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

Submission No: 581

Submitted by: Bar Association of Queensland

Publication:

Attachments:

Submitter Comments:

2 June 2025

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Chair
State Development, Infrastructure
and Works Committee

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

Dear Chair

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

Preface: the Rule of Law

1. Proposed sec. 53DD(3), to be included with the insertion of new Chapter 3A into the *Brisbane Olympic and Paralympic Games Arrangements Act* 2021**,** is contrary to the rule of law. The myriad other difficulties with the draft bill pale into insignificance against this proposition.

2. The public interest in upholding the rule of law is far more important than the public interest in *"ensuring the State is ready to host the Brisbane 2032 Olympic and Paralympic Games"*.[1]

3. Without the rule of law, the State will never be *"ready to host the Brisbane 2032 Olympic and Paralympic Games"* and should not consider itself worthy of doing so.

Introduction

4. The Bar Association of Queensland (**the Association**) appreciates the opportunity to make submissions in respect of the *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill* (**the Bill**), and the extension of time granted to make submissions.

5. The Bill deals with matters relating to:

   (a) the delivery of the 2032 Olympic and Paralympic Games;

   (b) the regulation of solar farms and wind farms; and

   (c) the operation of Economic Development Queensland.

6. The *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025 (Consultation Version May 2025)*

[1] Proposed sec. 53DA(b).

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relating to solar farms and wind farms has also been provided (**the Draft Regulation**).

7. This submission addresses matters relating to:

   (a) the delivery of 2032 Olympic and Paralympic Games; and

   (b) how solar farms and wind farms are regulated.

The 2032 Olympic and Paralympic Games

Amendments rendering lawful conduct which would be unlawful

8. The Bill renders particular *"development, use or activity"* lawful where they might otherwise contravene a suite of legislative enactments.[2] The criteria for the application of this deeming provision concern the *"development, use or activity's"* relationship with the delivery of 2032 Olympic and Paralympic Games.

9. The suite of enactments rendered otiose by the deeming provision regulate things like the protection of waterways, environmentally sustainable development, the protection of economic drivers (eg., the fisheries industry, tourism and regional development), the amenity of developments, the protection of irreplaceable heritage, and the provision of safe water for the community.

10. Proposed sec. 53DC lists the developments, uses and activities to which the new Part 2 of proposed new Chapter 3A of the *Brisbane Olympic and Paralympic Games Arrangements Act* 2021 would apply.

11. *"Development"* is defined by reference to the *Planning Act* 2016. *"Use"* is undefined (save by reference to the Games-related type of use referred to in proposed sec. 53DC) and, similarly, *"activity"* is undefined (save by reference to the development-related activities). The actual words *"use"* and *"activity"* are not defined, and the expression *"development, use or activity"* is used throughout the proposed amendments as a cognate phrase. The cognate phrase is undefined.

12. The amendments proceed on the basis that the *"development, use or activity"* is <u>in fact</u> unlawful. It is then *"taken to be"* lawful by virtue of proposed. Sec. 53DD(1) and (2) *"despite the following Acts"*:

   (a) the *City of Brisbane Act* 2010;

   (b) the *Coastal Protection and Management Act* 1995;

   (c) the *Economic Development Act* 2012;

   (d) the *Environmental Offsets Act* 2014;

   (e) the *Environmental Protection Act* 1994;

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[2] See clause 66 of the Bill and proposed section 53DC.

(f) the *Fisheries Act* 1994;

(g) the *Integrated Resort Development Act* 1987;

(h) the *Local Government Act* 2009;

(i) the *Nature Conservation Act* 1992;

(j) the *Planning Act* 2016;

(k) the *Queensland Heritage Act* 1992;

(l) the *Regional Planning Interests Act* 2014;

(m) the *South-East Queensland Water (Distribution and Retail Restructuring) Act* 2009*;*

(n) the *Vegetation Management Act* 1999; and

(o) the *Water Supply (Safety and Reliability) Act* 2008.

13. In each instance, as part of their approval processes, the legislation provides for assessment against stated criteria aimed at ensuring the development, use and activity in question is appropriate and for the benefit of Queensland. Approvals are generally subject to conditions intended to minimise the adverse effects of permitted development on surrounding property, the community and the environment.

14. These Acts also contain offence provisions, for example, making it an offence to cause environmental harm or environmental nuisance, or for demolishing a heritage place.

15. The Association observes, with respect, that deeming something that is *prima facie* unlawful to be lawful if vaguely expressed criteria[3] are said to apply will likely create more legal disputation rather than less.

16. The Association appreciates that significant steps will need to be taken in order to deliver the 2032 Olympic and Paralympic Games in a timely and efficient manner; however, the proposed amendments involve a very significant alteration of the existing legislative requirements where other, less extreme measures would achieve the same result. In this regard, there are already existing powers to streamline assessment processes such as the Ministerial call-in powers under the Planning Act which allow the State to take over the assessment of a particular application and exclude appeals. If necessary, legislative amendments could be made relating to how approvals are dealt with for Olympic related development, uses and activities under the listed Acts, without the need to exclude them as contemplated by the Bill.

