

Economic Development and Other Legislation Amendment Bill 2024

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing

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

In accordance with section 38 of the *Human Rights Act 2019* (HR 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 amendments to be moved during consideration in detail of the Economic Development and Other Legislation Amendment Bill 2024 (Bill).

In my opinion, the amendments are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill will amend the *Economic Development Act 2012* (ED Act) and other legislation to give the Minister for Economic Development Queensland (MEDQ) a new remit to drive new social, affordable and diverse housing; in the context of urban renewal and precincts as a clear legislative purpose and implement a strengthened model for the operation 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;
- create a mechanism to enable MEDQ to deliver in a flexible manner tailored to specific opportunities and to maximise its use of alternative delivery models and funding sources.
- 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 objectives of the amendments to be moved during consideration in detail of the Bill are to clarify the operation of sections 44 and 45 of the ED Act regarding the effect of the declaration of a priority development area (PDA) on existing development applications and development approvals under the *Planning Act 2016* (Planning Act). In this regard:

- The Planning Act serves as the primary regulatory framework for development in Queensland. It classifies development as either prohibited (development application cannot be made), assessable (requires a development approval) or accepted development (does not need a development approval). A local categorising instrument, under the Planning Act, further categorises development as assessable, or accepted development.
- The ED Act provides for land to be declared as a PDA. The Planning Regulation 2017 provides that development that is PDA-related development (including development in a PDA) cannot be made assessable development by a local categorising instrument.
- Section 44 of the ED Act provides for development applications and applications to change development approvals (change applications) made under the Planning Act but not decided when a PDA is declared to continue to be assessed and decided under the Planning Act despite the declaration of the PDA.
- Section 45 of the ED Act provides that existing development approvals under the Planning Act continue in effect as development approvals under the Planning Act after the declaration of a PDA.

The Bill will:

- amend section 44 of the ED Act to provide for applications to extend the currency period of, or cancel, development approvals issued under the Planning Act made but not decided immediately before the declaration of a PDA to be decided under the Planning Act as if the land were not in a PDA;
- amend the ED Act to provide for the following applications relating to development approvals in effect under the Planning Act before the declaration of a PDA, or decided in accordance with section 44 of the ED Act, to be made and assessed under the Planning Act as if the land were not in a PDA under the ED Act:
 - a change application for a minor change to a development approval under the Planning Act; and
 - an application to cancel a development approval under the Planning Act;
- include provisions in the ED Act which validate any change applications or applications to extend currency periods of, or cancel, development approvals assessed and decided under the Planning Act before the changes to the amendments to sections 44 and 45 of the ED Act commence; and

- include transitional provisions in the ED Act which validate any change applications and applications to extend currency periods for, or cancel, development approvals that were made and not yet decided by the responsible entity when the amendments to the ED Act commence, so that those applications are taken to be validly made and can continue to be assessed and decided by the responsible entity under the Planning Act, as if the land were not in a PDA.

Human Rights Issues

Right to equality before the law (section 15 of the HR Act)

The amendments to the Bill to be moved during consideration in detail engage the right to equality before the law under section 15 of the HR Act. This is due to there being instances where extension, cancellation or change applications to Planning Act approvals, may have been incorrectly lodged with and decided by the relevant authority. These applications and decisions have been made at various dates and are subject to differing stages of implementation, some of which may have been enacted. A person may consider themselves to be discriminated against or be subject to legal inequality if these decisions are not retrospectively validated.

In response to this concern, rather than nullifying these approvals, the intent of the proposal is to identify how these existing applications and approvals are to be treated, as well as validating the existing applications and approvals. Consequently, it is not considered that these persons have had their right to legal equity diminished by the proposal.

The amendments to the Bill to be moved in consideration in detail also include a provision allowing the lodgement of a minor change application, or cancellation application, relating to an historic Planning Act approval following the declaration of a PDA. These minor change and cancellation applications will be assessed and decided under Planning Act as if the land were not land in a PDA. This policy change is not considered to restrict the right of a person to equity before the law, but rather expands on the right.

