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

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Submitted by: Queensland Law Society

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Submitter Comments:

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[redacted]

Committee Secretary
State Development, Infrastructure and Works Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary

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

The Queensland Law Society (QLS) thanks the State Development, Infrastructure and Works Committee for inviting submissions regarding the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025 (Bill).

As the Committee may be aware, QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, provide advice to key stakeholders, including government and increase community understanding of the law. QLS is an apolitical representative body supporting the creation of good law for the public good.

This submission has been contributed to by QLS policy committees, including the Planning and Environment Law Committee, whose members have substantial expertise in this area.

In the short time available, QLS has endeavoured to identify issues of concern with respect to the proposed amendments but foreshadows there may be other unintended consequences flowing from these.

Executive summary

Brisbane Olympic and Paralympic Games amendments

For the reasons outlined in this submission QLS:

1. recommends Parliament and the community be provided with sufficient information about the approval process for venues and other projects;
2. is concerned by the prohibition on civil proceedings as currently drafted and recommends the provision is narrowed to capture only specific actions and that the court be given oversight over the application of the prohibition;

3. is concerned by the proposed alternative framework for assessing Aboriginal and Torres Strait Islander cultural heritage. QLS would be pleased to provide a supplementary submission in relation to this proposed framework.

Social impact and community benefit amendments

For the reasons outlined in this submission QLS:

1. does not support the reforms contained in the Bill;
2. considers existing frameworks could be modified to better achieve the stated objectives;
3. recommends that if the reforms are to progress, a number of amendments will be needed to reduce the likelihood of unintended consequences occurring;
4. is concerned by the proposal that a regulation could seek to prescribe a development in a particular way so as to require a social impact assessment to be undertaken;
5. Is concerned by the retrospective application of these reforms to existing applications;
6. considers the amendments do not adequately provide for public participation.

Brisbane Olympic and Paralympic Games amendments

QLS recognises the need for fast-tracking the development of Olympics-related infrastructure to meet the requirements of hosting this momentous event.

QLS notes some of the provisions suggested, particularly the removal of the application of any development assessment considerations (except those relating to building works), coupled with the removal of any civil proceeding rights, are to our knowledge unprecedented in Queensland and have the potential to cause a number of adverse consequences.

The briefing paper provided to this inquiry by the Department, at page 10, provides:

> Authority Venues, Other Venues and Games-related transport infrastructure projects listed in the Bill's schedules or future schedules will be required to prepare rigorous planning and technical impact assessment documentation (eg stormwater, noise & amenity, traffic and transport impact assessment etc) that would ordinarily be required for State-delivered infrastructure projects for Government assessment. This may include further engagement with the community and Local Governments as required for particular projects dependent upon the scale and complexity of impacts for delivery and/or legacy uses.

This provides some comfort; however, the requirement does not appear in the Bill from our reading. Making this a legislative requirement would assist to alleviate some concerns in relation to appropriate assessments, as would providing public access to the planning and technical impact assessment documentation referred to. We refer to the existing structures in the *State Development and Public Works Organisation Act 1971* (Qld) (State Development Act) and the Ministerial facilitated development process may also assist the government.

In a similar way to the Planning Act amendments within the Bill which prescribe guidance for social impact assessment, QLS recommends the Bill require preparation of a guidance document that outlines how the community engagement will take place, and how the inputs are addressed in relation to these projects. The legislation, and not the Minister, should prescribe which projects involving development of authority venues, other venues, villages or games-related transport infrastructure require a community engagement process.

To ensure there is appropriate oversight and scrutiny by Parliament, QLS recommends that each venue or project be added to the new schedules in *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (QLD) as they are approved.

Recommendation 1: To ensure appropriate community engagement takes place, QLS recommends the Bill require preparation of a guideline to prescribe which projects that involve development of authority venues, other venues, villages or games-related transport infrastructure require a community engagement process. This would outline how the community engagement will take place, and how the inputs are addressed.

