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

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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
Protecting Queenslanders' individual rights and liberties since 1967

The Secretary
State Development, Infrastructure and Works Committee
Cnr of Geoge and Alice Streets
BRISBANE QLD 4000

SDIWC@parliament.qld.gov.au

Dear Madam,

PLANNING (SOCIAL IMPACT AND COMMUNITY BENEFIT) AND OTHER AMENDMENT BILL 2025 ('BILL')

Introduction

1. The Queensland Council for Civil Liberties ('QCCL') is a not-for-profit organisation that promotes and protects civil liberties and individual rights for Queenslanders.

2. QCCL takes no position whatever on the desirability of building an Olympic stadium and/or residence at Victoria Park or any other place. We take no position on the desirability of the Olympic games generally, or on the venue plan articulated earlier this year.

3. We object to the proposed insertion of Chapter 3A into the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* ('Act'). In particular our concerns relate to:

   (a) clause 53DD(1) which makes lawful what would otherwise be unlawful conduct under fifteen different environmental, planning and heritage statutes;

   (b) clause 53DD(3) which extinguishes the right of the public to commence civil litigation in relation to the development which would reasonably delay its delivery; and

   (c) clause 53EG which retains the privative clause from section 53BB of the unamended Act.

Summary

4. Broadly, we oppose the amendments because:

   (a) the rights enforced through civil litigation are intrinsically important and the amendments would allow injuries to go unredressed;

   (b) associations of workers, consumers and residents must have legal standing as a remedy to regulatory capture and lackadaisical administration of laws designed to protect them from the powerful. This fundamental principle cannot be abrogated because of the alleged importance of some particular government interest. To the contrary the pressure that will come on the government to "do whatever it takes" to

get have a successful games makes the risk of bad decisions and hence the need for a check on government even greater;

(c) the amendments violate the principle of equality before the law which is inherently unfair and diminishes trust in public institutions;

(d) the amendments violate the rule of law in a manner which encourages the arbitrary and oppressive exercise of public and private power; and

(e) the inherent powers of the court to dismiss frivolous litigation and the risk of an adverse costs order strike the appropriate balance between the efficient delivery of the project and the protection of the rights of the public.

Submissions

5. If Queenslanders cannot enforce their legal rights, they have no rights at all. Litigation is the ultimate mechanism for the enforcement of rights. The judicature is a branch of government, without which a free and dignified existence would be impossible. It plays a key role in keeping the executive accountable to the rule of law: without recourse to the courts it becomes almost impossible to protect rights.

6. The benefits of civil litigation extend far beyond the successful party to a particular dispute. The knowledge that rights will be enforced ensures that public and private actors observe the obligations that they owe to individual citizens and society generally. The prospect of litigation is not only a deterrent to would-be wrongdoers, but also exercises a normative influence by communicating that civil rights and the avoidance of injury are important. Most people never need to sue, it is enough that a boundary is set. As Chief Justice Brennan observed:

> 'As a citizen, I value civil justice, not because I think I might want to sue somebody, but because I know how some people would behave if they were beyond the reach of the law. Justice has a civilising effect upon power, whether that power be formal or informal, official or unofficial, public or private. To most people, a lawsuit is a last resort; one never likely to be used. But they understand that, without that possibility, the unchecked power of bureaucracy, or private forces, would subject them to intolerable stress.'[1]

7. Moreover, the legal rights protected by the common law and under statutes are so recognised because they have intrinsic value. There is nothing arbitrary about the rights to be compensated for injury through another's fault, to quiet enjoyment of one's home, to tolerably safe public spaces. But the Bill sets an alarming precedent by limiting an individual's ability to vindicate such rights through proposing the insertion of cl 53DD(3). Although the efficient delivery of public infrastructure and entertainment is important, blanket extinguishment of the right to bring a civil claim is an overreach.

[1] Chief Justice Murray Gleeson, 'The Purpose of Litigation' (Speech, The Martin Kirewaldt Memorial Address, Darwin, 12 August 2008) 20.

That some members of the public might suffer serious detriment without redress, simply for the sake of efficiency, is a shame.

8. We note that cl 53DD(2) also makes lawful what would be otherwise be unlawful under some fifteen statutes which comprise the core of Queensland's planning and environment law regime. Clearly, these statutes must secure significant objectives, otherwise why give those objectives coercive operation? By absolving the development of the need to observe the law, the Bill effectively creates a two-tier legal system, in violation of the right to equality before the law, protected by the *Human Rights Act 2019*.[2] Not only is this inherently unfair, but it sends the message that the law is not important. The government more than anyone should lead by example, and observe the laws it imposes on the community. It is only natural that members of the public become cynical and loose in their compliance with the law if they perceive that our government does the same.

9. In addition to provisions just discussed we note that clause 53EG ousts the jurisdiction of the Supreme Court to provide judicial review with respect to the project save as to jurisdictional error. Read together as a whole, Part 3A therefore leaves the public with only the constitutionally protected minimum redress. It could be inferred that were review for jurisdictional error not constitutionally protected that even this right would be extinguished. In 2024, a survey by Roy Morgan found that Queenslanders were more distrustful of public institutions than every other state and territory for three years running.[3] We clearly have a public trust problem in this state. We encourage this government to restore the faith that Queenslanders should feel in their leaders, by protecting their legal rights and observing the obligations that the government imposes on them.

10. The rule of law is a fundamental assumption of the Australian political system.[4] We are concerned that this Bill sets a dangerous precedent for the observance of the rule of law in Queensland. If the law is suspended whenever it is convenient for government to do so, it is likely that over time both public administrators, and the private companies which provide so many vital public goods, will come to regard the observance of law as optional. As the High Court observed in *Kirk*:

> 'To deprive a State Supreme Court of its supervisory jurisdiction... would be to create islands of power immune from supervision and restraint.'[5]

Recommendations

11. We respectfully submit that:

    (a) the amendments which would introduce Part 3A into the Act be abandoned; and

[2] *Human Rights Act 2019* s 15. We note that the right to 'taking part in public life' under s 23 and a fair hearing under s 31 are also clearly engaged.
[3] *Widespread Distrust of Government Political Parties Defines the Election* (Report No. 9717, 22 October 2024)
[4] *Australian Communist Party v The Commonwealth* (1951) 8 CLR 1 [35] (Dixon J).
[5] *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 53, 581 [99] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

(b) that section 53BB of the Act as currently in force should be amended to restore the full judicial review powers of the Supreme Court.

12. Finally, we concede that the efficient completion of the project is a reasonable goal. However, we submit the wide power of the courts to dismiss suits which are frivolous, vexatious or an abuse of process, along with risk of an adverse costs order is sufficient to ensure that that only legitimate proceedings are initiated.

QCCL thanks interns John Birrell, Charlie Hoare and Gabriel French for preparing this submission.

We trust this is of assistance to you in your deliberations.

Please direct correspondence concerning this letter to president@qccl.org.au

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
20 May 2025