

Economic Development and Other Legislation Amendment Bill 2024

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing make this statement of compatibility with respect to the Economic Development and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The 2022 Queensland Housing Summit explored strategies and opportunities to address challenges and meet the housing needs of Queenslanders. The Queensland Housing Summit Outcomes Report recommended key actions including to strengthen the Minister for Economic Development Queensland's (MEDQ) remit to drive new social, affordable and diverse housing; in the context of urban renewal and precincts as a clear legislative purpose, together with opportunities to build capacity.

The Bill amends the *Economic Development Act 2012* and other legislation to implement the strengthened model of MEDQ.

The Bill will achieve five main outcomes:

- refine the corporate structure of MEDQ to optimise its broad capabilities across planning and development activities;
- introduce a range of new powers and refine existing powers to create additional pathways for MEDQ to ensure the sufficient supply of social and affordable housing;
- include undertaking investment activities in property assets, as a function of MEDQ;
- establish a new Priority Renewal Framework (PRF) to enable MEDQ to lead coordinated and integrated urban renewal in declared Place Renewal Areas (PRAs); and
- strengthen MEDQ through the introduction of operational efficiencies to MEDQ's existing functions.

The Bill will deliver significant improvements in outcomes across housing, enterprise and place-based metrics while supporting MEDQ's long-term performance and financial sustainability.

Human Rights Issues

Amendments to support housing supply and affordability

Human rights protected and promoted (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The Bill protects and promotes human rights related to access to housing.

Clause 3 of the Bill will replace sections 3 and 4 of the *Economic Development Act 2012*. The new sections 3 and 4 expand the main purpose of the *Economic Development Act 2012* to facilitate the provision of diverse housing in Queensland. The main purpose will now primarily be achieved:

- with an increased focus and further recognition given to cultural heritage, ecological sustainability and valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition; and
- by providing MEDQ with the ability to undertake strategic leadership and coordination of PRAs.

Clause 5 inserts new sections 7A and 7B of the Act to define the key concepts of social housing and affordable housing.

Clause 6 inserts a new part 3 in chapter 1 of the *Economic Development Act 2012*. The purpose of the new part is stated in new section 7C and is to ensure that entities to which MEDQ provides assistance for the purpose of providing social housing are regulated under the *Housing Act 2003* in the same way as entities to which the chief executive under the *Housing Act 2003* provides assistance for the purpose of providing a social housing service.

Clause 9 of the Bill amends section 13 of the *Economic Development Act 2012* to make clear that the functions of MEDQ include facilitating the provision of housing.

The Bill will also provide MEDQ with greater powers for delivering affordable and social housing where MEDQ is the regulator for Priority Development Areas (PDAs). For example:

- clause 25 of the Bill amends section 57 of the *Economic Development Act 2012* to allow for the content of a development scheme to include requirements for affordable and social housing;
- clause 32 of the Bill amends section 88 of the *Economic Development Act 2012* to allow conditions on a PDA development approval relating to the provision of affordable and social housing;
- clause 32 of the Bill amends section 88 of the *Economic Development Act 2012* of the Act to allow conditions on a PDA development approval requiring the payment of a monetary amount in lieu of affordable or social housing; and
- clause 37 of the Bill inserts a new Part 7A into the *Economic Development Act 2012* providing for housing agreements about the provision of affordable housing in PDAs.

By facilitating the delivery of social and affordable housing, these amendments protect and promote human rights related to home as well as threats to physical and mental integrity which come with housing insecurity, such as:

- The right to life (section 16 of the *Human Rights Act 2019*), which may impose positive obligations to address the general conditions in society that may give rise to direct threats to life such as homelessness. Further, the right to life encompasses the freedom to ‘enjoy life with dignity’.¹ The UN Special Rapporteur on the Right to Adequate Housing has emphasised that ‘the right to life cannot be separated from the right to a secure place to live’.²
- The freedom to choose where to live (section 19 of the *Human Rights Act 2019*).
- Property rights (section 24 of the *Human Rights Act 2019*), which may be promoted by access to the property required to live a life with dignity, such as housing.
- Right to privacy, family and home (section 25(a) of the *Human Rights Act 2019*), which extends to a person’s physical and mental integrity,³ which may be imperilled by homelessness.
- Protection of families and the best interests of the child (section 26(1) and (2) of the *Human Rights Act 2019*). Under section 26(1), the State has a positive obligation to protect the existence of the family. Under section 26(2), children have a right to protection in their best interests, including housing security.⁴
- The cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*), which may be promoted by increasing the availability of affordable housing within First Nations communities and increasing First Nations engagement in planning and delivery of housing projects (see the amendment made to section 4 of the *Economic Development Act 2012*). This may reduce the need for members of the communities to move away to find affordable housing and may increase the supply of housing that is designed and planned by references to the communities’ preferences. In this way, the Bill may therefore support the exercise and enjoyment of rights to maintain, control, protect and development identity and cultural heritage, language and kinship ties.
- Security of the person (section 29(1) of the *Human Rights Act 2019*), which encompasses freedom ‘from injury to the body and the mind, or bodily and mental integrity’.⁵ Homelessness threatens a person’s physical and mental integrity.

New section 4 of the *Economic Development Act 2012* will also embed respect for ecological sustainability and cultural heritage. Embedding respect for ecological sustainability serves to protect human rights related to the environment and intergenerational equity, including the rights to the right to life, the right of young people to enjoy their human rights without

¹ UN Human Rights Committee, *General comment No. 36 – Article 6: right to life*, 124th sess, UN Doc CCPR/C/GC/36 (3 September 2019) [3].

² Leilani Farha, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, UN Doc A/71/310 (8 August 2016) 11 [27].

³ Explanatory note, Human Rights Bill 2018 (Qld) 22.

⁴ UN Committee on the Rights of the Child, *General comment No. 21 (2017) on children in street situations*, UN Doc CRC/C/GC/21 (21 June 2017) [28].

⁵ UN Human Rights Committee, *General comment No. 35 – Article 9: liberty and security of person*, 124th sess, UN Doc CCPR/C/GC/35 (16 December 2014) [9].

discrimination, the right of children to protection in their best interests, the right to property, the right to privacy and home and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (sections 15, 16, 24, 25, 26, 27 and 28 of the *Human Rights Act 2019*).

Embedding respect for the cultural heritage significance of places serves to protect cultural rights generally (section 27 of the *Human Rights Act 2019*). More particularly, embedding recognition of First Nations knowledge, culture and heritage serves to protect the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*).

Although the Bill protects and promotes these human rights, the Bill also engages or limits a number of other human rights.

Information-sharing (clause 6)

Clause 6 of the Bill inserts a new part 3 into chapter 1 of the *Economic Development Act 2012*, which explains the application of the *Housing Act 2003* to entities that receive assistance from MEDQ for the purpose of providing social housing.

New section 7H provides that the CEO may disclose anything that comes to the CEO's knowledge under the *Economic Development Act 2012* to the chief executive under the *Housing Act 2003* if the CEO is satisfied the disclosure would assist the chief executive, registrar or an authorised officer under the *Housing Act 2003* to perform their functions.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

Giving the CEO power to share information with the chief executive under the *Housing Act 2003* has the potential to limit individuals' right to privacy in section 25(a) of the *Human Rights Act 2019* (although, in practice, it may be more likely that the kind of information shared relates to corporate entities or financial arrangements).

The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability of individuals to keep information about their private lives private.
- Purpose – The purpose of the amendment is to ensure that the chief executive, registrar and authorised officers under the *Housing Act 2003* can effectively perform their regulatory functions under that Act. The purpose is consistent with a free and democratic society operating under the rule of law.

