example including a component of affordable housing. This process promotes the facilitation of development that is an identified priority for the State, which includes affordable housing. Through this, the Bill enables the freedom to choose where to live.

### ***Section 21 – freedom of expression***

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.

#### *Urban encroachment—amending an affected area*

Clauses 80 and 82 relate to amending a registration to include additional land in an affected area. The owner of a premises must give notice to with the owners and occupiers of all premises within the additional land that is proposed to be included in the affected area. The Planning Regulation will set out the application and public consultation requirements, including that public consultation must be carried out for at least 15 business days; and that the Minister must assess the application having regard to the outcomes of the public consultation.

Clause 82 requires that if the application is approved, the owner of the premises publishes a notice about the inclusion of the additional land in a relevant online newspaper for the affected area, and on the website for the premises if applicable.

These clauses are relevant to the human right of freedom of expression. However, as owners and occupiers within the original affected area will have previously been consulted as part of the registration process, restricting public consultation to owners and occupiers within the additional land is not considered to limit this human right.

### ***Section 22 – peaceful assembly and freedom of association***

Section 22 of the HR Act recognises that every person has the right of peaceful assembly and freedom of association with others, including the right to form and join trade unions.

#### *Growth areas—UIZ*

Clause 107 of the Bill relates to the prohibition of certain development in a UIZ, as described above. Using a UIZ allows a local government to stop certain pre-emptive development in some areas through a prohibition whilst they progress detailed planning in other areas, this may include the planning for community infrastructure which promotes assembly and free association for community members.

### ***Section 23 — taking part in public life***

Section 23 provides 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.



Clauses 43, 63, 74, and 107 have been identified as relevant to this right as there was stakeholder feedback sought on the policy intent of the growth areas component of the Bill from non-government groups and entities who represent community interests, as described above.

Clause 74 relating to state facilitated applications and its associated provisions in the DA Rules, clause 43 related to acquisition and easement powers and clause 63 relating to the prohibition on certain development in a UIZ and associated provisions in the MGR are also relevant to this right as the provisions associated with these clauses as these will allow people were able to take part in public life.

#### *Urban encroachment—amending an affected area*

Clauses 80 and 82 are relevant to human right of taking part in public life. However, as owners and occupiers within the original affected area have previously been consulted as part of the registration process, restricting public consultation to owners and occupiers within the additional land is not considered to limit this human right.

#### *Making electronic submissions*

Clause 38 amends the definition of properly made submission in the Planning Act to clarify that submissions can be made electronically in the way stated in the notice asking for the submission. This amendment engages the right to participate directly in public life and promotes, rather than limits, it by expanding the ways in which individuals can make submissions about matters of interest to them.

#### ***Section 24 — property rights***

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

#### *Temporary Use Licenses*

Clauses 13 and 52 allow for the relevant Minister under either the Planning Act or ED Act to amend, suspend or cancel temporary use licenses (TULs). A person can apply for a TUL to change or vary an existing development approval conditions or other operating constraints which may prevent them from operating during an applicable event. TULs cease at the end of an applicable event, with the premises reverting to its original development conditions or operating requirements.

The amendments improve the functionality of the TUL framework by allowing the Chief Executive to suspend, amend or cancel a TUL. While TULs are generally relevant to property rights, I do not consider the provisions limit those rights. Their temporary nature is very clear, meaning that there is no risk a TUL holder will make ongoing arrangements for property that depend on the temporary use that will be adversely affected when the TUL ceases. Further, a TUL holder is not prevented from reverting to the use rights and development conditions in place before the TUL was granted.

### *Development Control Plans*

Clause 60 of the Bill validates previous development approvals given in Development Control Plan (DCP) areas. A DCP is a mechanism by which the planning intent for larger planned areas, such as suburbs or neighbourhoods, can be formalised through the assessment and approval of a series of increasingly specific plans. DCPs were created in 1990 to facilitate large scale staged development. They have been maintained in effect as new planning legislation in Queensland has been introduced. Three DCPs are currently in operation within the Ipswich City, Moreton Bay City and Sunshine Coast Regional Council areas.