Recommendation 2: Each venue or project approved under these provisions should be added to the new schedules in *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (Qld) to ensure Parliament retains proper scrutiny and oversight, given the unprecedented nature of this legislation.

We note legislative powers currently exist to fast-track development under the Planning Act with respect to Ministerial Infrastructure Designations, as well as under the *Economic Development Act 2014* (Qld) and State Development Act. Each of these frameworks require consideration of relevant public interest criteria in assessing the development, while facilitating streamlined development. We understand these processes may not have been suitable given the requirements of the Olympic and Paralympic Games, however, we would appreciate clarity on the rationale for introducing a new process when existing processes could have been utilised.

Recommendation 3: The Department should publish, with the supporting material for this Bill. relevant background reports documenting deliberations as to why the existing 'fast-track' legislative provisions were not considered adequate. This may provide some comfort and transparency to the public.

Unintended consequences from the prohibition on civil proceedings

New section 53DD(3) of the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* has been drafted in such broad terms it will likely capture a wide variety of matters, which may not be the intent. Moreover, the provision could operate to impede Olympic and Paralympic Games developments as it could preclude the government from enforcing a construction contract against a builder of a games development if the government felt the builder was cutting corners. QBCC court action against a development builder, a bank seeking to enforce a mortgage in relation to a site, a sub-contractor seeking payment of invoices from a head contractor in a development, amongst other things, could all be prevented by this provision.

The broad language will likely lead to disputes, and we query how the prohibition will be enforced; for example, will it be pleaded by a respondent/defendant in a defence and then argued?

If the scope of the provision is to remain, despite our recommendation, the potential unintended consequences could be lessened if matters were able to proceed only with leave of the court. In these circumstances, the court could be required to only grant leave if a certain threshold was met by the party seeking to institute a proceeding. The threshold could include consideration of the impact on any development, public interest criteria and any safety or related issues.

Recommendation 4: Section 53DD(3) be amended to ensure it only prevents the actions contemplated. As stated, this subsection, as drafted, could have wide ranging application, including to proceedings relating to negligence, nuisance, commercial matters, insolvency instituted by creditors, or with respect to personal injuries amongst others, and possibly result in unintended consequences.

If not amended, we recommend guidance be provided, either in the legislation or at least in the second reading speech or explanatory notes, to specify the types of proceedings the provision applies to, , and those to which it does not apply.

Recommendation 5: Further or in the alternative, section 54DD(3) should be amended to state a civil proceeding cannot be commenced without leave of the court.

We also note new section 53EG provides that unless the Supreme Court decides a "relevant decision" is affected by jurisdictional error, the decision is final and conclusive and cannot be challenged. "Relevant decision" is defined in subsection (3) to mean a decision or purported decision of an administrative character that is related to the delivery of a venue or village, construction of transport infrastructure or the making of a cultural heritage plan. In the absence of appropriate approval and consultation processes, this limitation should be noted as significant, even where there is deemed compliance with a number of statutes.

Impacts on Aboriginal and Torres Strait Islander cultural heritage

QLS notes with particular concern the proposed alternative framework for assessing and allowing impacts to Aboriginal and Torres Strait Islander cultural heritage. The framework under Chapter 4, Part 3, allows for a developer to bypass the requirements under the *Aboriginal Cultural Heritage Act 2003* (Qld), and the *Torres Strait Islander Cultural Heritage Act 2003 (*Qld) by instead adopting the new proposed framework. This new cultural heritage framework is of concern where:

- The time limits proposed for negotiating with Aboriginal and Torres Strait Islanders are significantly curtailed and may not give adequate consideration to cultural requirements in decision-making. For example, for negotiation on a 'part 3 plan' under proposed subsection 53DJ(5)(a) there is a minimum time of 14 days specified. For a default plan there is a period of 10 business days for negotiations, and the proponent can nominate a date by which an offer must be accepted at their choosing.
- The Bill provides for a default plan which applies 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.
- The default plan affords the coordinator (a person appointed by the proponent) with significant discretion in contexts where agreement is not reached with the Aboriginal or Torres Strait Islander party. For example, 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. The default plan does not afford any dispute resolution mechanisms.

