

# Brisbane Olympic and Paralympic Games Arrangements Amendment Bill 2024

## Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (Human Rights Act), I, 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 Brisbane Olympic and Paralympic Games Arrangement Amendment Bill 2024 (the Bill).

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

### Overview of the Bill

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

The Bill amends the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Act) to establish the Games Venue and Legacy Delivery Authority (authority) and its board. The main functions of the authority are to:

- (a) deliver venues in time for the games and within budget allocations, including managing effects on users of the venues during their development;
- (b) monitor and ensure the delivery of villages in time for the games; and
- (c) coordinate and integrate the planning and delivery of State, Commonwealth and local government obligations under, or related to, the host contract.

The Bill provides the authority with the necessary powers to perform its functions and in performing those functions, the authority must seek to maximise the legacy and benefits, for Queensland, Australia and the Oceania region, of the games. Where the Minister is satisfied it is reasonably necessary to do so, the Minister may give the authority a written direction about the performance of its functions or the exercise of its powers.

The authority will have a board of directors (board) to ensure the authority performs its functions in a proper, effective and efficient way. The board will have the capacity to establish committees (which can exercise delegated authority) and commissions (of an advisory nature). The authority may employ a chief executive officer and other staff. Other government agencies may also agree to make the services of officers or employees available to the authority.

The Bill provides that the authority will be a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*, and a unit of public administration under the *Crime and Corruption Act 2001*.

The Bill also makes changes regarding the corporation.

## Human Rights Issues

### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

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

- Recognition and equality before the law (section 15) – relevant to clause 20 in relation to board appointments;
- Freedom from forced work (section 18) – relevant to clause 20 in relation to the requirement for chief executives to give information, documents or assistance to the authority, in relation to the proposed alternative staffing arrangements, selection panel members and an additional function of the president of the board of the corporation;
- Freedom of movement (section 19) – relevant to clause 20 in relation to the acquisition of land powers;
- Freedom of expression (section 21) – relevant to clause 20 in relation to the finality of decisions, acquisition of land powers, and the declaration of development for venues and villages to be accepted development or PDA accepted development, the composition of the board, criminal history information and disclosure of interests;
- Taking part in public life (section 23) – relevant to clause 20 in relation to the composition of the board, criminal histories, and disclosure of interests and declaring development for venues and villages to be accepted development or PDA accepted development;
- Property rights (section 24) – relevant to clause 20 in relation to the provisions facilitating development for venues;
- Privacy and reputation (section 25) – relevant to clause 20 in relation to the acquisition of land powers, composition of the board, criminal history information and disclosure of interests;
- Cultural rights – generally (section 27) - relevant to clause 20 in relation to the acquisition of land powers;
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) - relevant to clause 20 in relation to the acquisition of land powers;
- Fair hearing (section 31) – relevant to clause 20 in relation to the finality of decisions;
- Rights in criminal proceedings (section 32) - relevant to clause 20 in relation to the offences concerning criminal history information, clause 24 (Duty to act honestly), and clause 25 (Use or disclosure of confidential information); and
- Right not to be punished more than once (section 34) – relevant to clause 20 in relation to composition of the board.

The amendments to the Act which relate to the corporation make minor changes, provide clarification and do not change the human rights considerations previously addressed in the Statement of Compatibility for the Brisbane Olympic and Paralympic Games Arrangements Bill 2021.

### **Freedom from forced work (section 18)**

The proposed legislation:

- includes an obligation on the chief executive of a public sector unit to give information, documents and assistance the authority reasonably requires to perform its functions (new section 53CL);
- permits the authority to give a person a written notice requiring them to give the authority information, documents and assistance the authority reasonably requires in relation to planning decisions related to venues and villages (new section 53AR);
- provides that a chief executive of a relevant government agency may make available the services of officers or employees of the agency to be made available to the authority (new sections 53CH and 53CI);
- requires persons occupying certain ex-officio roles to be on the selection panel for board directors (new section 53BH); and
- expressly confers on the president of the board of the corporation the function of helping the board of the authority perform its functions, without additional remuneration or allowances (new section 53BI).

These provisions may, if enacted, limit or otherwise affect the right of persons, including proposed selection panel members, the president of the corporation, chief executives or other employees to freedom from forced work. However, as outlined in the analysis below, any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate.

#### (a) the nature of the right

The freedom from forced work under section 18 of the Human Rights Act protects a person's right to not be held in slavery or servitude or to be made to perform forced or compulsory labour. This right means that persons should not be subject to conditions that violate individual dignity and exploit human productivity. Section 18(3) provides that work or service that forms part of normal civil obligations is not forced work. This is an internal qualification that limits the scope of the right.

#### (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The organisation of a large and complex global mega-event, on immovable timeframes, comes with extensive challenges. The purpose of the provisions which require a chief executive of a public sector entity to provide the authority with information and assistance in accordance with new section 53CL, is to provide the authority with a mechanism to facilitate obtaining information or assistance which is essential to the successful delivery of the games, from public sector entities such as departments. This is appropriate, as government departments, have to

date, undertaken the functions which are proposed to be given to the authority under the amended Act, and the chief executive of those departments will have useful background knowledge and experience. The information or assistance provided by a chief executive would likely relate to the existing or former operations of the chief executive's department and the implementation of government policy for the games. In that sense, the information and assistance would be part of the chief executive's work of government and could be regarded as a normal civil obligation and not a limitation on the right to freedom from forced work. It would also be consistent with a free and democratic society based on human dignity, equality and freedom.

