



# **Brisbane Olympic and Paralympic Games Arrangements Bill 2021**

**Report No. 20, 57th Parliament  
Economics and Governance Committee  
November 2021**

## **Economics and Governance Committee**

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All web address references were current at the time of publishing.

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## Abbreviations

AIP	Australian Institute for Progress
AOC	Australian Olympic Committee
BCC	Brisbane City Council
Bill	Brisbane Olympic and Paralympic Games Arrangements Bill 2021
Board	Board of directors of the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games
Brisbane 2032 Games	2032 Brisbane Olympic and Paralympic Games
CC Act	<i>Crime and Corruption Act 2001</i>
CCC	Crime and Corruption Commission
CCIQ	Chamber of Commerce & Industry Queensland
CEO	chief executive officer
CGC	City of Gold Coast
committee	Economics and Governance Committee
Corporation	Brisbane Organising Committee for the 2032 Olympic and Paralympic Games
DPC or department	Department of the Premier and Cabinet
EBSS P&C	East Brisbane State School Parents and Citizens' Association/Olympics Impact Group
FLP	fundamental legislative principles
FLP Notebook	Office of the Queensland Parliamentary Counsel, <i>Fundamental Legislative Principles: The OQPC Notebook</i> , January 2008
FOI	freedom of information
HRA	<i>Human Rights Act 2019</i>
ICCPR	International Covenant on Civil and Political Rights
IOC	International Olympic Committee
IPC	International Paralympic Committee
LSA	<i>Legislative Standards Act 1992</i>

NGO	non-government organisation
NSW	New South Wales
OHC	Olympic Host Contract
OQPC	Office of the Queensland Parliamentary Counsel
POQA	<i>Parliament of Queensland Act 2001</i>
Premier	Hon Anastacia Palaszczuk MP, Premier and Minister for the Olympics
QIPP	<i>Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy</i>
QPP	<i>Queensland Procurement Policy</i>
Review Report	Department of Justice and Attorney-General, <i>Report on the Review of the Right to Information Act 2009 and Information Privacy Act 2009</i> , October 2017
RTI Act	<i>Right to Information Act 2009</i>
SOCOG Act	<i>Sydney Organising Committee for the Olympic Games Act 1993</i> (NSW)
Solomon Report	Freedom of Information Independent Review Panel, <i>The Right to Information: Reviewing Queensland's Freedom of Information Act – The report by the FOI Independent Review Panel</i> , June 2008
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)
SWDA	Sporting Wheelies & Disabled Association
UN	United Nations
UNHRC	United Nations Human Rights Committee
WECA	West End Community Association

All Acts are Queensland Acts unless otherwise specified.

## Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Brisbane Olympic and Paralympic Games Arrangements Bill 2021.

The committee's task was to examine the proposals set out in the Bill and determine whether to recommend the Bill be passed, including by receiving advice and technical assistance from departmental officials, welcoming input from stakeholders and the broader public through submissions and hearing evidence, and considering other available information to support the committee in its deliberations.

In discharging these responsibilities, the committee also examined the Bill for compatibility with human rights, in accordance with the *Human Rights Act 2019*, and considered the application of fundamental legislative principles – that is, whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank the Department of the Premier and Cabinet and our Parliamentary Service staff for their assistance with the committee's inquiry. I commend this report to the House.



Linus Power MP

Chair

## Recommendations

### **Recommendation 1** **2**

The committee recommends the Brisbane Olympic and Paralympic Games Arrangements Bill 2021 be passed.

### **Recommendation 2** **13**

The committee recommends that the Premier and Minister for the Olympics further explain the scope of clauses 9 and 10 of the Bill and outline any broader legislative recognition of the importance of an inclusive and consultative approach to delivering the Brisbane 2032 Games, during the Second Reading Debate on the Bill.

### **Recommendation 3** **30**

The committee recommends that the Premier and Minister for the Olympics encourage the Board of the Corporation to engage with and provide a voice to those affected by its Games infrastructure planning and decisions through commissions, with a view to ensuring that development associated with the Games is achieved in a community-focused, forward-thinking manner that will support the present and future need of local families, businesses and the wider community.

### **Recommendation 4** **34**

The committee recommends that the Premier and Minister for the Olympics clarify the operation of clause 40(3) of the Bill, and why the declaration that the directors present constitute a quorum for making a decision in respect of subsection 1(b) and not (1) in its entirety.

### **Recommendation 5** **38**

The committee recommends that the Department of the Premier and Cabinet continue to engage with the Australian Olympic Committee and International Olympic Committee to ensure that the Corporation and its Board are supported by a transparent and accountable legislative framework that appropriately balances the need for confidentiality of sensitive information with mechanisms for access to information in the public interest.

### **Recommendation 6** **40**

The committee recommends that the Premier and Minister for the Olympics undertake to further engage with the Commonwealth Government regarding the necessity of retaining clause 8(2), and advise the Assembly of any further advice received as to the grounds for its inclusion.

### **Recommendation 7** **43**

The committee recommends that the Premier and Minister for the Olympics consider amending the Bill to include a provision to require the destruction of criminal history information after it is no longer needed.



## 1 Introduction

### 1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* (POQA) and Standing Rules and Orders of the Legislative Assembly (Standing Orders).<sup>1</sup>

The committee's primary areas of responsibility are:

- Premier and Cabinet and Olympic and Paralympic Games
- Treasury, Trade and Investment
- Tourism, Innovation and Sport.<sup>2</sup>

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation, the application of fundamental legislative principles (FLPs), and the compatibility of the legislation with the *Human Rights Act 2019* (HRA).<sup>3</sup>

### 1.2 Inquiry process

The Brisbane Olympic and Paralympic Games Arrangements Bill 2021 (Bill) was introduced into the Legislative Assembly on 27 October 2021 by the Hon Anastacia Palaszczuk MP, Premier and Minister for the Olympics (Premier). On the introduction of the Bill, the Assembly agreed to a motion that the Bill be declared an urgent bill<sup>4</sup> and referred to the committee for expedited consideration and report by 26 November 2021.<sup>5</sup>

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 21 submissions<sup>6</sup> (a list of submitters is provided at **Appendix A**)
- received a written briefing on the Bill from the Department of the Premier and Cabinet (DPC or department), prior to a briefing from officials from the department's 2032 Taskforce on 4 November 2021 (a list of the officials who appeared at the briefing is provided at **Appendix B**)
- requested and received written advice from the department on issues raised in submissions
- held a public hearing with stakeholders on 15 November 2021 (a list of the witnesses who participated in the hearing is provided at **Appendix C**).

The submissions, correspondence from the department, and transcripts of the briefing and hearing are available on the committee's inquiry webpage.<sup>7</sup>

<sup>1</sup> *Parliament of Queensland Act 2001* (POQA), s 88; Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

<sup>2</sup> Standing Orders, schedule 6.

<sup>3</sup> POQA, s 93; *Human Rights Act 2019* (HRA), s 39.

<sup>4</sup> The Bill was declared urgent under Standing Order 137, which provides for bills to be declared urgent and be subject to expedited passage through the various stages of parliamentary consideration. This includes providing, under SO 137(1), for the House to 'refer an urgent Bill to a portfolio committee to report to the House for a period of less than 6 weeks'.

<sup>5</sup> Queensland Parliament, Record of Proceedings, 27 October 2021, p 3290.

<sup>6</sup> The committee issued its call for submissions on 28 October 2021 and required submissions to be provided by 12pm, 9 November 2021. To publicise the inquiry and call for submissions, the committee contacted over 1,100 email subscribers and 200 identified stakeholder organisations and individuals, as well as publishing inquiry information on its webpage and issuing a media release and social media posts.

<sup>7</sup> <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=167&id=4126>

### 1.3 Policy objectives of the Bill

The primary objectives of the Bill are to:

- establish the organising committee for the Brisbane 2032 Olympic and Paralympic Games (Brisbane 2032 Games) to undertake the organisation, conduct, promotion and commercial and financial management of the games
- establish a board of directors to ensure the organising committee performs its functions in a proper, effective and efficient way.<sup>8</sup>

### 1.4 Government consultation on the Bill

On introducing the Bill, the Premier advised that the proposed legislation ‘was prepared in close consultation with our games partners’ using a ‘collaborative approach’.<sup>9</sup>

As part of the legislative development process, in September 2021, a consultation draft of the Bill was shared with ‘the Australian Government, Brisbane City Council, City of Gold Coast, Sunshine Coast Council, Council of Mayors South East Queensland, Australian Olympic Committee and Paralympics Australia’.<sup>10</sup> Each of these stakeholders was invited to provide written comment on the draft Bill, with several meetings also held to discuss the provided feedback.<sup>11</sup> Additionally, the draft Bill was provided to the International Olympic Committee (IOC) for endorsement, ‘as required under the OHC’.<sup>12</sup>

The explanatory notes advise that a number of changes were made to the Bill in response to feedback provided through this consultation process, including in relation to the membership of the board of directors and regarding the organising committee’s handling of confidential and personal information.<sup>13</sup>

DPC also confirmed that at the conclusion of the department’s consultation with games partners, ‘the International Olympic Committee provided their support for the bill that is now before the committee’.<sup>14</sup>

### 1.5 Should the Bill be passed?

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

#### **Recommendation 1**

The committee recommends the Brisbane Olympic and Paralympic Games Arrangements Bill 2021 be passed.

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<sup>8</sup> Department of the Premier and Cabinet (DPC), correspondence, 4 November 2021, p1; explanatory notes, p 1.

<sup>9</sup> Hon Anastacia Palaszczuk MP, Premier and Minister for the Olympics (Premier), Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>10</sup> Explanatory notes, p 9.

<sup>11</sup> Kerry Peterson, Deputy Director-General, 2032 Taskforce, DPC, public briefing transcript, Brisbane, 4 November 2021, p 3.

<sup>12</sup> Explanatory notes, p 9.

<sup>13</sup> Explanatory notes, pp 9-10. The notes also acknowledge certain other suggested changes which were not incorporated in the final Bill, including in respect of board membership and the terms of appointment of board members, and proposed borrowing and investment powers for the organising committee (Explanatory notes, p 10). See also the discussion of the proposed and accepted changes during the public briefing: Public briefing transcript, 4 November 2021, Brisbane, p 9.

<sup>14</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 3.

## 2 Background

On 21 July 2021, Brisbane was elected as host of the 2032 Olympic and Paralympic Games by a majority of IOC members at the 138th IOC session in Tokyo, Japan.<sup>15</sup> On the same day, the Premier, the Lord Mayor of the Brisbane City Council (BCC), and the President of the Australian Olympic Committee (AOC) executed the Olympic Host Contract (OHC) with the IOC.<sup>16</sup>

The terms of the OHC require the hosts to form an organising committee as an entity within 5 months following the execution of the OHC – that is, by 21 December 2021, unless a later date is agreed to by all signatories of the OHC.<sup>17</sup>

Established for every Olympic and Paralympic games, organising committees coordinate operational games matters ‘such as accommodation; transportation for athletes, officials and media personnel; operation of venues, facilities and the sports program; the torch relay ...; the opening and closing ceremonies; and the games ticketing program’.<sup>18</sup>

The OHC for the Brisbane 2032 Games requires the organising committee to be ‘endowed with legal personality under the laws of the hosts’ country and in a manner providing for maximum efficiency with respect to its operations and its rights and obligations under the OHC’,<sup>19</sup> and also mandates that:

- persons holding certain positions (for example with the IOC, AOC, Paralympics Australia and the International Paralympic Committee) be appointed to the highest decision-making body of the organising committee;
- the organising committee apply a policy of equal remuneration of men and women and the composition of the organising committee’s highest executive body reflect fair representation of men and women; and
- the organising committee not be subjected to or impacted by any direct or indirect taxes due in the Host Country in connection with any payment or other contribution made to the organising committee by the IOC or IOC Controlled Entities.<sup>20</sup>

The Queensland Government, in determining a model for the organising committee with regard to these requirements, considered previous governance models adopted by former games hosts, including for the Sydney 2000 and London 2012 Olympic and Paralympic Games, and for the Gold Coast 2018 Commonwealth Games.<sup>21</sup>

Once a model for a statutory body was identified, the government prepared draft legislation which, while ‘specific to Queensland’, is:

... largely consistent with the SOCOG Act [*Sydney Organising Committee for the Olympic Games Act 1993* (NSW)], which established a board of directors to manage and control the affairs of the Sydney Organising Committee for the Olympic Games.<sup>22</sup>

According to DPC, the Bill’s provision for the establishment of the organising committee and managerial board of directors for the Brisbane 2032 Games represents ‘a very important first step’ in delivering on the Queensland Government’s commitments under the OHC and ‘laying the foundations to deliver a successful Olympic and Paralympic Games in 2032’.<sup>23</sup>

<sup>15</sup> Explanatory notes, p 1.

<sup>16</sup> Explanatory notes, p 1.

<sup>17</sup> DPC, correspondence, 3 November 2021, p 1.

<sup>18</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>19</sup> DPC, correspondence, 3 November 2021, p 1.

<sup>20</sup> DPC, correspondence, 3 November 2021, p 1.

<sup>21</sup> Explanatory notes, p 3.

<sup>22</sup> Explanatory notes, p 10.

<sup>23</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 1.

The Premier, in similarly describing the Bill as ‘solidifying’ the Games partnership recognised under the OHC,<sup>24</sup> also cited the benefits of moving early to capitalise on ‘an unprecedented 11-year planning runway ... with the formation of the organising committee’.<sup>25</sup> In this respect, the Premier emphasised:

Hosting the 2032 Olympic and Paralympic Games has never been about a few weeks of competition. It is about the decades of investment, the decades of growth and the decades of opportunity for our great state of Queensland.<sup>26</sup>

DPC also advised of the anticipated benefits of the Brisbane 2032 Games:

Hosting the games is a transformational opportunity that will unlock social, economic and environmental outcomes over a two-decade window for Queensland, including the regions.

An independent analysis by KPMG found the games could generate an estimated \$8.1 billion in benefits and 91,600 full-time equivalent job years for Queensland.<sup>27</sup>

## 2.1 Submitter commentary

Submitters to the inquiry made a broad range of suggestions in respect of various provisions of the Bill, which are canvassed in the relevant sections of chapter 3 of this report in which those provisions are examined. However, they also commented broadly on the potential benefits or otherwise of the Brisbane 2032 Games, including outlining a range of concerns about key Games infrastructure projects around the Gabba precinct and surrounding suburbs in particular,<sup>28</sup> and identifying significant opportunities and recommended priorities for any Games developments.

In terms of the costs of the Brisbane 2032 Games, the Australian Institute for Progress (AIP) pointed to research suggesting that since 1976, ‘the average overrun on Summer Olympics is 213 per cent and the median 120 per cent’, with ‘fat-tail, unquantifiable, and unpredictable risks ... meaning unpredictable cost overruns are almost guaranteed to occur’.<sup>29</sup>

Montreal (1976) had the worst result, with a 720 per cent increase over budget, resulting in a debt that took 30 years to repay. Rio (2016) was the next highest with 352 per cent.<sup>30</sup>

In respect of the Sydney 2000 Games in particular, submitter Amanda Addley noted that the Games ‘actually lost the equivalent of \$3.3 billion’.<sup>31</sup>

The Member for South Brisbane, Dr Amy MacMahon MP, also advised she had heard from many residents in her electorate ‘who are skeptical about the predicted economic benefits’ of the Games, reporting that in the 447 responses she received to a survey of local residents:

... over 100 survey respondents indicated they felt that the Games would be an excessive use of taxpayer money, and over 50 felt that money would be better spent elsewhere.<sup>32</sup>

Whilst acknowledging these historical examples and concerns, Kerry Peterson, Deputy Director-General of DPC’s 2032 Taskforce, sought to highlight that:

Some recent organising committees actually have operated and made a small profit which has been redistributed through the IOC to the sporting bodies. In a few recent games, they actually have got to the end with a positive outcome. That is something that we ... definitely have to work towards.<sup>33</sup>

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<sup>24</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>25</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>26</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>27</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 1.

<sup>28</sup> See, for example, submissions 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 16, 18.

<sup>29</sup> Australian Institute of Progress (AIP), submission 20, p 2.

<sup>30</sup> AIP, submission 20, p 2.

<sup>31</sup> Public hearing transcript, Brisbane, 15 November 2021, p 5.

<sup>32</sup> Submission 18, p 8.

<sup>33</sup> Public briefing transcript, Brisbane, 4 November 2021, p 7.

Accordingly, and as acknowledged by the AIP, the challenge for the organising committee will be ‘to minimise the risk to the federal, state and local governments who are participating in hosting the games, as well as to ensure, as much as possible, that there is some positive economic or social pay-off from the games’.<sup>34</sup>

Beyond addressing particular aspects of local infrastructure developments,<sup>35</sup> submitters advocated for a range of actions and development priorities they considered would help to deliver on the promise of the games and provide long-term economic and social benefits for Queenslanders. In particular, it was submitted that:

- the government should seek to reduce the Games’ environmental footprint as much as possible with a focus on climate-aware development and infrastructure,<sup>36</sup> and uphold its commitment to hosting a carbon-neutral Games<sup>37</sup>
- public and active transport (including cycling infrastructure), together with pedestrian infrastructure, should be of a world-class standard and at the forefront of planning considerations<sup>38</sup>
- all new infrastructure should be publicly owned and for the ongoing use of the public beyond the Olympics,<sup>39</sup> including accommodation and green space (eg with the athletes’ village, for example, transformed into long-term publicly-owned housing, ‘given the already established negative impact the Games will have on housing affordability’)<sup>40</sup>
- sporting facilities should be subject to facility legacy plans which ensure they are made with the intended long term use by the community (including local schools) as a priority, rather than the Games<sup>41</sup>
- any developments should be in accordance with local planning documents<sup>42</sup>
- heritage sites within Games precincts should be protected and restored in line with their original condition<sup>43</sup>
- disruption to traffic and local amenities both during construction and the Games themselves should be minimised as far as possible,<sup>44</sup> with consideration given to possible concessions or compensation for residents of affected communities<sup>45</sup>
- communities should be fully consulted and provided with transparent information regarding all infrastructure, building applications and other works to be carried out, with appropriate community engagement mechanisms established<sup>46</sup>

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<sup>34</sup> AIP, submission 20, p 1.

<sup>35</sup> See, for example, Amanda Addley, submission 1, p 1; T Wilson Brown, submission 5, p 1; East Brisbane State School Parents and Citizens' Association/Olympics Impact Group (EBSS P&C), submission 12, p 1.

<sup>36</sup> Kyle Weise, submission 6, p 1.

<sup>37</sup> Dr Amy MacMahon MP, submission 18, p 3.

<sup>38</sup> See, for example, Amanda Addley, submission 1, p 1; Kyle Weise, submission 6, p 1; Jason Fernandez, submission 9, p 3; Dr Amy MacMahon MP, submission 18, p 11.

<sup>39</sup> Amanda Addley, submission 1, p 1; Jason Fernandez, submission 9, p 3; Dr Amy MacMahon MP, submission 18, p 13.

<sup>40</sup> Dr Amy MacMahon MP, submission 18, p 13.

<sup>41</sup> Jason Fernandez, submission 9, p 3.

<sup>42</sup> Amanda Addley, submission 1, p 1; Jason Fernandez, submission 9, p 3.

<sup>43</sup> Amanda Addley, submission 1, p 1.

<sup>44</sup> Natalie Tse, submission 2, p 1.

<sup>45</sup> Amanda Addley, submission 1, p 2.

<sup>46</sup> Amanda Addley, submission 1, p 1; Natalie Tse, submission 2, p 1; Jason Fernandez, submission 9, p 2.

- appropriate initiatives should be considered and engaged to address potential housing affordability issues in key Games precincts (eg requiring a fair level of affordable housing to be set aside in residential building construction and considering caps on rents and rates to ensure local residents are not forced out of their neighbourhood)<sup>47</sup>
- a worker transition plan should be established to support those engaged in the development of Games infrastructure to access ongoing meaningful employment in public projects after the Games.<sup>48</sup>

While these matters go somewhat beyond the scope of the Bill and accordingly are not examined in detail in this report, they speak directly to the task the organising committee will face, the types of issues they will be called to address, and the values community members see as critical to delivering a successful Games that brings long-term benefits to the people of Queensland.

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<sup>47</sup> Amanda Addley, submission 1, p 1; Dr Amy MacMahon MP, submission 18, pp 12.

<sup>48</sup> Jason Fernandez, submission 9, p 3.

### 3 Examination of the Bill

The Bill proposes to:

- establish the organising committee for the Brisbane 2032 Games as a statutory body (Corporation)<sup>49</sup> including setting out:
  - the functions and powers of the Corporation<sup>50</sup>
  - the financial arrangements underpinning the Corporation's delivery of the Brisbane 2023 Games,<sup>51</sup> and
  - a power of ministerial direction for the Premier in respect of the Corporation's performance of its functions or exercise of powers,<sup>52</sup> and
- establish a board of directors as the Corporation's decision-making body (Board),<sup>53</sup> including setting out:
  - the functions and powers of the Board<sup>54</sup>
  - the composition of the Board and processes for appointment<sup>55</sup>
  - provisions for the management of conflicts of interest of Board members, including disclosure of interest arrangements,<sup>56</sup> and
  - a power for the Board to establish committees and commissions to assist it in the performance of its functions.<sup>57</sup>

In addition, the Bill:

- provides an exemption from the *Right to Information Act 2009* (RTI Act) in respect of information that is confidential information communicated in confidence by or for the AOC or IOC<sup>58</sup>
- excludes board members who are Commonwealth parliamentarians from the application of the *Crime and Conduct Act 2001* (CC Act).<sup>59</sup>

Each of these key provisions is examined in the sections of this chapter that follow.

#### 3.1 Establishment of the Corporation, its functions and powers

##### 3.1.1 Corporation form and establishment

The Bill proposes to establish the Corporation as a statutory body as defined by the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*.<sup>60</sup> The Corporation would also be considered a unit of public administration under the CC Act.<sup>61</sup>

<sup>49</sup> Brisbane Olympic and Paralympic Games Arrangements Bill 2021 (Bill), cls 6-13.

<sup>50</sup> Bill, cl 9.

<sup>51</sup> Bill, cls 10(1), 53-54.

<sup>52</sup> Bill, cl 55.

<sup>53</sup> Bill, cl 14.

<sup>54</sup> Bill, cls 15-16.

<sup>55</sup> Bill, cls 17-27.

<sup>56</sup> Bill, cls 37- 44.

