Environmental Defenders Office

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

23 May 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

State Development, Infrastructure and Works Committee
Legislative Council
Queensland Parliament
By email: sdiwc@parliament.qld.gov.au

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations people will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025 (**the Bill**).

Overall, EDO raises concerns that many of the key features of this Bill are unprecedented in Queensland, are arguably an overreaction to the issues the government is seeking to address and raise significant costs and risks to Queensland which the Committee must closely consider.

EDO raises strong concerns with respect to the proposed amendments impacting the rights of First Nations People to protect their cultural heritage, with respect to the facilitation of Olympic and Paralympic games related development.

EDO is a non-Indigenous community legal centre that acts on behalf of First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction. EDO has and continues to work on behalf of First Nations clients who have interacted with western laws, including litigation and engaging in western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level feedback only on those aspects of the Bill which relate to proposed amendments to the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (together **the Cultural Heritage Acts**). We urge the Queensland Government to undertake meaningful consultation on the Bill with affected First Nations communities, particularly to seek their views on proposed amendments to the Cultural Heritage Acts proposed in Chapter 4, Part 2, Clause 66 of the Bill, consistent with the government's obligations under the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).

Of note, the Bill provides for two starkly contrasting policy priorities, the first being the fast tracking of development without assessment for the 2032 Brisbane Olympics and Paralympics, and second being the substantial slowing of applications for renewable energy projects in Queensland. Given the focus of the Brisbane Olympic and Paralympic games on being 'climate-positive' and sustainable, the policies of this Bill may jeopardise Queensland's abilities to achieve these goals.

The Queensland Government has existing powers to fast-track development to facilitate the need for Olympic and Paralympic infrastructure development in a timely manner. These powers exist under the *Economic Development Act 2012* (Qld) (**ED Act**) and the *State Development and Public Works Organisation Act 1979* (Qld) (**SDPWO Act**), as well as under the *Planning Act 2016* (Qld) (**Planning Act**), amongst other Acts. Each of these processes provide for some level of assessment, accountability and transparent process to facilitate the development and would be potentially adequate for facilitating the necessary infrastructure required to meet the commitments made in hosting the Olympic and Paralympic games.

EDO commends the Government's intention to seek to standardise and improve the assessment of renewable energy projects in Queensland. Up until now there have been inconsistent approaches across the state, with renewable energy projects often being assessed through local government planning schemes not built for assessing large scale renewable energy projects. However, these

changes also raise significant concerns of impeding the renewable energy sector from progressing in Queensland, even where applications have already been made prior to the Bill being introduced. At a time when action to reduce greenhouse gas emissions is more urgent than ever, the potential reduction in renewable energy products coming online will not only be of detriment to Queensland's competitiveness in the clean energy space, but also to the increasingly dangerous climate change impacts we the state is so vulnerable to.

Further, while EDO supports the consideration of social impacts and community benefits for all development, particularly impactful developments, these considerations can be appropriately considered using tools in existing laws or building these requirements into the current assessment framework, and should not be a means of preventing applications from being made. If social impact assessment and community benefits are of priority interest to the Queensland Government, these requirements should be applied to all impactful developments, including quarries, large supermarkets and any exploration or production application for resource activities.

EDO recommends that the Queensland Government turn its focus to ensuring renewable energy zones are thoughtfully mapped throughout the state to secure prime areas for renewable energy which avoid conflicting areas, such as high conservation value and high agricultural value land. More considered work could be undertaken to facilitate whole of community negotiation on community benefits with renewable energy industry projects, and all large-scale development proponents.

EDO notes that there are aspects of the new framework proposed for renewable energy project regulation which would be beneficial for broad application across development proposals, such as:

- The new public notice requirements provided for in the Development Assessment Rules for those projects requiring a social impact assessment, which would be very valuable for any large scale or impactful development, such as quarries and large shopping centres. We note that an email notification system for development applications in a particular area would also be a useful modern method for notification.
- The requirements for the preparation of a social impact assessment and community benefit agreement, as mentioned above; however, with these processes forming part of the application process and public consultation, rather than being required to be finalise prior to application and only prepared with local government input.
- Specific requirement to assess cumulative impacts provided clearly for in the legislation.

However, these benefits do not outweigh the substantial risks posed by this Bill, and should rather be considered for implementation through a more considered reform process.