Information sought under new section 53AR, in relation to planning approval processes, is intended to inform the authority so it can, in carrying out its functions, including delivering venues in time for the games to successfully deliver the games, determine whether further steps are required to facilitate planning outcomes. This type of information would ordinarily be expected to be in the possession of planning authorities and decision-makers and to that extent, the types of information and assistance sought would be part of the work of the persons within the authority or decision-maker, which is a government or public sector entity, and could be regarded as a normal civil obligation and not a limitation on the right to freedom from forced work. To the extent that assistance is required from a non-government entity, it may be a limitation on the right to freedom from forced work. As the assistance must be reasonably required to assist the authority to perform its statutory functions, the purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of new sections 53CH and 53CI is to allow the authority, particularly during a transitional period between the authority being established and becoming fully staffed, and during fluctuating demand for human resources, to have available to it, officers and employees of government agencies. These sections, when read together with s 82 of the *Public Sector Act 2022*, would mean that an officer or employee of a government agency would not work in the authority without the agreement of the officer or employee. Accordingly, the provisions would not limit the right to freedom from forced work and would be consistent with a free and democratic society based on human dignity, equality and freedom.

Requiring chief executive officers of the games' delivery partners identified in new section 53BH to form part of the selection panel for the board of directors of the authority is to reflect the significant commitments those partners have made to the games and the importance of the central coordination role the authority will undertake. While potentially limiting the right to freedom from forced work, the provision also promotes the right to take part in public life (section 23 of the Human Rights Act) and will contribute to a rigorous selection process for the board directors and enhance cooperation between the games' delivery partners. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

Under the BOPGA Act, the corporation is established to plan, organise and deliver the games in accordance with the host contract. The purpose of new section 53BI, which expressly confers on the president of the board of the corporation a function to help the board of the authority perform its functions (assistance function), is intended to provide a clear avenue to facilitate the cooperation and information exchange required between the corporation and authority to successfully deliver the games. While the new section provides that the president of the board of the corporation is not entitled to be paid any additional remuneration or allowances for

performing this function, the provision promotes the right to take part in public life (section 23 of the Human Rights Act) and expressly recognises a level of cooperation and information exchange that is intended to occur in any event, in the ordinary course of the president's existing functions. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Requiring chief executives of public sector units to provide information and assistance to the authority, including through making officers and employees available, does not limit the right to freedom from forced work. Requiring a person outside a government entity to provide information and assistance to the authority in making planning decisions may be a limitation on the right to freedom from forced work. The limitation achieves its purpose of providing the authority with the information and assistance it requires to make planning decisions necessary to successfully deliver the games and ensure the benefits of the games are maximised.

Requiring the participation of chief executive officers of games delivery partners on the selection panel for the board of directors of the authority will contribute to a rigorous selection process for board directors and enhance cooperation between the games' delivery partners.

Providing a role for the president of the board of the corporation to assist the board of the authority to perform its functions will enhance cooperation and information exchange between the two games entities.

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

Providing the authority with the powers to request assistance and information from chief executives, including through making officers and employees available to it, in my opinion, does not limit the right to freedom from forced work and in any event, is the only way to ensure that the authority has the information and assistance needed to successfully deliver the games. While requiring a person to provide information and assistance, if reasonably required by the authority to assist its decision making in respect of planning decisions, requiring officers to participate in selection panels for the authority's board of directors, and imposing an additional function on the president of the board of the corporation may limit the right to freedom from forced work, the purpose of the proposed legislation cannot be achieved through any reasonably available and less restrictive means. In considering the availability of less restrictive alternatives, it is relevant that:

- a person may only be asked to provide the authority with information or assistance which is 'reasonably required' in relation to the authority making planning decisions (new section 53AR(2));
- the duty of a chief executive to provide information and assistance is qualified to that reasonably required by the authority to perform its functions (new section 53CL(2));
- a chief executive is not required to disclose information if that disclosure would contravene a duty of secrecy or confidentiality imposed on a person under an Act or law (new section 53CL(3));

- there is no change to the employment or engagement terms and conditions of officers and employees whose services are made available to the authority (new section 53CH(2));
  - public service employees would have to consent to the arrangement and would not be forced to work in the authority;
  - the Bill preserves existing employee entitlements for certain public sector employees who later become an employee of the authority, thereby promoting human rights (new section 53CI);
  - requiring identified officers of games delivery partners to form part of the selection panel for the board of directors takes into account feedback received during consultation about the proposed Bill;
  - new section 53BI is consistent with feedback received from the corporation during consultation about the proposed Bill; and
  - new section 53BI is considered to be aligned with the president's existing functions and the president is otherwise remunerated in accordance with the requirements of the BOPGA Act.
- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, to the extent that the proposed amendments place a limitation on the right to freedom from forced work, they strike a fair balance between the benefits gained by the public through the rigorous and collaborative appointment of directors to the board, enhancing the cooperation between the corporation and the authority and providing the authority with the information and assistance it requires to support the State and the corporation in performing the obligations of the host contract, including delivery of venues and villages in time for the games.

(f) any other relevant factors

Nil

**Taking part in public life (section 23), freedom of expression (section 21) and right not to be punished more than once (section 34)**

Proposed new chapter 3, part 5 deals with the composition of the board, the appointment of board members, and will provide for how conflicts of interest are to be managed.

Proposed new section 53AS provides for a regulation to be made to declare development for a venue or village to be accepted development under the *Planning Act 2016* (Planning Act) or PDA accepted development under the *Economic Development Act 2012* (Economic Development Act) (development declaration).

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

(a) the nature of the right

Section 23 of the Human Rights Act states that every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs directly or through freely chosen representatives.

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

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

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

Section 34 of the Human Rights Act 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.