<sup>57</sup> Bill, cls 45-47.

<sup>58</sup> Bill, cl 66 (inserting s 13A into sch 1 of the *Right to Information Act 2009*).

<sup>59</sup> Bill, cl 8(2).

<sup>60</sup> Bill, cl 8(1); explanatory notes, p 2.

<sup>61</sup> Bill, cl 8.

DPC advised that as the OHC does not mandate any particular legal form for the organising committee (beyond requiring certain conditions are met),<sup>62</sup> an assessment was undertaken in accordance with the Queensland Government's Public Interest Map Policy, to 'determine whether the Corporation should be a departmental or non-departmental body, the organisational form it should take and how it should govern and be governed'.<sup>63</sup>

In addition to examining governance models adopted by former games hosts, key factors considered during the assessment process included 'the public interest in successfully delivering the Brisbane 2032 Games, the level of organisational capability and independence required by the Corporation to deliver its functions, and the financial risks to the state as sole underwriter of the Corporation under the OHC'.<sup>64</sup>

The explanatory notes advise that the Queensland Government ultimately considered it was not appropriate for the Corporation's functions to be undertaken by a government department 'as this arrangement could inhibit the Corporation from acting freely in a commercial manner to generate revenue and independently manage the IOC's financial contribution to its operations'.<sup>65</sup>

The establishment of the Corporation as a statutory body, rather, was considered preferable as:

- it enables the Corporation to operate at arms-length from the State with control over its own funds ...
- the structure is flexible enough to accommodate the bespoke design of the Corporation (with time-limited objectives and a finite life), and the ability to set out defined functions in its enabling legislation and require observance with the key requirements of the OHC;
- it will be subject to the public sector accountability regime rather than the *Corporations Act 2001* (Cwlth), which is considered appropriate given the public money and public interest involved in successfully delivering Brisbane 2032; and
- it allows for the establishment of the Board with appropriate representation from key Games partners.<sup>66</sup>

On introducing the Bill, the Premier stated that establishing the Corporation as a statutory body under Queensland legislation would 'provide the organisation with the necessary operational and financial independence and flexibility to achieve its objectives' and ensure 'it is subject to an appropriate level of public accountability'.<sup>67</sup>

While the Corporation would be governed by the Board, as its decision making body (see chapter 3.2 of this report), the Bill provides for the appointment of a chief executive officer (CEO)<sup>68</sup> who would be 'responsible for the day-to-day administration of the corporation's operations in accordance with the priorities set by the board'.<sup>69</sup> In addition, the Corporation 'may employ other staff it considers appropriate for performing its functions'.<sup>70</sup>

On the day the Corporation is dissolved, the state becomes the successor in law of the Corporation.<sup>71</sup> At that time, the 'assets, rights, duties and liabilities of the corporation become assets, rights, duties and liabilities of the State',<sup>72</sup> and the state would take over any contract, lease, other instrument or current legal proceeding to which the Corporation was a party before the dissolution day.<sup>73</sup>

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<sup>62</sup> DPC, correspondence, 3 November 2021, p 2.

<sup>63</sup> DPC, correspondence, 3 November 2021, p 2.

<sup>64</sup> DPC, correspondence, 3 November 2021, p 2.

<sup>65</sup> Explanatory notes, p 3.

<sup>66</sup> DPC, correspondence, 3 November 2021, p 2.

<sup>67</sup> Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>68</sup> Bill, cl 48.

<sup>69</sup> Bill, cl 48(5).

<sup>70</sup> Bill, cl 51.

<sup>71</sup> Bill, cl 53(2).

<sup>72</sup> Bill, cl 53(3).

<sup>73</sup> Bill, cl 53(3).



### 3.1.2 Corporation functions

The main function of the Corporation, as set out in the Bill, would be to ‘undertake and facilitate the organisation, conduct, promotion and commercial and financial management of the 2032 Olympic and Paralympic Games’.<sup>74</sup> Without limiting the activities that this ‘main function’ may encompass, the Bill lists each of the following as functions of the Corporation, which may be performed inside or outside of Queensland:

- become a party to the host contract
- comply with the Corporation’s obligations under the host contract
- organise accommodation and transportation for athletes, officials and media personnel
- manage the preparation and operation of venues and facilities for the sports program
- organise events and ceremonies such as the Olympic and Paralympic torch relays, the opening and closing ceremonies and the cultural Olympiad
- manage the ticketing program
- recruit, retain and organise volunteers
- establish a marketing program in consultation with the IOC and the AOC
- support the IOC and the host broadcaster in relation to broadcasting and make arrangements for the provision of other information services
- other functions given to it by legislation, including functions set out in another Act or ‘any other function, related to its main function’,<sup>75</sup> which is prescribed by regulation.<sup>76</sup>

The Bill also establishes requirements for the Corporation in performing its functions, including requiring it to:<sup>77</sup>

- have regard to the available financial resources of the Corporation and the state for the Brisbane 2032 Games<sup>78</sup>
- use its best endeavours to avoid creating liabilities that will not be, or are likely not to have been, satisfied before the Corporation is dissolved<sup>79</sup>
- have regard to, and comply with, any relevant requirements in the following documents:
  - the Olympic Charter
  - the *IPC handbook* published by the International Paralympic Committee (IPC)
  - the *World anti-doping code* published by the World Anti-Doping Agency<sup>80</sup>
  - the *Athletes’ rights and responsibilities declaration* developed by the Athletes’ Commission of the IOC
  - the Olympic movement code on the prevention of the manipulation of competitions published by the IOC,<sup>81</sup> and

<sup>74</sup> Bill, cl 9(1).

<sup>75</sup> Bill, cl 9(3).

<sup>76</sup> Bill, cls 9(2 and 3), 12.

<sup>77</sup> Bill, cl 10. The Queensland Government’s policy about procurement does not apply to the extent it is inconsistent with the Olympic Host Contract.

<sup>78</sup> Bill, cl 10(1)(a).

<sup>79</sup> Bill, cl 10(1)(c).

<sup>80</sup> World Anti-Doping Agency means the not-for-profit foundation of that name established in 1999 in Lausanne, Switzerland; Bill, cl 10(3).

<sup>81</sup> Bill, cl 10(b).

- ensure goods and services are procured in accordance with the Queensland Government’s policy about procurement, including procurement from Indigenous businesses, except where the policy is inconsistent with the OHC.<sup>82</sup>

In respect of the procurement requirement, the Premier explained on introducing the Bill that the Corporation would ‘take a Buy Queensland approach’ in accordance with the *Queensland Procurement Policy* (QPP),<sup>83</sup> the underpinning principles of which are as follows:

- putting Queenslanders first when securing value for money – recognising that value for money is more than price paid
- working together to achieve outcomes – providing a flexible procurement framework based on an agency-led procurement model
- ... focusing on a category management approach with a strong governance framework and integrated planning<sup>84</sup>
- building leaders in procurement practice — professionalising the procurement discipline and building procurement capability
- ... ensuring procurement is undertaken with integrity, that probity is appropriately managed, and that accountability for outcomes is maintained... providing the procurement framework to advance economic, environmental and social objectives.<sup>85</sup>

Although the *Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy* (QIPP) does not normally apply to Queensland statutory bodies,<sup>86</sup> as noted above, the Bill’s requirement for the Corporation to comply with the Queensland Government’s procurement policy includes procurement from Indigenous businesses.<sup>87</sup> The QIPP defines an Indigenous business as one ‘that is at least 50 per cent owned by an Aboriginal person or a Torres Strait Islander person’ and provides a framework for procurement from Indigenous businesses to be 3% of the value of government contracts as at 2022.<sup>88</sup>

### 3.1.2.1 *Submitter comments*

In its submission to the inquiry, the Sporting Wheelies and Disabled Association (SWDA) recommended that the Bill be amended to increase the functions of the Corporation to include supporting ‘able bodied athletes and athletes with disabilities to access wellbeing services before, during and after the Games’.<sup>89</sup>

In addition, noting that the ‘Paralympics are organised as a separate event’, the SWDA recommended that ‘specific reference is made to the Paralympic organising bodies in section 9 (2)(h) and section 9(2)(i) which discuss the support function of the [Corporation] in the areas of marketing and broadcasting’.<sup>90</sup> The SWDA saw such a reference as supporting the equal visibility of members of the disabled community, and proactively working to limit unconscious bias in the Bill.<sup>91</sup>

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<sup>82</sup> Bill, cl 10(1)(d) and (2).

<sup>83</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>84</sup> Queensland Government procurement is organised into 6 categories of spend, to enable category managers to leverage the procurement spend of the Queensland Government: building, construction and maintenance; general goods and services; information and communication technology; medical, social services; and transport infrastructure services.

<sup>85</sup> Queensland Government, *Queensland Procurement Policy 2021*, April 2021, p 1, [www.forgov.qld.gov.au/\\_\\_data/assets/pdf\\_file/0034/187297/qldprocurementpolicy2021.pdf](http://www.forgov.qld.gov.au/__data/assets/pdf_file/0034/187297/qldprocurementpolicy2021.pdf).

<sup>86</sup> Queensland Government, *Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy*, September 2017, p 2, [www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/business-economic-development/qipp/queensland-indigenous-procurement-policy.pdf](http://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/business-economic-development/qipp/queensland-indigenous-procurement-policy.pdf).

<sup>87</sup> Bill, cl 10.

<sup>88</sup> Queensland Government, *Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy*, factsheet, p 1, [www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/business-economic-development/qipp/factsheet-general.pdf](http://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/business-economic-development/qipp/factsheet-general.pdf).

<sup>89</sup> Submission 7, p 2.

<sup>90</sup> Submission 7, p 3.

<sup>91</sup> Submission 7, pp 2-3.

Regarding the requirements for the Corporation in performing its functions, further, and as noted in chapter 2.1 of this report, a number of submitters also identified a range of key principles and values that they considered should guide the Corporation's work.

In terms of the specific provisions of the overarching performance requirements set out in the Bill (clause 10), the East Brisbane State School Parents and Citizens' Association/Olympics Impact Group (EBSS P&C) noted that clause 10 does not instruct the Corporation 'to have regard for the schools, community organisations, business, or residents of Brisbane that may be impacted by preparations for, or hosting of, the Olympic Games'.<sup>92</sup> The EBSS P&C asserted that a requirement for consultation and representation of community views should be 'specifically written in',<sup>93</sup> as opposed to engaging 'non-committal wording'<sup>94</sup> which leaves it up to the Board of the Corporation to 'decide themselves whether or not they want to have regard to or consult with the community'.<sup>95</sup> EBSS P&C member Professor Dan Angus stated in this regard that the Bill offered an opportunity to explicitly recognise the importance of engaging south east-Queensland's people in a way that would be consistent with the 'New Norm' adopted by the IOC,<sup>96</sup> which seeks to reimagine how games are delivered:

A legacy of Sydney 2000 was the mobilisation of 45,000 volunteers. Sydney's success was born from the involvement and participation of its local community. Having lived in the Woolloongabba area through the Brisbane floods, I have seen how this community can rally and rise to an occasion. To make this the best Olympics in history, we need our community to be actively involved in shaping the games through direct representation. Rather than our energy being spent protecting our community from the wrecking balls, we would much rather be rallying our community to help make the Brisbane Olympics the best games in living memory. The best way to achieve this positive vision is by ensuring the community is involved in the planning process in the lead up to the 2032 games.

... I think that is what we are asking for—to really think carefully around how these games can be different and can take on board the vision of that new norm.<sup>97</sup>

The SWDA also called for an extension of the clause 10 requirements, to mandate that the Corporation 'consider inclusion in matters of legacy planning, infrastructure planning and services delivery', with such a requirement extending to 'accessibility of facilities and inclusion in employment opportunities'.<sup>98</sup> Citing the importance of considering not only elite athletes but 'also the many thousands of people throughout Queensland who attempt to access sport and often find it very, very difficult to do so, SWDA CEO Amanda Mather explained:

... just because a building might meet Australian national standards in terms of code, in terms of accessibility, that does not necessarily make it particularly accessible from a sport perspective and particularly accessible from a person with a disability playing sport perspective. Things like the availability of disability facilities, the distance it is from the car park to the venue, if there are any hills to navigate, that sort of thing. Although it might meet code, there is an unintentional bias in the fact that it is actually still difficult for people to access these venues. One of the things that the University of Queensland recently did a study on was the time that it takes for a para athlete to get from the car park to the swimming pool in the case of swimming and what they determined was it actually takes 13 per cent longer. That 13 per cent is made up of all of those things that are barriers to entry for those people that just makes it more difficult to be able to access. When you multiply that by the number of times athletes need to train, that 13 per cent adds up to a significant period of time and can make that access more difficult. I think that there is a need to look beyond just making things meet code and meet standard to actually looking at what is best practice and how can we best service people with a disability to

<sup>92</sup> Submission 12, p 1.

<sup>93</sup> Nicola Middleton, EBSS P&C, public hearing transcript, Brisbane, 15 November 2021, p 4.

<sup>94</sup> Professor Dan Angus, EBSS P&C, public hearing transcript, Brisbane, 15 November 2021, p 5.

<sup>95</sup> Nicola Middleton, EBSS P&C, public hearing transcript, Brisbane, 15 November 2021, p 3.

<sup>96</sup> The New Norm is a set of 118 reforms intended to reimagine the value proposition of organising the Games by providing cities with 'increased flexibility in designing the Games to meet long-term development goals, and ensure that cities seeking to host the Olympic Games receive more support and assistance from the Olympic Movement'. See International Olympic Committee (IOC), *Olympic Agenda 2020, Olympic Games: the New Norm*, Report by the Executive Steering Committee for Olympic Games Delivery, February 2018, p 3.

<sup>97</sup> Professor Dan Angus, EBSS P&C, public hearing transcript, Brisbane, 15 November 2021, pp 4, 5.

<sup>98</sup> Submission 7, p 2.

make our games venues and all of the activities leading up to these games more accessible for people with a disability.

...

It is important to consider the nature of the high-support needs athletes as well.<sup>99</sup>

Further, the SWDA also recommended an amendment to extend the proposed list of documents the Corporation is required to have regard to and comply with, to include 'specific mention of guidance on working with people with disabilities'.<sup>100</sup>

The Chamber of Commerce & Industry Queensland (CCIQ), whilst complimentary of the Bill's formal connection of the Corporation's functions with the Queensland Government's procurement policy, also recommended 'the addition of an explicit mention of small and medium enterprises' in that subsection of the Bill 'alongside "Indigenous businesses"'.<sup>101</sup> In this respect the CCIQ submitted that it believes:

... the 2032 Brisbane Olympic and Paralympic Games provide a once-in-a generation opportunity to reform the Queensland Government's procurement policy to better support the participation of Small and Medium Enterprises.<sup>102</sup>

### 3.1.2.2 Departmental response

In response to the SWDA's suggestion that the functions of the Corporation be extended to support athlete access to wellbeing services before, during, and following the games, DPC emphasised that the Corporation's main function, as set out in the Bill, is 'to undertake and facilitate the organisation, conduct, promotion and commercial and financial management' of the Brisbane 2032 Games'.<sup>103</sup> The provision of support for athletes to access relevant support services, DPC advised, is generally the responsibility of the AOC and Paralympics Australia:

One of the Australian Olympic Committee's objectives under its constitution is to encourage and support measures relating to the medical care and health of athletes. Further, the Australian Institute of Sport's Mental Health Referral Network program offers independent and confidential mental health and wellbeing support to Olympic and Paralympic athletes.<sup>104</sup>

Regarding the SWDA's suggestion that the listed marketing and broadcasting functions of the Corporation be extended to make specific reference to Paralympic bodies in addition to the IOC and AOC, DPC advised:

Paralympics Australia was consulted on the Bill including the functions of the Corporation.

The Olympic Host Contract provides that the Corporation is equally responsible for the planning, organisation, financing and staging of both the Olympic and Paralympic Games and that "the planning of the Paralympic Games should be integrated from the early planning stages of the Games and included at all levels of the Corporation's organisation, including the governance and executive structures".<sup>105</sup>

In respect of the EBSS P&C and SWDA proposals for an expansion of the requirements for the Corporation in undertaking its functions, as set out in clause 10 of the Bill, DPC affirmed:

Clause 10 does not prohibit the Corporation from taking a variety of other matters into consideration in performance of its functions, such as impacts on the community of hosting the Brisbane 2032 Olympic and Paralympic Games (Brisbane 2032). It was not considered necessary or appropriate to include mandatory consultation requirements on the Corporation within the legislation.<sup>106</sup>

Further, addressing SWDA's proposed additional requirement that the Corporation consider inclusion in matters of legacy planning, infrastructure planning and services delivery, and proposed incorporation of

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<sup>99</sup> Public hearing transcript, Brisbane, 15 November 2021, pp 11-12.

<sup>100</sup> Submission 7, p 2.

<sup>101</sup> Submission 17, p 2.

<sup>102</sup> Submission 17, p 2.

<sup>103</sup> DPC, correspondence, 12 November 2021, p 6.

<sup>104</sup> DPC, correspondence, 12 November 2021, p 6.

<sup>105</sup> DPC, correspondence, 12 November 2021, p 7.

<sup>106</sup> DPC, correspondence, 12 November 2021, p 5.

guidance on working with people with disabilities in the list of documents to which the Corporation must have regard, DPC stated respectively:

- Clause 9(2)(b) requires the Corporation to comply with its obligations under the Olympic Host Contract. The Olympic Host Contract requires the Corporation to operate in conformity with and promote the principles of diversity, inclusion and gender equality in all of its activities related to the organisation of Brisbane 2032. This is arguably a stronger obligation than “considering” inclusion and it is not considered necessary to further legislate this requirement.

Clause 10(1)(b)(ii) requires the Corporation have regard to, and comply with any relevant requirements in, the IPC (International Paralympic Committee) Handbook. The IPC Handbook states that the Corporation “shall foster the widest possible community involvement into the planning, promotion, preparation and staging of the Paralympic Games, as a unique opportunity to enhance social inclusion, tolerance to diversity and active citizenship among its members.”<sup>107</sup>

- Upon establishment, the Board will be able to implement various policies and guidelines which could include guidance on working with people with disabilities. It is not considered appropriate to include this as a legislative requirement, which would necessitate reference to specific (and potentially multiple) guidance materials. The response to the IOC’s Future Host Questionnaire included a commitment to drive initiatives to inspire a more inclusive future Australian society. Brisbane 2032 will apply the 10+10+ year Games platform to existing national, Queensland and Brisbane strategies aimed at promoting greater inclusion, diversity and accessibility in sport and society.<sup>108</sup>

Finally, in response to the CCIQ’s calls for specific reference to support for small and medium enterprises in procurement requirement set out in the Bill, DPC advised:

Clause 10(1)(d) states that, in performing its functions, the Corporation must ensure goods and services are procured in accordance with the Queensland Government’s policy regarding procurement, including procurement from Indigenous businesses. One of the key principles of the Queensland Procurement Policy (QPP) is to ensure full, fair and reasonable opportunity for Queensland suppliers, including local suppliers and small and medium enterprises. The QPP also includes a target of sourcing at least 25% of procurement by value from Queensland small and medium enterprises, increasing to 30% by 30 June 2022.<sup>109</sup>

#### Committee comment

The committee notes the clarifying information provided by DPC. The committee also appreciates the importance of ensuring the Corporation’s functions, and the requirements for its performance of those functions, appropriately set the tone for the Corporation’s delivery of an inclusive Games with the potential to engage and deliver benefits to all Queenslanders.

The committee therefore recommends that the Premier further explain the intended scope of the provisions, and detail any other legislative means by which the values expressed by the SWDA and EBSS P&C might be expressed, during the Second Reading Debate on the Bill.

#### **Recommendation 2**

The committee recommends that the Premier and Minister for the Olympics further explain the scope of clauses 9 and 10 of the Bill and outline any broader legislative recognition of the importance of an inclusive and consultative approach to delivering the Brisbane 2032 Games, during the Second Reading Debate on the Bill.

<sup>107</sup> DPC, correspondence, 12 November 2021, p 6.

<sup>108</sup> DPC, correspondence, 12 November 2021, pp 6-7.

<sup>109</sup> DPC, correspondence, 12 November 2021, pp 7-8.

### 3.1.3 Financial arrangements

On introducing the Bill, the Premier advised that the Corporation 'will manage all of the obligations of planning and delivering the Brisbane 2032 Olympic and Paralympic Games at no cost to the taxpayer'.<sup>110</sup> The Premier explained:

Robust and detailed budgets have been prepared to achieve this which include significant contributions from the International Olympic Committee and private commercial revenue to ensure all activities associated with the organising committee are delivered on a cost-neutral basis.<sup>111</sup>

In addition to the 'significant contribution from the IOC',<sup>112</sup> the explanatory notes detail other budgeted sources of the Corporation's revenue including:

- ticketing and merchandise sales
- sponsorships
- banknote, coin or stamp programs.<sup>113</sup>

At the committee's public briefing on the Bill, DPC advised that documentation provided to the IOC in May 2020 detailed a budget for the Corporation of \$4.9 billion, with revenue forecast to equal expenditure.<sup>114</sup> Additionally, DPC advised:

Importantly, in the expenditure line item there is a contingency of 16 per cent, which we think is fairly healthy given the nature of the operational costs assumed by the [Corporation]. It was checked by the IOC as well, and they felt that, both on the revenue side and the expenditure side, it was sound.<sup>115</sup>

Under the OHC, the Queensland Government has guaranteed to underwrite any economic shortfall or loss of the Corporation.<sup>116</sup> Accordingly, as previously noted, on the day the Corporation is dissolved, the liabilities of the Corporation become liabilities of the state.<sup>117</sup>

To minimise the risk of outstanding liabilities being transferred to the state, the Bill provides that the Corporation must 'use its best endeavours to avoid creating liabilities that will not be, or are likely not to have been, satisfied before the corporation is dissolved ...'.<sup>118</sup>

In addition, DPC advised that 'the Bill includes a number of safeguards to manage the state's risks and obligations as the underwriter of the corporation', including:

... the corporation being responsible to a minister and subject to their direction ... there is also a requirement for certain board committees to have a Queensland government representative observer on those committees; and mandating that the corporation enter into a funding agreement with the Queensland government that includes certain reporting requirements.<sup>119</sup>

In regard to the mandated funding agreement, the Bill provides that the Corporation must enter into that agreement within 6 months of the Corporation's commencement.<sup>120</sup> The funding agreement must provide for the monitoring of the Corporation by the Minister, and, as previously noted, include reporting

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<sup>110</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>111</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>112</sup> Explanatory notes, p 3.

