Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

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Attachments:

Submitter Comments:

Queensland State Development and Public Works Committee

By email: SDIWC@parliament.qld.gov.au

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Re: Submission on Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

I am writing as a professor of public law at the Faculty of Law & Justice, UNSW Sydney. I am the constitutional consultant to the Clerk of the House of Representatives, the Director of The Judiciary Project at the Gilbert + Tobin Centre of Public Law, a Director of the Centre for Public Integrity, and the Co-editor of the *Rule of Law in Context* series (Hart Publishing). I am currently the Professorial Fellow supporting the Pro Vice Chancellor (Society) and Indigenous Law Centre at UNSW (Sydney).

As a public lawyer I am deeply concerned by the amendments proposed in the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025 (Qld) ('the Bill') for two key **rule of law** reasons.

According to the rule of law in the Australian constitutional system, government power must be exercised according to law, and must be accountable, primarily through the courts, for breach of that law. The rule of law protects individuals from the exercise of arbitrary power, and ensures equal application of the law to the government.[1]

In summary, the Bill's attempt to, in effect, fast-track the development of the Olympic development within Victoria Park amounts to an attempt to exclude the ordinarily applicable laws (including laws that protect against environmental and heritage degradation), and oust the oversight of the Court in relation to that specific development. This is an affront to the requirements of equal and general applicability of the law to government that is fundamental to the rule of law.

[1] See further Gabrielle Appleby, Megan Davis, Dylan Lino and Alexander Reilly, *Australian Public Law* (Oxford University Press, 4th ed, 2024), chapter 1.

1) Declaration of legality in proposed s 53DD(1)

My first concern relates to the attempt to 'declare' the development to be lawful under the proposed s 53DD, 'despite' a number of pieces of legislation, including the *Environmental Protection Act 1994*, the *Queensland Heritage Act 1992* and the *Vegetation Management Act 1999*. These laws are of general application to all people planning developments of any size in the State, and have been put in place by the Parliament for the public interest in protecting Queensland's environment and heritage.

This is, at its core, a legislative attempt to override generally applicable legislation that exists for the wider public interests, excluding its operation for the purposes of the Olympic development within Victoria Park. Such exclusions run counter to the fundamental principle of equality before the law under the rule of law. They remove the accountability of the government for their actions against generally applicable law. It creates an exceptionalism in which power can be exercised without oversight and accountability, and thus opens up the very real prospect of the arbitrary exercise of government power.

2) Exclusion of jurisdiction in proposed s 53DD(3)

My second major concern relates to the attempt in the proposed s 53DD(3) to exclude the commencement of civil actions (which would include judicial review), against a person in relation to the development, use or activity, where there is a reasonable prospect that this will prevent the timely delivery of the venue.

There is a real question as to whether this provision, which amounts to an attempt to remove the jurisdiction of the Supreme Court to oversee that the government's development of the stadium is in accordance with the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Qld), is constitutionally valid.

In 2010, the High Court of Australia held in *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 that State parliaments cannot constitutionally remove the supervisory jurisdiction of the State Supreme Courts over government actions. The Court said:

> To deprive a State Supreme Court of its supervisory jurisdiction enforcing the limits on the exercise of State executive and judicial power by persons and bodies other than that Court would be to create islands of power immune from supervision and restraint.[2]

[2] *Kirk* at 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

This would remove one of the Supreme Court's 'defining characteristics' and be unconstitutional. It is hard to read the proposed s 53DD(3) as doing anything other than attempting to remove the supervisory jurisdiction of the Queensland Supreme Court.

This stands in direct contrast to the existing s 53BB of the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Qld), that expressly retains the jurisdiction of the Supreme Court to review decisions that are affected by jurisdictional error.

Yours sincerely,

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