Section 21 of the Human Rights Act recognises that every person has the right to hold an opinion without interference and has the freedom of expression, through speech, art, writing (or other forms of expression) and to seek out and receive the expression of others' opinion.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*Board*

New sections 53BF and 53BG provide that the board is to consist of appropriately qualified directors (and chairperson) nominated by the Minister, chosen for nomination as a director by a selection panel representing identified games delivery partners. In considering a proposed nomination, the Minister and the members of the selection panel must have regard to a person's skills, knowledge and experience in areas relevant to the performance of the board's functions, in addition to diversity considerations, and the Queensland Government's policy about gender equity on boards. Current Queensland Government policy aims for 50 per cent of new appointments to government boards to be, where possible, women. Certain persons are not able to be appointed to the board, such as an elected officer, an employee of the State, Federal or local government, a director of the corporation or a member or employee of the governing body of identified Olympic and Paralympic entities.

New section 53BL prescribes the various scenarios when the office of a board member becomes vacant. A person is disqualified from becoming or continuing in office if they have an indictable offence conviction which is not a spent conviction, are insolvent or are disqualified from managing corporations (new section 53BM).

In addition, proposed new chapter 3, part 5, division 4, subdivision 2 addresses the circumstances where a board member has a direct or indirect interest in a matter being considered by the Board that could conflict with the proper performance of their duties when considering the matter. The board member must disclose the nature of the interest at a meeting and, unless the Board otherwise directs, must not be present when the Board considers the matter.

The purpose of the new sections, which if enacted, could limit a person's right to take part in public life, is to support good governance of the authority by ensuring appropriately qualified persons are appointed or remain as directors and to ensure that conflicts of interest are appropriately managed and that board members act in the best interests of the authority with accountability and transparency. This is consistent with a free and democratic society based on human dignity, equality and freedom.

In addition to limiting the right to take part in public life, the obligation on the Minister and the members of the selection panel, when considering a proposed nomination, to 'have regard to' the Queensland Government's policy about gender equity on boards, may limit the right to enjoy human rights without discrimination (section 15(2) of the Human Rights Act), the right to equal protection of the law without discrimination (section 15(3) of the Human Rights Act), and the right to protection against discrimination (section 15(4) of the Human Rights Act).

In the Human Rights Act, 'discrimination' is defined as including direct or indirect discrimination on the basis of one of the protected attributes in the *Anti-Discrimination Act 1991* (Anti-Discrimination Act), such as sex, age, race and gender identity. Accordingly, the requirement to have regard to a policy which aims to increase the participation of women on government boards and to also have regard to diversity so that it may be appropriate to appoint members with certain expertise or from certain sections of the community such as seniors, youth, Aboriginal people, Torres Strait Islander people, or people from culturally and linguistically diverse backgrounds, may constitute a limitation on the rights of individuals who are not within these sections of the community.

However, section 15(5) of the Human Rights Act provides that 'measures taken for the purpose of assisting or advancing persons or groups of persons, disadvantaged because of discrimination do not constitute discrimination'. As the purpose of provisions which require the Minister to have regard to Queensland Government policy about gender equity and diversity is to assist or advance persons who are disadvantaged, they are a measure of the type outlined in section 15(5) and do not limit the human rights in section 15(3).

Because the definition of 'discrimination' is inclusive, it protects against discrimination on additional grounds that are analogous to those protected by the Anti-Discrimination Act. Discrimination on the basis of an irrelevant criminal record may be an analogous ground of discrimination. However, the disqualifying offences in new section 53BM 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. Accordingly, I consider that the provisions relating to criminal histories do not discriminate on the basis of an irrelevant criminal record.



As ‘punishment’ in s 34 of the Human Rights Act means a ‘sanction for a criminal offence’ it does not include non-penal consequences such as disciplinary measures. Accordingly, the provision which disqualifies a person from holding office as a director if convicted of an indictable offence does not limit the right against double punishment in s 34.

#### *Development declaration*

New section 53AS allows a development declaration to be made. This categorises development the subject of the declaration as accepted development, which does not require a development approval under the Planning Act or the Economic Development Act. If that development had, before the development declaration, been categorised by a local categorising instrument as assessable development, new section 53AS may limit the right to take part in public life and the right to freedom of expression.

Communities may expect local governments in their local planning schemes to decide the level of assessment for venues and villages rather than a regulation made under the new section 53AS. As the local government will be unable to categorise or assess and make decisions about development for venues and villages, this amendment may limit the right to participate in the conduct of public affairs through chosen representatives.

The new section 53AS may also limit the right to freedom of expression as removing the need to make an application for a development approval, which otherwise would have required public consultation to be carried out, may limit the right to freedom of expression as submissions about the application may not be made.

The purpose of the new section 53AS is to facilitate timely decision-making to ensure delivery of venues and villages in time for the games, which is a key function of the authority and is consistent with the State’s obligations under the host contract.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

#### *Board*

The new provisions of chapter 3, part 5 may limit the right of access to public service and public office in section 23(2)(b) of the Human Rights Act because people who do not meet the specified eligibility criteria will be ineligible for those positions and people who meet the grounds for removal may be removed from these positions. Further, those directors who have a conflict of interest may be excluded from certain decisions of the board.

The limitation will be effective to meet the purpose of the limitation as they will support good governance by allowing the appointment of appropriately qualified, independent individuals of high community standing, commercial acumen, and subject matter expertise to the authority’s board and require that board members act in the best interests of the authority with accountability and transparency.

#### *Development declaration*

The new section 53AS will achieve its purpose as the development declaration made pursuant to that section will remove the need for a development application to be made for venues and villages the subject of the declaration. This will minimise potential delays to delivery of venues

or villages so as to facilitate the timely delivery of venues and villages and compliance with the host contract requirements.

