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

Submission No: 431

Submitted by: Danggan Balun Applicant

Publication: Making the submission and your name public

Attachments: See attachment

Submitter Comments:

20 May 2025

To whom it may concern,

Implications for First Nations cultural heritage of proposed amendments in the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

I, Larissa Wright, am a member of the Applicant of the Danggan Balun People Native Title Claimant Application (QUD 331/2017) (**Danggan Balun Applicant**). I am also the Danggan Balun Cultural Heritage Manager. This submission is made on behalf of the Danggan Balun Applicant, who acts jointly under the *Native Title Act 1993* (Cth) (**NTA**).

The Danggan Balun Applicant is the registered native title claimant under the NTA and the Aboriginal Party under the *Aboriginal Cultural Heritage Act 2003* (Qld) (**ACHA**) for part of the area that is to be impacted by works related to the Olympics 2032. To that end, the Danggan Balun Applicant adopt the summary of implications for First Nations People prepared by the Environmental Defenders Office dated 19 May 2025. See **attached** at annexure 1.

Should you have any queries in relation to this matter, please do not hesitate to contact me on [redacted].

Yours faithfully

[redacted]

Larissa Wright
Danggan Balun Cultural Heritage Manager

Environmental Defenders Office

Implications for First Nations cultural heritage of proposed amendments in the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

19 May 2025

On 1 May 2025, the Hon Jarrod Bleijie MP, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations introduced the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025 **(the Bill**) into the Queensland Parliament.

This document provides a summary of Chapter 4, Part 2, clause 66 of the Bill which relates to Aboriginal and Torres Strait Islander cultural heritage. With the limited timeframe to consider the Bill, the concerns below are limited to the proposed amendments dealing with cultural heritage.

In short, the Bill 2025 modifies the operation of the Aboriginal Cultural Heritage Act and Torres Strait Islander Cultural Heritage Act (together **Cultural Heritage Acts**) purportedly to support the efficient delivery of development related to the Olympics. This is implemented through amending the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Qld) (**BOPGA Act**).

In summary, the reforms:

(a) provide an alternative process for developing cultural heritage management plans (**CHMPs**), known as a part 3 plan, allowing this to be used in place of the usual CHMP required under the Cultural Heritage Acts;
(b) provide a default plan in instances where a part 3 plan cannot be negotiated; and
(c) ensure that where a person carries out development or does certain activities in accordance with the part 3 plan, that person does not commit an offence under the Cultural Heritage Acts; and
(d) remove the right to seek injunctions or for the provision of stop orders under the Cultural Heritage Acts in certain circumstances. [1]

Lack of free, prior and informed consent: in process and content

We note there are a number of concerns relating to the existing framework under the Cultural Heritage Acts.[2] However, the proposed reforms further erode the minimal rights afforded under the Cultural Heritage Acts and place Aboriginal and Torres Strait Islander parties in an even weaker position in relation to protection of their cultural heritage. The proposed reforms fail to reflect the principle of free, prior and informed consent with respect to development relating to Olympics infrastructure that may impact cultural heritage.

We also note that the Bill itself has been introduced without appropriate consultation with affected First Nations people. The public has been provided with an incredibly short timeframe of just 13 business days to review the 144 page Bill and provide submissions. To our knowledge there was no

[1] See proposed BOPGA Act, s 53DH.
[2] See for example submissions by EDO on the Options Paper: Finalising the review of Queensland's Cultural Heritage Act, available here.

targeted consultation with affected stakeholders. To that end, the Bill should be withdrawn, and appropriate consultation should occur at the direction of First Nations communities, to ensure that the proposed changes are progressed with their free, prior and informed consent. Specifically, the Minister should ensure that Native Title Service Providers and Native Title Representative Bodies in Queensland are consulted, including on the proposed obligations on those bodies to provide the names and details of any person "whom the representative body reasonable believes may be a party".[3]

The Bill is incompatible with the *Human Rights Act 2019* (Qld)

Chapter 4, Part 2, clause 66 of the Bill is incompatible with section 28 of the *Human Rights Act 2019* (Qld), which relates to the cultural rights of Aboriginal and Torres Strait Islander people because it erodes existing rights and processes to protect Country and cultural heritage. On introducing the Bill, the Minister also provided a human rights compatibility statement which acknowledges that impact:[4]

> *The construction of the venues, villages and Games-related transport infrastructure may interfere with the ability of persons to practice their cultural rights, for example, by limiting access to places of worship or the ability of persons to congregate together to practice their culture. Section 28 of the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples have a rich and diverse culture. There are many hundreds of distinct Aboriginal groups and Torres Strait Islander groups in Australia, each with geographical boundaries and an intimate association with those areas. Many of these groups have their own languages, customs, laws, and cultural practices. Section 28 explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander person who is free to practise their culture and gives rights to individuals as part of a cultural group. The development of the venues, villages and Games-related transport infrastructure may impact on the cultural heritage of Aboriginal peoples and Torres Strait Islander peoples. They have a right to enjoy, maintain and control their cultural heritage, and to maintain and strengthen their distinctive relationship with the land with which they have a connection under their tradition. The development of the venues, villages and Games-related transport infrastructure may interfere with the ability of Aboriginal peoples and Torres Strait Islander peoples to maintain their traditional connection to the land by limiting their access and their ability to conserve and protect the environment and productive capacity of their traditional lands and waters.*

That statement fails to engage with the legislative requirement as to whether the above impacts are reasonable and demonstrably justifiable, as required by the sections 8, 13 and 38 of the Human Rights Act. In our view, the amendments are neither reasonable nor proportionate and therefore the Bill should not be passed.