- Relationship between limitation and its purpose – The limitation will be effective to achieve the purpose because the CEO is permitted to share any information the CEO considers may assist the chief executive, registrar and authorised officers under the *Housing Act 2003* perform their functions.
- Less restrictive alternatives – If the entities are unable to share relevant information, it may be difficult for the entities under the *Housing Act 2003* to perform their functions effectively and efficiently. However, new section 7H does not give the CEO unlimited discretion to pass on information. The CEO is only permitted to share information if satisfied that the disclosure would assist the chief executive, regulator or authorised officers under the *Housing Act 2003* perform their functions under the Act. The CEO and the relevant entities under the *Housing Act 2003* will also be subject to obligations under the *Information Privacy Act 2009* that ensure that individual’s private information will be managed and stored securely and for appropriate purposes.
- Fair balance – It is vitally important that social housing services are delivered effectively and to a high standard. The provision of the service can be complex and if relevant entities do not have the information they require to ensure appropriate service delivery, the quality of the services is likely to be reduced. In the circumstances, and having regard to the protections imposed by new section 7H and the *Information Privacy Act 2009*, the amendment strikes a fair balance.

As the potential interference privacy is proportionate and not arbitrary, the right is not limited by the information-sharing provision. Accordingly, the amendment is compatible with human rights.

Power to acquire land for specified purposes (clause 14)

Clause 14 of the Bill inserts a new division 3A into chapter 2, part 3 of the *Economic Development Act 2012*. The new division gives MEDQ the power to take land, including an easement or lease of State land, for the purpose of providing infrastructure for the benefit of a PDA or to give effect to a PRF for a PRA. The land may be taken and vested in a third party. The MEDQ will also have power to enter land and occupy and use it temporarily. The processes for taking of land and payment of compensation under the *Acquisition of Land Act 1967* will apply to land taken under these new provisions.

Currently, MEDQ is not empowered to compulsorily acquire land to support development in or for a PDA. Without those powers, currently MEDQ must rely on other entities to acquire the land required for PDAs.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The new power to take land, including easements, may potentially limit the following human rights:

- the right to choose where to live (section 19 of the *Human Rights Act 2019*)
- the right to property (section 24 of the *Human Rights Act 2019*)
- the right to non-interference with privacy, family and home (section 25(a) of the of the *Human Rights Act 2019*)

- cultural rights generally (section 27 of the *Human Rights Act 2019*); and
- cultural rights of Aboriginal and Torres Strait Islander peoples, especially the right to maintain and strengthen their connection to country (section 28 of the *Human Rights Act 2019*).

Some of those human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

For impacts on land, territories, waters, coastal seas or other resources, the cultural rights of Aboriginal and Torres Strait Islander peoples will only be engaged if they have a connection to that land or other resource under Aboriginal tradition or Island custom (definitions of ‘Aboriginal tradition’ and ‘Island custom’ are in schedule 1 of the *Acts Interpretation Act 1954*). The cultural rights of First Nations peoples are inherently diverse, and not all land that may be compulsorily acquired will be the subject of a continuing connection to country. However, because it is possible that the new power might be exercised to acquire land with which an Aboriginal or Torres Strait Island peoples have a connection, the new power has the potential to limit that right.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s home and property free from interference, as well as the ability of Aboriginal and Torres Strait Islander peoples to maintain their connection to country and to enjoy and protect their identity and cultural heritage.
- Purpose – The purpose of the amendments is to enable MEDQ to deliver critical infrastructure to support development, including the provision of social and affordable housing in Queensland, and to give effect to a PRF for a PRA. The power to acquire land to implement a PRF will help to facilitate economic growth, boost housing supply and deliver key public facilities. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The new power to take land will help to achieve those purposes.
- Less restrictive alternatives – The new power to take land is necessary to achieve these purposes. Currently, MEDQ must rely on other entities to exercise their compulsory acquisition powers, which can lead to delays in the delivery of development including housing. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are already narrowly tailored and subject to existing

safeguards. In particular:

- Compulsory acquisition powers will be exercised in accordance with the processes in the *Acquisition of Land Act 1967* providing for the right to object to proposed resumptions and the right to claim compensation for any resumption.
- As a public entity under the *Human Rights Act 2019*, when exercising the power to take land, MEDQ will be required to give proper consideration to human rights and to exercise the power in a way that is compatible with human rights under s 58 of the *Human Rights Act 2019*.
- Any relevant requirements in other legislation will also need to be complied with, including requirements under the *Environmental Protection Act 1994*, the *Aboriginal Cultural Heritage Act 2003*, the *Torres Strait Islander Cultural Heritage Act 2003*, the *Native Title (Queensland) Act 1993* and the *Native Title Act 1993 (Cth)*. New section 20C will specifically require the process for taking land and paying compensation in section 20A(4) to be carried out in a way that is consistent with the *Native Title (Queensland) Act 1993* and the *Native Title Act 1993 (Cth)*.
- Fair balance – On one side of the scales, it is important that MEDQ has the powers necessary to facilitate the delivery of infrastructure to support development, including the provision of affordable, social and diverse housing. That also serves to protect and promote human rights related to access to housing. On the other side of the scales, compulsory acquisition of land is one of the most severe ways that a person’s property and home can be interfered with, and in particular cases may amount to a denial of a First Nation’s connection to their country. However, the extent of that impact on human rights is mitigated in important ways, including the adoption of the existing safeguards under the *Acquisition of Land Act 1967* (as modified and adapted as necessary) to ensure fair compensation. Ultimately, the importance of ensuring MEDQ has the power it needs to support development outweighs the interference with human rights. (New sections 20H and 20I give persons from whom MEDQ compulsorily acquires land a first option to buy the land from the entity for which MEDQ acquired it, if at least seven years have passed since the acquisition and the entity no longer requires the land and intends to dispose of it. However, this will not assist native title holders whose native title rights have been extinguished by the compulsory acquisition).

As the potential interference with property and privacy is proportionate and not arbitrary, those rights are not limited by the new power to acquire land. While there may be a limitation on other human rights, these limitations are proportionate to the aim of ensuring MEDQ has the power it needs to support development. For these reasons, the limitation is justified and accordingly, the clause 14 of the Bill is compatible with human rights.

Reporting and accountability (clause 16)

The Bill will bring about a corporate restructure of MEDQ.

Clause 16 of the Bill replaces chapter 2, part 5 of the *Economic Development Act 2012* and establishes a new accountability and reporting regime for the restructured MEDQ.

New section 32KA provides that MEDQ must publish its strategic plan. However, publication of information in the strategic plan is not required if MEDQ considers the information may

have an adverse effect on the interests of MEDQ or reveal information that is commercial-in-confidence.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

New section 32KA may limit the right of individuals to seek and receive information and ideas of all kinds in section 21(2) of the *Human Rights Act 2019*. MEDQ has significant powers, including powers of compulsory acquisition. Allowing MEDQ not to include information in its strategic plan deprives individuals who are or will be affected by MEDQ's activities from obtaining information about them.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human right is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is ability of individuals to seek and receive information about development activities and other economic activities proposed to be undertaken by an entity that represents the State.
- Purpose – The purpose of allowing MEDQ not to publish certain information as part of its strategic plan is to protect the commercial confidentiality of arrangements MEDQ has with other entities and to protect MEDQ's own commercial interests.
- Relationship between limitation and its purpose – Allowing MEDQ to exclude information from its strategic plan will be effective to protect confidential information.
- Less restrictive alternatives – There is no less restrictive way reasonable available to achieve the purpose. Commercially sensitive information is either confidential or it is not.
- Fair balance – MEDQ is responsible for facilitating significant commercial development and investment that helps support and grow Queensland's economic prosperity and ensure an increased supply of suitable housing at a time of critical shortage. To achieve these objectives, MEDQ may need to enter into arrangements with private sector entities or withhold information to maintain a competitive market position. Private entities may be unwilling to enter into arrangements with MEDQ if doing so results in their commercial affairs becoming public and known to their competitors. Accordingly, the provision strikes a fair balance between the freedom to seek and receive information and enabling MEDQ to pursue its objectives effectively.

Eligibility requirements for appointments (clause 16)

The Bill will bring about a corporate restructure of MEDQ.

Clause 16 of the Bill inserts a new part 8 into chapter 2 of the *Economic Development Act 2012*. Part 8 will provide for a chief executive officer (CEO) of MEDQ who will ensure the effective and efficient operation of MEDQ and manage the organisational unit.