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

#### *Board*

The proposed provisions which regulate the selection and composition of the board, and disclosure of interest by directors, reflect the principles of good governance for statutory bodies and relevantly provide for:

- the Minister to have some discretion to approve the nomination of a person as a director even if they have been convicted for an indictable offence or is an insolvent under administration if the person was not a director when the person was convicted or became insolvent under administration (new section 53BM);
- a conviction for an indictable offence to not disqualify a person from becoming or continuing to be a director if it is a spent convictions under the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- the exclusion of certain persons (new section 53BF(3)) from appointment to the board to ensure a board which is independent from government and to reduce the potential for conflicts of interest in the performance of the authority's functions; and
- diversity considerations to achieve Government policy and which assist or advance persons disadvantaged by discrimination.

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

#### *Development declaration*

Available alternatives may include making an application for development approval, making a new planning instrument or amending the existing instrument to categorise the development of venues and villages as accepted development. Each of these alternatives will take time and may require public notification and consideration of submissions.

I do not consider that there is any other less restrictive and reasonably available way to achieve the purpose of the proposed legislation. In reaching this conclusion I have considered that the new section 53AS also mitigates limits on human rights by requiring the Minister to:

- have regard to use of the established planning powers in the Planning Act, the Economic Development Act and the *State Development and Public Works Organisation Act 1971* (State Development and Public Works Organisation Act) and any other Act regulating development; and
- first be satisfied about certain matters referred to in new section 53AS(2) before making a recommendation about the making of a development declaration, which requires such decisions to be considered and not arbitrary.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

### Board

As outlined above, if enacted, the provisions of new chapter 3, part 5, insofar as they set eligibility requirements for the board of the authority other than on gender and diversity, may limit the right to take part in public life. However, as the authority is a statutory body tasked with:

- (a) delivering venues in time for the games and within budget allocations, including managing effects on users of venues during their development;
- (b) monitoring and ensuring the delivery of villages in time for the games; and
- (c) coordinating and integrating the planning and delivery of State, Commonwealth and local government obligations under, or related to, the host contract,

any limit on those rights is reasonable and justified when balanced against the need to apply principles of good governance to ensure the integrity of the authority established by the Bill and the people who comprise it. By only requiring disqualification for convictions for offences that are not spent and permitting the Minister to give approval to become a director despite a conviction, new section 53BM ‘balanc[es] the risk of blighting the prospects of ex-offenders and the risk of appointing unsuitable people to sensitive positions’: *MC v United Kingdom* (2022) 74 EHRR 24, 861 [54].

### *Development declaration*

Delays caused by a development approval process, including possible legal challenges could have a profoundly negative impact on the State’s ability to comply with the host contract, including delivery of the venues and villages, and to stage a successful games.

Accordingly, I consider that the proposed provisions strike a fair balance between the benefits gained by the community in the authority assisting in the delivery of a successful games and proper performance of the State’s obligations under the host contract, and the limitation on the right to take part in public life and freedom of expression.

Accordingly, any limitations on a person's right to take part in public life that is protected by section 23 of the Human Rights Act or a person’s right to freedom of expression that is protected by s 21 of the Human Rights Act is reasonable and justified, when balanced against the public interest.

- (f) any other relevant factors

Nil

### **Property rights (section 24), freedom of movement (section 19), freedom of expression (section 21) and right to privacy (section 25)**

Clause 20 of the Bill will, on commencement, insert a new chapter 3, part 4, division 3, of the Act. The new division gives the Minister power to recommend to the Governor in Council that land should be declared acquisition land for a venue or village, without consulting with the owner of the land. If declared, the authority will have the power to compulsorily acquire acquisition land, including taking an easement, or lease or other interest in State land, for the purpose of delivering a venue or ensuring the delivery of a village, and any purpose incidental to delivering a venue or village. The land may be taken and vested in a third party. The authority will also have power to enter land and occupy and use it temporarily (new section 53BA). The

processes for taking of land and payment of compensation under the *Acquisition of Land Act 1967* (Acquisition of Land Act) will apply to land taken under these new provisions.

The new power to take land may potentially limit the human right to property (section 24, Human Rights Act), the right to choose where to live (section 19, Human Rights Act), the right to freedom of expression (section 21, Human Rights Act) and the right to non-interference with privacy, family and home (section 25(a), Human Rights Act). The power may also potentially limit cultural rights generally (section 27, Human Rights Act) and cultural rights of Aboriginal peoples and Torres Strait Islander peoples, especially the right to maintain and strengthen their connection to country (section 28, Human Rights Act) and this is discussed in more detail under that heading below.

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 the potential interference with where a person lives, 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, it will not be arbitrary.

As outlined below, 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 the authority has the power its needs to support development. For these reasons, any limitation is justified and accordingly, proposed new chapter 3, part 4, division 3 of the Bill, is compatible with human rights.

(a) the nature of the right

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

Section 19 provides that every person lawfully within Queensland has the freedom to choose where to live. This means that the person cannot be arbitrarily forced to move from a particular place.

Section 21 recognises that every person has the right to hold an opinion without interference and has the freedom of expression, through speech, art, writing (or other forms of expression) and to seek out and receive the expression of others' opinion.

Section 25(a) protects a person's right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to enable the authority to compulsorily acquire land to enable venues and villages to be delivered without delay in time for the games, the world's largest sporting event, and assist in compliance with the State, Commonwealth and local government

obligations under, or related to, the host contract. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on human rights achieves its purpose as it allows the authority to identify and acquire land needed for the on-time delivery of venues and villages needed to host a successful games and ensure compliance with obligations under the host contract. These obligations, include obligations on the State (and the corporation) to provide all Key Olympic Venues (including adequate and properly equipped sports competition venues and training venues, compliant with technical standards for each sport included in the Programme of the Games and commensurate with Olympic-level competition and the number of athletes expected to participate in the games), Paralympic venues scaled to the needs of the Paralympic Games and other venues as further described in the contract documents.