Key concerns with Chapter 4, Part 2, Clause 66 of the Bill

Chapter 4, Part 2, Clause 66 of the Bill modifies the application of the Cultural Heritage Acts by establishing a specific regime for the management and protection of Aboriginal and Torres Strait Islander cultural heritage in the context of development, use or activities for venues, villages and Games-related transport infrastructure.

The key concerns identified to date in Chapter 4, Part 2, Clause 66 of the Bill are:

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[3] See proposed BOPGA Act, s 53DK.

[4] See Statement of Compatibility, p 22.

- It is entirely at the discretion of the proponent whether to proceed with the usual process under the Cultural Heritage Acts or the alternate process. Aboriginal and Torres Strait Islander parties are not consulted and have no right to make submissions as to the appropriateness of the alternate process in the circumstances.
- The Bill proposes extremely truncated timeframes for responding to notices issued by the proponent with respect to engaging with the proponent about developing a part 3 plan (minimum two weeks in most cases) and negotiating a part 3 plan (minimum 60 days). This places incredible pressure on Aboriginal and Torres Strait Islander parties, who are frequently acting on a voluntary basis and may already have limited time and resources.
- While it is useful that some notices are required to be published online on the relevant Department's websites, they should also be placed in other locations where interested Aboriginal or Torres Strait Islander People regularly access notices, for example the Koori Mail.
- Where projects involve multiple Aboriginal or Torres Strait Islander parties, proposed new section 53DN of the BOPGA Act which requires groups to negotiate together with the proponent with the aim of creating one agreement. This fails to recognise that Aboriginal and Torres Strait Islander Parties may have different interests and views on the proposal, and the potential cultural restrictions on sharing information amongst the parties. Each Aboriginal or Torres Strait Islander party should be afforded the right to negotiate their own agreement, as under the current regime.
- The Bill introduces a power to regulate a cap on the costs that can be paid to parties for participating in negotiations and to require detailed accounting to justify fees sought. Any costs reasonably incurred should be borne by the proponent without a significant administrative burden placed further on First Nations peoples, and placing a cap and excessive administration requirements only further contributes to the existing imbalance in resources and bargaining power. Such significant and onerous requirements are neither necessary or justified and constitute executive overreach.
- The Bill mandates a default plan where no Aboriginal or Torres Strait Islander party is identified, no Aboriginal or Torres Strait Islander party has indicated they wish to participate in negotiations or where agreement cannot be reached within the 60 day window. This is obstructive and problematic, as the negotiating parties may be willing and able to negotiate an agreed outcome with additional time. There is also a risk that negotiations may be delayed for reasons beyond the control of the negotiating parties. This may also create a perverse incentive for proponents to delay negotiations beyond this window, given the broad discretionary power exercised by the proponent's appointed coordinator.
- The Bill also explicitly prohibits the default plan from being amended or replaced, even where the negotiating parties agree on the changes. This prohibition is neither justified nor necessary.
- Of great concern is the proposed removal of the rights of groups or members of a group with traditional, historic or custodial interest in cultural heritage to seek injunctions or obtain stop orders under the Cultural Heritage Acts irrespective of whether or not a part 3 plan has taken effect:
    - Proposed section 53DU removes the ability of relevant First Nations groups to seek protection of cultural heritage via an application for an injunction in the Land Court. The prohibition will apply where the proponent for a games project has given a cultural heritage notice, whether or not a part 3 plan for the project area for the games project has taken effect.
    - Proposed section 53DU(2) goes further; it removes access to stop work orders under the Cultural Heritage for an activity that is part of the games project.

These broad prohibitions give effective carte blanche to a proponent to circumvent the protections of the Cultural Heritage Acts and are inconsistent with the overriding purpose and principles of the Acts.

- The usual supervisory jurisdiction of the Land Court in respect to negotiations of CHMPs is removed from the process and dispute resolution mechanisms are greatly watered down. The Bill provides that the parties may approach the Land Court for assistance in mediating negotiations if agreement has not been reached within 40 days and the parties jointly agree they could reach agreement through mediation. The Land Court has a discretion whether or not to offer mediation.

Concerns with the Default Plan

Specific issues with the Default Plan are:

- The timeframes for responding to notices in the default plan are incredibly short (10 business days), which can make obtaining instructions and making informed collective decisions difficult for Aboriginal and Torres Strait Islander parties. Similarly, the submission period of 40 business days for commenting on a draft cultural heritage plan is inadequate. The proponent can nominate a date by which an offer must be accepted at their choosing.
- The default plan affords the coordinator (a person appointed by the proponent) with an incredibly broad discretion where agreement is not reached with the Aboriginal or Torres Strait Islander party. For example, the discretion may be exercised in relation to the development of the final cultural heritage report, final masterplan, cultural heritage training and cultural heritage training materials. This is particularly problematic as the default plan does not afford any dispute resolution mechanisms; instead, the coordinator has unfettered discretion to finalise and make decisions with respect to these matters.
- Further, if cultural heritage remains are uncovered, the coordinator has discretion to determine alone whether it has cultural significance and should be afforded protection without consulting the cultural heritage party for the area with respect to this decision, who are simply notified of the decision, without any right to be heard.
- The default plan places obligations (eg. publishing notices) on the Director-General of the Department of Sport, Racing and Olympic and Paralympic Game, however the Director-General is not party to the agreement. This could lead to enforcement issues for the Aboriginal and Torres Strait Islander party.