<sup>113</sup> Explanatory notes, p 3.

<sup>114</sup> Dr Clinton de Bruyn, Executive Director, Finance, Policy and Legal, 2032 Taskforce, DPC, public briefing transcript, Brisbane, 4 November 2021, p 7.

<sup>115</sup> Dr Clinton de Bruyn, DPC, public briefing transcript, Brisbane, 4 November 2021, p 7.

<sup>116</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 4; explanatory notes, p 3.

<sup>117</sup> Bill, cl 53(3).

<sup>118</sup> Bill, cl 10; explanatory notes, p 3.

<sup>119</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>120</sup> Bill, cl 54(1).

requirements.<sup>121</sup> The Corporation's obligations under the funding agreement would be in addition to those imposed on the Corporation as a statutory body by the *Financial Accountability Act 2009*, which include:

- ensuring its operations are carried out efficiently, effectively and economically
- establishing and maintaining appropriate systems of internal control and risk management
- providing an annual report, including financial statements, for tabling in the Parliament by the Minister.<sup>122</sup>

DPC also advised that the composition and structure of the Corporation's Board (examined in chapter 3.2 of this report), would be integral to ensuring the delivery of the Brisbane 2032 Games at no cost to taxpayers, and perhaps with the realisation of a profit, with DPC citing 'the importance of the diversity of the board and the skills of the board' and the Queensland Government's representation on the board and related finance committees to ensure they 'manage their revenue versus expenses' and 'get to the finish line on a cost-neutral basis'.<sup>123</sup>

In response to a question from the committee as to whether the Queensland Government had considered underwriting insurance to cover any outstanding debt from the Brisbane 2032 Games that may arise due to unforeseen circumstances, DPC advised:

... that is a consideration that will definitely be considered by the board. We did look into those types of insurances—cancellation insurance and worst scenario, Armageddon situations—for the Commonwealth Games. Insurance is something that definitely can be considered, taking into account what happened in Tokyo. It is a matter for the board. At this stage, it is not included in the legislation. That is not to say it would not be considered.<sup>124</sup>

Further, DPC also confirmed that the Corporation would not be able to borrow and invest without gaining the Treasurer's approval as required under the *Statutory Bodies Financial Arrangements Act 1982*, though DPC acknowledged that borrowing and investment powers were requested during the government's consultation on the Bill.<sup>125</sup> Addressing why this requested inclusion was not endorsed, DPC advised at the committee's public briefing: 'There is a process that we need to follow. We believe the corporation can still follow our standard government processes.'<sup>126</sup>

Noting that the Queensland Government may incur some initial and ongoing administrative costs 'in engaging and cooperating with the Corporation', the explanatory notes advise that those costs 'would be funded through existing Queensland Government resources to support the coordination of Brisbane 2032-related activities'.<sup>127</sup>

### 3.1.3.1 Submitter comments

As previously noted (see chapter 2.1 of this report), submitters expressed some concerns about the risk of a budgetary blowout associated with the Brisbane 2032 Games, noting historical challenges for games hosts in this respect.<sup>128</sup>

Noting the Bill's provision for the state to cover any outstanding liabilities, submitter Melissa Occhipinti sought reassurances as to the extent to which taxpayers could be provided with a guarantee that the event will be delivered within budget and they will not be 'left with an expensive hangover after the games'.<sup>129</sup>

<sup>121</sup> Bill, cl 54(2).

<sup>122</sup> *Financial Accountability Act 2009*, part 4, ss 60-64.

<sup>123</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 7.

<sup>124</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 7.

<sup>125</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 9; explanatory notes, p 10.

<sup>126</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 9.

<sup>127</sup> Explanatory notes, p 3.

<sup>128</sup> Dr Amy MacMahon MP, submission 18, pp 7-8; AIP, submission 20, p 2. See also Melissa Occhipinti, submission 8, p 1.

<sup>129</sup> Melissa Occhipinti, submission 8, p 1.

The Friends of Raymond Park, in addressing the Bill's provision for the state to cover any costs shortfall, submitted:

Given the body will receive at least **AUD\$5 billion** in funding for the 2032 Games (with the potential for this amount to later increase – the projected budget for the Olympics has already increased by 30% in one year), we insist on the need for transparency throughout this process to help secure a level of accountability for the people of Queensland.<sup>130</sup>

Submitter Amanda Addley submitted in this respect that such accountability could be provided through '[f]ull fiscal transparency with monthly reports on all public expenditure for all aspects relating to the Olympic Games and its associated activities whether involving private or public service contracts'.<sup>131</sup>

### 3.1.3.2 *Departmental response*

In response to submitter calls for a budgetary guarantee or legislative cap on the Brisbane 2032 Games budget, DPC emphasised that while the provision would ensure the state will be responsible for any potential financial shortfall of the Corporation, as is required under the OHC, the Bill:

- provides that in clause 10(c) that the Corporation must 'use its best endeavours to avoid creating liabilities that will not be, or are likely not to have been, satisfied before the Corporation is dissolved'<sup>132</sup>
- requires the Board to ensure the Corporation performs its functions, including its function in clause 10(c) in a proper, effective and efficient way.<sup>133</sup> (See further discussion of the Board in chapter 3.2.)

DPC also sought to highlight the 'additional safeguards' incorporated in the Bill to manage the state's risks and obligations as underwriter of the Corporation:

... such as the Corporation being responsible to a Minister and subject to their direction; a requirement for certain Board Committees to have a Queensland Government observer; and mandating that the Corporation enter into a Funding Agreement with the Queensland Government that includes reporting requirements.<sup>134</sup>

In response to submitter comments regarding the importance of fiscal accountability and transparency, including Ms Addley's proposal for regular financial reporting, DPC advised:

Section 9 of the *Financial and Performance Management Standard 2019* (subordinate legislation made under the FA Act) requires that a statutory body must be managed in accordance with the Queensland Government Performance Management Framework Policy (PMF). A key element of the PMF is that public reporting occur in a fair and balanced way, to facilitate accountability. The Corporation will need to publicly report its performance in a number of ways under the PMF, with a key mandatory requirement being the preparation of audited annual reports – required to be tabled in the Legislative Assembly each financial year.<sup>135</sup>

Further, DPC stated:

Another key mechanism for the Corporation to report on performance is in the suite of budget papers published annually, specifically Budget Paper 5 – Service Delivery Statements (SDS). While largely a forward looking document, the SDS also includes information on the non-financial performance during the preceding 12 months – specifically results achieved against targets set in the previous year's SDS.<sup>136</sup>

### 3.1.4 **Ministerial directions**

The Bill provides that the Minister would be permitted to give the Corporation a written direction about the performance of its functions or the exercise of its powers.<sup>137</sup> The Minister may give such a direction only if

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<sup>130</sup> Friends of Raymond Park, submission 13, p 1. Bold in original.

<sup>131</sup> Submission 1, p 1.

<sup>132</sup> DPC, correspondence, 12 November 2021, pp 8- 9.

<sup>133</sup> DPC, correspondence, 12 November 2021, p 9.

<sup>134</sup> DPC, correspondence, 12 November 2021, p 9.

<sup>135</sup> DPC, correspondence, 12 November 2021, p 2.

<sup>136</sup> DPC, correspondence, 12 November 2021, p 2.

<sup>137</sup> Bill, cl 55.



the Minister: is satisfied it is reasonably necessary to do so; has given notice of the proposed direction to the Commonwealth Government; and has considered the Corporation's obligations under the OHC.<sup>138</sup>

As examples, the Bill provides that Ministerial directions could include giving the Minister information held or controlled by the Corporation or a report about a matter relevant to the Corporation's functions, or submitting a document to the Minister for the Minister's approval.<sup>139</sup>

DPC advised of the provision for Ministerial directions:

This clause is appropriate given the Corporation will be established under Queensland's legislative framework ... whereby statutory bodies are typically responsible to a Minister and subject to their direction. Further, the State is the sole financial underwriter of the Corporation and requires a mechanism of last resort to direct the Corporation and protect the public interest and investment in Brisbane 2032.<sup>140</sup>

DPC also advised that '[a] similar provision for Ministerial directions was included in the *Commonwealth Games Arrangements Act 2011* and was only used in one instance to provide the Gold Coast 2018 Commonwealth Games Corporation with a "Statement of Expectations".<sup>141</sup>

If the Minister were to give a direction to the Corporation, the Corporation would be required to ensure it complied with the direction.<sup>142</sup> The Corporation would also be required to include details of the direction in its annual report for the financial year in which the direction is given, and may include in that annual report, a comment about the effect on the Corporation's activities of complying with the direction.<sup>143</sup>

## 3.2 Establishment of the Board, its functions and arrangements

### 3.2.1 Establishment, functions and powers of the Board

As previously noted, the Corporation is to be governed by a board of directors, with the Bill providing for the establishment of the Board<sup>144</sup> to 'ensure the corporation performs its functions in a proper, effective and efficient way', as well as carrying out any other functions given to the Board under the Act that the Bill would establish.<sup>145</sup>

The Bill provides the Board with the power to do anything necessary or convenient in performing its functions,<sup>146</sup> and provides that anything done in the name of the Board, for the Board, or with the authority of the Board, would be taken to have been done by the Corporation.<sup>147</sup>

DPC advised that the Queensland Government considered a Board 'the most appropriate decision-making body to govern the Corporation' for the following reasons:

- key Games stakeholders can have effective representation and decision-making power, including those required by the OHC;
- membership on the board can be set to ensure voting rights reflect Games partners' level of investment and risk in Brisbane 2032;
- board sub-committees and commissions can be used to ensure greater levels of representation and diversity; and
- a board can add value to the operations of the Corporation by including among its membership subject matter experts and those with high standing within the community.<sup>148</sup>

<sup>138</sup> Bill, cl 55.

<sup>139</sup> Bill, cl 55(2); DPC, correspondence, 3 November 2021, p 5.

<sup>140</sup> DPC, correspondence, 3 November 2021, p 5.

<sup>141</sup> DPC, correspondence, 3 November 2021, p 5.

<sup>142</sup> Bill cl 55(5).

<sup>143</sup> Bill cl 55(5).

<sup>144</sup> Bill, cl 14.

<sup>145</sup> Bill, cl 15.

<sup>146</sup> Bill, cl 16.

<sup>147</sup> Bill, cl 16.

<sup>148</sup> DPC, correspondence, 3 November 2021, p 2.

### 3.2.2 Composition and appointment of the Board

On introducing the Bill, the Premier advised that the Bill ensures that the membership of the Board includes 'representation from all levels of government and the international and Australian Olympic and Paralympic committees along with past Olympians and Paralympians and a number of independent experts and community representatives'.<sup>149</sup>

On establishment, the Board would comprise 20 members, which DPC advised would be similar to the Sydney 2000 organising committee board (15 members) and London 2012 organising committee board (18 members) and less than half the size of the Tokyo 2020 organising committee board (45 members).<sup>150</sup> The Bill does not provide for a formal cap on the number of Board members, and allows for multiple Australian IOC members and IPC Governing Board members to be on the Board, in accordance with the OHC.<sup>151</sup> However, in correspondence with the committee, the DPC advised:

... the likelihood of there ever being more than one active Australian IOC Member or the IPC Governing Board member is low given there are currently no Australians on the 14-person IPC Governing Board and only one active Australian IOC Member (of currently approximately 102 IOC Members).<sup>152</sup>

Some directors would be appointed because of their office (ex-officio), including key representatives from each signatory to the OHC, who would have an automatic position on the board.<sup>153</sup> Other directors would be nominated by certain Brisbane 2032 Games partners. The explanatory notes set out the rationale for the mixture of appointment methods:

The primary reason for allowing certain persons and entities to decide who become directors of the board (as opposed to just ex-officio directors) is to ensure that Games partners have sufficient flexibility to recommend suitable appointees depending on the emerging needs of the Corporation over its life. For example, the expertise required of board directors may be different in the early years of the Corporation's life compared to the years immediately preceding Brisbane 2032. There needs to be a level of discretion granted to ensure that the board has the appropriate mix of skills and experience ...<sup>154</sup>

#### 3.2.2.1 *Ex-officio directors*

The Bill provides for the following office holders to be appointed as directors of the Board:

- the President or Honorary Life President of the AOC<sup>155</sup>
- the President of Paralympics Australia
- the CEO of the AOC
- any IOC members from Australia who have not reached the age limit or extended age limit for members under the Olympic Charter
- any IPC Governing Board members residing in Australia
- the Lord Mayor of Brisbane.<sup>156</sup>

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<sup>149</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289.

<sup>150</sup> DPC, correspondence, 3 November 2021, p 3.

<sup>151</sup> DPC, correspondence, 3 November 2021, p 3.

<sup>152</sup> DPC, correspondence, 3 November 2021, p 3.

<sup>153</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November, p 5. The OHC was signed by the International Olympic Committee, the Brisbane City Council, the State of Queensland, and the Australian Olympic Committee (AOC): <https://stillmed.olympics.com/media/Documents/Olympic-Games/Brisbane-2032/Host-Contract/Host-City-Contract-2032-Principles.pdf>.

<sup>154</sup> Explanatory notes, p 4.

<sup>155</sup> This position is regarded as a nominated director under cl 17(4) of the Bill.

<sup>156</sup> Bill, cl 17; DPC, correspondence, 3 November 2021, p 3.

At the committee's public hearing on the Bill, DPC advised the following details about the proposed ex-officio directors of Board on its establishment:

Currently ... the board will include the Vice-President of the International Olympic Committee, which is currently Mr John Coates; the President of Paralympics Australia, Mr Jock O'Callaghan; the Chief Executive Officer of the Australian Olympic Committee, Mr Matt Carroll ...<sup>157</sup>

### 3.2.2.2 *Nominated directors*

The Bill provides for a total of up to 17 nominated directors to be appointed as Board members by the Governor in Council.<sup>158</sup> Aside from the one ex-officio position that is subject to nomination (with the Bill providing for the appointment of either the President of the AOC or an Honorary Life President, depending on who the AOC nominates), the remaining 16 nominated directors would include:

- one athlete who has competed for Australia in a recent edition of the Olympic Games as confirmed by the AOC (on establishment to be Bronte Barratt<sup>159</sup>)
- one athlete having competed for Australia in a recent edition of the Paralympic Games as confirmed by Paralympics Australia (on establishment to be Kurt Fearnley<sup>160</sup>)
- 5 independent directors who are nominated by the state Minister (currently the Premier), subject to a joint nomination process with the Prime Minister
- up to 4 directors nominated by the Prime Minister of Australia
- 4 directors nominated by the Premier of Queensland
- one director nominated by the Lord Mayor of Brisbane.<sup>161</sup>

The Bill also requires that regard must be given to the gender diversity of the board's directors and the Queensland Government's policy about gender equity on boards when considering proposed nominations for directors.<sup>162</sup> This is further reinforced by a specific 'requirement that 50 per cent of the nominated directors are female'.<sup>163</sup> DPC explained the rationale behind this requirement applying only to nominated directors:

The aim is that as the board changes and ebbs and flows and the ex officio positions of the presidents and the members through the life of the board will change, there is a broader need to consider the diversity of the board.

...

The intention is to get a broader balance, but technically the nominated directors is what the diversity clause applies to because the other positions will be who they are as they are ex-officio positions.<sup>164</sup>

Further, at least one independent director nominated by the Premier (in consultation with the Lord Mayor, the President of the AOC and the President of Paralympics Australia), must be an Aboriginal or Torres Strait Islander person.<sup>165</sup>

These representation requirements are considered further in chapter 5.1.1 of this report, regarding human rights considerations.

The nomination requirements for each of the nominated directors, including who is responsible for nomination and whom must be consulted regarding potential nominations, are shown in Table 1 (over page).

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<sup>157</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>158</sup> Bill, cl 17(4), (5).

<sup>159</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>160</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>161</sup> Bill, cl 17; DPC, correspondence, 3 November 2021, pp 2-3.

<sup>162</sup> Bill, cls 18-20.

<sup>163</sup> Premier, Queensland Parliament, Record of Proceedings, 27 October 2021, p 3289. See also Bill, cl 17(3).

<sup>164</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November, p 6.

<sup>165</sup> Bill, cl 18(6).

**Table 1: Nomination and consultation requirements for nominated directors**

Nominated director	Nominator	Persons to be consulted
The President of the AOC <u>or</u> an Honorary Life President of the AOC*	The AOC	Nil
One person who has competed for Australia at either or both of the most recent 2 Olympic Games held before the person's appointment*	Elected by athletes who have competed for Australia at either or both of those Olympic Games	Nil
One person who has competed for Australia at either or both of the most recent 2 Paralympic Games held before the person's appointment*	Elected by the athletes who have competed for Australia at either or both of those Paralympic Games <u>or</u> selected by the Athletes Commission of Paralympics Australia	Nil
5 independent directors, including one whom would be President of the Board* At least one must be an Aboriginal or Torres Strait Islander person	Minister for the Olympics (Premier) using a 'joint nomination process' <sup>^</sup>	Lord Mayor of Brisbane President of the AOC President of Paralympics Australia The Prime Minister must be given notice of the proposed nomination, and have not objected within 14 days
4 persons	Prime Minister	Nil
4 persons	Premier	Nil
1 person	Lord Mayor of Brisbane	Council of Mayors (SEQ) Pty Ltd
*At least 50% of the nominated directors must be women		

Source: Brisbane Olympic and Paralympic Games Arrangements Bill 2021, cls 17(a) and (f) to (k), 18, 20.

Notes: <sup>^</sup>Clause 18 of the Bill defines 'joint nomination process' as 'a process for the nomination of persons for [independent directors] agreed to, and implemented jointly, by the Minister and the Commonwealth Government'.

### *Independent directors*

As noted above, the Bill stipulates that 5 independent directors are to be nominated by the Minister (currently, the Premier) through a joint nomination process with the Prime Minister.<sup>166</sup>

Regarding the appointment of the independent directors, the explanatory notes advise:

The Minister and Prime Minister are the appropriate persons to exercise discretion on the appointment of independent directors and the president, given the State is a signatory to the Olympic Host Contract and is responsible for covering any potential financial shortfall of the Corporation and the Commonwealth Government has committed to provide a significant financial contribution to critical Games-related infrastructure.<sup>167</sup>

When considering a proposed nomination of an independent director, the Minister, the Prime Minister and each person consulted must have regard to the following:

- the person's relevant skills, knowledge and experience
- the diversity of the Board's skills, knowledge and experience relevant to the Board's functions
- the gender diversity of the Board's directors, ensuring that at least 50% of the nominated directors are women, and the Queensland Government's policy about gender equity on boards
- at least one of the independent directors must be an Aboriginal or Torres Strait Islander person.<sup>168</sup>

<sup>166</sup> Bill, cl 18.

<sup>167</sup> Explanatory notes, p 4.

<sup>168</sup> Bill, cl 18(5) and (6).

The explanatory notes state that the Bill's requirements for the Minister and Prime Minister to meet requirements for consultation and to be satisfied that the person is appropriately qualified constitute 'appropriate limitations' on the discretion of the Minister and the Prime Minister.<sup>169</sup>

The Bill provides that nominated independent directors must not be any of the following:

- an elected office holder
- a public service employee
- an local government employee
- an Australian Public Service employee
- a member of the governing body, or an employee, of the AOC
- a member of the governing body, or an employee, of Paralympics Australia
- a member of the governing body, or an employee, of the IOC
- a member of the governing body, or an employee, of the IPC.<sup>170</sup>

#### *Terms of appointment*

With the exception of the director nominated by the AOC (that is, the President of the AOC or an Honorary Life President of the AOC), nominated directors would be appointed for a term no longer than 4 years, and may be reappointed.<sup>171</sup> DPC confirmed in this respect that there is 'nothing to stop directors being extended beyond the four-year term'.<sup>172</sup>

The Bill provides for the disqualification of a person from becoming or continuing as a nominated director if any of the following apply:

- they have a conviction, other than a spent conviction, for an indictable offence
- they are an insolvent under administration
- they are disqualified from managing corporations under the *Corporations Act 2001* (Cth).<sup>173</sup>

However, the Minister may consider the circumstances of an offence or insolvency and give approval for the person to become a nominated director despite the conviction or insolvency.<sup>174</sup>

To support this provision, the Bill sets out a process for the Minister to obtain a criminal history report on the person from the commissioner of police, which is examined further in chapters 4.2 and 4.6 of this report regarding issues of FLP, and chapter 5.1.3, regarding human rights considerations.

#### *Removal of nominated directors*

The Bill provides for the AOC, Paralympics Australia, the Prime Minister and the Lord Mayor to remove their nominated directors from office by notifying the Minister in writing.<sup>175</sup> The explanatory notes advise the rationale behind this provision:

Providing the Australian Olympic Committee, Paralympics Australia, Prime Minister and Lord Mayor with the ability to remove their nominated directors from office at their discretion under clause 23 is considered an appropriate delegation of administrative power to ensure that persons can immediately be removed from office if they are no longer affiliated with, or supported by, the nominating entity. This is justified as directors of the board should at all times be truly representative of the Games partners that nominated them, pursuant

<sup>169</sup> Explanatory notes, p 4.

<sup>170</sup> Bill, cl 18.

<sup>171</sup> Bill, cl 22.

<sup>172</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 9.

<sup>173</sup> Bill, cl 24; explanatory notes, p 14.

<sup>174</sup> Explanatory notes, p 14; Bill, cl 24(4).

<sup>175</sup> Bill, cl 23(f).

to the intent of the Olympic Host Contract. The power is balanced with that fact that a new director that is nominated to a position vacated ... will still need to be appointed by the Governor in Council ...<sup>176</sup>

In addition, the Bill provides for automatic removal of nominated directors from office in the following circumstances:

- if they were nominated by the Prime Minister, were a member of the Commonwealth Parliament at the time they were nominated; and the Prime Minister's political party is no longer recognised as being in government or they stop being a member of the Commonwealth Parliament, or
- if they were nominated by the Premier, were a member of the Legislative Assembly at the time they were nominated, and the Premier's political party is no longer recognised as being in government or they stop being a member of the Legislative Assembly, or
- if they were nominated by the Lord Mayor, were a councillor of a local government at the time they were nominated; and the director stops being a councillor of the local government.<sup>177</sup>

Further, a number of offence provisions would apply in respect of a failure of a Board member to comply with requirements, including in respect of their handling of confidential information, or for acting dishonestly in the performance of their duties. These offence provisions are examined further in chapter 4.3 of this report, regarding FLPs.