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

An alternative to the compulsory acquisition power would be to require the authority to acquire property by agreement and to require an owner to be consulted before a declaration of acquisition land is made. However, an owner will have the opportunity to object to a proposed acquisition under the Acquisition of Land Act process and acquiring property by agreement cannot necessarily be achieved in a timely way. I am therefore of the opinion that there is no less restrictive and reasonably available way of achieving the objectives for the authority's functions. In reaching this conclusion I have taken into account that the potential limits on human rights are already narrowly tailored and subject to existing safeguards. In particular:

- the Minister must be satisfied the authority has made reasonable endeavours to consult with the Coordinator-General (who has powers to take land in accordance with the State Development and Public Works Organisation Act), before making a recommendation that land be declared to be acquisition land;
- before land can be compulsorily acquired by the authority, the land must first be declared by regulation to be acquisition land for a venue or village, and before making a recommendation to the Governor in Council for the making of the regulation, the Minister must be satisfied that the land is required for a venue or village, and that taking the land is necessary to facilitate the timely delivery of the venue or village;
- compulsory acquisition powers will be exercised in accordance with processes in the Acquisition of Land Act providing for the right to object to proposed resumptions and the right to claim compensation for any resumption, and compensation for damage where the Authority exercises power to enter land and occupy and use it temporarily; and
- as a public entity under the Human Rights Act, when exercising the power to take land as part of performing functions of a public nature, the authority 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 section 58 of the Human Rights Act.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On the one hand, it is important that the authority has the powers necessary to enable it to deliver venues and ensure villages in time for the games, and to coordinate and integrate the planning and delivery of State, Commonwealth and local government obligations under, or related to, the host contract. Hosting the games is expected to deliver economic and other benefits for the region, including creating employment opportunities which may promote human rights.

On the other hand, compulsory acquisition of land is one of the most severe ways that a person's property and home can be interfered with.

The extent of that impact on human rights is mitigated in important ways, by:

- requiring that the State Development and Public Works Organisation Act including the established powers of the Coordinator-General to take land, is considered before seeking to rely on the acquisition power;
- where land is to be taken for the benefit of a third party, requiring the authority to have taken reasonable steps to obtain the agreement of the owner that would facilitate the delivery of the venue or village in a timely way; and
- following the existing process in the Acquisition of Land Act which includes appropriate safeguards such as the requirement to give a notice of intention to take land, the opportunity to make an objection and a requirement to pay compensation including costs attributable to disturbance in relation to the taking of the land.

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 the authority has the power it needs to deliver venues and villages for the games. For these reasons, the limitation is justified and compatible with human rights.

(f) any other relevant factors

Nil

**Cultural rights (section 27) and Cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28)**

The new power to take land, may also limit the following human rights:

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

For impacts on land, territories, waters, coastal seas or other resources, the cultural rights of Aboriginal peoples and Torres Strait Islander peoples will 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 Aboriginal or Torres Strait Island peoples have a connection, the new power has the potential to limit that right.

Provisions relating to the taking of land may, if enacted, limit or otherwise affect cultural rights. However, as outlined in the analysis below, any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate.

Compulsory acquisition also has the potential to disrupt established communities, which may interfere with the rights of individuals to enjoy their culture, practise their religion or use their language in community with other persons of the same background (section 27 of the Human Rights Act) and the rights of Aboriginal peoples and Torres Strait Islander peoples to protect, develop and use their language, and maintain, protect and develop their kinship ties with other members of their community (section 28 of the Human Rights Act).

(a) the nature of the right

Sections 27 and 28 of the Human Rights Act protect cultural rights generally, and specifically recognise the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples to maintain their connection to country and to enjoy and protect their identity and cultural heritage.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation resulting from the provisions which allow the authority to take land is described above in the discussion of Property rights (section 24), freedom of movement (section 19), freedom of expression (section 21) and right to privacy (section 25).

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The reasons the provisions which allow the authority to take land achieves their purpose are described in the discussion of Property rights (section 24), freedom of movement (section 19), freedom of expression (section 21) and right to privacy (section 25).

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

Where an appropriate agreement to acquire land, or rights to use land, cannot be reached in a timely way, there is not considered to be any less restrictive and reasonably available way of achieving the objectives for the authority’s functions. The reasons for this are referred to in the discussion of Property rights (section 24), freedom of movement (section 19), freedom of expression (section 21) and right to privacy (section 25) above and additionally having regard to the additional safeguards:

- any relevant requirements in other legislation will also need to be complied with as part of development for venues and villages, 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); and
  - new section 53AX specifically requires the process for taking land and paying compensation under new section 53AV(5) to be carried out in a way that is consistent with processes under the *Native Title (Queensland) Act 1993* and the *Native Title Act 1993* (Cth).
- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On the one hand, it is important that the authority has the powers necessary to enable it to deliver venues and ensure villages in time for the games, and to coordinate and integrate the planning and delivery of State, Commonwealth and local government obligations under, or related to, the host contract.. Hosting the games is also expected to deliver economic and other benefits for the region, including creating employment opportunities.

On the other hand, it is important that persons, including Aboriginal peoples and Torres Strait Islander peoples, are not denied enjoyment of their specific cultural rights and any limitations of those rights must be carefully considered.

The extent of that impact is mitigated in important ways as outlined above in the discussion of Property rights (section 24), freedom of movement (section 19), freedom of expression (section 21) and right to privacy (section 25) and by the legislative framework within Queensland which provides for recognition, protection and conservation of Aboriginal cultural heritage and Torres Strait Islander cultural heritage.