In *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC 18 (the Northlakes judgement), the P&E Court held that development in DCP areas must use the Integrated Development Assessment System (IDAS) application process created under the repealed *Integrated Planning Act 1997* (IPA).

The Northlakes judgement calls into question the validity of approvals given since the repeal of IPA. It also highlighted the development assessment process that applies to DCPs is out of date, and this was not the intention as part of the transition to the Planning Act.

The Bill ensures previous development approvals given and commenced in DCP areas will continue to operate lawfully, without needing to gain further approval because of the Northlakes judgement. The validation provisions will therefore ensure continued property rights.

### ***Section 26 – Protection of families and children***

Section 26 of the HR Act provides that children are entitled to protection in their best interests.

#### *Growth areas*

Clause 107 of the Bill relates to the prohibition of certain development in the UIZ as described above. The prohibition associated with the new UIZ aims to ensure that pre-emptive development does not occur to achieve orderly development in local government growth areas, as described above. This right has been identified as relevant to the Bill, as the orderly planning of a local government area may include community facilities for families and children, such as primary and secondary schools and health facilities. However, the amendments promote, rather than limit, the right.

### ***Section 27 — cultural rights — generally***

Section 27 of the HR Act states that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language. The ability to enjoy these rights can be affected by housing availability and therefore the amendments in the Bill that will facilitate increased housing supply potentially promote this rights.

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

Section 28 of the HR Act states the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy, maintain, control, protect and develop their cultural heritage, traditional practices, distinctive spiritual practices and their relationship to territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom. Section 28 also states that Aboriginal peoples and Torres Strait Islander peoples to enjoy, maintain, control, protect and develop language, kinship ties, and the ability to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. Section 28 further states that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

Land use and housing decisions can profoundly affect Aboriginal peoples' and Torres Strait Islander peoples' connection to country and their ability to maintain and develop kinship ties and to use their languages. However, the Bill will facilitate the provision of more housing and it does not affect or remove the application of relevant assessment benchmarks for development relating to Aboriginal and Torres Strait Islander cultural heritage. Accordingly, while the Bill engages the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, it does not limit those rights.

***Section 31 — right to a fair hearing***

Section 31 recognises that that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing. Clause 98 amends section 45 of the P&E Court Act to clarify that the applicant bears the onus of proof in a submitter appeal for change applications and that the appellant bears the onus of proof in an appeal relating to encroachment registrations. P&E Court proceedings are civil proceedings.

However, I am satisfied that the provisions do not limit the right stated in section 31 of the HR Act. It is not inherently unjust, unfair or unreasonable for a person seeking a change of use to bear the onus of proof in a hearing of objections against the proposed change, or in an appeal against an urban encroachment registration. Appeals will be heard by the P&E Court, which is a competent, independent and impartial court, after a public hearing conducted according to the provisions of the P&E Court Act and the applicable court rules.

***Sections 36 and 40 — right to education and right to health services***

Section 36 of the HR Act recognises that every child has the right to access primary and secondary education, appropriate to the child's needs and every person has the right to access further vocational education and training that is equally accessible to all. Section 37 states that every person has the right to access health services without discrimination.

### *Growth areas-UIZ*

Clause 107 of the Bill relates to the prohibition of certain development in the UIZ, as described above. The prohibition associated with the new UIZ aims to ensure that pre-emptive development does not occur and to achieve orderly development in local government growth areas, as described above. This right has been identified as relevant to the Bill, as the orderly planning of a local government area may include community facilities for families and children, such as primary and secondary schools and health facilities. The UIZ amendments therefore promote, rather than limit, the rights stated in sections 36 and 37 of the HR Act.

## **Conclusion**

In my opinion, the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**STEVEN MILES MP**  
**DEPUTY PREMIER**  
Minister for State Development,  
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