### 3.2.2.3 *Submitter comments and departmental response: size of the board*

Expressing the view that the Board should be 'no larger than it needs to be',<sup>178</sup> the AIP stated that the potential size of the board 'seems excessive', noting '[r]esearch by the Australian Institute of Company Directors in 2012 place company boards at an average of 7.15 members, and a range of between 4 and 13 members'.<sup>179</sup> The AIP submitted that while '[s]ize may involve a larger group of stakeholders ... it will also attenuate decision-making, as well as increase the possibility of poor decisions being made for internal political reasons'.<sup>180</sup>

Regarding the number of ex-officio directors on the Board, the AIP noted:

... the IOC gets three representatives ... the IPC gets one. Then there will be two representatives of previous Olympians. This is a total of 7 ... which is almost one-third of the entire board.<sup>181</sup>

Although the AIP considered 'the experience of the various members of the international and national sporting associations' to be 'undoubtedly valuable' as it 'potentially mitigates "Eternal Beginner Syndrome"', the AIP suggested that that experience could be accessed through an advisory process, rather than as part of the executive body'.<sup>182</sup>

In response to the AIP's concern about the size of the Board, the DPC advised:

While larger than most government ASX-listed company boards, the size of the Board will usually be around 20, which is similar to the Sydney 2000 organising committee (15) and London 2012 organising committee (18) boards, and less than half the size of the Tokyo 2020 organising committee (45) board.<sup>183</sup>

Further, in response to the AIP's suggestion that the IOC, AOC and Paralympics Australia member experience be accessed through an advisory process rather than as part of the Board, the DPC advised:

The Olympic Host Contract ... between the State of Queensland, Brisbane City Council, the Australian Olympic Committee and the IOC requires that persons holding certain positions (for example with the IOC, AOC,

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<sup>176</sup> Explanatory notes, p 4.

<sup>177</sup> Explanatory notes, p 14; Bill, cl 23(g) to (i).

<sup>178</sup> Submission 20, p 3.

<sup>179</sup> Submission 20, p 2.

<sup>180</sup> Submission 20, p 2.

<sup>181</sup> Submission 20, p 2.

<sup>182</sup> Submission 20, p 2.

<sup>183</sup> DPC, correspondence, 12 November 2021, p 3.

Paralympics Australia and the International Paralympic Committee) be appointed to the highest decision-making body of the organising committee.<sup>184</sup>

#### 3.2.2.4 *Submitter comments and departmental response: Board member expertise and qualifications*

The expertise of members of the Board was a key theme of submissions received by the committee. Greg Mackenzie and T Wilson-Brown sought the inclusion of independent ‘experts in fields such as urban design, city planning, public transport, sporting events, tourism’.<sup>185</sup> Other submitters sought the inclusion of professionals such as civil engineers,<sup>186</sup> ‘representation by Queensland industry and business interests’,<sup>187</sup> and for the Board ‘to draw upon the talents and experience of people who have worked in civil society, business and NGOs [non-government organisations]’.<sup>188</sup>

The SDWA recommended the Board include ‘an independent director from a research background such as exercise physiology and/or the neuroscience of exercise’ so the Corporation can ‘benefit from developments in research’ and ‘understand the needs of para athletes, the neuroscience behind sports and disability and the technologies to provide a great competitive environment’.<sup>189</sup>

To ‘ensure delivery of a climate positive Olympics’, the Australian Institute of Landscape Architects called for the inclusion of a director who is ‘appropriately qualified and experienced in sustainable development’ and a representative from the design profession, such as the Queensland state government Architect.<sup>190</sup> In addition, ‘to ensure the Games is an opportunity for forward-thinking climate-aware development and infrastructure’, Kyle Weise sought the inclusion on the Board of ‘members with proven expertise’ in the expansion of ‘low carbon forms of transport, such as cycling’.<sup>191</sup>

Several submitters expressed the need for the membership of the Board to include community members from areas that would be impacted by the development of infrastructure for the Brisbane 2032 Games,<sup>192</sup> including ‘residents and locals’,<sup>193</sup> and ‘bodies such as Local Government and schools that would inherit the stadiums, grounds, and other facilities after their use by the Olympics and Paralympics’.<sup>194</sup> In this regard, the EBSS P&C submitted that the Premier and Lord Mayor, in appointing members to the Board, should choose ‘individuals who represent the views and interests of the communities in which the Games will be held’,<sup>195</sup> with at least one member to be specifically nominated for the purpose of community representation. Suggesting that ‘Sydney’s success [in 2000] was born from the involvement and participation of its local community’, the EBSS P&C asserted that ‘[t]o make this the best Olympics in history, we need our community to be actively involved in shaping the games through direct representation’.<sup>196</sup>

The Friends of Raymond Park also saw a need ‘to ensure the 2032 Olympic organising committee includes the appointment of a trusted member from the community, specifically locals who have no affiliation to any political party’, suggesting the Bill be amended to this effect because ‘[t]he residents need a voice here’.<sup>197</sup>

<sup>184</sup> DPC, correspondence, 12 November 2021, p 12.

<sup>185</sup> Submissions 3, 5.

<sup>186</sup> Jason Fernandez, submission 9, p 2.

<sup>187</sup> Chamber of Commerce & Industry Queensland (CCIQ), submission 17, p 3.

<sup>188</sup> Policy Wonks, submission 15, p 2.

<sup>189</sup> Submission 7, p 3.

<sup>190</sup> Submission 19, p 1.

<sup>191</sup> Submission 6, p 1.

<sup>192</sup> See: submissions 3, 5, 6, 9, 12, 13, 18.

<sup>193</sup> Submissions 3, 5, 9. See also submission 1.

<sup>194</sup> Jason Fernandez, submission 9, p 2.

<sup>195</sup> Submission 12, p 2.

<sup>196</sup> Professor Dan Angus, EBSS P&C, public hearing transcript, Brisbane, 15 November 2021, p 4.

<sup>197</sup> Melissa Occhipinti, Founder, Friends of Raymond Park, public hearing transcript, Brisbane, 15 November 2021, p 3.

Further, the West End Community Association Inc. (WECA) called for 'direct community representation on the Board ... through the appointment of West End resident and President of WECA, Seleneah More'.<sup>198</sup>

DPC noted the many suggestions of submitters regarding the different expertise and perspectives they considered should be represented on the Board, including regarding direct representation from impacted communities and residents, schools, small to medium business owners, and those with specific expertise. In response to these submitter comments, DPC affirmed that the provisions of the Bill afford scope for a range of individuals, including those proposed by stakeholders, to be appointed:

Clause 17 allows for the appointment of five independent directors, four persons nominated by the Prime Minister, four persons nominated by the Premier, and one person nominated by the Lord Mayor of Brisbane City Council to the board of the Corporation (the Board). In nominating independent directors, the Minister and any person consulted on the nomination must take into consideration the person's skills, knowledge and experience in areas relevant to the performance of the Board's functions and the broader diversity and skills profile of the Board.<sup>199</sup>

Further, the DPC explained:

It is not considered appropriate to specify specific qualifications required by nominees in legislation, as this would unnecessarily limit the diversity of skills and experience on the Board. This does not preclude persons with these qualifications being appointed to the Board.<sup>200</sup>

In response to the specific suggestion from the EBSS P&C that the Premier and the Lord Mayor select directors who represent the views and interests of communities in which the Brisbane 2032 Games would be held, DPC also affirmed that '[t]he Bill does not diminish the ability for the Premier and Lord Mayor to have regard for the views and interests of affected communities when nominating directors to the Board'.<sup>201</sup>

Further, the DPC advised that '[c]ause 47 allows for the establishment of Commissions of the Board, which are advisory in nature and provide an opportunity to ensure the Corporation can undertake broader stakeholder engagement with respect to Brisbane 2032'.<sup>202</sup> The DPC observed that those commissions 'are able to be made up of directors of the Board and members of the community'.<sup>203</sup>

The provisions governing the establishment of commissions are examined further in chapter 3.2.4 of this report.

### 3.2.2.5 Submitter comments and departmental response: Board membership reflecting level of investment and risk

Noting the statement in the explanatory notes that 'membership on the board can be set to ensure voting rights reflect Games partners' level of investment and risk in Brisbane 2031',<sup>204</sup> the City of Gold Coast (CGC) suggested that the proposed composition of the Board be modified by increasing the local government representation to 3 members: the Lord Mayor of Brisbane, the Mayor of the City of the Gold Coast and the Mayor of the Sunshine Coast Regional Council.<sup>205</sup> Observing that 'under the new Olympic Host model a region can now host the Olympic Games', the CGC observed that the composition of the Board as set out in the Bill 'only supports the Brisbane Lord Mayor and his nominee'.<sup>206</sup> The GCG expressed concern that consequently, it 'may have no representation on the ... Board and associated Board Committees'.<sup>207</sup>

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<sup>198</sup> Submission 16, p 1.

<sup>199</sup> DPC, correspondence, 12 November 2021, pp 2, 7, 10, 12.

<sup>200</sup> DPC, correspondence, 12 November 2021, p 12.

<sup>201</sup> DPC, correspondence, 12 November 2021, p 5.

<sup>202</sup> DPC, correspondence, 12 November 2021, p 10.

<sup>203</sup> DPC, correspondence, 12 November 2021, p 5.

<sup>204</sup> Explanatory notes, p 3. Submission 14, p 1.

<sup>205</sup> Submission 14, p 2.

<sup>206</sup> Submission 14, p 1.

<sup>207</sup> Submission 14, p 1.



The CGC noted that under the Bill's proposed composition of the Board, the Brisbane, Gold Coast and Sunshine Coast local governments would have 'less than 10% of ... Board membership', despite their 'significant' combined financial commitment to the Brisbane 2032 Games, and their receipt of 'no revenue returns'.<sup>208</sup>

In relation to the level of investment in the Brisbane 2032 Games by the Gold Coast and Sunshine Coast local government areas, the CGC submitted:

- the 2 local government areas will host one-third of all sport events associated with the Brisbane 2032 Games
- the number of venues and parks under the ownership of the 2 local government areas that will be used for the Brisbane 2032 Games is likely to outnumber those owned by the BCC.<sup>209</sup>

Specifically, in relation to the level of investment and risk invested in the Brisbane 2032 Games by the CGC, the CGC stated:

- the CGC contributed \$23 million towards the land acquisition and construction of the Queensland Government-owned Robina Stadium, and exempts it from local government service charges
- the capital contribution of the CGC to the 2032 Brisbane Games is estimated to exceed \$200 million
- the 'shorter-term and longer-term venue risks are much higher for the City [of the] Gold Coast than for Brisbane City'
- the scale and scope of the operational risks for the CGC 'are likely to be similar to that of Brisbane City when the resources of both local governments are factored in', given predicted total ticketed spectator numbers and daily spectator numbers
- the Gold Coast will host a large number of visitors due to the number of tickets available for Gold Coast-hosted sporting events and expected additional spectators that will be drawn from Brisbane-hosted sporting events due to the level of hotel stock available in Brisbane.<sup>210</sup>

In terms of the expertise and value the CGC would bring to the Board, the CGC stated that 'as a legacy of hosting the Gold Coast 2018 Commonwealth Games', 'the City of the Gold Coast administration and Gold Coast Mayor would have more currency, experience and knowledge on hosting a major multi-event sports program than any other local government in ... Australia'.<sup>211</sup>

In response to the concerns raised by the CGC, the DPC explained that the Olympic Host contract 'requires that Host signatories to the OHC, which includes the Brisbane City Council and Queensland Government, have at least one representative on the Board'.<sup>212</sup>

In relation to the inclusion on the Board of the CGC specifically, the DPC further advised:

As part of drafting the Bill, the Commonwealth and Queensland governments agreed that local government should have an additional representative than what is required under the [Olympic Host Contract. Clause 17(1)(k) accordingly provides that the Lord Mayor can nominate a person to the Board, and this person may be a representative of the City of Gold Coast.

The Bill provides for independent directors who could be from, or reflect views relevant to, the Gold Coast. The Bill also allows for the establishment of Commissions of the Board and persons from the Gold Coast community or business representatives could potentially participate in these Committees.<sup>213</sup>

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<sup>208</sup> Submission 14, p 2.

<sup>209</sup> The CGC noted that 'most venues in Brisbane will be under the ownership of the Queensland Government/Stadiums Queensland'.

<sup>210</sup> Submission 14, pp 1-2.

<sup>211</sup> Submission 14, p 2.

<sup>212</sup> DPC, correspondence, 12 November 2021, p 9.

<sup>213</sup> DPC, correspondence, 12 November 2021, p 9.

3.2.2.6 *Submitter comment and departmental response – representation and diversity*

As previously noted, the Bill includes requirements regarding the representation of women on the Board (50% of the nominated directors) and mandates that at least one independent director nominated by the Premier (in consultation with the Lord Mayor, the President of the AOC and the President of Paralympics Australia) must be an Aboriginal or Torres Strait Islander person.<sup>214</sup>

The AIP questioned the inclusion of these requirements, submitting that ‘the composition of the board suggests it is a political body, rather than an executive one’.<sup>215</sup> The AIP declared that ‘In particular, the requirement that “at least 50%” be female’, signals that the composition of the Board is ‘symbolic rather than functional’,<sup>216</sup> and asserted that the ‘secret to a successful Olympics will be determined much more by the ability of the board, rather than its representativeness’.<sup>217</sup>

The CCIQ and Property Council of Australia, in contrast, advised that they supported the requirement for at least 50% of nominated Board directors to be women, and expressed strong support for the provision that at least one of the independent directors are an Aboriginal or Torres Strait Islander person.<sup>218</sup>

Multiple other submitters also advocated generally for First Nations voices, calling for the inclusion on the Board of First Nations people ‘representing traditional owners’<sup>219</sup> ‘on whose stolen land the “Games” will be held’.<sup>220</sup>

Kyle Weise also called for sought the inclusion on the Board of ‘appropriately qualified representatives from the LGBTIQ+ community to allow appropriate consideration of the gendered construction of the Games, which is organised along a questionable male/female binary’.<sup>221</sup>

Overall, Kyle Weise submitted, the composition of the Board should be such that is comprises:

... members who have the expertise and authority to ensure that when the Olympic and Paralympic games are held in Brisbane they reflect the values of our democratic society and resolutely reject racism, imperialism and sexism, and instead promote equality and equal access to education, housing and green space.<sup>222</sup>

In response to the AIP’s concerns that the composition of the Board makes it a political body, rather than an executive one, and its call for the removal of all ‘carve-outs’ and ‘quotas’, the DPC advised:

The Olympic Host Contract requires that the Corporation operate in conformity with and promote the principles of diversity, inclusion and gender equality in all of its activities related to the organization of Brisbane 2032. In addition, the Queensland Government have set the gender diversity target that 50% of all new board appointees to Queensland Government bodies will be women. The requirement that at least 50% of the nominated directors holding office must be women is consistent with Queensland Government policy.<sup>223</sup>

Addressing submitter comments regarding the importance of including First Nations and LGBTIQ+ voices, DPC reaffirmed that the Bill allows for the appointment of 5 independent directors, 4 persons nominated by the Prime Minister, 4 persons nominated by the Premier, and one person nominated by the Lord Mayor, any of whom may represent any number of communities, perspectives and lived experiences. In nominating independent directors in particular, DPC noted:

... the Minister and any person consulted on the nomination must take into consideration the person’s skills, knowledge and experience in areas relevant to the performance of the Board’s functions and the broader diversity and skills profile of the Board.<sup>224</sup>

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<sup>214</sup> Bill, cl 18(6).

<sup>215</sup> Submission 20, p 2.

<sup>216</sup> Submission 20, p 2.

<sup>217</sup> Submission 20, p 3.

<sup>218</sup> Submission 4, p 1; submission 17, p 3.

<sup>219</sup> Submissions 3, 5, 9, 10. See also submission 18, p 5.

<sup>220</sup> Kyle Weise, submission 6, p 1.

<sup>221</sup> Submission 6, p 1.

<sup>222</sup> Submission 6, p 1.

<sup>223</sup> DPC, correspondence, 12 November 2021, p 12.

<sup>224</sup> DPC, correspondence, 12 November 2021, p 10.

In addition, DPC noted the scope for further engagement through the advisory commissions that the Board may establish (see report chapter 3.2.4) to enable it to undertake broader stakeholder engagement with respect to the Brisbane 2032 Games.<sup>225</sup>

In responding to Kyle Weise’s recommendation that the Board include members who would reject racism and sexism and promote equality, DPC advised:

Clause 9(2)(b) requires the Corporation to comply with its obligations under the Olympic Host Contract (a publicly available document). In its activities related to the organization of Brisbane 2032, the Olympic Host Contract requires that the Corporation “prohibit any form of discrimination with regard to a country or a person on grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status in particular, without limitation, by operating in conformity with and promoting the principles of diversity, inclusion and gender equality (in particular fair and equal gender portrayal)”.

In response to the International Olympic Committee’s ... Future Host Questionnaire (a publicly available document), Brisbane 2032 recognised its duty to maximise positive social, environmental and economic impacts for its host communities, which extends to the monitoring and oversight of all Games-related human rights impacts. In accordance with the UN Guiding Principles on Business and Human Rights, a Brisbane 2032 Human Rights Strategy will be developed which incorporates an explicit commitment to respecting internationally recognised human rights.<sup>226</sup>

### 3.2.3 Board arrangements

#### *President and vice presidents of the Board*

The Bill provides for the appointment of a president and vice presidents of the Board, who would be appointed for the term stated in their instruments of appointment as president or vice president.<sup>227</sup>

The president of the Board would be one of 5 independent directors, selected by a ‘joint nomination process’<sup>228</sup> and appointed by the Premier following consultation with the Lord Mayor of Brisbane, the President of the AOC, and the President of Paralympics Australia. In addition, the Prime Minister must be given notice of the proposed nomination, and would have 14 days within which to object.<sup>229</sup>

The role of the president would include:

- acting as chairperson for board meetings at which the president is present
- working with, and providing leadership to, the CEO
- participating on particular committees of the board as a member or the chairperson
- representing the Corporation, and developing relationships with the Corporation’s national and international stakeholders, such as the IOC, IPC and national and international sporting federations.<sup>230</sup>

If the president is not present for a board meeting, a vice president would be required to preside in accordance with the orders of rotation set out in clause 33 of the Bill.<sup>231</sup>

The vice presidents of the Board would include the president of Paralympics Australia, the Lord Mayor of Brisbane, and a director who is a vice president of the IOC and from Australia would be vice presidents of the Board. If no director of the Board is a vice president of the IOC from Australia, the director nominated

<sup>225</sup> DPC, correspondence, 12 November 2021, p 10.

<sup>226</sup> DPC, correspondence, 12 November 2021, p 3.

<sup>227</sup> Bill, cls 25-27.

<sup>228</sup> Clause 18 of the Bill defines ‘joint nomination process’ as ‘a process for the nomination of a person as president agreed to, and implemented jointly, by the Minister and the Commonwealth Government’.

<sup>229</sup> Bill, cl 25.

<sup>230</sup> Bill, cl 25.

<sup>231</sup> Bill, cl 33.

by the AOC would be a vice president instead. In addition, one of the directors nominated by the Minister and one of the directors nominated by the Prime Minister would each be vice presidents.<sup>232</sup>

#### *Quorum and voting*

The Bill provides that the quorum for the holding of a board meeting would be two-thirds of the number of directors holding office.<sup>233</sup> The DPC advised that this provision ‘ensures that the board’s discussions and decisions will reflect the collective views of all the partners’.<sup>234</sup>

Provision is made for a recognition of quorum for circumstances in which Board members may participating remotely, will the Bill confirming that:

- the Board may hold meetings ‘and directors may take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between directors taking part in the meeting’
- a director who takes part in the board meeting using such communication technology ‘is taken to have been present at the meeting’.<sup>235</sup>

A question at a board meeting must be decided by a majority of the votes of the directors present at the meeting and able to vote on the question, with each director present having a vote on each question to be decided.<sup>236</sup> If the votes of the directors present at the board meeting are equal, the president or vice president who is presiding at the meeting would have a casting vote.<sup>237</sup>

A resolution may also be validly made by the Board even if it is not passed at the meeting, if:

- notice of resolution is given under the procedures approved by the Board
- a majority of directors agree in writing to the resolution.<sup>238</sup>

#### **3.2.4 Establishment of committees and commissions**

Recognising the significant and varied matters the Board will required to oversee, the Bill provides that the Board may, from time to time, establish:

- one or more committees, comprised of Board members, to assist in the performance of the Board’s functions,<sup>239</sup> with decision-making powers delegated by the Board<sup>240</sup>
- one or more commissions, which are advisory in nature (charged with advising the Board ‘on matters referred to the commission by the board’<sup>241</sup>), and which may comprise both members of the Board and ‘other appropriately qualified persons decided by the board’,<sup>242</sup> including community members who are experts in the matters referred to the commission.<sup>243</sup>

Addressing the differences between the two bodies, and the types of committees and commissions that might be established, DPC advised during the public briefing:

... committees are normal committees that exist under normal boards. As you said, there would be finance and audit committees. For an Olympic Games, there would be committees to do with sport and the technical

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<sup>232</sup> Bill, cl 36.

<sup>233</sup> Bill, cl 34.

<sup>234</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 2.

<sup>235</sup> Bill, cl 35(4)(5).

<sup>236</sup> Bill, cl 35(1)-(2).

<sup>237</sup> Bill, cl 35(3).

<sup>238</sup> Bill, cl 35(6).

<sup>239</sup> Bill, cl 45.

<sup>240</sup> Michael Murray, Director, Policy, 2032 Taskforce, DPC, public briefing transcript, Brisbane, 4 November 2021, p 7.

<sup>241</sup> Bill, cl 47.

<sup>242</sup> Bill, cl 47(2).

<sup>243</sup> Michael Murray, DPC, public briefing transcript, Brisbane, 4 November 2021, pp 7-8.

nature of the games. There could be opening and closing ceremony committees. They would be specific. They are not outlined in the bill as such. The commissions are an opportunity to ensure there is broader engagement about the games.

...

We know that the engagement of the regions and the engagement of the whole state, nationally and potentially even Oceania is important. ...

Climate positive is a key initiative that we committed to under the Olympic Host Contract. We committed to being climate positive. Committees and commissions particularly around sustainability and ensuring those stakeholders are involved would probably be another key aspect. Regional engagement could be another one.