While there may be a limitation on cultural rights, these limitations are proportionate to the aim of ensuring the authority has the power its needs to deliver venues and villages for the games. For these reasons, the limitation is justified and compatible with human rights.

- (f) any other relevant factors

Nil

### **Privacy and reputation (section 25) and freedom of expression (section 21)**

The parts of the proposed legislation that are relevant to this right are:

- the power of the Minister to ask the commissioner of the police service for a written report about the criminal history of a person who is to become, or is, a director of the authority's board (new section 53BN);
- the obligation of a board director to disclose to the Minister if they are convicted of an indictable offence during the term of their appointment (new section 53BO);
- the requirement for disclosure of an interest that could conflict with the proper performance of a board director's duties to the Board (new section 53BX);



- the requirement for the president of the board of the corporation to disclose interests which could conflict with the performance of the president's functions under that section (new section 53BI); and
- the obligation of a chief executive or a person to provide information or documents to the authority in relation to a planning decision or that the authority reasonably requires to perform its functions (new sections 53AR and 53CL).

These provisions may, if enacted, limit or otherwise affect the right to privacy and reputation and freedom of expression, which is discussed in more detail below. As explained above, the right to privacy in s25(a) of the Human Rights Act includes internal limitations: the interference must be unlawful and arbitrary. In the present case, any interference will be lawful. Whether it is arbitrary will be considered in the context of the proportionality analysis below. In relation to the right to freedom of expression any limitation of this right is considered reasonable, demonstrably justifiable, and proportionate for the reasons explained below.

(a) the nature of the right

Section 25 of the Human Rights Act protects a person's privacy and reputation. It provides that a person has the right:

- not to have the person's privacy, family, home or correspondence (written and verbal) unlawfully or arbitrarily interfered with; and
- not to have the person's reputation unlawfully attacked.

Under this section, the scope of the right to privacy is broad and may include matters such as personal information, data collection and correspondence.

Under section 21 of the Human Rights Act, 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 kind.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As referred to in the discussion on taking part in public life, a person:

- is unable to be appointed or continue as a director of the authority if that person has a conviction for an indictable offence (other than an indictable offence); and
- must not participate in board decision making where the director has an interest in a matter being discussed at a board meeting.

The purpose of the proposed provisions which allow the Minister to request a criminal history report and require a director to disclose convictions or conflicts is to ensure that the Minister has or can obtain the information needed to determine whether a person is eligible to be a director and to ensure that conflicts of interests are declared and managed in an accountable and transparent manner appropriate for a statutory body. This also applies to disclosure of conflicts of interest by the president of the board of the corporation. There is a strong public interest in ensuring that there is appropriate oversight and accountability imposed on people who seek appointment, or are appointed, to public office.

The purpose of new sections 53AR and 53CL is detailed in the discussion in respect of the freedom from enforced work.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Any limitation on the right to privacy imposed by the proposed provisions which allow the Minister to request a criminal history report and require a director to disclose convictions or conflicts, achieve their purpose as they enable the Minister to independently confirm whether a person is ineligible to be appointed as a director and requires directors to deal with conflicts of interest in an accountable and transparent manner, which ensures the integrity of the membership of the board. Likewise, the requirement on the president of the board of the corporation to disclose conflicts of interest in the context of authority board meetings reflects this accountability and transparency requirement.

Any limitation on the right to privacy imposed by the new provisions which allow a person or chief executive to be required to provide information and assistance to the authority in making planning decisions or information the authority requires to perform its functions will achieve its purpose of providing the authority with the information and assistance it requires to make planning decisions necessary to successfully deliver the games and ensure the benefits of the games are maximised.

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

Requiring a director to give notice to the Minister of any conviction for an indictable offence is the only reasonably available way for a Minister to be informed of the conviction and providing the Minister with the power to request a person's criminal history is the only way for the Minister to independently confirm that information or to determine a person's eligibility to be appointed to the board.

Significantly, in protecting human rights, the Minister may only exercise this power if the person has given the Minister written consent for the request.

In addition, the proposed legislation includes safeguards to protect the person's criminal history given in a report to the Minister and any criminal history information that the person discloses by notice.

The proposed legislation will only allow a person to use or disclose criminal history information for: the performance of a function or exercise of a power under the Act, to the extent the use or disclosure is otherwise required or permitted by law; or with the consent of the person to whom the criminal history information relates. The proposed legislation also provides the penalty for failing to comply with this requirement is 100 penalty units.

Similar provisions in relation to the disclosure of information that would disqualify a person from membership of statutory bodies are common across the Queensland statute book, and already exist in section 29 of the Act in relation to changes in criminal history information of directors of the corporation.

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. Provisions requiring board members to disclose conflicts of interest are also typical across the Queensland statute book.

Whether there is any less restrictive and reasonably available way to achieve the purpose of new sections 53AR and 53CL is referred to in the discussion in respect of the freedom from enforced work.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As outlined above, the Minister having the power to obtain information about a person's criminal history and the requirement for a person to disclose certain matters that would disqualify them from board membership is important for ensuring the integrity of the board. It is in the public interest that the membership of public bodies be open to scrutiny by the Minister to whom the public body is responsible, and that obligations are imposed on board members to disclose matters that would disqualify a person from being a board member. The requirement to disclose conflicts of interest ensures proper and transparent decision making in the public interest.

Such provisions are common in Queensland legislation and strike a fair balance between the importance of ensuring an individual's right to privacy and freedom of expression, and the integrity of membership and appointments to Queensland Government statutory bodies. The importance of ensuring performance, transparency and public accountability outweigh the relatively minor impact on human rights.