- Further, if cultural heritage remains are uncovered, the coordinator has discretion to determine, without consultation with the cultural heritage party for the area, whether the remains have cultural significance and should be afforded protection. The cultural heritage party for the area are simply notified of the decision with no right to be heard.
- The Bill introduces the power to specify in a regulation a cap on the costs that can be paid to Aboriginal and Torres Strait Islander parties for participating in negotiations and to require detailed accounting to justify fees sought.
- The Bill removes the ability for injunctions or stop orders to be sought to prevent impacts to cultural heritage.
- As stated above, new section 53EG restricts appeal rights in relation to 'relevant decisions' except in cases of jurisdictional error. "Relevant decision" is defined in subsection (3) to mean a decision or purported decision of an administrative character that is related to the delivery of a venue or village, construction of transport infrastructure or the making of Cultural heritage plan.

Further, the Bill may not recognise the need for Aboriginal or Torres Strait Islanders to maintain confidentiality over their heritage while being required to sign onto one agreement where there are multiple First Nations interests in an area.

Details of whether appropriate consultation was undertaken with Aboriginal and Torres Islander communities should be included in the explanatory notes to the Bill.

Recommendation 6: QLS seeks clarification on the extent of consultation undertaken with Aboriginal or Torres Strait Islanders with respect to this aspect of the amendments proposed by the Bill.

Social impact and community benefit amendments

QLS acknowledges the desire for greater oversight of renewable energy projects the government is seeking to address through the proposed amendments in Chapter 2 of the Bill. However, we do not consider the reforms are reasonable for the reasons outlined below.

The proposed process, including the requirement for there to be a completed community benefit agreement (CBA) in place before an application is made will lead to a number of issues for the relevant parties, including significant delays.

Since 1998, Queensland has benefited from an integrated system of development assessment which has been designed to address application delays that were a feature of the previous system. This has overall led to beneficial outcomes where government agencies have been held accountable to prescribed timeframes and the barriers for an applicant to enter the system have been relatively contained to matters of form, payment of fees and owner's consent. QLS considers the reforms in the Bill run counter to this integrated system which has been an entrenched and beneficial feature of Queensland's planning system for many years.

In contrast, these reforms are likely to adversely impact the renewable energy industry in Queensland in a way that is inconsistent with other types of development under the planning system, or resources projects under other legislation. This is also concerning noting the recognised need for transition to renewable energy for our energy supply to reduce the increasing risks of climate change.

Recommendation 7: The reforms in Chapter 2 will create myriad issues and should be removed from the Bill. The government should undertake consultation on alternative reforms that do not make an application conditional on a completed CBA.

Preference for utilising the existing frameworks

There is already an agreement making framework in the Planning Act which is voluntary and otherwise driven by meeting the planning criteria around infrastructure. The Infrastructure Agreements (IA) framework is very broad in terms of what is considered "infrastructure" and there are many examples of IAs being used to achieve broader community benefits. It is not clear why this framework is not being used as a benchmark for CBAs. We note the significant project declaration power that can be used for projects of relevant significance in order to access broader assessment powers and conditions available to the Coordinator-General.

It would be more efficient and cost effective to utilise the existing development application and infrastructure agreement processes in the Planning Act (with necessary amendments) rather than adding additional layers of complexity to these specific projects. The Social Impact Assessment Report (SIAR) and CBA could be documents required under the approved form to be attached to, or given with, the application, for the purpose of section 51(1)(b) and the approved form could be amended to add additional questions for the purpose of section 51(1)(a). That way, an assessment manager may decide to accept the application as "properly made" if it does not comply with subsection (1) and make an information request with respect to the matters contemplated in the Bill. The infrastructure agreement provisions of the Planning Act could be amended/expanded as required, to cover matters that fall within a CBA.

The existing IA framework is being used by proponents and assessment managers alongside the voluntary establishment of community benefit funds that provide proponents with an ability to contribute funding towards local community groups and organisations.