Clause 16 also inserts a new part 9 into chapter 2, which will provide for the Economic Development Queensland employing office (EDQ employing office). The EDQ employing office will employ staff to perform work for MEDQ under a mobility arrangement (as defined in the *Public Sector Act 2022*). Part 9 will provide for the appointment of an executive officer

(EO) of the EDQ employing office who will ensure the effective and efficient administration and operation of the EDQ employing office and the performance of its functions, and may be the same person as the CEO for MEDQ.

Clauses 45 to 52 amend provisions relating to the Economic Development Board.

The Bill sets out eligibility criteria and grounds for removal for these new positions:

- under new section 32P, to be appointed as CEO, a person is to have a professional qualification relevant to, and professional experience in an area relating to, the main functions of MEDQ;
- under new section 32Q, a person is disqualified from being appointed or continuing as CEO, if they have a conviction (other than a spent conviction) for an indictable offence, if they are insolvent or disqualified from managing a corporation, or if they contravene section 32W, 32X or 32Y;
- under new section 32U, the CEO may be removed from office in certain circumstances where they have engaged in inappropriate or improper conduct, become incapable of performing their functions, neglected their duties or performed their functions incompetently;
- under new section 32ZL, a person is disqualified from being appointed or continuing as the EO of the EDQ employing office, if they have a conviction (other than a spent conviction) for an indictable offence, if they are insolvent or disqualified from managing a corporation, or if they contravene section 32ZR or 32ZS;
- under new section 32ZP, the EO of the EDQ employing office may be removed from office in certain circumstances where they have engaged in inappropriate or improper conduct, become incapable of performing their functions, neglected their duties or performed their functions incompetently;
- clause 47 of the Bill amends section 132 of the *Economic Development Act 2012* to provide that:
 - the CEO of the MEDQ and the EO of the EDQ employing office are not eligible for appointment to the Economic Development Board.
- clause 49 amends section 134 of the *Economic Development Act* to add new grounds for a member to be removed from the Economic Development Board, namely where the member:
 - is not eligible to be a member;
 - is absent from three consecutive meetings without leave and without reasonable excuse.;
 - or
 - engages in inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office of a board member.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

These provisions may limit the right of access to public service and public office in section 23(2)(b) of the *Human Rights Act 2019* (and possibly other rights related to employment such as the rights to property and privacy in ss 24 and 25 of the *Human Rights Act 2019*). The reason is that people who do not meet those eligibility criteria will be excluded

from those positions and people who meet the grounds for removal may be removed from these positions.

Eligibility criteria related to criminal convictions raise particular issues and are considered separately below.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the equal opportunity of all people to be appointed to public office in one of the new positions created by the Bill. The right of equal access to the public service and to public office is directed to preventing privileged groups from monopolising public service, in the sense of monopolising the composition of the public service.⁶
- Purpose – The purpose of the eligibility criteria and grounds for removal is to protect the integrity of the bodies established by the Bill and the people who comprise them. The provisions are designed to ensure that the people who fill the roles have the appropriate skills and knowledge, are representative of the community, take the responsibility of being a member of the Economic Development Board seriously and do not bring the reputation of the Economic Development Board into disrepute through improper conduct done in a personal capacity.
- Relationship between limitation and its purpose – The eligibility criteria and grounds for removal help to achieve those purposes.
- Less restrictive alternatives – These provisions are the least restrictive way of ensuring integrity and that positions are held by people with appropriate qualifications. The disqualifying matters are narrowly tailored to relevant matters such as a person’s ability to appropriately manage an organisation (disqualifying offences are considered separately below). Removal on the ground of absence for 3 consecutive meetings of the Economic Development Board will only occur if the absences were without leave of the Board or chairperson and without reasonable excuse. Removal on the ground of inappropriate or improper conduct in a Board member’s private capacity will occur only if the conduct ‘reflects seriously and adversely on the office of board member’.
- Fair balance – The eligibility criteria are consistent with the underlying purpose of the right of access to the public service, that is, ‘[b]asing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures’.⁷ Ultimately, the need for integrity and appropriately qualified people for the role outweighs the impact on the right of access to the public service and to public office (and any other human rights related to employment).

⁶ *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324].

⁷ UN Human Rights Committee, *General Comment No 25*, 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) [23].

Criminal history checks (clause 16)

New sections 32Q and 32ZL make conviction for an indictable offence (other than a spent conviction) a ground of disqualification from becoming or continuing as CEO of MEDQ or EO of the EDQ employing office.

Under new sections 32R and 32ZM, to decide if a person is disqualified from becoming or continuing as CEO for the EO of the EDQ employing office, the Minister may ask the commissioner of the police service for a criminal history check. However, the request may only be made where the person has given their consent.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

These provisions relating to a person's criminal history engage, but do not limit, the following human rights:

- the right to recognition and equality before the law (section 15);
- the right to privacy and reputation (section 25); and
- the right not to be tried or punished more than once (section 34).

Recognition and equality before the law

Section 15(2) protects a person's right to enjoy their other human rights without discrimination. Section 15(3) provides that every person is entitled to the equal protection of the law without discrimination. Section 15(4) provides that all people have the right to equal and effective protection against discrimination.

In the *Human Rights Act 2019* 'discrimination' is defined as including direct or indirect discrimination on the basis of one of the protected attributes in the *Anti-Discrimination Act 1991*, such as race. However, even if conviction rates are higher among people of a particular racial background, it is considered that the provisions relating to criminal histories are not unreasonable and do not amount to indirect discrimination on the basis of race.

Because the definition of 'discrimination' in the *Human Rights Act 2019* is inclusive, it protects against discrimination on additional grounds that are analogous to those protected by the *Anti-Discrimination Act 2019*.⁸ Discrimination on the basis of an irrelevant criminal record may be an analogous ground of discrimination.⁹ However, the disqualifying offences are limited to only include indictable offences (crimes and misdemeanours) and not offences of a less serious nature such as simple or regulatory offences. Further, convictions for indictable offences that are spent are excluded from the grounds of discrimination (though not from the criminal history report). Accordingly, it is considered that the provisions relating to criminal histories do not discriminate on the basis of an irrelevant criminal record.

Right to privacy

These grounds of disqualification engage the right to privacy in section 25(a) of the *Human Rights Act 2019*. In the United Kingdom, the position is that police cautions take place in

⁸ *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [317]-[320].

⁹ *Thlimmenos v Greece* [2000] ECHR 162; (2001) 31 EHRR 15, [39]-[49].

private and are therefore an aspect of the right to a private life. Convictions, which take place in public, become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the spent convictions regime.¹⁰ There is also authority that ordinarily employers are to be trusted to only take into account convictions which are relevant.¹¹ Critically, spent convictions under the *Criminal Law (Rehabilitation of Offenders) Act 1986* are not a ground for disqualification.

Right to reputation

Section 25(b) of the *Human Rights Act 2019* protects the right not to have one's reputation unlawfully attacked. However, the right to reputation does not protect against the foreseeable consequence of one's own actions, such as the commission of a criminal offence.¹²

Right not to be punished more than once

It might be thought that disqualification on the basis of a criminal conviction amounts to double punishment. Section 34 of the *Human Rights Act 2019* protects the right not to be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law. The right embodies the principle of double jeopardy. 'Punishment' means a 'sanction for a criminal offence'. It does not include non-penal consequences such as disciplinary measures.¹³

Accordingly, these provisions relating to criminal histories do not limit the right against double punishment in s 34.

For these reasons, the new provisions relating to criminal history to be inserted by clause 16 of the Bill are compatible with human rights.

Restrictions on employment and contracts (clause 16)

Clause 16 of the Bill inserts new sections 32W and 32ZR, which provide that the CEO of the MEDQ and the EO of the EDQ employing office must not engage in other paid employment without the Minister's prior approval. New section 32X also provides that the CEO of MEDQ must not enter into a contract with MEDQ, other than a contract related to the CEO's employment. In addition, although the transitional provisions of the Bill protect the rights of public service employees who work for the EDQ employing office, there are no corresponding protections if a public service employee is appointed as the CEO or EO of the EDQ employing office.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

By limiting a person's ability to work or exercise their freedom to contract, these provisions potentially interfere with property and privacy in sections 24 and 25 of the *Human Rights Act*

¹⁰ *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; [2015] AC 49, 65-6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3; [2010] 1 AC 410, [27].