In my opinion, to the extent that the proposed new sections 53AR and 53CL place a limitation on the right to privacy, they strike a fair balance between the benefits gained by the public through providing the authority with the information and assistance it requires to support the State and the corporation in performing the obligations of the host contract, including delivery of venues and villages in time for the games.

(f) any other relevant factors

Nil

I therefore consider that the provisions do not limit the right to privacy, as any interference with the right is proportionate and not arbitrary. I also consider the limitation on the right to freedom of expression to be reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

### **Fair Hearing (section 31) and freedom of expression (section 21)**

Under proposed new chapter 3, part 4:

- proposed new section 53AR permits the authority to give a person a written notice requiring them to give the authority information, documents or assistance the authority reasonably requires in relation to planning decisions related to venues or villages;
- the Minister may recommend the making of a regulation to declare development for a venue or village to be accepted development under the Planning Act or PDA accepted development under the Economic Development Act (new section 53AS);

- the Minister may recommend the making of a regulation that land is ‘acquisition land’ for a venue or village (new section 53AU); and
- the authority may compulsorily acquire acquisition land for the purpose of delivering the venue or village (or an incidental purpose) and has related powers to temporarily use and occupy land, and use, lease and dispose of land (new chapter 3, part 4, division 3).

Consultation with a person affected by these decisions or the public before a decision is made under new chapter 3, part 4 is not required under the Bill. It is also proposed that other than a decision affected by jurisdictional error, part 4 decisions of the Minister or authority are final and conclusive and not subject to challenge or appeal, under the *Judicial Review Act 1991* or otherwise (new section 53BB).

These provisions may, if enacted, limit or otherwise affect the right to a fair hearing and the right to freedom of expression. However, as outlined in the analysis below, any limitation of these rights is considered reasonable, demonstrably justifiable, and proportionate.

(a) the nature of the right

Section 31 of the Human Rights Act recognises that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing.

As mentioned above, under section 21 of the Human Rights Act, 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.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of not providing for consultation before a decision is made under new chapter 3, part 4 or for a decision, once made, to be challenged is to facilitate timely decision-making to ensure delivery of venues and villages in time for the games, which is a key function of the authority and is consistent with the State’s obligations under the host contract. The purpose of information gathering tools, such as the ability to provide a written notice requiring information, documents or assistance will assist the authority to understand any ‘planning-related’ barriers to timely venue delivery and inform the authority whether other planning pathways are required to properly assess proposed development in a timely matter. Further, delays caused by review processes or legal challenges could have a profoundly negative impact on the ability to comply with the host contract and stage a successful games. Ensuring that the State is able to deliver the games expeditiously in compliance with its obligations under the host contract, is compatible with a free and democratic society.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of limiting consultation and appeal rights is to minimise potential delays to delivery of venues or villages and compliance with the host contract requirements.

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

As set out above, it is imperative that delivery of venues and villages for the games is not delayed by consultation, reviews and legal challenges. There is no other less restrictive and reasonably available way to ensure that this can happen. In considering the availability of less restrictive alternatives, it is relevant that:

- the process for the making of objections, and the requirement to have regard to the objections, to the taking of land as usually apply under the Acquisition of Land Act will still apply so individuals will have an opportunity to be heard in the context of those processes;
- consultation undertaken with the Coordinator-General is intended to explore whether other avenues exist (such as powers under the State Development and Public Works Organisation Act);
- the Minister is required to have regard to the Planning Act, the Economic Development Act the State Development and Public Works Organisation Act and any other Act regulating development before seeking a regulation declaring development for a venue or village to be a particular category of development under new section 53AS;
- the Minister must first be satisfied about the matters referred to in new section 53AS(2) before making a recommendation about the making of a development declaration, which requires such decisions to be considered and not arbitrary; and
- many venues are existing facilities which are proposed to be upgraded or expanded within existing footprints and the powers will therefore apply to quite defined areas that have already come under public scrutiny.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Delays caused by consultation, review processes or legal challenges could have a profoundly negative impact on the State's ability to comply with the host contract, including delivery of the venues and villages, and to stage a successful games.

A person aggrieved by a decision of the authority which was beyond the powers of the authority continues to be able to seek relief from the Courts in respect of that decision.

Accordingly, I consider that the proposed provisions strike a fair balance between the benefits gained by the community, in the authority assisting in the delivery of a successful games and proper performance of the State's obligations under the host contract and the limitation on right to a fair hearing and freedom of expression.

(f) any other relevant factors

Nil

## **Rights in criminal proceedings (section 32) and freedom of expression (section 21)**

The proposed legislation will create offences for:

- a board member who fails to immediately give notice to the Minister if they are convicted of an indictable offence, unless they have a reasonable excuse (new section 53BO);
- a person who uses or discloses criminal history information, unless permitted under the proposed legislation (new section 53BP);
- a board member or chief executive officer who does not act honestly in the performance of their functions or in the exercise of their powers under the Act (clause 24 amending section 56 of the Act); and
- a board member, chief executive officer, member of a commission, or another person involved in administering the Act, who discloses or uses confidential information other than as permitted under the Act (clause 25 amending section 57 of the Act).

These provisions may, if enacted, limit or otherwise affect the right to liberty, the presumption of innocence and in some case, freedom of expression. However, as outlined in the analysis below, any limitation of these rights is considered reasonable, demonstrably justifiable, and proportionate.

### (a) the nature of the right

Section 32 of the Human Rights Act protects a person's right to be presumed innocent until proven guilty. The right imposes the onus on the prosecution to prove the offence beyond a reasonable doubt. The right may be engaged where legislation provides for an exemption from liability where a reasonable excuse exists (new section 53BO).

Under section 21 of the Human Rights Act, 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. The freedom of expression may include the right to say nothing or the right not to say certain things.