I think it will be very much fit for purpose.<sup>244</sup>

In respect of the way in which the two types of bodies may operate, the Bill provides that subject to the direction of the Board, a committee or commission may 'conduct its proceedings, including its meetings, as it considers appropriate'.<sup>245</sup> However, certain requirements would apply in respect of the meetings of particular committees. That is, the Bill provides that any committees established by the Board that relate to audit, risk management and/or financial management must be attended by a public service employee who is nominated by the Minister, and who may observe the meeting (speaking only if invited to do so by the committee) and receive the same information a member is entitled to receive relating to the meeting or other business of the committee.<sup>246</sup>

The explanatory notes advise that '[t]his clause does not prevent these committees, or any other committees, from inviting other persons to observe their meetings, for example representatives from Brisbane City Council or any other relevant stakeholders'.<sup>247</sup>

#### 3.2.4.1 Submitter comments

As previously noted, submitters called for a range of representatives to be included on the Board, including local community representatives, school representatives, urban and city planning experts, representation from design professions (including architecture), civil engineers, public transport experts, experts in sporting and community events, experts in sustainable and climate-aware development, directors with a research background in exercise physiology and/or neuroscience, representatives from business and industry, and civil society representatives from trade unions, employers and NGOs.<sup>248</sup> However, many of these submitters also recognised the scope for such individuals to provide input to the planning and organisation of the Games through the commissions the Board may establish.

The AIP particularly noted the scope for 'the experience of the various members of the international and national sporting associations' to be 'accessed through an advisory process',<sup>249</sup> while the Property Council specifically advocated for the establishment of an industry-focussed taskforce or advisory group to support the Corporation.<sup>250</sup> Representatives from the EBSS P&C and Friends of Raymond Park called for the establishment of a community engagement commission that works with local representatives to address community impacts,<sup>251</sup> which they suggested should be 'a priority and ... one of the first actions of the [Board]'.<sup>252</sup> Ms Nicola Middleton, EBSS P&C, suggested that the requirement to establish such a commission could be written into the Bill.<sup>253</sup>

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<sup>244</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 8.

<sup>245</sup> Bill, cls 45(3), 47(3).

<sup>246</sup> Bill, cl 46.

<sup>247</sup> Explanatory notes, p 17.

<sup>248</sup> See, for example, submissions 1, 3, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19.

<sup>249</sup> AIP, submission 20, p 3.

<sup>250</sup> Submission 4, p 1.

<sup>251</sup> Public hearing transcript, Brisbane, 15 November 2021, p 6.

<sup>252</sup> Melissa Occhipinti, Founder, Friends of Raymond Park, public hearing transcript, Brisbane, 15 November 2021, p 3.

<sup>253</sup> Public hearing transcript, Brisbane, 15 November 2021, p 4.

#### 3.2.4.2 *Departmental response*

In response to submitter comments, DPC confirmed that the Bill's provision for the establishment of commissions of the Board, which are advisory in nature, provides 'an opportunity to ensure the Corporation can undertake broader stakeholder engagement on its functions with respect to Brisbane 2032'.<sup>254</sup> This includes providing for the appointment of 'members of the community' alongside the Board's directors,<sup>255</sup> including individuals 'from the private sector'<sup>256</sup> and 'persons qualified in sustainable development or design professionals'.<sup>257</sup>

The type and number of committees to be established, DPC advised, will be 'very much up to the corporation of the games'.<sup>258</sup> DPC stated: 'In our discussions with the IOC to date, they are very keen to see the way these are developed'.<sup>259</sup>

#### *Committee comment*

The committee expects there will be a broad range of specific professional skills and expertise upon which the Board will need to draw in undertaking its legislative functions, and notes the capacity for commissions in particular to provide a mechanism to facilitate access to technical knowledge and advice.

The committee also recognises the concerns raised by stakeholders, including residents of suburbs that will be impacted by the Games. The committee notes their lack of certainty and the challenges they face in accommodating the Games development as it is integrated into their communities. The committee views commissions as an important avenue for engagement with and representation of those stakeholders, to enable them to provide input into decisions that will directly affect them and help contribute to a lasting legacy for their communities.

#### **Recommendation 3**

The committee recommends that the Premier and Minister for the Olympics encourage the Board of the Corporation to engage with and provide a voice to those affected by its Games infrastructure planning and decisions through commissions, with a view to ensuring that development associated with the Games is achieved in a community-focussed, forward-thinking manner that will support the present and future need of local families, businesses and the wider community.

### **3.3 Disclosure and management of conflicts of interest**

While directors of the Board would have duties to the Corporation, the Bill recognises that they would also naturally represent the interests of their appointing organisation or other affiliation, industry or community.<sup>260</sup> Accordingly, to 'ensure the integrity and accountability of Board members without limiting the ability of the Board to function properly', the Bill sets out requirements for Board members' disclosure of any potential conflict of interest.<sup>261</sup>

Specifically, the Bill provides that if a director has a direct or indirect interest in a matter being considered, or about to be considered, at a board meeting, and 'the interest could conflict with the proper performance of the director's duties about the consideration of the matter', the director must disclose the nature of the interest at a board meeting.<sup>262</sup> The Bill requires any such disclosure to be made '[a]s soon as

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<sup>254</sup> DPC, correspondence, 12 November 2021, p 2.

<sup>255</sup> DPC, correspondence, 12 November 2021, p 5.

<sup>256</sup> DPC, correspondence, 12 November 2021, p 2.

<sup>257</sup> DPC, correspondence, 12 November 2021, p 12.

<sup>258</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 8.

<sup>259</sup> Kerry Petersen, DPC, public briefing transcript, Brisbane, 4 November 2021, p 8.

<sup>260</sup> DPC, correspondence, 3 November 2021, p3.

<sup>261</sup> DPC, correspondence, 3 November 2021, p3.

<sup>262</sup> Bill, cls 37 and 38.

practicable after the relevant facts come to the director's knowledge',<sup>263</sup> with all disclosed conflicts to be recorded in a register of interests kept by the Board.<sup>264</sup>

Generally, a single disclosure will be sufficient to fulfil this disclosure requirement, with the Bill providing that if a director has disclosed at a board meeting that they are a member, partner, are employed by, or have another stated interest in relation to, a stated company or other entity, the director is deemed to have met their disclosure requirements in relation to any matter that subsequently arises in relation to the company or other entity ('arising after the day the disclosure was made').<sup>265</sup>

DPC advised that this provision, which recognises 'the variety of interests a director might hold by virtue of them being representatives of Games partner organisations', 'will prevent the need for repeated disclosure of similar and potentially obvious conflicts of interests that a director might hold in that capacity'.<sup>266</sup> DPC also advised that a similar provision was contained in the SOCOG Act.<sup>267</sup>

Once a disclosure has been made, the Bill provides that:

- unless the Board otherwise directs, the director must not be present when the Board considers the matter or take part in making a decision of the Board about the matter<sup>268</sup>
- the director must not be present when the Board is considering whether or not to allow the director to: a) be present when the Board considers the matter, or b) take part in making a decision about a matter<sup>269</sup>
- the Board members present are a quorum for making a decision about whether or not to allow the affected director to take part in decision making about the matter (no similar declaration of quorum is currently included in respect of the Board members present when making a decision about whether or not to allow the director to be present when the Board considers the matter).<sup>270</sup>

Where a director fails to disclose an interest as required under the disclosure of interest provisions, this would not invalidate a decision of the Board.<sup>271</sup> However, the Bill stipulates that if the Board becomes aware that a director contravened the disclosure of interest provisions, the Board must reconsider a decision made by the Board in which the director took part in contravention of the provisions.<sup>272</sup>

### 3.3.1 Exceptions to disclosure requirements

The Bill provides for an exception to the disclosure of interest requirements for certain elected officials.<sup>273</sup> DPC advised:

Throughout consultation and as part of drafting the Bill, the potential for certain directors, specifically elected office holders and elected representatives of the Olympic Movement, to have conflicting duties was identified as an issue. For example, should a Commonwealth or Queensland Government Cabinet Minister be appointed to the Board, they would likely have had a conflict of duty between their obligation to keep Cabinet information confidential and the obligation they owe as a director to disclose the information to the Corporation.<sup>274</sup>

<sup>263</sup> Bill, cl 38.

<sup>264</sup> Bill, cl 41.

<sup>265</sup> Bill, cl 39.

<sup>266</sup> DPC, correspondence, 3 November 2021, pp 3-4.

<sup>267</sup> DPC, correspondence, 3 November 2021, p 4.

<sup>268</sup> Bill, cl 40(1).

<sup>269</sup> Bill, cl 40(2).

<sup>270</sup> Bill, cl 40(3).

<sup>271</sup> Bill, cl 42(1).

<sup>272</sup> Bill, cl 42(2).

<sup>273</sup> Bill, cl 37.

<sup>274</sup> DPC, correspondence, 3 November 2021, p 4.

The Bill responds to this issue by both:

- excluding the application of disclosure of interest requirements for directors with a potential conflict of interest if those directors are elected office holders and the interest is held in the director's capacity as an elected office holder (clause 37)<sup>275</sup>
- providing that any director who is an elected office holder, the president or an honorary life president of the AOC, a member of the IOC, or a member of the International Paralympic Committee governing board, does not owe a duty to the Corporation to disclose any information they have acquired or have access to that is confidential in nature and has been given to them in their official capacity (clause 43).<sup>276</sup>

Examples of the types of confidential information a director would have no duty to disclose, as outlined in the Bill, include:

- if the director is a Minister—documents related to Cabinet considerations or operations, or State or Commonwealth budgetary processes
- if the director is a councillor of a local government—documents related to the local government's budgetary processes
- if the director is a member of the International Olympic Committee—documents of a confidential nature related to that committee.<sup>277</sup>

A specific exemption is also provided for the Lord Mayor or any other councillor who holds office as a director in respect of the conflict of interest provisions set out in the *City of Brisbane Act 2010* or *Local Government Act 2009* (clause 44). The Bill provides that those provisions: 'do not apply in relation to the councillor's conflict of interest in a matter relating to the corporation that arises solely because of the councillor holding office as a director'.<sup>278</sup> DPC advised that this exemption:

... was included to ensure that any councillors who are directors of the Board are not unduly limited from participating in council meetings relating to a conflict that the councillor might have in a matter that arises solely because of their office as a director of the Board.<sup>279</sup>

### 3.3.2 Submitter comments

As previously noted, a number of submitters expressed a view that conflicts of interest would best be managed by excluding from the Board any persons with potentially significant conflicts of interest arising from their own financial ventures, with property developers in particular singled out.<sup>280</sup> The AIP submitted in this regard that while the expertise of some stakeholders who are by their nature invested in the type of matters that would come before the Board is 'undoubtedly valuable', it considered that such involvement could be better facilitated 'through an advisory process, rather than as part of the executive body': 'Presumably they will need to declare conflicts of interest as they arise, and abstain from votes, but this situation would be best avoided all together'.<sup>281</sup>

In respect of the disclosure of interest provisions, the CCC advised that it does not consider it necessary for the Bill to exempt directors who are elected office holders from disclosure of interest requirements, or to discharge councillors from equivalent disclosure requirements under local government legislation.<sup>282</sup> Warning that 'such a 'carve out' for this is issue is neither necessary nor desirable and may present

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<sup>275</sup> Bill, cl 37(2).

<sup>276</sup> Bill, cl 43; explanatory notes, p 16.

<sup>277</sup> Bill, cl 43(1) – see examples.

<sup>278</sup> Bill, cl 44(2).

<sup>279</sup> DPC, correspondence, 3 November 2021, p 4.

<sup>280</sup> Greg Mackenzie, submission 3, p 1; T Wilson-Brown, submission 5, p 1; Jason Fernandez, submission 9, p 2.

<sup>281</sup> AIP, submission 20, p 3.

<sup>282</sup> CCC, submission 21, p 1.



corruption risks,<sup>283</sup> the CCC submitted that if a conflict arises between an elected officer bearer's duties and their role as a director of the Board, it should be declared and managed as it would if the exception did not apply.<sup>284</sup> The CCC explained:

A conflict of duty could arise due to a number of factors including geographical considerations regarding where infrastructure is developed or decisions which traverse portfolio responsibilities. A perceived or actual conflict may not, of itself, necessitate the director declining to participate in discussion and voting on the issue, but this does not mean the conflict should not be declared and considered.

The remainder of the board should consider the nature of the conflict, the particular expertise or experience that the conflicted director can bring to the board in relation to the particular issue, and determine how best to manage the conflict. That is what is contemplated in relation to other directors and other interests ... and is how such conflicts are addressed through ordinary corporate board processes. There is no reason identified, and none is readily apparent, which would justify the proposed departure from that practice.

Disclosure and management of conflicts of interest is central to good governance. Those considerations loom large for a body which is likely to be involved in the management of substantial public funds. Given the mixed public and private nature of the Corporation's functions, the CCC's view is that this should weigh in favour of more stringent, rather than less stringent, governance mechanisms.<sup>285</sup>

In respect of the Bill's provision excusing elected officials from any duty to disclose to the Corporation confidential information given to them in an official capacity, the CCC confirmed that it does not oppose its inclusion *per se*, but expressed some concerns about its application.<sup>286</sup> The CCC noted, however, that 'it seems that the provision is intended to make clear that those office holders who have confidential information which may be relevant to the Corporation's decision-making do not breach their obligation to the Corporation by maintaining confidentiality of that information,' and not to exempt those persons who have such confidential information from broader obligations to manage conflicts.<sup>287</sup> This position, the CCC considered, is appropriate.<sup>288</sup>

### 3.3.3 Departmental response

In response to submitter comments regarding governance risks associated with conflicts of interest and the need for conflicted individuals to appropriately abstain from Board decisions, DPC affirmed that the Bill's requirement for directors to disclose to the Corporation any potential conflict of interest '...will ensure that a broad range of interests are captured, which includes any "direct or indirect interest in a matter being considered, or about to be considered, at a board meeting" and where "the interest could conflict with the proper performance of the director's duties about the consideration of the matter"' – including conflicts of interest arising from personal financial ventures.<sup>289</sup> DPC also emphasised that the provisions as proposed would require directors to disclose the nature of any conflicts at a board meeting as soon as practicable after the relevant facts come to the directors' knowledge,<sup>290</sup> to allow the Board to determine how to proceed. Further, '[o]nce established, the Board will be responsible for establishing a framework for dealing with conflicts of interest and must keep a register of interests'.<sup>291</sup>

Addressing the CCC's concerns about the Bill's provision of an exemption from the disclosure of interest requirements for elected office holders (where that interest is held in the director's official capacity), DPC noted that the Bill provides that the Lord Mayor is a director to the Board and contemplates that other

<sup>283</sup> Submission 21, p 1.

<sup>284</sup> Submission 21, p 2.

<sup>285</sup> Submission 21, pp 1-2.

<sup>286</sup> Submission 21, p 2.

<sup>287</sup> Submission 21, p 2.

<sup>288</sup> Submission 21, p 2.

<sup>289</sup> DPC, correspondence, 12 November 2021, p 11.

<sup>290</sup> DPC, correspondence, 12 November 2021, p 11.

<sup>291</sup> DPC, correspondence, 12 November 2021, p 11.

elected officials (such as Members of Parliament, including Ministers), may be appointed to the Board.<sup>292</sup> In this regard, DPC advised:

There is precedent for the appointment of elected officials in relation to the Sydney Olympic Games, where the New South Wales Minister for the Olympics was an ex-officio Board member and President of the Sydney 2000 Organising Committee. The New South Wales Shadow Minister for the Olympics was also an ex-officio member of the Board.<sup>293</sup>

DPC advised that the exemption seeks to provide for the management of conflicts in a way that reflects the practical realities of these compositional characteristics:

The Lord Mayor and any appointee to the Board who is an elected representative, such as a Minister, could have competing interests by virtue of their public duties or role within government. However, there is a broad alignment of interests between the Corporation and Games partners for the successful delivery of the Games (as per the stated purpose of the Act in clause 3 of the Bill), which ameliorates the potential for conflicts to arise. Further, any conflicts of interest would be managed consistent with existing governance arrangements.

Clauses 37(2) [exception for elected office holders] and 44 [exemption for councillors in respect of disclosure requirements in local government legislation] were therefore considered necessary in order for elected representatives to more fully participate in Board discussions and decisions.<sup>294</sup>

#### Committee comment

The committee notes the explanations DPC has provided in respect of the exemptions included in the disclosure of interest provisions, as intended to provide transparency around possible conflicts as far as possible, while ensuring the ability of the Board to conduct its business is not adversely affected, nor elected officials' duties of confidentiality in their elected roles impinged upon.

The committee has questions, however, as to the application of clause 40(3) of the Bill, which:

- provides that when a director has declared a possible interest and excused themselves from a meeting to allow the Board to consider the conflict, 'the directors present' constitute a quorum for the purpose of deciding whether the affected director may take part in a Board decision about a matter to which the interest relates
- makes no provision for the recognition of the directors present as a quorum for deciding whether or not to allow the affected director to be present when the Board considers the matter.

The reason for the distinction between the recognition of quorum in respect of these 2 decisions is not clear to the committee.

#### **Recommendation 4**

The committee recommends that the Premier and Minister for the Olympics clarify the operation of clause 40(3) of the Bill, and why the declaration that the directors present constitute a quorum for making a decision in respect of subsection 1(b) and not (1) in its entirety.

### **3.4 Right to information exemption**

The Bill includes an exemption from the application of the RTI Act for documents created or received by the Corporation in carrying out its functions, to the extent that they comprise information that is not already in the public domain and which was communicated in confidence by or for the AOC or the IOC.<sup>295</sup>

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<sup>292</sup> DPC, correspondence, 12 November 2021, p 11.

<sup>293</sup> DPC, correspondence, 12 November 2021, pp 11-12.

<sup>294</sup> DPC, correspondence, 12 November 2021, p 11.

<sup>295</sup> Bill, cls 65-66.

DPC advised that the RTI exemption for this particular type of information was included on the request of the AOC and IOC:

... on the basis that this was the approach taken under the SOCOG Act and that a similar approach should be adopted in this Bill given the sensitive nature of some of the documents that will be developed in connection with the performance of the Corporation's functions.<sup>296</sup>

DPC referenced, as particular examples of the sensitive documents involved, commercial-in-confidence information in relation to the Corporation's local marketing program and sponsorship arrangements, and highly sensitive security information and personal information.<sup>297</sup>

DPC emphasised that the exemption would not apply to other information created or received by the Corporation: 'All other requests for information in relation to the Corporation's activities will be subject to the usual right to information process under the RTI Act'.<sup>298</sup>

For example, as infrastructure costs and other infrastructure development processes are the responsibility of the state in collaboration with the federal government and relevant councils (and are not matters for the AOC or IOC), DPC confirmed:

All those processes and buildings are subject to our usual government processes. Things like procurement—in fact, domestic sponsorship—it will just be a question of whether there are commercial deals in place that are particularly relevant, and the RTI officer will be able to consider those arrangements. If there is communication or agreements or sponsorship deals that the organising committee establishes—any costs—that will be subject to the usual RTI process that will be considered by the RTI officer.<sup>299</sup>

The RTI exemption is also considered further in chapters 4.4 and 5.1.2 of this report, regarding FLP and human rights considerations respectively.

### 3.4.1 Submitter comments

A number of individual and community submitters expressed concerns about the proposed RTI exemption,<sup>300</sup> which they opposed as potentially 'undemocratic'<sup>301</sup> and contrary to principles of transparency and accountability.<sup>302</sup>

The Information Commissioner, Ms Rachael Rangihaeata, pointed to the adequacy of the existing framework in governing such matters, stating that it 'has sufficient existing flexibility to enable protection of information where it will be contrary to the public interest to disclose that information'.<sup>303</sup> In this regard, Ms Rangihaeata sought to highlight the exemptions already contained within the RTI Act, including in respect of information which if disclosed would found an action for breach of confidence (including a breach of contractual confidentiality). Ms Rangihaeata confirmed that the exemptions would likely cover the types of examples of AOC and IOC communications cited by the department, though emphasising that all matters must be considered on a case-by-case basis.<sup>304</sup> Further:

If an exemption is not satisfied in that particular case, the decision-maker and the agency then looks to whether, in weighing up the relative public interest factors, it would be contrary to the public interest to disclose that information.

<sup>296</sup> DPC, correspondence, 3 November 2021, p 4.

<sup>297</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, pp 3-4; DPC, correspondence, 3 November 2021, p 4. See also explanatory notes, p 9.

<sup>298</sup> DPC, correspondence, 3 November 2021, p 4.

<sup>299</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 4.

<sup>300</sup> T Wilson-Brown, submission 5, p 1; Melissa Occhipinti, submission 8, p 1; Jason Fernandez, submission 9, p 1; Office of the Information Commissioner (OIC), submission 11, pp 1-3; Friends of Raymond Park, submission 13, p 1; Dr Amy MacMahon MP, submission 18, p 9.

<sup>301</sup> Friends of Raymond Park, submission 13, p 1.

<sup>302</sup> Melissa Occhipinti, submission 8, p 1; Dr Amy MacMahon, submission 18, p 8.

<sup>303</sup> Public hearing transcript, Brisbane, 15 November 2021, p 8.

<sup>304</sup> Rachael Rangihaeata, Information Commissioner, public hearing transcript, Brisbane, 15 November 2021, p 9.