¹¹ *R (P) v Secretary of State for Justice* [2020] AC 185, 242-3 [51]-[52].

¹² *Matalas v Greece* [2021] ECHR 247; (2021) 73 EHRR 26, 975-6 [39].

¹³ UN Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc CCPR/C/GC/32 (23 August 2007) 16 [57].

2019. The absence of express statutory protection for public service officers who are appointed as the CEO or EO of the EDQ employing office also potentially interferes with these rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any interference with property and privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms, is the autonomy to work, enter into contracts and enjoy the benefits of public service tenure.
- Purpose – The purpose of the restrictions on other paid employment is to reduce the risk of an actual or perceived conflict of interest in relation to employment. The restriction on the ability of the CEO to enter into a contract with MEDQ (other than for their employment) is also to reduce the risk of an actual or perceived conflict of interest. The purpose of not expressly preserving the rights of public service employees appointed as CEO or EO of the EDQ employing office is to avoid any unintended consequences that may result if there is inconsistency between the continuing rights and the employment conditions under the person’s instrument of appointment.
- Relationship between limitation and its purpose – The restrictions on other paid employment help to reduce the risk of a conflict of interest. Not expressly preserving rights of public service employees engaged as CEO or EO of the EDQ employing office will be effective to avoid inadvertent conflict between the continuing rights and the terms of the person’s instrument of appointment as CEO or EO. Allowing the relationship between an appointee’s rights as a public service employee and the terms of their employment as CEO or EO allows each appointee’s individual circumstances to be considered and for appropriate rights to be continued or protected under the individual instrument of appointment.
- Less restrictive alternatives – The Minister may provide written approval to engage in other paid employment, which will allow for the impact on human rights to be minimised where appropriate. As for the preservation of employment rights, the only way to avoid potential inconsistency is not to include a preservation provision in the Bill.
- Fair balance – The importance of avoiding actual or perceived conflicts of interest outweighs the impact on a CEO or EO’s property and privacy rights. Allowing preservation of rights to be dealt with in the CEO’s or EO’s instrument of appointment rather than in the Bill allows for careful consideration of the circumstances of the appointee and therefore strikes a fair balance.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by new sections 32W, 32X and 32ZR.

Conflicts of interest (clauses 16 and 50)

Clause 16 of the Bill inserts new sections 32Y and 32ZS, which require the CEO of MEDQ and the EO of the EDQ employing office to disclose conflicts of interest to the Minister. They must also not take action or further action concerning the matter unless authorised by the Minister.

Clause 50 replaces section 135 of the *Economic Development Act 2012* to provide for disclosure of interests by members of the Economic Development Board. A board member must disclose to the other members of the board if they have a material personal interest in a matter that will be considered by the board. The member who disclosed the interest cannot vote on the matter, though they can otherwise continue to participate in the meeting if a majority of the other board members vote to allow them to do so.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

Those requirements may potentially limit the right to privacy in section 25(a) of the *Human Rights Act 2019*, and the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).¹⁴

It is also possible that preventing those who are conflicted from taking actions or taking part in decision making might impact on their right to participate in the conduct of public affairs in section 23(1) of the *Human Rights Act 2019*.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on those human rights is reasonable and justified by reference to the need to ensure integrity and transparency.

- Nature of the human right – What is at stake in human rights terms, is the ability to keep information to oneself and to take part in decision-making of a public nature.
- Purpose – The purpose of requiring disclosure of conflicts of interest is to enhance performance, transparency and public accountability.
- Relationship between limitation and its purpose – Imposing a requirement to disclose conflicts of interest and the potential restrictions on taking action where there is a conflict of interest supports integrity, accountability and transparency in decision-making. It is vital that the independence and neutrality of those appointed can be relied upon and these limitations are essential to ensure good governance.
- Less restrictive alternatives – The approach adopted in the Bill to manage conflicts of interest is considered the least restrictive way of achieving the policy intent of ensuring that conflicts of interest are disclosed and managed in way that is appropriate. Where a conflict is raised by either the CEO or EO, the Minister may authorise the CEO or EO to continue to act, which will allow for the impact on human rights to be minimised. Board members of the Economic Development Board can also vote to allow a member with a personal interest to continue to participate in the meeting (other than by voting on the particular matter in which they have an interest).
- Fair balance – The impact on human rights is at the lower end of the scale. There is not great importance in being free to withhold a conflict or to take action when conflicted. On the other side of the scales, ensuring that those appointed act with integrity is of the utmost importance. The importance of ensuring performance, transparency and public accountability outweigh the relatively minor impact on human rights.

¹⁴ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

As the interference with privacy is proportionate and not arbitrary, the right to privacy is not limited by the provisions related to conflicts of interest. Any limits on the freedom of expression and the right to take part in public life are proportionate and therefore justified. Accordingly, the provisions related to conflicts of interest are compatible with human rights.

Identity cards (clause 16)

Clause 16 of the Bill inserts a new part 10 in chapter 2 of the *Economic Development Act 2012*. The new part 10 substantially reproduces the provision in the existing chapter 2, part 5 that require MEDQ to issue identity cards to individuals MEDQ authorises to enter premises under section 123 or new section 123A (authorised persons). The identity card must include a recent photograph of the authorised person and a copy of their signature. If an authorised person exercises a power under the *Economic Development Act 2012* in relation to a person, the authorised person must produce the identity card for the other person's inspection.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The requirement for an authorised person to display an identity card that has a copy of their signature and to present the identity card for inspection arguably limits the right in section 25(a) of the *Human Rights Act 2019* not to have one's privacy unlawfully or arbitrarily interfered with.

However, the *Economic Development Act 2012* will mandate the content of the identity card and the obligation to display and produce it for inspection. Any resulting interference will therefore be lawful.

In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

- Nature of the human right – What is at stake in human rights terms is protection of the privacy of authorised persons.
- Purpose – The purpose of requiring identity cards to include a photograph and the signature of the card holder and requiring card holders to display and produce card for inspection is so that persons subject to the exercise of statutory powers can satisfy themselves that a person who purports to be authorised to exercise the power is actually so authorised. It also enables authorised person who misuse their powers to be identified and made the subject of complaints. The protection of members of the community from government overreach is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The limitation is effective to achieve the purpose. Including a recent photograph of the authorised person helps the person subject to the exercise of power confirm that the card holder is the same person who is present.

Including the authorised person's signature ensures that persons subject to the exercise of power know the authorised person's name, if they wish to make a complaint.

- Less restrictive alternatives – Removing photographs and signatures from identity card would mean that persons subject to the exercise of power have no way of confirming that the exercise of the power is actually authorised and no way of later identifying the authorised person who exercised the power, limiting the other person's ability to make a complaint or take other action following the exercise of the power. Accordingly, there are not less restrictive alternatives reasonably available.
- Fair balance – The *Economic Development Act 2012* permits authorised person to enter premises and undertake activities at those premises. These are significant powers and it is reasonable that persons who exercise them can be identified by sight and name.

As the interference with privacy is proportionate and not arbitrary, the provisions in new chapter 2, part 10 do not limit the right.

PDA development conditions (clauses 32 and 33)

Clause 32 of the Bill amends section 88 of the *Economic Development Act 2012* to provide that a PDA development condition may:

- relate to the supply of affordable housing or social housing on the relevant land for the PDA development approval (new section 88(1)(f)(i) and (jj)); or
- require the payment of an amount in lieu of the provision of affordable housing or social housing (new section 88(1)(f)(iii)).

Clause 33 of the Bill inserts new section 88A in the *Economic Development Act 2012*. New section 88A applies if a PDA development condition of a PDA development approval imposed under new section 88(1)(f)(iii) requires the payment of an amount in lieu of the supply of social housing or affordable housing on the relevant land for the PDA development approval. It provides that the amount may be used by MEDQ for the provision of affordable housing or social housing in the local government area in which the land the subject of the PDA development application is situated.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

By requiring a PDA development applicant to pay an amount for the provision of affordable housing or social housing, the Bill potentially limits the right of persons not to be arbitrarily deprived of their property in section 24(2) of the *Human Rights Act 2019*.