As discussed below, the CBA framework is a problematic precedent to introduce into the planning framework more broadly, as it is difficult to see what aspect of a renewables project is different to any other developments (i.e. residential, industrial or commercial in cities or regions) in terms of the proposition that communities should benefit from them due to broader impacts caused by them beyond traditional infrastructure considerations.

Recommendation 8: As stated in recommendation 7, QLS recommends existing frameworks under the Planning Act be utilised for solar and wind farm approvals instead of the reforms currently proposed in the Bill.

The CBA process is vague and will likely produce unintended consequences.

The provisions in the Bill operate such that an applicant can be prohibited from making an application for a wind farm or a large-scale solar farm if they cannot reach an agreement with Council with respect to the CBA, unless an exemption is granted by the Minister in relation to the need for a CBA.

However, the process for making a CBA, pursuant to its meaning in new section 106Y (and the processes outlined in other provisions) is vague and may impact the ability of applicants to obtain an agreement. The proposed provisions place no real parameters or benchmark on what

a CBA is to provide or be about. There appears to be no requirement for the "benefit" in section 106Y(1)(a) or (b) to be tied to or related to an impact from the proposed development. The provision needs to be appropriately scoped to give guidance to all parties and in particular, subsection (b) should be explained in greater detail to enable negotiations to occur in a way that best achieves the purpose of this legislation. Sections 65AA(3) and 106Y(1) should be amended to clarify whether a monetary contribution towards infrastructure includes a contribution towards the establishment, operating and maintenance costs of infrastructure or is more limited in its scope (see infrastructure provisions in the Planning Act).

Under the proposed process in the Bill, an agreement is required before the project has undergone any planning assessment (or appeal), or is conditioned, or before it is known what infrastructure requirements exist. For other types of developments these processes very often result in refinement or changes to a project (either from a planning perspective requiring a minor or other change, or from a commercial feasibility perspective, which means the parameters of the CBA may no longer be feasible). In fact, the parties must revert back to the CBA process if there is a change to the development application. This would provide another power to the relevant local government to prevent a change being made unless further agreement can be reached. QLS considers this raises issues of fairness and will lead to significant delays and costs.

The pre-application process will be prolonged while the applicant undertakes the social impact assessment, prepares the report and enters into negotiations for a CBA. While negotiations for a CBA can occur in parallel to the SIAR process, the report will necessarily need to inform the terms of the CBA. There has been insufficient justification provided as to why this more burdensome process has been selected.

Section 66(1)(b) of the Planning Act currently provides that a development condition must not require a person to enter into an infrastructure agreement. We query whether a condition can require a person to enter into a CBA.

Further, under new section 65AA(4)(b), a CBA can be in place, together with a condition imposed due to a change in social impact since the CBA was entered into. In those circumstances, it is suggested consideration be given to the Planning Act providing that the condition overrides the CBA to deal with an inconsistency (we refer to comments made in respect of section 106ZD).

As stated above, QLS recommends current processes in the Planning Act relating to IAs be used to achieve the objectives of this legislation.

Recommendation 9: New section 106Y be refined to ensure parties are able to fairly negotiate to achieve the objectives of this legislation. Both sections 65AA(3) and 106Y(1) be amended to clarify whether a monetary contribution towards infrastructure includes a contribution towards the establishment, operating and maintenance costs of infrastructure or is more limited in its scope (see infrastructure provisions in the Planning Act).

Recommendation 10: Section 66(1) of the Planning Act may need to be amended to state that a condition must not require the person to enter into a CBA, similar to section 66(1)(b) relating to an IA, as both are voluntary processes. Alternatively, it could be that community benefits conditions become necessary community benefit conditions and are defined.

Recommendation 11: Regarding section 52A, it is suggested an additional sub-paragraph be inserted after subsection (1)(a) as follows: "(b) The development application is for development that includes development requiring social impact assessment."

Recommendation 12: New section 53EG(1)(c) be amended to include a reference to the Planning and Environment Court and declaratory relief.

Recommendation 13: Section 106S(c) be amended to state, "a cumulative impact of the development and other development and lawful uses in the locality."