The agency decision-maker can name a public interest factor that they believe is relevant to their decision-making process. There is a very long list in the act, but it is open to them to name a specific one. In this case, there may well be one that they identify that is very relevant to this context. When you have those two aspects of that decision-making process, that is what allows the decision-maker to protect any information where it would be contrary to the public interest to disclose it. That is what the RTI Act framework is all about.<sup>305</sup>

The submission of the Office of the Information Commissioner (OIC) also sought to highlight that the report on a comprehensive review of the RTI Act and the *Information Privacy Act 2009* (Review Report) tabled by the Attorney-General in the Parliament in October 2017 recommended that no further exemptions or exclusions be made.<sup>306</sup> The Review Report concluded that:

The RTI Act already contains sufficient exemptions and exclusions and the flexible public interest balancing test .... allows for adequate protection of information where required. To add 'tailored' exemptions or exclusions directed at certain documents or agency functions may suggest that the RTI Act does not adequately protect other types of information.<sup>307</sup>

Similarly, an earlier, June 2008 report on the wide-ranging review of the former Freedom of Information Act conducted by an independent panel chaired by David Solomon AM (Solomon Report) also specifically argued against including exclusions to allay concerns about disclosure where exemptions or the public interest test can easily protect sensitive information.<sup>308</sup>

Noting these findings, which have largely been reflected in government policy, the Information Commissioner advised that the list of exemptions has been 'largely undisturbed since 2009'.<sup>309</sup>

While acknowledging that 'greater certainty about RTI outcomes ahead of the decision making process has been sought by stakeholders and government agencies over the years', much in the vein of the exemption set out in the Bill, Ms Rangihaeata emphasised that any departure from broader RTI policy 'must be clearly justified and impacts on policy commitments carefully considered'.<sup>310</sup>

Right to information is all about getting the balance right in the public interest. An exemption may make an outcome clearer and more certain for government and those it engages with. However, great care has to be taken to ensure an exemption does not have the potential to go beyond the intended balance of favouring disclosure unless it would be contrary to the public interest to disclose all the information covered by the proposed exemption. Once in place, an exemption removes the need to weigh up the respective public interest factors favouring for and against disclosure in each case for different requests for information over the coming years.<sup>311</sup>

In this instance, Ms Rangihaeata submitted:

... commercial-in-confidence is commonly dealt with under breach of confidence and particularly contractual confidentiality. I think that it is a fairly well-trodden path in terms of that. The department would be able to advise in terms of whether there were any—there are no decisions about the Commonwealth Games. I am struggling to see where the history is in terms of the Commonwealth Games or other large events where there is a problem to remedy. Commercial-in-confidence is actually something that everybody deals with all the time. When you have contracts that are set out well—and this would be something that everyone would be investing a lot of time in to ensure that confidentiality is covered in great detail—it should be well executed.

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<sup>305</sup> Rachael Rangihaeata, Information Commissioner, public hearing transcript, Brisbane, 15 November 2021, p 9.

<sup>306</sup> OIC, submission 11, p 2.

<sup>307</sup> Department of Justice and Attorney-General, *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009*, October 2017, p 20.

<sup>308</sup> OIC, submission 11, p 2. See also Freedom of Information Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act – The report by the FOI Independent Review Panel*, June 2008, pp 100-104.

<sup>309</sup> Public hearing transcript, Brisbane, 15 November 2021, p 9.

<sup>310</sup> Rachael Rangihaeata, Information Commissioner, public hearing transcript, Brisbane, 15 November 2021, p 8.

<sup>311</sup> Rachael Rangihaeata, Information Commissioner, public hearing transcript, Brisbane, 15 November 2021, p 8.

I think that the context in Queensland and Australia needs to be carefully considered and the signals that it sends because, while we are providing certainty perhaps to some of our stakeholders, we are also sending different signals to other stakeholders in taking these steps.<sup>312</sup>

Regarding the potential symbolic implications of the exemption, representatives from the Friends of Raymond Park stated that 'the visuals on this are really poor'<sup>313</sup> and that it 'gives the impression that the government has something to hide and leaves residents and members of the Friends of Raymond Park anxious and distressed'.<sup>314</sup> Amanda Addley, while acknowledging the department's advice that an equivalent exemption had been included in the SOCOG Act, submitted:

I see this as our opportunity to look forward and not look to the past of what occurred with the Sydney Olympics ... I think it is very important to look forward. The other factor is we are now the first host country to be under the new selection process. I think that affords us also the opportunity to carve our own way. I know that the Olympics associations were saying that, with their right to the exemption for the freedom of information aspect, in the past their agreements have had these exemption clauses. I feel as well we do not need to adhere to that request.<sup>315</sup>

Jason Fernandez also asserted that decision making and reports should not be exempt from the RTI Act.<sup>316</sup>

### 3.4.2 Departmental response

In acknowledging concerns about the potential implications of the RTI exemption for the transparency and accountability of the Corporation, DPC has emphasised:

Transparency is very important in everything we are doing, and the IOC, the AOC and all the partners are very keen to see that transparency. In fact, the Olympics host contract is publicly available, so our commitments under the contract are all publicly available, including our submission and the future host questionnaire. Everything we have put forward is in the public realm.<sup>317</sup>

The inclusion of the exemption, DPC reaffirmed, was specifically requested by the IOC.<sup>318</sup>

At the public briefing on the Bill, Kerry Petersen, Deputy Director-General of the DPC's 2032 Taskforce, confirmed the department's understanding that the information to be excluded from the application of the RTI Act 'is probably no more than our RTI Act already accommodates',<sup>319</sup> much as some of the submitters suggested. However, Ms Petersen advised that the IOC had considered the state's RTI Act and the factors favouring non-disclosure, and felt the need 'to have that extra line in the legislation'.<sup>320</sup> In this sense, DPC noted that the IOC's request was informed by an identified need for 'absolute confidentiality' in relation to certain information, 'such as commercial and financial agreements with marketing partners and operational plans that have security implications', with the Bill providing the 2 Olympic bodies and 'in particular the IOC, certainty that the Corporation can protect the confidentiality of certain sensitive commercial, financial and operational information under its control'.<sup>321</sup>

In a historical sense, DPC also advised of the use of such exemptions:

This is the basis upon which Sydney was taken. Yes, that was a while ago, but the International Olympic Committee has also confirmed that all recent games have had this particular provision for organising committees right up to recent Olympics.<sup>322</sup>

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<sup>312</sup> Rachael Rangihaeata, Information Commissioner, public hearing transcript, Brisbane, 15 November 2021, p 10.

<sup>313</sup> Melissa Occhipinti, submission 8, p 2.

<sup>314</sup> Melissa Occhipinti, Founder, Friends of Raymond Park, public hearing transcript, Brisbane, 15 November 2021, p 3.

<sup>315</sup> Amanda Addley, public hearing transcript, Brisbane, 15 November 2021, p 5.

<sup>316</sup> Submission 9, p 1.

<sup>317</sup> Kerry Peterson, DPC, public briefing transcript, 4 November 2021, p 3.

<sup>318</sup> DPC, correspondence, 12 November 2021, p 4.

<sup>319</sup> Public hearing transcript, Brisbane, 3 November 2021, p 4.

<sup>320</sup> Public hearing transcript, Brisbane, 3 November 2021, p 4.

<sup>321</sup> DPC, correspondence, 12 November 2021, p 4.

<sup>322</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 3.

Finally, DPC sought to re-emphasise the limits of the exemption, applying as it does only to information communicated by the AOC and IOC that is not already in the public domain, with all other requests for information in relation to the Corporation's activities to be 'subject to the usual right to information process under the RTI Act'.<sup>323</sup>

#### Committee comment

The committee notes the sentiments of stakeholders and the advice of the Information Commissioner regarding the capacity for the current legislative framework to appropriately protect the confidentiality of the type of documents that would be subject to exemption in a manner that is in keeping with the public interest. The committee also recognises the clear position on exemptions outlined in both the Review Report and the Solomon Report.

The committee agrees that the removal of the proposed exemption would ensure the legislation better reflects the principles of transparency and accountability that the Queensland Government and its OHC partners seek to embody with their delivery of the Brisbane 2032 Games, and which community members expect.

However, the committee also recognises that the IOC has expressed a preference for the certainty provided by such an exemption, and that the OHC clearly states that:

All agreements and other contractual or legal documents relating to the formation and governance of the OCOG, as well as any subsequent changes thereto, shall be subject to the IOC's prior written approval.<sup>324</sup>

Ultimately, given the limited scope of the exemption proposed in this instance, it is unlikely to lead to any difference in outcomes for access to information than would otherwise be the case. However, the committee would welcome any willingness on the part of the AOC and IOC to reconsider their position as to the necessity of the exemption, and the strong message that would be sent by its removal from the legislation, placing the public interest squarely at the forefront of right to information decision-making in respect of the Corporation and its activities.

#### **Recommendation 5**

The committee recommends that the Department of the Premier and Cabinet continue to engage with the Australian Olympic Committee and International Olympic Committee to ensure that the Corporation and its Board are supported by a transparent and accountable legislative framework that appropriately balances the need for confidentiality of sensitive information with mechanisms for access to information in the public interest.

### **3.5 Application of the *Crime and Corruption Act 2001***

Although the Corporation would be considered a unit of public administration under the CC Act, the Bill provides that the CC Act would not apply to directors of the Board who are members of the Australian Parliament.<sup>325</sup> DPC advised that in the initial exposure draft of the Bill, all Board members were subject to the CC Act, 'but the Commonwealth government specifically requested that amendment'.<sup>326</sup> In response to a question from the committee regarding the application of that provision in circumstances of a CCC investigation, DPC advised:

The Prime Minister's nominees are yet to be confirmed, but should those nominees be federal government parliamentarians, then at this point in time, based on the drafting of the bill and the request that was put to us, they are not subject to that. I imagine they would be subject to their own ethics obligations as parliamentarians.<sup>327</sup>

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<sup>323</sup> DPC, correspondence, 12 November 2021, p 4.

<sup>324</sup> Olympic Host Contract 2032 – Principles, 3.1, p 10, <https://stillmed.olympics.com/media/Documents/Olympic-Games/Brisbane-2032/Host-Contract/Host-City-Contract-2032-Principles.pdf>

<sup>325</sup> Bill, cl 8(2).

<sup>326</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 4.

<sup>327</sup> Kerry Peterson, DPC, public briefing transcript, Brisbane, 4 November 2021, p 4.

### 3.5.1 Submitter comments

Several submitters expressed the view that all directors of the Board should be subject to the CC Act,<sup>328</sup> with Kyle Weise warning that this ‘caveat’ undermines the integrity of the Board, and the proposed legislation.<sup>329</sup>

The CCC, in its submission to the inquiry, expressed ‘serious concerns’ about the exemption ‘at two levels’:<sup>330</sup>

First, there is no reason stated, and none which is apparent, which would justify exempting members of the Commonwealth Parliament from the operation of the CC Act in relation to the functioning of the Corporation.

Second, the drafting of the proposed exemption is, in any event, overly broad and as a result may give rise to unintended consequences.<sup>331</sup>

Noting the Bill designates the Corporation as a unit of public administration to make it “subject to the public sector accountability regime rather than the *Corporations Act 2001* (Cth)”,<sup>332</sup> the CCC submitted:

There is no principled reason why Commonwealth Parliamentarians should be exempted from this accountability regime. It would be perverse if all other directors of the Corporation were within the CCC’s jurisdiction, but directors who were members of the Commonwealth Parliament were not. That is particularly so given the absence of an equivalent Commonwealth integrity body with jurisdiction over members of the Commonwealth Parliament.<sup>333</sup>

Given subclause 8(2) is ‘drafted in terms of a blanket exemption from the operation of the CC Act’,<sup>334</sup> the CCC further advised the provision ‘[a]s presently drafted, ... would provide exemption not just for matters connected with the Corporation or the Olympics more broadly, but in relation to any matters at all arising under the CC Act’.<sup>335</sup> In this regard, the CCC explained that the definition of ‘corrupt conduct’ in the CCC Act covers the conduct of any person ‘which has certain defined effects on public administration’,<sup>336</sup> including members of the Commonwealth Parliament, and provided the following example to illustrate a potential unintended consequence of subclause 8(2):

... if a member of the Commonwealth Parliament who had a private business interest gave a ‘kickback’ to a procurement officer in a State Government department to give a contract to that private business, that conduct would fall squarely within the CCC’s jurisdiction.

As it is presently drafted, cl 8(2) would exempt that member from the CCC’s jurisdiction if that member were also a director of the Corporation. That cannot have been intended.<sup>337</sup>

Noting that the provision ‘proposes to exempt such Member/directors from the operation of the CC Act in its entirety’, the CCC advised ‘the investigative powers available to the CCC would have no application to such Members/directors’.<sup>338</sup> The implications of this effect, as explained by the CCC, would be as follows:

An investigation into conduct of other non-exempt directors, or the Corporation more broadly, may be hampered if a Member/director could not be compelled to provide relevant evidence.

<sup>328</sup> Kyle Weise, submission 6, 1; Dr Simone Hine, submission 10, p 1; Dr Amy MacMahon MP, submission 18, p 8; CCC, submission 21, p 2; Amanda Addley, public hearing transcript, Brisbane, 15 November 2021, p 2.

<sup>329</sup> Submission 6, p 1.

<sup>330</sup> Submission 21, p 2.

<sup>331</sup> Submission 21, p 2.

<sup>332</sup> Submission 21, pp 2-3, quoting the explanatory notes, p 2.

<sup>333</sup> Submission 21, p 3.

<sup>334</sup> Submission 21, p 3.

<sup>335</sup> Submission 21, p 3.

<sup>336</sup> Submission 21, p 3.

<sup>337</sup> Submission 21, p 3.

<sup>338</sup> Submission 21, p 3.

And again, those same considerations would also apply to other investigations in which a Member/director may be a witness, but which is unconnected to the business of the Corporation ...<sup>339</sup>

Further, the CCC noted that the CC Act 'covers matters that extend beyond the CCC's Corruption jurisdiction'.<sup>340</sup>

### 3.5.2 Departmental response

In response to submissions, including that from the CCC, which called for all members of the Corporation's Board to be subject to the CC Act, the DPC reaffirmed:

In a draft version of the Bill, all Board directors were initially subject to the CC Act. Following consultation, the Commonwealth Government specifically requested that the CC Act not apply to Commonwealth Parliamentarians.<sup>341</sup>

As to the CCC noting in its submission that clause 8(2) is drafted broadly and may have unintended consequences, the DPC advised that '[t]he intent of clause 8(2) was for the CC Act not to apply in relation to a director who is a Commonwealth Parliamentarian only as it relates to their duties as a director of the Corporation's Board (as it relates to the Bill)'.<sup>342</sup>

#### Committee comment

The committee shares the concerns of submitters regarding the proposed exemption of any Federal Members of Parliament appointed to the Board from the application of the CC Act.

It is not clear to this committee why the Federal Government would consider it appropriate that any Federal parliamentarians appointed to the Board should be held to a different standard of accountability than every other Board member.

In the committee's view, very strong justification would be required to warrant such a provision, and to date, no such reasoning has been provided.

#### **Recommendation 6**

The committee recommends that the Premier and Minister for the Olympics undertake to further engage with the Commonwealth Government regarding the necessity of retaining clause 8(2), and advise the Assembly of any further advice received as to the grounds for its inclusion.

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<sup>339</sup> Submission 21, p 3.

<sup>340</sup> Submission 21, p 3.

<sup>341</sup> DPC, correspondence, 12 November 2021, p 8.

<sup>342</sup> DPC, correspondence, 12 November 2021, p 8.



## 4 Compliance with the *Legislative Standards Act 1992*

### 4.1 Fundamental legislative principles

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

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee brings the following to the attention of the Legislative Assembly.

### 4.2 Rights and liberties of individuals – privacy

As outlined in chapter 3.2.2 of this report, the Bill provides for the establishment of a board of directors for the Corporation, along with the composition, functions and powers of the Board. Under the Bill, a person is disqualified from becoming, or continuing as, a director of the Board in the case of any of the following:

- they have a conviction, other than a spent conviction, for an indictable offence
- they are an insolvent under administration
- they are disqualified from managing corporations.<sup>343</sup>

To support this provision, the Bill provides the Minister with the power to ask the commissioner of the police service for a written report about the criminal history of a person and a brief description of the circumstances of a conviction mentioned in the criminal history. However, this power is limited, as the Minister may make the request only if the person has given written consent for the request.<sup>344</sup> Under the Bill, criminal history information is confidential.<sup>345</sup>

The Bill also provides that a nominated director of the board must, unless they have a reasonable excuse, immediately give notice to the Minister if they are convicted of an indictable offence during their term of appointment.<sup>346</sup> The penalty for failing to give notice is discussed in chapter 4.2.

In addition, the Bill authorises the Corporation to transfer an individual’s personal information to the IOC or IPC if the information is transferred in the performance of the Corporation’s functions.<sup>347</sup>

#### 4.2.1 Issues of fundamental legislative principle

The above provisions raise potential issues of FLP regarding an individual’s right to privacy with respect to their personal information (criminal history information), which is relevant to a consideration of whether legislation has sufficient regard to individual rights and liberties.<sup>348</sup>

In considering similar provisions in Bills relating to a person’s criminal history information, committees have considered whether adequate safeguards are included in the legislation, such as whether:

- the criminal history can be obtained only with consent
- there are strict limits on further disclosure of that information
- the criminal history information must be destroyed when it is no longer required for the purpose for which it was obtained.<sup>349</sup>

<sup>343</sup> Explanatory notes, p 14; Bill, cl 24.

<sup>344</sup> Explanatory notes, p 15; Bill, cl 28.

<sup>345</sup> Explanatory notes, p 15; Bill, cl 30.

<sup>346</sup> Explanatory notes, p 15; Bill, cl 29.

<sup>347</sup> Explanatory notes, p 18; Bill, cl 58.

<sup>348</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook* (FLP Notebook), January 2008, p 113.

<sup>349</sup> See for example, Transportation and Utilities Committee, Report No. 13, 55th Parliament – *Plumbing and Drainage and Other Legislation Amendment Bill 2015*, March 2016, p 24.

In this instance, in respect of the provision for the Minister to obtain a person's criminal history report, the first of these 2 conditions are met.

The committee sought clarification from DPC regarding the absence of a provision in the Bill that would require the destruction of criminal history information when it is no longer required for the purpose for which it was obtained, in contrast to equivalent provisions in various other recent legislation.<sup>350</sup> DPC advised:

During the drafting process, DPC contemplated the inclusion of such a requirement. It was considered that destroying criminal history information was only one of several potential administrative steps that could be taken to help ensure confidentiality in accordance with clause 30(2). This includes the secure storage of information and placing organisational restrictions on the access to information. Such provisions were not considered necessary to include in the Bill. Further, the persons referenced in clause 30 of the Bill will need to abide by the *Information Privacy Act 2009* and related guides.<sup>351</sup>

Consideration has also been given in the past to the extent of information covered by the term 'criminal history', including for example, whether the term extends to charges that do not result in convictions, and to 'spent' convictions, and convictions that are quashed or set aside, and convictions which are 'not recorded'.

Here, the following can be noted:

- A person's criminal history can be obtained only with their consent.<sup>352</sup>
- There are limits on disclosure, and an offence for unauthorised disclosure.<sup>353</sup>
- The convictions included in a criminal history do not extend to spent convictions.<sup>354</sup>

It can also be noted that the Bill goes some way to addressing confidentiality issues regarding criminal history information by making it an offence for a person who possesses criminal history information to directly or indirectly disclose confidential information or criminal history information to another person, unless the disclosure is:

- in the performance of a function or exercise of a power under the Act, or
- otherwise permitted by law, or
- made with consent of the person to whom the information relates.<sup>355</sup>

A maximum penalty of 100 penalty units (\$13,785) would apply for an unauthorised disclosure.<sup>356</sup>

In respect of the proactive disclosure requirements for directors, it can be noted that a nominated director is required to immediately give notice to the Minister that they have been convicted of an indictable offence, unless the person has a reasonable excuse.<sup>357</sup> This, in effect, removes any meaningful consent.

The explanatory notes, in relation to the criminal history requirement, provide the following justification:

... the power for the Minister to obtain criminal history information is necessary to ensure the suitability of individuals appointed to the Corporation. Similarly, the obligation imposed on nominated directors to disclose if they are convicted of an indictable offence is necessary to ensure the integrity of the Corporation.<sup>358</sup>

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<sup>350</sup> See for example, *Jobs Queensland Act 2015*, s 18; *Cross River Rail Delivery Authority Act 2016*, s 70; *Plumbing and Drainage Act 2018*, s 120; *Hospitals Foundation Act 2018*, s 38; *Health and Wellbeing Queensland Act 2019*, s 48; *Personalised Transport Ombudsman Act 2019*, s 23.

<sup>351</sup> Rachel Hunter, Director-General, DPC, correspondence, 16 November 2021, p 1.

<sup>352</sup> Bill, cl 28(2).

<sup>353</sup> Bill, cl 30.

<sup>354</sup> Bill, cl 28(5).

<sup>355</sup> Bill, cl 30.

<sup>356</sup> Bill, cl 30. A penalty unit is \$137.85 – *Penalties and Sentences Regulation 2015*, s 3; *Penalties and Sentences Act 1992*, s 5A.

<sup>357</sup> Explanatory notes, p 15; Bill, cl 29.

<sup>358</sup> Explanatory notes, p 5.

It could also be argued that any person who does not want their criminal history accessed or to disclose their information relating to insolvency and disqualification from managing corporations, can decline to provide consent or the information and withdraw their application (or vacate their position). At the same time, this effectively prevents a person from becoming or continuing to be a member, since a person is disqualified from becoming, or continuing to be a nominated director if the person does not give consent.<sup>359</sup>

Regarding the Bill enabling the Corporation to transfer personal information to the IOC and IPC, the explanatory notes provide the following justification:

It will be necessary for the Corporation to maintain a close working relationship with the International Olympic Committee and International Paralympic Committee to deliver its functions and meet its obligations under the Olympic Host Contract. Under the Olympic Host Contract, the Corporation is required to cooperate with the IOC in relation to the processing of personal information, and to fulfil all obligations under the laws of Queensland and Switzerland ...

...

... the clause is appropriately balanced in that the information can only be transferred in the performance of the corporation's functions.<sup>360</sup>

#### Committee comment

The committee recognises that the proactive disclosure requirements for directors are necessary to ensure the Minister can be satisfied that directors continue to meet eligibility requirements, and notes that the Bill provides for criminal history to be obtained only with consent, and with strict limits imposed on the further disclosure of that information.

The committee also notes the explanation provided by DPC in relation to the absence of a requirement for the destruction of criminal history information after it is no longer needed. Whilst the persons referenced in clause 30 of the Bill would need to abide by the provisions of the *Information Privacy Act 2009*, the committee considers that reliance on that safeguard is not best practice when compared with other recent legislation that includes a requirement for the destruction of criminal history information after it is no longer needed.<sup>361</sup> Beyond the fact that it is unclear what is to be gained by enabling the secure storage of information beyond its useful purpose, the retention of the information presents a potential privacy risk that could easily be avoided.

Given this legislation establishes the foundations for the organising framework for the Brisbane 2032 Games, setting the tone for the operations of the Corporation and the Board, the committee considers it appropriate that Bill reflect best practice in its treatment of personal information.

#### **Recommendation 7**

The committee recommends that the Premier and Minister for the Olympics consider amending the Bill to include a provision to require the destruction of criminal history information after it is no longer needed.