The right in section 24(2) of the *Human Rights Act 2019* is a right not to be 'arbitrarily' deprived of property. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any interference with property and privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s property free from arbitrary interference.
- Purpose – The purpose of allowing MEDQ to impose conditions and to require the payment of an amount for the provision of affordable housing or social housing is to facilitate the supply of these types of housing in Queensland. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – Securing money for the construction of affordable and social is an effective measure to increase the supply of diverse housing in Queensland, including social housing and affordable housing.
- Less restrictive alternatives – The new power is necessary to achieve the objective of a sufficient supply of social and affordable housing within priority development areas. Currently, MEDQ does not have the ability to enforce any social or affordable housing targets that are set in the relevant planning instruments in a PDA, which may result in those targets not being met. A less restrictive alternative would not achieve the objective.
- Fair balance – The amendments are necessary to ensure supply of affordable housing and social housing in Queensland, which is experiencing an acute shortage of these types of housing.

As the interference with property is proportionate and not arbitrary, the right is not limited by the amendment to section 88 of the *Economic Development Act 2012* and the new section 88A.

Housing agreements (clause 37)

Clause 37 inserts new chapter 3, part 7A in the *Economic Development Act 2012*. Under new chapter 3, part 7A, if a PDA development condition of a PDA development approval requiring the payment of an amount in lieu of the supply of social housing or affordable housing is imposed under new section 88(1)(f)(iii). MEDQ may enter into an agreement (a housing agreement) with another entity to waive payment of the amount in exchange for the supply of social housing or affordable housing on the relevant land for the PDA development approval or other land (including land located outside the PDA). If it does, MEDQ must give a copy of the housing agreement to the local government in which the priority development area is situated.

If the owner of relevant land for a PDA development approval to which a housing agreement applies is a party to the housing agreement and consents to the responsibilities under the agreement being attached to the relevant land, the responsibilities under the agreement attach to the relevant land and bind the owner and the owner’s successor in title.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The right not to be arbitrarily deprived of one’s property in section 24 of the *Human Rights Act 2019* and the right not to have one’s privacy, family or home unlawfully or arbitrarily

interfered in section 25 of the *Human Rights Act 2019* with are potentially limited by the fact that housing agreements can attach to premises and bind future owners.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any interference with property and privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s home and family life and enjoy one’s property without interference.
- Purpose – The purpose of the housing agreement amendments more broadly is to provide flexible options to encourage the provision of more affordable housing in Queensland, which is a purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The responsibilities of the housing agreement attaching the premises ensure the provision of the agreed affordable housing even if that the land is transferred to a new owner.
- Less restrictive alternatives – Housing agreements are a voluntary mechanism that a landowner may consent to in order to discharge an obligation under a condition of approval for a monetary payment in lieu of the provision of affordable housing. A less restrictive alternative would be for the responsibilities of the agreement to not bind future owners, this may however undermine the capacity for MEDQ to ensure the fulfillment of the responsibilities under the agreement.
- Fair balance – The amendments are necessary to provide flexibility for MEDQ to work with the development industry to support the supply of affordable housing in Queensland, which is experiencing an acute shortage of these types of housing.

Clauses 20 to 22 amend the existing provisions in the *Economic Development Act 2012* for interim land use plans for priority development areas. Presently, section 40AB of the *Economic Development Act 2012* provides that an interim land use plan for a priority development area expires 12 months after the plan takes effect, unless there is a stated expiry dated in the declaration regulation for the priority development area.

Clause 20 amends section 40AB to allow for a later expiry date to be fixed under new section 40ABA, in addition to the existing expiry mechanisms in section 40AB. New section 40ABA, which is inserted by clause 7 of the Bill, provides that if the declaration regulation does not state an expiry date for an interim land use plan, and the development scheme for the relevant priority development area has not yet taken effect, MEQD may extend the expiry of the interim land use plan for a maximum period of 2 years. The extension must be made by gazette notice no later than 1 year after the interim land use plan takes effect.

Clause 21 also inserts new section 40ABB, which gives MEDQ the power to make minor administrative amendments to interim land use plans.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

Allowing the extension of interim land use plans potentially limits:

- the right to freedom of movement, including the freedom to choose where to live in section 19 of the *Human Rights Act 2019*, because an interim land use plan may limit an individual's ability to deal with their home;
- the right to participate in the conduct of public affairs, directly or through freely chosen representatives, in section 23(1) of the *Human Rights Act 2019*, because the declaration of a priority development area and the making of an interim land use plan displaces the relevant local planning scheme;
- the right not to have one's property arbitrarily interfered with in section 24(2) of the *Human Rights Act 2019*, because a temporary development scheme may impose limits on the ability of individuals who own property located in the area to deal with their property;
- the right not to have one's privacy, family, home or correspondence unlawfully or arbitrarily interfered with in section 25(a) of the *Human Rights Act 2019*, as the imposition of a temporary development scheme may limit individuals' ability to manage their homes;
- cultural rights generally (section 27 of the *Human Rights Act 2019*) and the cultural rights of Aboriginal and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*) because of the risk that facilitating urban renewal may disrupt established communities and limit the ability of individuals with particular cultural, linguistic, religious or racial backgrounds to practise their culture, language or religion together with other persons of the same background;
- the right to a fair hearing in section 31 of the *Human Rights Act 2019*, as there are limited rights of review and appeal against decisions on PDA development applications, wherein the interim land use plan must be considered when deciding the application.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The limits on these human rights are reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's home and family life, own one's property without interference, be subject to planning schemes made by democratically elected local representatives and have rights to appeal against planning decisions that affect one's home and property.
- Purpose – The purpose of giving MEDQ power to extend the operation of an interim land use plan, and to make minor amendments to an interim land use plan, is to remove the need to make a new interim land use plan for a priority development area if the development scheme is not finalised when the existing interim land use plan is due to expire or the interim land use plan requires minor administrative amendments..
- Relationship between limitation and its purpose – Removing the automatic expiry of interim land use plans and allowing MEDQ to extend the expiry date by gazette notice is effective to achieve the purpose.

- Less restrictive alternatives – Extending an existing interim land use plan, and allowing MEDQ to make minor administrative amendments to a plan, is less burdensome and expensive than the existing requirement to make a new interim land use plan. The alternative would be to mandate that the development scheme for the priority development area commence 12 months after the plan takes effect or after the expiry date stated in the regulation, without exceptions or that an entirely new plan be made to accommodate a minor amendment. The former could result in development scheme being put in place without full consultation and consideration, while the latter would require public resources disproportionate to the significance of the changes. Extending the existing interim land use plan is therefore the least restrictive way reasonably available to achieve the purpose.
- Fair balance – The amendments allow MEDQ to extend an interim land use plan only for a further 12 months and require MEDQ to give public notice of minor administrative amendments.

The amendments are not unlawful or arbitrary (in the sense of being capricious, unjust or unreasonable) and therefore, the rights in sections 24 and 25 of the *Human Rights Act 2019* are not limited. The limitation of the remaining human rights is reasonable and demonstrably justifiable.

Temporary planning instruments (clause 28)

Clause 28 inserts new part 3A in chapter 3 of the *Economic Development Act 2012*. The new chapter 3A allows MEDQ to make a temporary planning instrument that suspends or otherwise affects the operation of any of the following:

- a provisional land use plan for an area (the ‘relevant area’);
- an interim land use plan for the relevant area;
- a development scheme for the relevant area.

MEDQ may make a temporary planning instrument if it:

- considers:
 - there is a risk, or potential risk, of serious adverse cultural, economic, environmental or social conditions happening in the relevant area; or
 - in the case of an interim land use plan or development scheme—it is necessary or desirable to align the interim land use plan or development scheme with the PRF for a PRA in the relevant area; and
- is satisfied it is necessary or desirable to immediately affect the operation of the existing planning instrument because of either of the reasons stated above.