Recommendation 14: New section 106X appears to elevate the status of SIA reports above other documents (e.g. a Need assessment or Traffic impact assessment) by making specific provision for amended reports up until the assessment manager's decision. This approach is not supported and the provision should be amended accordingly.

Recommendation 15: Section 106ZD(3) be expanded to cover the situation where the chief executive directed a condition be imposed (under section 106ZF). Clarity is needed regarding the situation where the council imposes the condition in circumstances where there is a CBA, but the social impact has materially changed.

Lack of public participation

QLS also raises concerns with the lack of public participation in the development of the SIAR or CBA, which are negotiated solely between the local government and the developer, or a 'public sector entity'. Given the focus of the SIAR and CBA, it is counterintuitive the public would have no right to be involved in the development of these instruments, even through a submission process. This is exacerbated by the removal of any community appeal rights with respect to the conditions associated with the SIA or CBA under section 106ZJ.

This concern reinforces our recommendation a completed CBA should not be a pre-condition for an application.

Dispute resolution

The effect of the Bill's provisions is that the CBA/SIAR processes are practically commercial negotiation without any third-party determination. There is only voluntary mediation (both parties must request it) and/or what appears to be a relatively discretionary power for the chief executive to specify a CBA is not required which does not appear to attract a right of appeal.

The absence of a concrete resolution pathway if CBA negotiations do not reach agreement is particularly problematic due to the operation of new section 51(3A) in this scenario.

As stated above, QLS's primary submission is section 51(3A) and related provisions be removed from the Bill and CBAs adopt the same voluntary process akin to the existing IA process. We have, however, made recommendations below to improve the resolution mechanisms if this feature of the Bill is to be retained.

It is unusual and concerning for there to be no appeal right or other more readily available resolution or "breakthrough" mechanism given the ramifications of new section 51(3A). The justification for such a prohibition is also unclear, given the proposed availability of a social

impact assessment and related conditioning powers to address these issues as part of an integrated assessment of the whole project, should a CBA not be in place.

The nature of the CBA framework in this regard appears to go beyond what is provided for in other assessment and approval processes involving agreement making (including for resource projects). For example, for landowner compensation (and access) agreements for resources projects, compensation for compulsory acquisition, or cultural heritage management plan agreements, there is a process for third party determination by a Court if an agreement cannot be reached in appropriate timeframes (this provides consequences for a party making unreasonable demands). The inability to agree does not generally act as a prohibition on commencing relevant approval processes.

Further, there appears to be a general lack of transparency in respect of the chief executive's ability to grant the application and impose a condition, which exacerbates the above concerns of QLS.

In respect of the mediation provisions in section 106ZB, QLS suggests the local government or other entity may refer a CBA dispute to mediation through the Planning and Environment Court's ADR Registrar or alternatively a mediator agreed between the parties.

In respect of the chief executive exemption provisions in proposed section 106ZE, QLS suggests, in addition to the general discretion to grant an exemption, more transparent and objective criteria could be considered for at least some instances where application can be properly made without a CBA (in particular, but also a SIAR), to ensure projects are able to move forward with application processes in a timely fashion (noting the ability to enter into a CBA could remain, as could the other assessment and conditioning powers, as an incentive for proponents to consider such agreements.

Recommendation 16: Section 106ZB be amended so the local government or other entity may refer a community benefit agreement to the Planning and Environment Court for mediation.

Recommendation 17: Further consideration be given to providing objective criteria for some instances where a CBA will not be required with respect to section 106ZE.

In addition, there are likely to be concerns from stakeholders with respect to notices given by the chief executive under the proposed new sections 106ZE and section 106ZF. For access to justice reasons, QLS does not support the amendment proposed to section 11(3) of the *Planning and Environment Court Act 2016* (Qld). It is considered relevant stakeholders should be able to commence declaratory proceedings in the Planning and Environment Court with respect to the decisions to give these notices.