### **4.3 Rights and liberties of individuals – proportionality and relevance of penalties**

A number of clauses in the Bill are offence provisions, and in each case non-compliance attracts a maximum penalty of 100 penalty units (currently \$13,785). Specifically:

- the Bill requires a nominated director to act honestly in the performance of their functions and the exercise of their powers, with the penalty applicable if the nominated director does not act accordingly<sup>362</sup>

<sup>359</sup> Bill, cl 24(2).

<sup>360</sup> Explanatory notes, pp 8-9.

<sup>361</sup> As per footnote 350, see, for example: *Jobs Queensland Act 2015*, s 18; *Cross River Rail Delivery Authority Act 2016*, s 70; *Plumbing and Drainage Act 2018*, s 120; *Hospitals Foundation Act 2018*, s 38; *Health and Wellbeing Queensland Act 2019*, s 48; *Personalised Transport Ombudsman Act 2019*, s 23.

<sup>362</sup> Bill, cl 56.

- as mentioned in section 4.1, a nominated director who is convicted of an indictable offence during the term of their appointment is to give notice to the Minister about the conviction (including details of the date and nature of the offence and any sentence), unless they have a reasonable excuse (with a penalty applicable for failing to give notice)<sup>363</sup>
- the Bill prohibits a person from using, directly or indirectly, or disclosing, criminal history information to another person, unless the use or disclosure is with consent or is authorised or required by law.<sup>364</sup>

In addition to the offence provision to safeguard criminal history information, the Bill also contains a general confidentiality provision which prohibits a person from using, directly or indirectly, or disclosing, confidential information to another person, unless the use or disclosure is with consent or is specifically authorised or required by law.<sup>365</sup>

#### **4.3.1 Issue of fundamental legislative principle**

The creation of new offences and the imposition of penalties affect the rights and liberties of individuals.

In this regard, the Office of the Queensland Parliamentary Counsel (OQPC), in its *Fundamental Legislative Principles: The FLP Notebook* (FLP Notebook), advises that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.<sup>366</sup>

A penalty, the OQPC notes, should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>367</sup>

##### **4.3.1.1 *Failure to disclose criminal history information***

In relation to the penalty imposed if a person does not give notice to the Minister if they are convicted of an indictable offence during their term of appointment, the explanatory notes set out the purpose of the obligation of disclosure (and, by extension, the penalties) as follows:

The obligation for nominated directors to disclose if they are convicted of an indictable offence reinforces the expectation that directors are to behave ethically and legally and ensures that the Minister is aware of matters that may impact on the integrity of the Corporation. Imposing such an obligation on directors is reasonable and 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 the board of the Corporation.<sup>368</sup>

As mentioned in the explanatory notes, similar provisions requiring a person to disclose if they are convicted of an indictable offence are found in other Queensland legislation including the *Health and Wellbeing Queensland Act 2019*, the *Hospital Foundations Act 2018*, the *Jobs Queensland Act 2015*, and

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<sup>363</sup> Bill, cl 29

<sup>364</sup> Bill, cl 30.

<sup>365</sup> Bill, cl 57. Confidential information is defined in cl 57 of the Bill as information that could identify an individual, is about a person's current financial position or financial background, or would be likely to damage the commercial activities of a person to whom the information relates. It does not include information that is publicly available or 'statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates'.

<sup>366</sup> OQPC, FLP Notebook, January 2008, p 120.

<sup>367</sup> OQPC, FLP Notebook, January 2008, p 120.

<sup>368</sup> Explanatory notes, p 6.

the *Cross River Rail Delivery Authority Act 2016*.<sup>369</sup> Those provisions all impose a maximum penalty of 100 penalty units for non-compliance. The explanatory notes conclude:

As such, including this offence in the Bill is considered appropriate and reasonable and not a breach of the fundamental legislative principles.<sup>370</sup>

#### 4.3.1.2 Disclosure of confidential information

Regarding the offence for disclosure of criminal history information, the explanatory notes state:

This offence is included in the Bill to protect the rights of the person about whom the information relates and provide an important safeguard against the unnecessary disclosure of a person's protected information. The penalty is set at a level to provide the appropriate deterrence and is consistent with the similar offences in Queensland legislation. On this basis, the inclusion of the offence in the Bill is considered appropriate and reasonable and not a breach of the fundamental legislative principles.<sup>371</sup>

In relation to the offence in the general confidentiality provision, the explanatory notes state:

Given the breadth of information to which the Corporation and the Board will have access that could identify an individual (such as ticketing information or an athlete's medical information), the creation of this offence is justified to ensure that this information is only used for proper and lawful purposes and therefore is not a breach of the fundamental legislative principles.<sup>372</sup>

The Acts mentioned above also contain provisions prohibiting misuse of information that attract a maximum penalty of 100 penalty units.

#### 4.3.1.3 Failure to act honestly in the performance of duties

The explanatory notes address the rationale for the offence and penalty if a director or CEO does not act honestly in the performance of their functions and exercise of their powers:

Given the public importance of successfully delivering Brisbane 2032 and the significant amount of money the Corporation will be responsible for, the impact of any wrongdoing on behalf of the directors and the chief executive officer could be of greater significance than other statutory bodies. Furthermore, given that the State has guaranteed to meet any financial shortfall of the Corporation when it is wound up, any dishonest actions by directors or the chief executive officer that result in increased financial costs for the Corporation could ultimately be transferred to the State as a liability upon the Corporation's dissolution. As such, the creation of this offence is justified and will ensure that directors and the chief executive officer honestly discharge their duties.<sup>373</sup>

The explanatory notes further state:

It should be noted that similar provisions have been applied across the Queensland statute book including, for example, under the *Cross River Rail Delivery Authority Act 2016*, *Commonwealth Games Arrangements Act 2011*, *Racing Act 2002* and the *Rural and Regional Adjustment Act 1994*.<sup>374</sup>

Although the above Acts all contain provisions prohibiting acting dishonestly in the performance of duties as stated, it can be noted that the provisions in the *Cross River Rail Delivery Authority Act 2016* and the *Rural and Regional Adjustment Act 1994* attract a maximum penalty of 200 penalty units, and the provisions in the *Commonwealth Games Arrangements Act 2011* and the *Racing Act 2002* are silent as to applicable penalties.

#### Committee comment

In relation to disclosure of criminal history information and confidential information, there is a consistency across a range of Acts containing similar provisions with a penalty of a maximum 100 penalty units.

<sup>369</sup> Explanatory notes, p 6; Similar provisions, with the same penalty, can also be found in the *University of Queensland Act 1998* and the *Personalised Transport Ombudsman Act 2019*.

<sup>370</sup> Explanatory notes, p 6.

<sup>371</sup> Explanatory notes, p 6.

<sup>372</sup> Explanatory notes, p 7.

<sup>373</sup> Explanatory notes, p 7.

<sup>374</sup> Explanatory notes, p 7.

The committee is satisfied that the penalties imposed are proportionate to penalties in other similar situations where a person fails to disclose information relevant to an appointment to a board (or similar) position or otherwise discloses confidential information.

The committee notes there is some inconsistency across other Acts in respect of the penalty amounts for similar offence provisions in relation to acting dishonestly in the performance of duties, and would welcome any further information the Premier and Minister for Cabinet can provide in respect of the applicable maximum penalty under the Bill.

On the whole, however, the committee is satisfied that the penalties imposed for acting dishonestly in the performance of duties are generally proportionate and reasonable.

#### **4.4 Rights and liberties of individuals – general rights and liberties**

The Bill provides that a regulation may prescribe a day as the dissolution day of the Corporation.<sup>375</sup> On that day, the Corporation is dissolved, the current directors go out of office, and the appointments of the CEO office and any other staff employed by the Corporation end.<sup>376</sup> Each person holding office is removed without compensation.<sup>377</sup>

The Bill also amends the RTI Act to provide that Act will not apply to documents that are created or received by the Corporation in carrying out its functions to the extent that they compromise information not already in the public domain that was communicated in confidence by or for the AOC or the IOC.<sup>378</sup>

##### **4.4.1 Issue of fundamental legislative principle**

The reasonableness and fairness of treatment of individuals is a relevant consideration in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

In regard to the dissolution of the Corporation, the removal of people from their employment, without compensation, could be seen as interfering with a person's right to participate in community activities, and to earn income, as well as removing their position and title.

However, it can be noted that although the board members are being removed from their positions, they will have been aware from the commencement of their appointment that the Corporation will have a limited life and that no compensation is payable upon dissolution of the Corporation.

Amending the RTI Act so that it excludes documents created or received by the Corporation could be seen as limiting a person's right to gain access to information held by public authorities.

In discussion of the effect of such provisions on the rights and liberties of individuals, and in referring to the then *Freedom of Information Act 1992* (the forerunner to the RTI Act), the OQPC states:

... [the Act] contains a long established scheme that enables members of the community to gain access to information held by public authorities. Any reduction of access requires strong justification.<sup>379</sup>

As outlined in chapter 3.4.1 of this report, the Information Commissioner has highlighted that the proposed amendment is inconsistent with a position established by 2 recent reviews of the RTI Act, in the Solomon Report and the Review Report.<sup>380</sup>

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<sup>375</sup> Bill, cl 52.

<sup>376</sup> Bill, cl 53; explanatory notes, p 8.

<sup>377</sup> Explanatory notes, p 8.

<sup>378</sup> Bill, cl 66.

<sup>379</sup> OQPC, FLP Notebook, January 2008, p 108. It was there noted that the former Scrutiny of Legislation Committee had referred to Parliament, without express objection, provisions stating that particular information was exempt matter under the *Freedom of Information Act 1992* or that the Act did not apply to the information.

<sup>380</sup> Submission 11, p 2. Concerns regarding clause 66 were also raised in submissions 5 and 8, and in submission 18, p 8.

The Information Commissioner stated:

Exclusions are used sparingly in the RTI Act given the impact of such a provision and as stated in the Review Report, the RTI Act has a sufficient legislative framework to protect sensitive documents, including commercial-in-confidence information.<sup>381</sup>

The explanatory notes state the removal is justified ‘given the sensitive nature of some of the documents that will be developed in connection with the performance of the Corporation’s functions, such as commercial-in-confidence information in relation to the Corporation’s local marketing program’.<sup>382</sup>

The notes also highlight that:

A similar provision was included in the *Sydney Organising Committee for the Olympic Games Act 1993 ...*, which constituted the Sydney Organising Committee for the Olympic Games to stage and deliver the Sydney 2000 Games.<sup>383</sup>

The comparison with the NSW Act was questioned by the Information Commissioner, who noted it was introduced almost 30 years ago, whereas the current Bill:

... must reflect and be consistent with contemporary Queensland RTI laws, which as set out above, represented significant reform of information access in 2009. Community expectations are high, with 86% of Queenslanders surveyed indicating in 2021 that the right to access information was important.<sup>384</sup>

#### Committee comment

In respect of individual rights and liberties, the committee considers that the RTI exemption is unlikely to lead to any significant difference in an individual’s ability to access information, noting both the limited scope of the exemption and the nature of the information involved. However, the committee agrees with the Integrity Commissioner that it would be preferable that legislation reflects contemporary standards and expectations about access to information about governing bodies and agencies in the public interest.

The committee’s concerns about the proposed RTI exemption in clause 66 have been canvassed previously in chapter 3.4 of this report, in which the committee has made a recommendation.

### **4.5 Rights and liberties of individuals – delegation of administrative power**

The Bill proposes to delegate administrative power in a number of circumstances. Regarding the composition of the board of directors, the Bill provides for the Prime Minister, Minister, Premier, and Lord Mayor, to exercise their discretion in relation to whom they recommend for appointment as a nominated director.<sup>385</sup> The Bill also enables the AOC, Paralympics Australia, Prime Minister and Lord Mayor to remove their nominated directors from office by providing a written notice to the Minister.<sup>386</sup>

In addition, the Bill provides that the Corporation may delegate its functions under the Act to the CEO or a committee of the Board.<sup>387</sup>

#### **4.5.1 Issue of fundamental legislative principle**

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.<sup>388</sup>

<sup>381</sup> Submission 11, p 2.

<sup>382</sup> Explanatory notes, p 9.

<sup>383</sup> Explanatory notes, p 9.

<sup>384</sup> Submission 11, p 3.

<sup>385</sup> Bill, cls 17, 19 & 20.

<sup>386</sup> Bill, cl 23.

<sup>387</sup> Bill, cl 60.

<sup>388</sup> LSA, s 4(3)(c).

The explanatory notes provide the following justifications regarding the administrative delegations pertaining to the Board's composition, citing the need for flexibility and noting the safeguards in place to protect the proper functioning of the board:

The Minister and Prime Minister are the appropriate persons to exercise discretion on the appointment of independent directors and the president, given the State is a signatory to the Olympic Host Contract and is responsible for covering any potential financial shortfall of the Corporation and the Commonwealth Government has committed to provide a significant financial contribution to critical Games-related infrastructure. Clauses 18 and 25 include appropriate limitations on this discretion, such as them being satisfied that the person is appropriately qualified and meeting requirements for consultation. ...

Providing the Australian Olympic Committee, Paralympics Australia, Prime Minister and Lord Mayor with the ability to remove their nominated directors from office at their discretion ... is considered an appropriate delegation of administrative power to ensure that persons can immediately be removed from office if they are no longer affiliated with, or supported by, the nominating entity. This is justified as directors of the board should at all times be truly representative of the Games partners that nominated them, pursuant to the intent of the Olympic Host Contract. The power is balanced with [the] fact that a new director that is nominated to a position vacated under clause 23 will still need to be appointed by the Governor in Council as per clause 17(5).<sup>389</sup>

The explanatory notes also refer to the requirements for proposed nominations by the Prime Minister, Premier and Lord Mayor.<sup>390</sup> The explanatory notes state that the requirements set out in clauses 18 and 25, such as the Minister and Premier meeting consultation requirements and being satisfied that the person is appropriately qualified, are 'appropriate limitations on this discretion'.<sup>391</sup> In addition, the Bill provides the Prime Minister and Premier must have regard to:

- the requirement that at least 50% of nominated directors holding office be women
- the gender diversity of the board's directors
- the Queensland Government's policy about gender equity on boards.<sup>392</sup>

The Lord Mayor, further, must consult with the Council of Mayors (SEQ) Pty Ltd, and must also have regard to the above gender requirements.<sup>393</sup>

Regarding delegation by the Corporation to the CEO or a committee of the board, the explanatory notes justify this delegation of administrative power as follows:

... necessary given the wide range of functions the Corporation will be required to undertake and that some tasks may be more effectively delivered if they can be given close attention by a committee of the board or the chief executive officer. Giving the Corporation the flexibility to use its discretion to delegate its functions or powers will empower the Corporation to successfully deliver Brisbane 2032 in the manner it considers most efficient and effective. It is appropriate for the chief executive officer or committee of the Board to exercise a function or power of the Corporation, given the chief executive officer is responsible for the day-to-day administration of the Corporation, and committees (which comprise of directors of the board) will have the expertise and decision-making power to efficiently undertake functions relevant to the Corporation.<sup>394</sup>

#### Committee comment

The committee is satisfied that the delegations of administrative power in the Bill are appropriate and justified.

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<sup>389</sup> Explanatory notes, p 4.

<sup>390</sup> Explanatory notes, p 4.

<sup>391</sup> Explanatory notes, p 4.

<sup>392</sup> Bill, cl 19.

<sup>393</sup> Bill, cl 20.

<sup>394</sup> Explanatory notes, p 5.



## 4.6 Rights and liberties of individuals – reversal of onus of proof in criminal proceedings

As mentioned previously, the Bill requires a nominated director who is convicted of an indictable offence during the term of their appointment to give notice to the Minister about the conviction, ‘unless the person has a reasonable excuse’.<sup>395</sup>

### 4.6.1 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.<sup>396</sup>

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. The OQPC advises: ‘For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt’.<sup>397</sup>

The Bill imposes an obligation on nominated directors to, unless they have a reasonable excuse, immediately give notice to the Minister if they are convicted of an indictable offence.<sup>398</sup>

The OQPC has noted of such ‘reasonable excuse’ provisions:

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.

For example, if legislation prohibits a person from doing something ‘without reasonable excuse’, it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.<sup>399</sup>

The explanatory notes for this Bill do not address this issue. In considering the issue regarding similar provisions in other Bills, explanatory notes justify the reversal of the onus of proof on the basis that establishing the defence would involve matters which would be within the defendant’s knowledge or on which evidence would be available to them.<sup>400</sup> It could reasonably be expected that this would be the case in relation to notifying the Minister for a conviction of an indictable offence.

#### *Committee comment*

The committee is satisfied that any potential FLP breach is justified and appropriate in the circumstances.

## 4.7 Rights and liberties of individuals – immunity from proceedings

The Bill provides protection from civil liability for a director, the CEO or another employee of the Corporation, for an act or omission made honestly and without negligence in the performance of their functions under the proposed legislation.<sup>401</sup> Where this provision prevents liability attaching to a person, liability instead attaches to the Corporation.<sup>402</sup>

### 4.7.1 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.<sup>403</sup>

<sup>395</sup> Bill, cl 29.

<sup>396</sup> LSA, s 4(3)(d).

<sup>397</sup> OQPC, FLP Notebook, January 2008, p 36.

<sup>398</sup> Bill, clause 29; explanatory notes, p 5.

<sup>399</sup> OQPC, FLP Notebook, January 2008, p 36.

<sup>400</sup> For a recent example, see Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018, explanatory notes, p 17.

<sup>401</sup> Bill, cl 61.

<sup>402</sup> Bill, cl 61(2).

<sup>403</sup> LSA, s 4(3)(h).

That is, it is a fundamental principle of law that everyone is equal before the law, and each person should therefore be fully liable for their actions. Generally, persons who commit a wrong when acting without authority should not be granted immunity.<sup>404</sup>

Notwithstanding this, the former Scrutiny of Legislation Committee of the Queensland Parliament expressed the view that the conferral of immunity is appropriate in certain circumstances. Importantly, where such a provision is engaged to protect an entity from liability, the OQPC's *Fundamental Legislative Principles: The OQPC Notebook* (FLP Notebook) advises:<sup>405</sup>

The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees.

... the preferred provision provides immunity for actions done honestly and without negligence ... if liability is removed from a person, it is usually declared to be shifted to the State.<sup>406</sup>

Further, where such clauses shift liability to the State (or in this case the Corporation) for actions or omissions of officials, aggrieved persons are able to make a claim for loss or damage suffered as a result of actions taken by officials.

Consistent with this preferred approach, the explanatory notes confirm:

... this clause includes appropriate limitations on the protection from civil liability, such as the protection not extending to officials who have been dishonest and negligent, and allowing for an avenue of redress for any affected individuals by providing that liability attaches to the corporation.<sup>407</sup>

Immunity clauses such as the above are quite common in legislation. They generally serve to allow public servants, officials, statutory officers and the like, to make decisions and exercise powers and functions without being unduly concerned that they may be held personally liable for acts done or omissions made in the course of carrying out their duties, providing that those actions or omissions are made honestly and without negligence or malice.

#### Committee comment

Noting the requirements for officials to be acting honestly and without negligence, and particularly noting any liability is shifted to the Corporation (such that a claim for loss or damage may be made), the committee is satisfied the provision is reasonable and appropriately defined.

### **4.8 Institution of Parliament – delegation of legislative power**

The Bill contains 2 clauses containing regulation-making powers.<sup>408</sup> The Bill provides that the Corporation may have any other function, related to its main function (to undertake and facilitate the organisation, conduct, promotion and commercial and financial management of the 2032 Games), as prescribed by regulation.<sup>409</sup> Additionally, as mentioned in chapter 4.3.1, the Bill also provides that a regulation may prescribe a day as the dissolution day.<sup>410</sup>

#### **4.8.1 Issue of fundamental legislative principle**

The LSA provides that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>411</sup>

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<sup>404</sup> OQPC, FLP Notebook, January 2008 p 64.

<sup>405</sup> OQPC, FLP Notebook, January 2008, p 64.

<sup>406</sup> OQPC, FLP Notebook, January 2008, p 64.

<sup>407</sup> Explanatory notes, p 9.

<sup>408</sup> Bill, cls 9, 52.

<sup>409</sup> Bill, cl 9.

<sup>410</sup> Bill, cl 52.

<sup>411</sup> LSA, s 4(2)(b).

The power to prescribe additional functions of the Corporation under regulation potentially breaches the FLP that legislation should have sufficient regard to the institution of Parliament.<sup>412</sup>

The explanatory notes state that allowing a regulation to prescribe additional functions of the Corporation is justified:

... as it includes an appropriate limitation, being that the prescription of additional functions must be related to the Corporation's main function. The main function of the Corporation is to undertake and facilitate the organisation, conduct, promotion and commercial and financial management of the Olympic and Paralympic Games.<sup>413</sup>

In relation to the Bill providing for the dissolution day to be set by regulation, the explanatory notes state:

... it is necessary to have the flexibility to prescribe the dissolution day under a regulation given that Brisbane 2032 is more than 10 years away and it is not yet clear how long the Corporation will need to meet its remaining obligations under the Olympic Host Contract after Brisbane 2032 and get its affairs in order prior to dissolution. The amount of time needed prior to dissolution will also depend on the magnitude of the Corporation's assets and liabilities and the administrative processes it has in place. Given these uncertainties, providing flexibility to prescribe a dissolution day under regulation is justified. There is also an appropriate limitation on this clause which provides that the Minister consult with the IOC prior to recommending the making of a regulation under clause 52(1).<sup>414</sup>

Committee comment

The committee notes that any additional functions of the Corporation prescribed by regulation must be related to the Corporation's main function, and recognises the need for flexibility to prescribe the dissolution day by regulation. The committee is satisfied that the provisions are appropriate and justified in the circumstances.

#### **4.9 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. While the committee identified a need to seek further advice from the department regarding the justifications for certain provisions, on the whole the notes are reasonably detailed. They contain the information required by Part 4 and a sufficient level of background and commentary to facilitate understanding of the Bill's aims and origins.

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<sup>412</sup> LSA, ss 4(2)(b), (4).

<sup>413</sup> Explanatory notes, p 7.

<sup>414</sup> Explanatory notes, p 8.

## 5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a bill must consider and report to the Legislative Assembly about whether the bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the bill.<sup>415</sup>

A bill is compatible with human rights if the bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.<sup>416</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>417</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

### 5.1 Human rights compatibility

In the statement of compatibility accompanying the Bill, the Premier acknowledges a number of potential limitations on the rights protected under the HRA, including in respect of:

- the right to freedom of expression (section 21 of the HRA)
- the right to take part in public life (section 23 of the HRA)
- privacy and reputation (section 25 of the HRA)
- the right to liberty and security of the person (section 29 of the HRA)
- rights in criminal proceedings (section 32 of the HRA).