If MEDQ makes a temporary planning instrument, it must publish the instrument on its website and give a copy to the local government for the relevant area. The temporary planning instrument commences on the day it is published in the Queensland Government Gazette or, if the instrument states a later commencement day, the stated day. The temporary planning instrument expires on the earliest of the following:

- 2 years after commencement;

- if the instruments states an expiry day—the stated day;
- the day on which the temporary planning instrument expires or is repealed.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The making of a temporary planning instrument may limit:

- the right to freedom of movement, including the freedom to choose where to live in section 19 of the *Human Rights Act 2019*;
- the right to participate in the conduct of public affairs, directly or through freely chosen representatives, in section 23(1) of the *Human Rights Act 2019*;
- the right not to have one’s property arbitrarily interfered with in section 24(2) of the *Human Rights Act 2019*, because a temporary planning instrument may impose limits on the ability of individuals who own property located in the area to deal with their property;
- the right not to have one’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with in section 25(a) of the *Human Rights Act 2019*, as the imposition of a temporary planning instrument may limit individuals’ ability to manage their homes;
- cultural rights generally (section 27 of the *Human Rights Act 2019*) and the cultural rights of Aboriginal and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*) because of the risk that facilitating urban renewal may disrupt established communities and limit the ability of individuals with particular cultural, linguistic, religious or racial backgrounds to practise their culture, language or religion together with other persons of the same background;
- the right to a fair hearing in section 31 of the *Human Rights Act 2019*, as there are limited rights of review and appeal against decisions in relation to PDA development applications, wherein regard must be had to the relevant development instrument (including as affected by the temporary planning instrument) when deciding the application.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The limits on these human rights are reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s home and family life, own one’s property without interference, be subject to planning schemes made by democratically elected local representatives and have rights to appeal against planning decisions that affect one’s home and property.
- Purpose – The purpose of giving MEDQ power to make a temporary planning instrument that suspends or otherwise affects the operation of the interim land use plan or development scheme for a prior development area, or provisional land use plan for a provisional priority development area, is so that MEDQ can address serious adverse cultural, economic, environmental or social conditions happening in the area or align the development scheme with a relevant PRF for a PRA. These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – The amendments are effect to achieve the purpose, as MEDQ will have the ability to move quickly to address adverse conditions or to align the urban renewal outcomes for an area, without the need to review and amend the development scheme for the priority development area, which can take some time.
- Less restrictive alternatives – The existing requirement is to make a new planning instrument or amend the existing instrument, e.g. new interim land use plan or development scheme. For making a new development scheme, or amending an existing scheme, this would include public notification and consideration of submissions made about the proposed new scheme or scheme amendment. However, the temporary planning instrument is intended to address the risk or potential risk of serious adverse conditions and where it is necessary to *immediately* affect the operation of the relevant instrument. Providing for a power to make a temporary planning instrument is the only way to achieve the policy outcome to deal with these matters on an urgent basis.
- Fair balance – If serious adverse cultural, economic or social conditions in a priority development area are not addressed promptly, there is a risk that the object of declaring the area as a priority development area will be frustrated. Similarly, urban renewal outcomes for PRAs in the priority development area may be frustrated if there is prolonged disparity between the development scheme and the urban renewal framework. However, temporary development schemes cannot remain in effect for longer than two years, which provides a safeguard against long-term displacement of development schemes for priority development areas.

Accordingly, there is no unlawful or arbitrary interference with the rights in sections 24 and 25 of the *Human Rights Act 2019* and those rights are not limited. The other relevant human rights are limited only to the extent that is reasonable and demonstrably justifiable.

Consultation for priority development area development applications (Clause 30)

Clause 30 inserts a new section 84G in the *Economic Development Act 2012*. It provides that in deciding a priority development area development application MEDQ may consult, in the way it considers appropriate, with any entity. However, new section 84G also provides that the MEDQ need not consult with any entity.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

In allowing the MEDQ to decide whether it will consult at all and, if so, the entities with which it will consult, new section 84G potentially limits:

- the right to freedom of expression (*Human Rights Act 2019*, section 21), which includes the freedom to impart ideas;
- the right to take part in public life (*Human Rights Act 2019*, section 23);
- the right not to be arbitrarily deprived of property (*Human Rights Act 2019*, section 24(2)); and
- the right not to have one's privacy unlawfully or arbitrarily interfered with (*Human Rights Act 2019*, section 25(a)).

The right in section 24(2) is engaged because ‘property’ is broadly interpreted in the human rights context and the making of a priority development area development application has the potential to affect the value of existing property in the priority development area. Section 24(2) includes an internal limitation, namely that the deprivation must not be ‘arbitrary’. ‘Arbitrary’ in this context means capricious, unjust or disproportionate to a legitimate end sought to be achieved. Although arbitrariness and proportionality are different standards, an act or decision that is proportionate will not be arbitrary. It is therefore appropriate to address this aspect of section 24(2) as part of the proportionality analysis below.

The right to privacy in section 25(a) of the *Human Rights Act 2019* is engaged because development has the potential to interfere with the ability of other persons who reside in the area to enjoy their homes. Like the right in section 24(2), the right in section 25(a) includes the internal limitation of arbitrariness. It also includes a further internal limitation, namely that the interference must not be unlawful. The internal limitations are discussed below as part of the broader proportionality analysis.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*).

The limits on these human rights are reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to make representations about development applications that may affect the value of property and the ability of individuals to enjoy their homes. The right to freely express ideas and contribute to public discussion of proposed development is also at stake. These are important components of a free and democratic society based on human dignity, equality and freedom.
- Purpose – The purpose of new section 84G is to avoid argument about whether MEDQ is required to consult with particular entities about priority development area development applications. Removing the scope of such arguments will streamline MEDQ’s decision-making and ensure that limited public resources are not spent to resolve disputes. The purpose is consistent with a free and democratic society.
- Relationship between limitation and its purpose – new section 84G ensures there is no doubt that MEDQ may consult in its discretion and is not obliged to consult.
- Less restrictive alternatives – The alternatives are to require MEDQ to consult (either generally or with stated entities) or to preclude any consultation. Requiring consultation would incur costs and extend the time for MEDQ to decide priority development area development applications. Given that section 84 of the *Economic Development Act 2012* already provides for such applications to be publicly notified and gives a right to any person to make submissions, the additional time and cost required for mandatory consultation is not warranted. As for removing any ability for MEDQ to consult, that option is more restrictive than what is proposed in section 84G. Under new section 84G, MEDQ has discretion to undertake consultation, in addition to reviewing submissions made in response to the public notice.

- Fair balance – Given the existing right to make submissions in response to a priority development area development application and the fact that MEDQ has discretion to consult if it considers it appropriate to do so, new section 84G strikes a fair balance between the purpose and the limitation on the human rights.

Accordingly, there is no unlawful or arbitrary interference with the rights in sections 24 and 25 of the *Human Rights Act 2019* and those rights are not limited. The other relevant human rights are limited only to the extent that is reasonable and demonstrably justifiable.

Remission of infrastructure charges and directions to government entities etc. (clauses 36 and 41 to 43)

Clauses 36 and 41 to 43 amend MEDQ’s existing powers relating to priority development areas and PDA-associated development. The new powers conferred by the amendments include power to require local governments and distributor-retailers to provide information about relevant infrastructure amounts to the MEDQ (new section 117B) and to remit particular infrastructure amounts to MEDQ (new section 117C). They also include:

- a new power for MEDQ to require distributor-retailers, government entities and local governments to provide MEDQ with information needed for the proper and orderly planning, development and management of a priority development area (new section 126A);
- a new power for MEDQ to remedy a contravention of an enforcement notice given by MEDQ under the *Planning Act 2016*, chapter 5, part 3, by having authorised employees or agents enter the premises where the action is requirement to be taken under the enforcement notice (other than a home) without the consent of the occupier and take action (new section 123A);
- replacing section 127 of the *Economic Development Act 2012* with a new section 127, which provides that MEDQ may direct distributor-retailers, government entities and local governments to accept a transfer
 - of stated land that is in a priority development area and is owned by the MEDQ or stated PDA-associated land for a priority development area owned by MEDQ; and
 - a stated amount from the Economic Development Fund for providing or maintaining infrastructure relating to stated land that is in a priority development and is owned by MEDQ or stated PDA-associated land for a priority development area that is owned by MEDQ;
- replacing section 128 of the *Economic Development Act 2012* with a new section 128, which provides that MEDQ may give written directions to distributor-retailers, government entities and local governments to provide or maintain stated infrastructure in, or relating to, a stated priority development area or on, or related to, PDA-associated land.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

Distributor-retailers are distributor-retailers established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. A ‘government entity’ has the meaning given in section 276 of the *Public Sector Act 2022*.