### (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As outlined above, the proposed legislation imposes obligations on a director of the board to immediately give notice to the Minister if they are convicted of an indictable offence.

The proposed legislation also creates an offence for the person to, without a reasonable excuse, fail to comply with the obligation to give notice. It prescribes a maximum penalty of 100 penalty units for the offence.

The purpose of creating this offence is to reinforce the importance of the obligation for board members to disclose these matters to the Minister and ensure that the Minister is aware of matters that may disqualify them from office. The underlying principle is to ensure the integrity of the Board membership.

The proposed legislation creates an offence for a person who possesses criminal history information because the person is, or has been, a member of the Board, or another person

involved in administration of the Act, to directly or indirectly disclose another person's criminal history information, other than as provided for under the section. The maximum penalty for a breach of this provision is 100 penalty units.

The proposed legislation creates an offence for a board member or the chief executive officer who does not act honestly in the performance of their functions or the exercise of their powers under the Act. The maximum penalty for a breach of this provision is 100 penalty units.

The proposed legislation also creates an offence for a board member, the chief executive officer, a member of a commission established by the Board, or another person involved in administering the Act to disclose confidential information other than: in the performance of a function or in the exercise of a power under the Act; or with the consent of the person to whom the information relates; or to the extent the disclosure or use is otherwise required or permitted by law. The maximum penalty for a breach of this provision is 100 penalty units.

'Confidential information' is defined to mean information that: could identify an individual; or is about a person's current financial position or financial background or would likely damage the commercial activities of a person to whom the information relates.

The purpose of these offence provisions is to reinforce the importance of the obligation to protect privacy and act honestly by deterring non-compliance, and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Any limitations on human rights to be imposed by these provisions will achieve the purpose of maintaining the integrity of board membership by ensuring the Minister is aware of matters which disqualify a person from being a board member. They will also achieve the purpose of deterring non-compliance with the obligations to disclose changes in criminal history, protect privacy and act honestly as individuals will be more likely to comply with the requirements of the provisions where they provide for a penalty for a failure to comply with the obligation.

Directors of the board will have the opportunity, in respect of the obligation to disclose changes in criminal history (new section 53BO), to raise an appropriate defence for failing to comply with the obligation.

The proposed provision (new section 53BO(2)) reverses the onus of proof, placing it on the board member to prove the existence of a reasonable excuse for the failure to give notice of their conviction. Reversing the onus of proof in these circumstances is appropriate as only the person subject to the offence would be in a position to provide the relevant information that would support the reasonable excuse defence.

The purpose of creating the offence about use or disclosure of criminal history information is to deter unauthorised disclosure of highly sensitive personal criminal history information and to protect the privacy of the individual to whom the information relates. The creation of a new offence provides an important safeguard against unauthorised disclosure of a person's protected information. While this may be a limitation on the right to freedom of expression, by providing a deterrence from unauthorised disclosure, the offence also supports the right to privacy and reputation.

Creating an offence for a board member or the chief executive officer who does not act honestly in the performance of their functions or the exercise of their powers under the Act is intended to support integrity in the functioning of the board and good governance.

The purpose of creating the offence in relation to confidential information is because the authority may have access to a significant range of sensitive personal information. While this may be a limitation on the right to freedom of expression, the creation of a new offence reinforces the importance of the provision and provides additional safeguards in the public interest against the misuse of personal information.

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

Arguably, in relation to the offence for failing to report changes in criminal history, a less restrictive way of providing a general defence from liability would be to draft the provision so that the person subject to the offence only has the evidential and not legal burden of proving the reasonable excuse. In considering this option, I note that the impact on the right to be presumed innocent will be greater the higher the penalty and the wider the extent and nature of the matters to be proved by the defendant. However, given that the facts of the defence of reasonable excuse are entirely within the defendant's knowledge, the approach to providing a general defence in the proposed legislation strikes a fair balance between the rights of the person subject to the offence and the purpose of the provision in ensuring the integrity of the membership of the Board.

In relation to the offence for failing to act honestly, similar provisions have been applied across the Queensland statute book including, for example, to directors of the corporation under the Act.

The offence provisions in the proposed legislation are the least restrictive way to ensure the integrity of the Board, the honest performance of functions and powers, and to protect against the unauthorised disclosure of confidential information obtained in the administration of the Act.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed legislation, if enacted, will establish the authority as a statutory body. As outlined above, it is in the public interest that the membership of public bodies be open to scrutiny by the Minister to whom the public body is responsible, and that obligations imposed on board members to disclose matters that would disqualify a person from being a board member and protect sensitive personal information are complied with.

While the offences in the proposed legislation may limit an individual's rights to liberty and security, including the presumption of innocence with respect to the existence of a reasonable excuse, and to a lesser extent, limit the freedom of expression, these limitations are reasonable and strike a fair balance between these rights and the importance of ensuring personal information is protected and the importance to the public of the integrity of the authority by ensuring:

- the integrity of the appointments to and membership of the board;



- the obligation to provide criminal history information is supported by offence provisions protecting the confidentiality and sensitivity of such information;
- the honest discharge of duties by the authority's board members and its chief executive officer in circumstances where the opportunities and potential for wrongdoing are substantial; and
- that persons within the Authority do not misuse personal information in circumstances where the range and sensitivity of such information may be substantial.

(f) any other relevant factors

Nil

## Conclusion

In my opinion, the Brisbane Olympic and Paralympic Games Arrangements Amendment Bill 2024 is compatible with human rights under the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom in accordance with section 13 of the Human Rights Act.

**Grace Grace MP**  
Minister for State Development and Infrastructure  
Minister for Industrial Relations and Minister for Racing

© The State of Queensland 2024