Recommendation 18: To address access to justice issues, QLS recommends the proposed new section 11(3) of the *Planning and Environment Court Act 2016* (Qld) (within clause 28 of the Bill) be deleted. The current subsection (3) in that Act and the proposed new section 11(2) can remain unchanged. QLS suggests a new subsection (3A) be inserted in proposed new section 12A (within Clause 30) to read as follows:

> (3A) A person may start a proceeding in the P&E Court for a declaration about a matter under the Planning Act, section 106ZE or 106ZF if the person is –

(a) if notice of a matter stated in section 106ZE or 106ZF has been given prior to a development application or change application being properly made –
  (i) the proponent of the material change of use of the premises; or
  (ii) a local government; or
  (iii) a public sector entity; or
(b) otherwise – the applicant, the assessment manager or responsible entity.

Transitional provisions, retrospectivity and inappropriate regulation-making powers are unfair and will lead to significant costs and delays

Existing applications (including change applications) regardless of the stage reached, will be considered not properly made upon commencement of these amendments and will need to recommence the assessment process, and commence preparation of a SIAR or CBA prior to re-application.

In addition, QLS raises significant concerns about the proposal for a regulation to override an act in order to change existing rights, pursuant to new section 106U. This provision it is at odds with the principles in:

- section 20 of the *Acts Interpretation Act 1954* (Qld) with respect to rights acquired prior to the amendments; and
- section 45(7) and (8) of the Planning Act, whereby the assessment manager must assess the application against, or have regard to, the statutory instrument in force when the application was made, but may give weight to amendments or later instruments (noting the amendments to the Planning Regulation proposed are not matters against which the application must be assessed or to which regard must be had).

The amendments should not apply to pre-existing applications as this is not fair or reasonable. This will undermine existing contracts and other arrangements entered into, potentially with local contractors and businesses, and may result in significant loss and damage. The explanatory notes incorrectly refer to this amendment as not being retrospective and they should be corrected if it is to remain in the Bill.

Proceeding with this amendment is a breach of a fundamental legislative principle, as noted in the explanatory notes (page 9), and will have real, adverse impacts for those in this industry, communities and the broader economy.

Similar concerns are raised in respect of new section 106T which provides that a regulation may prescribe development that is a material change of use of premises to be development for which social impact assessment is required. Again, this is a breach of fundamental legal principles insofar as this amendment has insufficient regard to the institution of Parliament (see section 4 of the *Legislative Standards Act 1992*).

Recommendation 19: Sections 106T and 106U be removed from the Bill and be replaced by provisions that apply the amendments prospectively, with all changes to a party's rights placed in the primary legislation.

Enforcement powers

QLS notes through proposed sections 106ZF and 106ZG there is a broad power to nominate 'a person' to be an enforcement authority with respect to a community benefit condition on a development application. In similar provisions providing for the delegation of powers in the Planning Act (for example sections 275M and 106Q) and *Environmental Protection Act 1994* (Qld) (for example section 516) these powers may only be provided to appropriately qualified people and generally those who are authorised and hold public service office positions. To provide for certainty, accountability and quality of enforcement, QLS recommends a similar limitation be provided to limit delegation of enforcement powers to those with appropriate qualifications and a public service office position.

Recommendation 20: QLS recommends a person nominated under this provision should be appropriately qualified and authorised to hold public service office positions.

Impact on other processes

While the provisions provide for a CBA to override a development approval / IA or infrastructure charge "to the extent of inconsistency", it appears the framework will still cut across the intended constraints provided by the infrastructure provisions in the Planning Act, at least in relation to how they would have applied had the local government remained the assessment manager. For example, an adopted charge or infrastructure conditioning power may not apply road, park or stormwater works or financial contributions to a solar farm because there is no additional demand created by the development, but a council could simply achieve these by withholding consent on a CBA unless the proponent "agrees" to provide them. Alternatively, it appears there is now a conditioning power to simply do this as a form of social impact or community benefit.

QLS also raises concern with respect to the precedent set by these provisions and the fairness in their application to one industry of the many regulated under the Planning Act, including others that can significantly impact local communities.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted]

[redacted]