Local governments, distributor-retailers and other government entities are not individuals. Therefore, to the extent the proposed amendments apply to them, human rights are not engaged.

However, the power to enter land under new section 123A and the power to direct distributor-retailers, other government entities and local governments under new section 126A to provide information may limit the following human rights of individuals:

- the right not to be arbitrarily deprived of property (*Human Rights Act 2019*, section 24(2); and
- the right not to have one's privacy unlawfully or arbitrarily interfered with (*Human Rights Act 2019*, section 25(a)), which is engaged by the possibility that information required to be given to MEDQ under new section 126A may include information about individuals.

Both rights include the internal limitation that the interference must not be 'arbitrary'. The right in section 25(a) also includes a second internal limitation, namely that the interference must not be unlawful.

Unlawfulness will not arise here as the amendments in the Bill give MEDQ express legal authority to enter property and require the provision of information.

'Arbitrary' in this context means capricious, unjust or disproportionate to a legitimate end sought to be achieved. Although arbitrariness and proportionality are different standards, an act or decision that is proportionate will not be arbitrary. It is therefore appropriate to address this aspect of section 24(2) as part of the proportionality analysis below.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The limits on these human rights are reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability of individuals to control access to land they own or occupy and the . These are important components of a free and democratic society based on human dignity, equality and freedom.
- Purpose – New section 123A gives MEDQ the power to remedy any offence if a person fails to comply with an enforcement notice given by MEDQ within a PDA. An amendment is proposed to allow MEDQ to take the remedial action if needed and recover the cost of taking that action. Ensuring that public authorities have power to effectively enforce the law is essential to the proper functioning of a free and democratic society based on human dignity, equality and freedom. It is also consistent with a free and democratic society that if a person refuses to comply with an enforcement notice, the enforcement costs should be borne (where possible) by that person and not by the public. The purpose of new section 126A is to ensure that the MEDQ has access to information it requires for the proper and orderly planning, development and management of a priority development area or PDA-associated land. Orderly planning and management of development activities is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – New sections 123A and 126A will be effective to achieve their respective purposes.

- Less restrictive alternatives – There are no less restrictive alternatives to new section 123A that would achieve the purpose, as for MEDQ to ensure that action required under an enforcement notice is undertaken (where the recipient of the notice has failed to take that action), there must be a power to enter land. There are also no less restrictive alternatives to new section 126A, as MEDQ is only permitted to exercise the power if satisfied it needs the information for properly and orderly planning, development and management of a priority development area of PDA-associated land.
- Fair balance – New section 123A includes several important safeguards to protect the rights of property occupiers. First, the entry power does not extend to any home on the land that is entered. Second, MEDQ must give the occupier of the land 7 days’ notice of the proposed entry, including the reason for the proposed entry. Third, if the occupier is present when MEDQ’s authorised employee or agent exercises the entry power, the employee or agent must make a reasonable attempt to identify themselves to the occupier of the land and seek consent to entry before actually entering the land. Fourth, while MEDQ has the ability under new section 123A to recover enforcement costs, it is not required to do so and retains discretion about commencing proceedings to recover the costs as a debt. These safeguards help to preserve the human rights and strike a fair balance with the important purpose of the limitation. New section 126A also strikes a fair balance. MEDQ can only compel provision of the information if it considers the information necessary to achieve its objectives for a priority development area or PDA-associated land. In addition, MEDQ will be required, as a public sector entity, to deal with information that is provided in accordance with the confidentiality requirements in section 163 of the *Economic Development Act 2012* as well as the privacy principles in the *Information Privacy Act 2009*, which include important safeguards, in particular when information is personal information about individuals.

Accordingly, there is no unlawful or arbitrary interference with the rights in sections 24 and 25 of the *Human Rights Act 2019* and those rights are not limited.

Application fees (clauses 34 and 44)

Clause 34 amends section 104 of the *Economic Development Act* to provide that an application for approval by MEDQ of a plan of subdivision must be accompanied by the application fee decided by MEDQ. Clause 44 amends section 129(3) of the *Economic Development Act* by replacing the words ‘costs of making or amending the relevant development instrument’ with the words ‘associated planning and regulatory costs’ and adding applications for approvals mentioned in section 104 to the list of applications for which the fee may include a cost component recovery.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

The amendments engage the right in section 24(2) of the *Human Rights Act 2019* not to be arbitrarily deprived of property. International human rights law provides a strong indication that the right to property in section 24 of the *Human Rights Act 2019* is engaged by any increase in taxes (or fees that are similar to taxes) as is the case with the introduction of an application fee.

‘Arbitrary’ in this context means capricious, unjust or disproportionate to a legitimate end sought to be achieved. Although arbitrariness and proportionality are different standards, an

act or decision that is proportionate will not be arbitrary. It is therefore appropriate to address this aspect of section 24(2) as part of the proportionality analysis below.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

- Nature of the human right – The right to own and enjoy property is a cornerstone of a free and democratic society based on human dignity, equality and freedom.
- Purpose – The purpose of the amendments is to enable MEDQ to recoup the costs it incurs in making or amending development instruments and in connection with the proper and orderly planning, development and management of priority development areas and PDA-associated land. A ‘user pays’ system is commonly accepted where governments undertake work that results (or has the potential to result) in a private benefit.
- Relationship between limitation and its purpose – The amendments will be effective to allow MEDQ to recover costs.
- Less restrictive alternatives – The alternative is not to impose application fees, which will result in the public bearing all of the costs while the applicant obtains a significant amount of, or all, the benefits.
- Fair balance – MEDQ will only be allowed to include a reasonable component in application fees to recover the costs it actually incurs. The amendments therefore strike a fair balance between preserving the right and ensuring that the entire cost of deciding applications is not borne by the public revenue.

Accordingly, the amendments do not arbitrarily interfere with the right to property in section 24(2) of the *Human Rights Act 2019* and do not limit the right.

Place renewal areas (clause 35)

Clause 35 of the Bill inserts a new part 4A into chapter 3 of the *Economic Development Act 2012*, providing for PRAs.

Under new section 104AC, MEDQ may declare a PRA over land within a PDA or PDA-associated land (other than a provisional priority development area). These ‘place renewal area declarations’ may only be made where MEDQ is satisfied the land involves or is likely to involve a State interest and action should be taken to give effect to the State interest. A State interest includes an interest relating to the main purpose of the Act or an interest that in MEDQ’s opinion affects an economic, community or environmental interest of the State or a region.

Under new section 104AC(4), MEDQ must consult with the relevant local government in the way MEDQ considers appropriate. Under new section 104AN, MEDQ may also consult with other entities (although it is not required to do so). Once the PRA is declared, MEDQ must take steps to notify of the PRA’s existence, including publishing the declaration and publishing and providing notices under new section 104AE.

New section 104AG provides that MEDQ must make a PRF for a PRA within 12 months after the place renewal declaration is made for the PRA, unless MEDQ extends the period to 18 months after the declaration is made. New section 104AH provides that a PRF must state the

strategic vision, objectives and outcomes for the PRA and include an implementation plan to achieve the vision, objectives and outcomes for the area.

Under new section 104AI, before making a PRF, MEDQ must consult, in the way it considers appropriate, with the relevant local government and with any government entity, government owned corporation, or other person or entity, that MEDQ considers is likely to be affected by the PRF.