Right to freedom of expression (section 21 of the HR Act)

The amendments to the Bill to be moved during consideration in detail engage the right of individuals to express themselves freely in section 21 of the HR Act. The Bill was previously the subject of a public briefing, public submissions and public hearing through the Parliamentary Committee process, where any person could make submissions about the draft Bill. The amendments to be moved during consideration in detail have not been the subject of public consultation.

However, any limit on the freedom of expression is reasonable and justified as follows:

- The proposed clause 25A of the Bill, which replaces section 44 of the ED Act, expands the application of the section so that there is clarity that the section also applies to extension and cancellation applications (in addition to development and change applications currently appearing in the ED Act).

- The proposed clause 25B of the Bill, which replaces section 45 of the ED Act, generally aligns with the existing provisions of the ED Act that have been in effect since the ED Act commenced, with the exception of allowing an application to be made for a minor change to, or cancellation application for, a development approval issued under the Planning Act on land which had been declared to be within a PDA since the development approval was issued. Such minor change or cancellation applications would be assessed and decided in accordance with local categorising instruments (such as the relevant local government's planning scheme), which would have been the subject of public consultation as part of their development under the Planning Act. Individuals would have had the ability to make submissions about the content of the local categorising instruments as part of that consultation process.

Property rights (section 24 of the HR Act)

Section 24 of the HR Act recognises that all persons have the right to own property and that a person must not be arbitrarily deprived of the person's property. Total and permanent deprivation of property is not required to engage the second aspect of the right. A restriction on the ability of a property owner to use and enjoy the property can be sufficient.

The proposed amendments to the Bill to be moved during consideration in detail engage this right because they will confirm that the right to make a change to a development approval under the Planning Act is limited to a 'minor change' (as that is defined) to the development approval. There will be no opportunity for a proponent to apply for a change to a development approval that is other than a minor change, under either the Planning Act or the Economic Development Act. Rather, where a person proposes a change to development under an existing development approval that is more than a minor change, the person would need to apply for a new PDA development approval under the ED Act

The proposed amendments to the Bill accordingly have the potential to limit property rights, as they confirm the restriction on dealings with an approval under the Planning Act, where the land the subject of the approval is subject to a PDA.

However, any limit on the freedom of expression is reasonable and justified because the purpose of the limitation caused by the proposed amendments is to give greater certainty to the protection of the new planning intent and vision for the area on declaration of a PDA. The declaration of a PDA is intended to provide a streamlined land use planning and development framework to deliver that tailored planning for the area that is to proceed in an orderly manner, balancing environmental sustainability with community needs. If anything more than 'minor changes' to a pre-existing development approval were permitted to proceed in a PDA this may interfere with the future implementation of the development intent and urban planning and design vision for the PDA.

Right to a fair hearing (section 31 of the HR Act)

Section 31 of the HR Act recognises (among other things), the right of parties to a civil proceeding to have the matter decided by a competent, impartial and independent court or tribunal following a fair and public hearing.

The proposed amendments engage and have the potential to limit this right, because the amendments will have the effect of restricting the changes that may be sought to a development approval under the Planning Act (as described above). There will be no opportunity for a proponent to apply for a change to a development approval that is other than a minor change, under the Planning Act where such an application under the Planning Act would be assessed by the responsible entity and then subject to appeal rights under the Planning Act and *Planning and Environment Court Act 2016* (P&E Court Act).

However, any limit on the freedom of expression is reasonable and justified as follows:

- There is no restriction on the rights of parties to participate in any Court proceedings with respect to the original development approval under the Planning Act, as provided for under the Planning Act and *Planning and Environment Court Act 2016*.
- Any new development applied for in the PDA under the ED Act will be subject to the rights of parties to participate in any Court proceedings with respect to that decision. Even though there is limited opportunity for merits review of decisions regarding PDA development applications under the ED Act, persons aggrieved by those decisions will, in most cases, have the ability to seek review under the *Judicial Review Act 1991*.

Conclusion

In my opinion, the amendments to be moved during consideration in detail are compatible with human rights under the HR Act because they limit human rights 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
Minister for Racing