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[3] Proposed sec. 53DC.

17. The amendments propose the removal of the application of the offence provisions under the relevant Acts: proposed sec. 53DD(2). For example, the proposed amendments mean that that if environmental harm (serious environmental harm, even) were to be caused there would be no consequence for those responsible. There is no obvious need for the removal of those provisions. The maintenance of a right to institute a prosecution does not obviously create any risk to timely delivery of games infrastructure. Environmental and planning prosecutions can proceed in parallel with continued (lawful) conduct of the development. Indeed, it has been the experience of the Association's members that such prosecutions usually take place well *after* the conduct the subject of them. Nothing would be held up by the prosecution.

18. In short, the 2032 Olympic and Paralympic Games can be delivered without the need to remove the application of the assessment and approval processes of the relevant Acts, nor to remove the offence provisions for conduct that is, by any metric, unlawful and should be prosecuted.

Civil Proceedings and the Rule of Law

19. The proposed amendments include a provision that would preclude a person from *"starting a civil proceeding"* about a development, use or activity if there is a reasonable prospect that the proceeding will prevent the timely delivery of an Olympic venue, village or games related transport infrastructure: s 53DD(3).

20. Proposed sec. 53DD(3) provides:

> (3) Also, a **civil proceeding may not be started** against a person in relation to the development, use or activity if there is **a reasonable prospect** that the proceeding will prevent—
>
> (a) the timely delivery of an authority venue, other venue or village for the Brisbane 2032 Olympic and Paralympic Games; or
>
> (b) the timely completion of games-related transport infrastructure.
>
> [Emphasis added.]

21. In the experience of the Association's members and based on research undertaken for the purposes of this submission, such a broad and restrictive provision has never before been enacted in Queensland.[4]

22. The Association understands the Government's desire to prevent challenges to decisions made by the State Government and Olympic Authorities in relation to Olympic venues and infrastructure. That can usually be achieved by inserting a provision which prevents an appeal or challenge to such a decision other than for jurisdictional error (such a carve-out being necessary as a result of the

[4] The Association's research into other jurisdictions is continuing, but none has been found thus far.

Constitutional restriction on seeking to oust the inherent supervisory jurisdiction of the Supreme Court of Queensland) (**Exclusion Clause**).

23. The inclusion of an Exclusion Clause would prevent disaffected persons from seeking merits review of administrative decisions (including planning or development decisions). That would have the practical effect, for example, of removing rights which might otherwise exist to appeal against such decisions to specialist courts and tribunals.

24. Such Exclusion Clauses are not unusual. It seems to the Association that it would be sufficient to protect the Government's concern in avoiding delays to the construction of Olympic venues and infrastructure.

25. It is, however, unclear why all civil proceedings are sought to be restrained. Such a broad provision involves a significant restraint on individual and commercial rights.

26. While the proposed provision has practical difficulties (mentioned *below*), they must not be allowed to distract from the fundamental problem that it is contrary to the rule of law. The rule of law must not be a casualty in the battle for efficient development of Olympic infrastructure. It should, in fact, be viewed as a key driver of it. Economic development requires the participants to have confidence in their ability to enforce their contractual rights. Adherence to the rule of law, the administration of justice, and an absence of graft are the hallmarks of flourishing economies.

> Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay. Commerce and manufactures, in short, can seldom flourish in any state in which there is not a certain degree of confidence in the justice of government.
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> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* 1776.

27. Asked rhetorically, why would a company tender for a contract worth hundreds of millions of dollars if it could not enforce that contract by regular application to the Courts of the jurisdiction in question?

28. The practical difficulties with the clause include the following matters.

29. ***First*****,** such a provision could be used to prevent commercial entities involved in delivering Olympic Infrastructure from seeking to promptly resolve commercial disputes by way of litigation. For example, it could prevent contractors from taking legitimate action, including injunctive relief, against a principal under a building contract to enforce its rights. The principal could seek to argue that the contractor's litigation will prevent *"the timely delivery of"* Olympic infrastructure.

30. Those sorts of questions will, for the most part, be questions which can only be resolved at a trial. They are not the sort of questions which could usually be determined at an early stage of a proceeding.

31. ***Secondly,*** if that litigation is stymied, the contractor-plaintiff may not be able to commence work on another Olympic venue because it has not been able to recover funds owed in relation to the first one. The inability to litigate is in fact preventing the *"timely delivery"* of the Olympic venue. This would be another area of disputation not amenable to summary determination.

32. ***Thirdly,*** the limitation on commencing proceedings, namely that *"there is a reasonable prospect it will prevent the timely delivery of Olympic [infrastructure]"*, will likely be impossible to enforce and will not stop litigation occurring. Until the proceeding is commenced, who is to be the arbiter of whether or not there is a reasonable prospect that it will prevent the timely delivery of Olympic infrastructure? Must one of the parties seek a declaration in advance of the civil proceeding (ie., an antecedent civil proceeding) that the proposed civil proceeding has reasonable prospect of preventing the timely delivery of Olympic infrastructure (or not)? So, then, there are potentially two civil proceedings, rather than just one.