Once a PRF is made, under new section 104AJ, MEDQ must take steps to notify of the existence of the PRF including publishing the declaration and publishing and providing notices.

Where a PDA development application is submitted, MEDQ must consider any PRF in effect and any advice received by MEDQ in relation to the PRF (under section 87 of the *Economic Development Act 2012* as amended by clause 31 of the Bill).

It should also be noted that new section 20A in clause 14 of the Bill gives MEDQ the power to take land for the purpose of implementing a PRF for a PRA. The human rights potentially limited by that power are discussed above in relation to clause 14 of the Bill.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

These amendments related to PRAs may impact a person's movement and passage through and between particular areas. It may also impact on a person's right to use their property in a particular way. For these reasons the following human rights may be limited:

- Rights related to home including the freedom to choose where to live (section 19) and the right to not have one's privacy, family or home unlawfully or arbitrarily interfered with (section 25(a) of the *Human Rights Act 2019*). The declaration of a PRA brings with it planning and land use implications that engage and potentially limit the ability of individuals to choose where to live. Further, the ways in which landowners and occupiers can enjoy their homes and conduct their family life within their home may be limited. The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. Any interference will be lawful, being authorised by the new part 4A in Chapter 3. Whether the interference is arbitrary will be considered below when assessing proportionality under section 13 of the *Human Rights Act 2019*.
- Freedom of expression (section 21 of the *Human Rights Act 2019*). Every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. Consultation is not required before a PRA is declared (except consultation with the relevant local government). In relation to PRFs (against which development applications in the PRA will be assessed) public consultation is limited to what MEDQ considers is appropriate. These restrictions on consultation may limit the right of persons to express their opinions about those actions. While development applications in a PRA (and therefore a PDA) are subject to public consultation, there are limited rights of review and appeal against decisions about development applications in PDAs (which in turn limits freedom of expression).
- Taking part in public life (s 23 of the *Human Rights Act 2019*). This right is limited because there is no public consultation required before a PRA is declared (apart from the requirement to consult the relevant local government) and the public consultation required before a PRF

is made is confined to what MEDQ considers appropriate. It should be noted that these limits on the right to take part in public life come in the context of pre-existing limits on that right. PRAs are made where a PDA has already been made. The effect of declaring an area as a PDA is, in broad terms, that the planning scheme of the local government for the area within which the PDA is located ceases to apply to the PDA. This already limits the right stated in s 23(1) of the *Human Rights Act 2019* to have the opportunity to participate in the conduct of public affairs through freely chosen representatives (that is, local councillors).

- Property rights (s 24 of the *Human Rights Act 2019*). Section 24(2) provides that a person must not be arbitrarily deprived of property. The declaration of a PRA in a PDA and the making of a PRF (for which regard must be had when deciding a PDA development application in the PRA), will limit the way in which land within the PRA can be used, thereby engaging this right. Again, this impact on property comes in the context of pre-existing impacts on property related to PDAs. The land use planning applying in PDAs limits the ways in which land within each existing PDA can be used. Although these impacts on property do not amount to a total deprivation of property, it is sufficient to engage the right because there may still be limitations or restrictions on use and enjoyment of property. The right to property will only be limited if the property is deprived arbitrarily. Arbitrariness will be considered below when assessing proportionality under s 13 of the *Human Rights Act 2019*.
- Cultural rights (ss 27 and 28 of the *Human Rights Act 2019*). Facilitating urban renewal has the potential to disrupt established communities, thereby potentially limiting the rights of individuals with a particular cultural, religious, racial or linguistic background the right to enjoy their culture, practise their religion or use their language, in community with other persons of that background. In addition, urban renewal has the potential to disrupt established communities, thereby limiting the cultural rights of Aboriginal and Torres Strait Islander peoples. For instance, there may be an interference with the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, language and kinship ties under s 28 of the *Human Rights Act 2019*. Infrastructure placement may also interfere with distinctive spiritual, material and economic relationship with the land under s 28.
- Fair hearing (s 31(1) of the *Human Rights Act 2019*). Section 31(1) provides that a party to a civil proceeding has the right to have the matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Declaring PRAs and making PRFs have the potential to limit this right because a consequence of an area being declared as a PDA or a PRA is that there are limited rights of review and appeal against decisions about development applications in PDAs.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's home and property free from interference, as well as the ability of Aboriginal and Torres Strait Islander peoples to maintain their connection to country and to enjoy and protect their identity and cultural heritage.
- Purpose – The purpose of the amendments is to facilitate the implementation of the PRF

to ensure essential services and infrastructure are located in appropriate places to support communities as the population increases.

- Relationship between limitation and its purpose – The amendments related to PRAs help to achieve that purpose.
- Less restrictive alternatives – The amendments are necessary to ensure the proper coordination of planning and delivery of development, promoting place renewal in Queensland. In considering the availability of less restrictive alternatives, consideration was given to the level of authority required to coordinate and facilitate a PRA or PRF. A less restrictive alternative would not achieve the policy outcome.
- In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are already narrowly tailored. In particular:
 - PRA declarations and PRFs must be published under new sections 104A and 104AH;
 - before declaring a PRA, MEDQ must consult with the relevant local government in the way it considers appropriate;
 - before making a PRF, MEDQ must consult with the relevant local government and other people or entities who MEDQ considers are likely to be affected (and as a public entity, MEDQ will need to exercise that power in a way that is compatible with human rights under s 58 of the *Human Rights Act 2019*); and
 - any relevant requirements in other legislation will also need to be complied with, including requirements under the *Environmental Protection Act 1994*, the *Aboriginal Cultural Heritage Act 2003*, the *Torres Strait Islander Cultural Heritage Act 2003* and the *Native Title Act 1993* (Cth).
- Fair balance – While there will be impacts on human rights related to property and quiet enjoyment of one’s home, those impacts are outweighed by the importance of urban renewal through the PRF amendments.

Power to obtain information and assistance (clause 35)

New section 104AM provides that distributor-retailers, other government entities and local governments must provide MEDQ with information or assistance it reasonably requires to implement a PRF. MEDQ may also give any of these entities a direction requiring the information or assistance to be provided. An entity to which a direction is given must do everything reasonably necessary to comply with the direction (although ‘assistance’ does not include the provision of funds or other assets to MEDQ).

Entities requested to provide the information or assistance will be corporations who do not hold human rights. However, the information or assistance provided may relate to matters relevant to natural persons.

Human rights potentially limited (Part 2, Divisions 2 and 3 *Human Rights Act 2019*)

By requiring these entities to provide information, these powers to obtain information engage the right to privacy in s 25(a), which is a right to be let alone. The right to privacy will only be limited if the interference is unlawful or arbitrary, which it cannot be if it is proportionate under s 13 of the *Human Rights Act 2019*. Whether the interference with privacy is arbitrary will be

addressed below when considering the factors in s 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability for natural persons to keep private matters private.
- Purpose – The purpose is to ensure that MEDQ has access to the information and assistance required to ensure the proper implementation of the PRF.
- Relationship between limitation and its purpose – Requiring entities to provide relevant information and assistance will help to achieve that purpose.
- Less restrictive alternatives – The limit on human rights is already narrowly tailored. The obligation on the relevant entity to comply with the direction is narrowed to doing what is reasonably necessary. The information provided would be subject to the confidentiality requirements in section 163 of the *Economic Development Act 2012* as well as the privacy principles in the *Information Privacy Act 2009*, which include important safeguards, in particular when information is personal information about individuals. Although the requirement to provide assistance could potentially be broad, under section 58 of the *Human Rights Act 2019*, MEDQ would need to consider human rights if a direction to provide assistance might impact on an individual’s human rights.
- Fair balance – The need to ensure MEDQ has the information and assistance needed to implement the PRF outweighs the minor impacts on privacy.

As the interference with privacy is proportionate and not arbitrary, the right to privacy is not limited. Accordingly, new section 104AM is compatible with human rights.

Conclusion

In my opinion, the Economic Development and Other Legislation Amendment Bill 2024 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 s 13 of the Act.

GRACE GRACE MP

Minister for State Development and Infrastructure
Minister for Industrial Relations and Minister for Racing

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