Having considered the explanations provided in the statement, the committee was readily satisfied that the identified limitations on the right to liberty and security of the person (section 29) and on rights in criminal proceedings (section 32) are reasonable and justified. The committee accordingly focussed its attention on the Bill's interaction with the first 3 of the rights listed above, which raised certain issues warranting further consideration.

#### Committee comment

On balance, the committee is satisfied that the Bill is compatible with human rights. However, the committee has some reservations about the compatibility of the provisions limiting the right to freedom of expression and the right to privacy and reputation – and specifically, whether their stated purpose may be achieved in a less restrictive way.

The committee's considerations in this regard are set out below.

#### 5.1.1 Freedom of expression – right to information

As discussed in chapters 3.4 and 4.4 of the report, the Bill amends schedule 1 of the RTI Act ('Documents to which this Act does not apply') to include as exempt from the application of the Act, any document created or received by the Corporation in carrying out its legislative functions, to the extent that it comprises information not already in the public domain that was communicated in confidence by or for the AOC or the IOC.<sup>418</sup> This potentially limits the right to freedom of expression set out in section 21 of the HRA.

Section 21 of the HRA protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal

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<sup>415</sup> HRA, s 39.

<sup>416</sup> HRA, s 8.

<sup>417</sup> The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

<sup>418</sup> Bill, cl 66.

communication. As acknowledged in the statement of compatibility, this includes a right to access government-held information.<sup>419</sup>

The United Nations Human Rights Committee (UNHRC) has referred to the importance of freedom of information legislation in this context:

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as **by means of freedom of information legislation**. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. .... Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.<sup>420</sup>

The statement of compatibility acknowledges that the RTI Act 'already recognises that the divulgence of confidential information and the prejudice of private business, professional, commercial or financial affairs as factors favouring nondisclosure in the public interest'.<sup>421</sup> The purpose of the limitation, it advises, is to provide further certainty to the IOC and AOC in the context of the OHC.<sup>422</sup>

It can be noted that the documents listed in Schedule 1 generally reflect the exemptions to freedom of expression which are recognised under international human rights law (eg national security or related matters of law enforcement). For instance, Schedule 1 exempts intelligence agency documents; documents under Terrorism Preventative Detention legislation; documents under the CC Act and those relating to police powers. Documents communicated in confidence relating to the IOC or AOC are of a very different nature to this.

It can also be observed that there is reference in section 10 of Schedule 1 to the commercial activities of WorkCover Queensland.<sup>423</sup> This is a general exemption of all confidential/commercial documents, but is constrained to 'commercial activities other than activities about policies, applications for compensation, or proceedings for damages'.<sup>424</sup>

In contrast, the exemption set out in clauses 65–66 of the Bill exempt documents in a broader way, that is, those 'communicated in confidence by or for the Australian Olympic Committee or the International Olympic Committee' with no carve out for documents relating to policies or other matters.

Regarding references to the inclusion of equivalent provisions in the SOCOG Act and other subsequent Games, it can also be noted that the SOCOG Act exclusion and a number of other precedents were drafted in a jurisdiction lacking a human rights charter. Accordingly, whilst of interest as a comparison, the reliance on these provisions as precedents must be assessed.

It is relevant to note that the UNHRC has stated that:

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of

<sup>419</sup> Statement of compatibility, p 3.

<sup>420</sup> United Nations Human Rights Committee (UNHRC), *General Comment No. 34, Article 19: Freedoms of opinion and expression*, 12 September 2011, para 19, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> [emphasis added].

<sup>421</sup> Statement of compatibility, p 3.

<sup>422</sup> Statement of compatibility, p 3.

<sup>423</sup> Sch 1, s 10 of the RTI Act exempts from the Act: 'Particular documents under Workers' Compensation and Rehabilitation Act 2003 Either of the following documents— (a) a document created, or received, by the Workers' Compensation Regulator in carrying out its function of monitoring the financial performance of self-insurers within the meaning of the *Workers' Compensation and Rehabilitation Act 2003*; (b) a document created, or received, by WorkCover Queensland in carrying out its commercial activities other than activities about policies, applications for compensation, or proceedings for damages'.

<sup>424</sup> RTI Act, sch 1, s 10.

the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>425</sup>

Here, it can be recognised that the protection of the information proposed to be exempted by the Bill is important as it means that transactions (such as contracts) can be made in the knowledge that sensitive commercial information that a company may hold proprietary rights in will be kept confidential. However, while the Bill provides an effective means of achieving this purpose, given the existing protections for such information in the RTI Act, it is not clear that there is a direct threat to commercial dealings in the absence of the exemption, such that neither the necessity or proportionality of the action are clearly set out.

The importance of preserving the right in section 21 of the HRA must also be considered – and there is a strong public interest in access to government information to ensure financial accountability and transparency where public funds are committed.<sup>426</sup> That is, disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds utilised in relation to the Games and assist an inquiry into possible deficiencies in the conduct or administration of the Board/Corporation.

#### Committee comment

It is not clear to the committee that the limitation on section 21 of the HRA associated with the proposed RTI exemption is either necessary or proportionate, noting the capacity of the existing protections in the RTI Act to appropriately protect the information in question.

However, the committee also recognises that while the proposed RTI exemption is not the least restrictive means of achieving the aims of these provisions, it may represent the least restrictive (or only) means of achieving that purpose within the confines of the OHC, noting the requirement of the OHC that the legislation be endorsed by the IOC, and the IOC's clearly expressed preference for the inclusion of the exemption.

Noting this conflict, the committee has made a recommendation in respect of the exemption in chapter 3.4 of this report.

#### **5.1.2 Right to take part in public life – Appointment to the Board**

As outlined in chapter 3.2.4 of this report, the Bill sets out provisions which impose limitations on the members who may be appointed to the board and their characteristics. Notably, in respect of nominated directors in particular, it provides that:

- one member must be a past Olympian and one must be a past Paralympian (clause 17(1)(f) and (g))
- at least 50% of the nominated directors holding office must be women (clause 17(3))
- appointment of members of the IOC must be in line with the age limit for members of the IOC (clause 17(7)),<sup>427</sup> which the Olympic Charter sets at 70 years of age<sup>428</sup>
- at least one director nominated under section 17(1)(h) must be an Aboriginal or Torres Strait Islander person (clause 18(6)).

There are also provisions for removal and disqualification from office in relation to the Board (clauses 23 and 24).

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<sup>425</sup> UNHRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, 12 September 2011, para 35, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

<sup>426</sup> See explanatory notes, page 3: 'Under the Olympic Host Contract, the State guaranteed that it would undertake to cover a potential financial shortfall of the Corporation and ensure that the Corporation can deliver Brisbane 2032 in accordance with the requirements of the Olympic Host Contract and meet all of its financial obligations.'

<sup>427</sup> Clause 17(7) provides that 'member, of the International Olympic Committee, does not include a member of that committee who has reached the age limit for members, or the extended age limit for that member if applicable, under the Olympic Charter'.

<sup>428</sup> Olympic Charter, Clause 3.3 Age limit: '3.3.1 Any IOC member ceases to be a member at the end of the calendar year during which he reaches the age of 70, subject to Rule 16.3.3.2 and BLR 16.2.6.1'.

These provisions have implications for the right to take part in public life, recognised in section 23 of the HRA, which provides:

- (1) 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.
- (2) Every eligible person has the right, and is to have the opportunity, without discrimination—
  - (a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
  - (b) to have access, on general terms of equality, to the public service and to public office.

The ‘public affairs’ described in section 23 of the HRA have been recognised by the UNHRC as covering ‘all aspects of public administration, and the formulation and implication of policy at international, national, regional and local levels’, a description that would comfortably capture the work of the directors of the Board as public officers.<sup>429</sup>

The Bill enlivens this right because it imposes certain limitations on eligibility for appointment to the Board, raising an issue of access to public office on terms of equality with particular reference to its imposition of an age limit for IOC member directors and measures to ensure equal representation by women and participation by Aboriginal or Torres Strait Islander persons.

In terms of the nature of the right, it is important to note that it is not absolute and can be limited in certain circumstances. The UNHRC has commented, however, that any limitations placed on the right to take part in public life must be based on ‘objective and reasonable criteria’.<sup>430</sup>

The statement of compatibility advises that the underlying policy intent of the appointment provisions is to ensure that the membership of the Board is appropriate and that appropriate mechanisms are in place to support good governance.<sup>431</sup>

On the issue of gender equality, it can be noted that the UNHRC has raised concerns about the under-representation of women in senior positions in the public service, in political life, the judiciary and other sectors and frequently recommends affirmative action where necessary.<sup>432</sup> The OHC also requires that the composition of the Board reflects ‘fair representation of men and women’.<sup>433</sup> The requirement of 50% representation of women fulfils that purpose.

On the issue of Indigenous participation, the UNHRC case law has also expressed, with some frequency, concerns about the under-representation of minority communities in public affairs and public office.<sup>434</sup> The statement of compatibility advises that the requirement that the Board include at least one Indigenous

<sup>429</sup> UNHRC, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25*, 12 July 1996, para 5.

<sup>430</sup> UNHRC, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25*, 12 July 1996, para 4.

<sup>431</sup> Statement of compatibility, p 5.

<sup>432</sup> Eg see Portugal CCPR/C/PRT/CO/4 (2012) 4 (decision-making positions in the public sector, including in the foreign service, as well as in the legislative assemblies of the autonomous regions of the Azores and Madeira); Bolivia CCPR/C/BOL/CO/3 (2013) 8 (in political life, and indigenous women in decision-making positions), discussed in Paul Taylor, *A Commentary on the International Covenant on Civil and Political Rights*, Cambridge Uni Press, 2020, p 703.

<sup>433</sup> IOC, *Olympic Host Contract, Principles: Games of the XXXV Olympiad 2032*, article 3.2, p 10, <https://stillmed.olympics.com/media/Documents/Olympic-Games/Brisbane-2032/Host-Contract/Host-City-Contract-2032-Principles.pdf>

<sup>434</sup> Eg see Nicaragua CCPR/C/NIC/CO/3 (2008) 20 (participation in elections by indigenous and ethnic communities in the autonomous regions); Australia CCPR/C/AUS/CO/5 (2009) 13 (Aboriginal and Torres Strait Islanders); Croatia CCPR/C/HRV/CO/2 (2009) 18 (low representation of minorities in local and regional government); Moldova CCPR/C/MDA/CO/2 (2009) 27 (de facto exclusion of Roma from participation in public life); Sweden CCPR/C/SWE/CO/6 (2009) 20 (limited Sami parliament participation in the decision-making affecting land and traditional activities); discussed in Paul Taylor, *A Commentary on the International Covenant on Civil and Political Rights*, Cambridge Uni Press, 2020, p 704.

person reflects the 'significant role that First Nations people and culture will play in the Olympic and Paralympic Games'.<sup>435</sup> It can also be noted that the involvement of First Nations voices in the operation of the Board reflects the importance of considering cultural rights, which are set out in the HRA (section 27 relating to cultural rights generally, and section 28 relating to the cultural rights of Aboriginal and Torres Strait Islander peoples).

The provisions, in essence, appear to be based on objective and reasonable criteria. In this respect it is important to note that section 15(5) of the HRA provides that 'measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination' do not constitute discrimination.

The position in relation to the age limit is more complex as this represents a limitation rather than affirmative measure, raising equality and discrimination concerns.

Here, it is relevant to seek guidance on the age limit from UNHRC commentary and case law. One case which is of relevance to the age limit in the current Bill is *Solis v Peru* (1016/01).<sup>436</sup> Here the applicant had been a public servant and pursuant to a policy to downsize the public service. The law provided for the retrenchment of all female public servants above 55 and all male public servants above 60. The author was terminated as he was 61 years old, and he claimed a breach of Article 25(c) of the International Covenant on Civil and Political Rights, which recognises the right to take part in public affairs and elections on which section 23 of the HRA is based. Peru argued that the measures were necessary to deal with overstaffing and with the aim of securing the country's economic stability and financial balance.<sup>437</sup> The UNHRC found no violation of Article 25(c).

Here the UNHRC noted that the applicant was 'not the only public servant who lost his job, but that other employees of the National Customs Authority were also dismissed because of restructuring of that entity'.<sup>438</sup> In relation to the age requirement, the Committee found that this was an 'objective distinguishing criterion' and that 'its implementation in the context of a general plan for the restructuring of the civil service was not unreasonable'.<sup>439</sup>

It is also relevant that age limits are used elsewhere under Australian law, specifically in Section 72 of the Commonwealth Constitution,<sup>440</sup> and that the age limit in question is set out in the Olympic Charter, which the OHC requires the hosts to respect.<sup>441</sup>

Noting these considerations, and given the fact that the age limit is applied across the Board (to all IOC members) and could potentially reflect the capacity of a person to carry out the role, it appears to be objective and reasonable.

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<sup>435</sup> Statement of compatibility, p 5.

<sup>436</sup> *Rubén Santiago Hinostroza Solís v. Peru*, Communication No. 1016/2001, U.N. Doc. CCPR/C/86/D/1016/2001 (2006) available at <http://hrlibrary.umn.edu/undocs/1016-2001.html>.

<sup>437</sup> Discussed in S. Joseph and M Castan, *The International Covenant on Civil and Political Rights (3rd Edition): Cases, Materials, and Commentary* (OUP, 2013) at 756.

<sup>438</sup> *Solis v Peru*, para 6.4.

<sup>439</sup> *Solis v Peru*, para 6.4. It can be noted, however, that the 3 UNHCR members expressed concern about this in separate opinions and 3 dissented on the age issue. Furthermore, international human rights law academics, Joseph and Castan argue that 'the minority opinion is far preferable to that of the majority': S Joseph and M Castan, *The International Covenant on Civil and Political Rights (3rd Edition): Cases, Materials, and Commentary*, OUP, 2013, p 757.

<sup>440</sup> Commonwealth Constitution, section 72: 'The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age' and 'the maximum age for justices of any court created by Parliament is seventy years'.

<sup>441</sup> IOC, *Olympic Host Contract, Principles: Games of the XXXV Olympiad 2032*, article 13.1, p 17, <https://stillmed.olympics.com/media/Documents/Olympic-Games/Brisbane-2032/Host-Contract/Host-City-Contract-2032-Principles.pdf>.



Committee comment

The committee is satisfied that any limitation on the right to participate in public life imposed by the eligibility requirements and associated appointment provisions is justifiable and proportionate.

Noting the need for diversity and representation on the Board, there does not appear to be a less restrictive way to achieve the purposes of the proposed provisions.

The committee considers that the provisions will assist in ensuring the Board has an appropriate breadth of skills, knowledge and experience to support public decision-making that is informed by a range of views and perspectives, and deliver good governance outcomes for the people of Queensland.

**5.1.3 Right to privacy and reputation – criminal history information**

As outlined in chapters 3.2.2.2 and 4.2 of this report, the Bill sets out provisions which impose limitations on the members who may be appointed to the Board and their characteristics, including providing in respect of nominated directors that a person is disqualified from becoming, or continuing as, a director of the Board if the person:

- has a conviction, other than a spent conviction, for an indictable offence
- is an insolvent under administration
- is disqualified from managing corporations.<sup>442</sup>

The statement of compatibility acknowledges that supporting provisions for the access to and disclosure of a person's criminal history information have implications in respect of the right to privacy and reputation protected under section 25 of the HRA, acknowledging that the broad scope of that right may include matters such as personal information, data collection and correspondence, the likes of which those provisions entail.<sup>443</sup>

Committee comment

The committee has considered these provisions in detail in chapter 4.2, in considering whether the legislation gives sufficient regard to the rights and liberties of individuals with specific reference to an individual's right to the privacy of their personal information.

As outlined in the committee's concluding comments of that chapter, the committee has recognised that the Bill includes information safeguards and that persons obtaining and disclosing an individual's criminal history information must abide by the *Information Privacy Act 2009* and related guides.

However, the committee is not satisfied that the provisions in question represent the least restrictive means by which to achieve the purpose of the legislation, noting the failure of the Bill to include a requirement for the destruction of a person's criminal history information once no longer needed for the purpose for which it was required – a provision that would serve to protect or limit the extent of infringement on this right.

**5.2 Statement of compatibility**

Section 38 of the HRA provides that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights. The committee is required to consider the tabled statement of compatibility and report to the Legislative Assembly about the statement.<sup>444</sup>

Committee comment

A statement of compatibility was tabled on the introduction of the Bill as required by s 38 of the HRA. While the committee would have benefitted from some additional explanation and justification in respect of some provisions, the statement generally contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

<sup>442</sup> Explanatory notes, p 14; Bill, cl 24.

<sup>443</sup> Statement of compatibility, p 7

<sup>444</sup> HRA, s 38.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Amanda Addley
002	Natalie Tse
003	Greg Mackenzie
004	Property Council of Australia
005	T Wilson-Brown
006	Kyle Weise
007	Sporting Wheelies & Disabled Association
008	Melissa Occhipinti
009	Jason Fernandez
010	Dr Simone Hine
011	Office of the Information Commissioner
012	East Brisbane State School Parents and Citizens' Association/Olympics Impact Group
013	Friends of Raymond Park
014	City of Gold Coast
015	PolicyWonks
016	West End Community Association (WECA)
017	Chamber of Commerce & Industry Queensland
018	Dr Amy MacMahon MP, Member for South Brisbane
019	Australian Institute of Landscape Architects
020	Australian Institute for Progress
021	Crime and Corruption Commission Queensland

## **Appendix B – Officials at public departmental briefing**

### **Department of the Premier and Cabinet**

- Ms Kerry Petersen, Deputy Director-General, 2032 Taskforce
- Dr Clinton de Bruyn, Executive Director, Finance, Policy and Legal, 2032 Taskforce
- Mr Michael Murray, Director, Policy, 2032 Taskforce

## **Appendix C – Witnesses at public hearing**

### **Ms Amanda Addley**

#### **Friends of Raymond Park**

- Mr Mitchell Keys, Media Assistant
- Ms Melissa Occhipinti

#### **East Brisbane State School Parents and Citizens' Association/Olympics Impact Group**

- Ms Nicola Middleton, Committee Member
- Professor Dan Angus, Committee Member
- Ms Nicole Phillips, Committee Member

#### **Office of the Information Commissioner**

- Ms Rachael Rangihaeata, Information Commissioner
- Ms Susan Shanley, Acting Privacy Commissioner

#### **Sporting Wheelies & Disabled Association – *via videoconference***

- Ms Amanda Mather, Chief Executive Officer

## **NON-GOVERNMENT STATEMENT OF RESERVATION**

The LNP Members of the Committee acknowledge that the *Brisbane Olympic and Paralympic Games Arrangements Bill 2021* enables a legislative framework for Queensland to prepare for the 2032 Olympic and Paralympic games.

At the outset, the LNP members of the committee wish to affirm the views of our party in that the LNP has, and will continue to, provide bipartisan support for Queensland hosting the 2032 Olympic and Paralympic games.

### **LNP support for the 2032 Olympic and Paralympic games:**

Hosting the 2032 games can be the catalyst for generational benefits which all Queenslanders can enjoy.

To this end, it is imperative that Queensland capitalise on this once in a generation opportunity. To do so, our state must:

- Build infrastructure required to deliver the games which can leave a lasting legacy for all Queenslanders. It's critical that Queensland's investment leaves a lasting and meaningful infrastructure footprint.
- Use the opportunity to skill and train Queensland's workforce. Our state will need construction, hospitality and tourism jobs – along with other key industries. Upskilling the local Queensland workforce should be an important facet of our preparation for the games.
- Develop a 20-year tourism plan which can benefit the width and breadth of the entire state. It's critical that the state capitalise on this opportunity when the eyes of the world are cast on Queensland. As such, Queensland should be working on unlocking and expanding world class tourism products which are ready before, during and after 2032.
- Promote and foster a generation of Queenslanders to live active and healthy lifestyles off the back of hosting the Olympic games. In doing so, Queenslanders can reduce the morbidity and mortality of chronic illnesses associated with sedentary lifestyles.

### **Right to Information Provisions:**

As identified in a number of submissions to the Committee by interested parties, the Opposition remains concerned with the provisions of the Bill which exempt documentation from the *Right to Information Act 2009*.

In particular Clause 65 of the Bill states that:

- (a) that is created, or received, by the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games in carrying out its functions under the Brisbane Olympic and Paralympic Games Arrangements Act 2021; and

(b) to the extent it comprises information not already in the public domain that was communicated in confidence by or for the Australian Olympic Committee or the International Olympic Committee.

It is the Opposition's firm view that exemptions to the Right to Information Act 2009 should be used in only exceptional circumstances.

There has been no clear rationale or assurance provided during the Committee's consideration of the Bill that the exemptions to the *Right to Information Act 2009* will not be used inappropriately.

Whilst there may be legitimate reasons to exempt a small number of specific documents from Right to Information scrutiny, the Opposition has not been provided with acceptable reasons to justify this sweeping exemption to the *Right to Information Act 2009*. As such, the Opposition is not satisfied that Clause 65 of the Bill is suitable.

The 2032 Olympic and Paralympic games should be for all Queenslanders. Exempting swathes of documents from public scrutiny is not in the spirit of the Olympic movement, nor is it in the interest of Queenslanders.

#### **Conflict of Interest Provisions:**

The Opposition also hold some reservations with respect to the management of Conflict of Interest issues outlined in this Bill.

The conduct of the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games should be beyond reproach. The Queensland public must have complete confidence that the Organising Committee is subject to the necessary checks and balances.

Ensuring that appropriate mechanisms for managing conflicts of interest matters are managed effectively should be a key consideration of the State Government.

#### **Conclusion**

The 2032 Olympic and Paralympic games should be one for all Queenslanders to enjoy. While our journey to becoming an Olympic host has just begun, the work on making sure our games leave a lasting, positive, legacy must start now.

Likewise, it is paramount that the appropriate level of transparency and public scrutiny of the games is evident from start to finish. As such, the decisions made by the Brisbane Organising Committee should be available to all Queenslanders in the interest of good governance, accountability and transparency.



**Ray Stevens**  
Deputy Chair of Economics and  
Governance Committee  
State Member for Mermaid Beach



**Michael Crandon**  
Member for Coomera



**Dan Purdie**  
Member for Ninderry