33. ***Fourthly,*** almost inevitably there will be a factual dispute between the parties which the Court will have to resolve as to what is *"timely delivery"* of the infrastructure and whether the proceeding will have a causative effect on that timely delivery.

34. ***Fifthly***, it is difficult to see how the provision would prevent litigation being commenced in the Federal Court of Australia.

35. ***Sixthly,*** there is no definition of what constitutes a *"civil proceeding"*. Would it include, for instance, and application by ASIC to wind up a company? The presentation of a creditor's petition? An injunction necessary to prevent a dangerous course of conduct? A disciplinary proceeding against the directors of a principal contractor?

36. It follows, in the view of the Association, that a broad-based restraint on the commencement of civil proceedings is unlikely to achieve the Government's objective. It will not prevent litigation from being commenced and maintained through until a trial.

37. With respect, the Association submits that a better approach, which would still achieve what the Association perceives to be the Government's aims, would be to:

    (a) include Exclusion Clauses where relevant; and

    (b) include a mechanism to require any civil proceeding which will, or may, affect the timely delivery of Olympic infrastructure to be efficiently (speedily, in fact) conducted and/or promptly resolved.

38. As to the second of these, the Association respectfully submits the following as illustrations of such mechanisms:

    (a) fast-tracked rules of litigation for relevant proceedings;

    (b) the process of disclosure be *prima facie* inapplicable save on application (as in the Federal court);

    (c) legislation promoting *"guillotine"* orders for breach of fast-track rules and directions (ie., non-compliance with an order results in the proceeding being dismissed or, alternatively, non-compliance results in a fixed costs order, payable within a short timeframe or the defence is struck out etc.);

    (d) the creation of an *"Olympics List"* similar to the *"Commercial List"*, but with a mandate for faster turn-around (the Association of course notes that the Chief Justice of the Supreme Court of Queensland would be required to be approached in relation to the establishment of such a list); and

    (e) alternatively, the creation of a special *"Olympics Court"*. There is long-standing precedent for this: the Queensland Court of Disputed Returns (a division of the Supreme Court of Queensland).

The changes relating to solar farms & wind farms

39. The Bill seeks to amend various legislative provisions so as to require a "*social impact assessment report*"[5] and a "*community benefit agreement*" for particular development applications (**the additional material**).

40. In the absence of this additional material, a development application is "*not properly made*".[6]

41. By reference to the Draft Regulation, the type of uses impacted are wind farms and prescribed solar farms.[7]

42. Other changes include altering the assessment manager for solar farms such that local governments will no longer be the assessment manager and the development application will be subject to impact assessment.[8]

43. The Association makes the following observations about the proposed amendments.

44. Firstly, the purpose of the *Planning Act 2016* (**the Planning Act**) includes establishing an efficient development assessment system.[9] Requiring the

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[5] See clause 21 of the Bill for a description of these documents.
[6] Clause 10 of the Bill.
[7] See ss.10 and 12 of the Draft Regulation.
[8] See s.13 of the Draft Regulation.
[9] See s.3(1) of the Planning Act.

additional material to be provided in order for a development application to be properly made does not further efficiency in the development assessment system.

45. Further, there are already powers under the Planning Act which enable the provision of information of this type. This includes through the use of the "information request" process. [10]

46. The existing planning processes allow an assessment manger (and other entities) to request such information in a flexible way and without the severe consequence of a development application not being able to be assessed.

47. The proposed approach may stifle innovation by applicants who may wish to advance alternatives to a community benefit agreement in support of approval for a particular development.

48. Under the existing processes, if certain material is not provided by an applicant or an applicant cannot commit to providing community benefits, that may provide a reason to refuse a development application. The existing decision rules allow these factors to be weighed up when deciding whether to refuse or approve a development application. [11]

49. Additionally, the removal of local governments as assessment managers is a matter of concern. The need to remove a local government from assessing development which will occur in its local government area has not been identified.

50. Similarly, the need for all solar farms caught by the Draft Regulation to be subject to impact assessment has not been identified. Impact assessable development is, *inter alia*, subject to third-party appeal rights.

51. Ordinarily, a local government can decide the level of assessment to which a particular development application should be subject. Requiring all solar farms caught by the Draft Regulation to be subject to impact assessment is likely to increase the time it takes to assess and decide such development applications including as a result of third-party appeals.

52. Finally, the uses that will be affected by the proposed amendments serve an important role in terms of the public interest, namely generation of electricity in a manner that moves away from utilising non-renewable sources.

53. The current legislative framework, as compared to the proposed amendments, may assist in meeting renewable energy targets and emission reduction targets set in legislation and agreements including the "net zero" targets under the *Climate Change Act 2022* and the Commonwealth's commitments under the Paris Agreement - United Nations Framework Convention on Climate Change.

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[10] As defined in Schedule 2 of the Planning Act.

[11] See ss.45 and 60 of the Planning Act.

Conclusion

54. The Association would be pleased to answer any questions you may have about the matters raised in this submission.

Yours faithfully

[redacted]

President