For these primary reasons, EDO recommends that the Committee does not support the passing of this Bill.

Summary of Recommendations

Recommendation 1:

(a) Remove the requirement that social impact assessment and community benefit agreements be required to be finalised for an application for renewable energy projects to be 'properly made' where this is an unfair burden on renewable energy industry.
(b) Apply a requirement more broadly that renewable energy projects, and any potentially impactful developments – including quarries and large supermarkets, as well as any gas and mining related application, amongst others, must provide for a social impact assessment and community benefit agreement as part of the assessment process.

Recommendation 21:

In order to provide for meaningful social impact assessment and community benefit:

(a) There should be a requirement for community consultation on the content of social impact assessments and community benefit agreements.
(b) Mediation should be available, for example through the Planning and Environment Court, where the local government and proponent cannot agree on a proposed community benefit agreement, to facilitate agreement.
(c) Third party appeal rights should be maintained with respect to development conditions regarding social impact assessment and community benefit agreements.

Recommendation 3:

To ensure transparency, accountability and public participation, once finalised, community benefit agreements should be made public.

Recommendation 4:

The power to nominate persons to undertake enforcement of development conditions, provided for under section 106ZG, be limited so that only public servants can be nominated, consistent with the general framework in the Planning Act, to ensure the important role of enforcement is undertaken by those with sufficient skills to do so.

Recommendation 5:

The power to give an exemption should be clarified so that there are clear criteria as to when circumstances would mean it is appropriate for a development application to be assessed despite no community benefit agreement. For example, the power to granted exemptions to social impact assessment should be narrowed in scope, to only apply where the Director-General is satisfied that there will be no social impact from a project.

Recommendation 6:

Public rights to commence declaratory actions in the Planning and Environment Court with respect to social impact assessments and community benefit agreements should be maintained.

Recommendation 7:

We recommend further work be done to support smart planning to reduce the impacts of the renewable energy sector, by:

(a) Supporting the Renewable Energy Zone framework as a way to provide certainty for industry and community and to support smart planning for the appropriate location of renewables to minimise negative impacts to Queensland.

(b) Establishing and funding Local Energy Hubs in each Renewable Energy Zone to bring developers, communities and local councils together to negotiate the best outcomes for communities and the environment.

Recommendation 8:

The provisions of the Bill relating to changing the application of planning, development and environmental laws to the development of Brisbane Olympic and Paralympic Games venues and infrastructure should not be recommended for passing given the unorthodox and dangerous overreach of these sections and the existence of sufficient fast-tracking mechanisms.

Recommendation 9:

Closely consider the proposal to remove accountability and transparency mechanisms around the removal of the CEO and executive officer of Economic Development Queensland, where this raises concerns as to why the current criteria are seen to be no longer relevant or required.

Recommendation 10:

To ensure that the reforms are progressed with the free, prior and informed consent of First Nations people, the parts of the Bill which impact the rights of Aboriginal and Torres Strait Islander peoples should be withdrawn, and appropriate consultation should occur with and as guided by affected First Nations communities.

Detailed submissions

Social impact assessments and community benefit agreements

Increased community impact and benefit requirements are supported, for all higher impact development – but should not hinder the ability for applications to be made

The Bill proposes a new requirement for certain development applications under the Planning Act to undertake a social impact assessment report and to enter into a community benefit agreement prior to an application being considered 'properly made'. Currently these requirements are proposed only for material change of use applications for prescribed wind and solar renewable energy projects, but there is potential for further development types to be added. Community benefit agreements must be negotiated with local governments, or a public sector entity. This effectively enables local governments to veto projects and creates an uneven negotiating environment. This is particularly troublesome as the dispute resolution pathway, namely

participation in mediation, is entirely voluntary and either party may withdraw from meditation at any time.[1]

The application of these laws to a limited industry, namely the renewable energy industry, has the potential to unfairly prejudice this industry and will likely slow Queensland's achievement of renewable energy targets. While it is noted the current Queensland Government is not in support of the renewable energy targets, these targets were entrenched to assist the state to do its part to reduce greenhouse gas emissions, transition to clean energy and ensure Queensland is maximising the economic benefits of being part of the clean energy industry. The Queensland Government's lack of support does not take away from the existence of these clear benefits in supporting the renewable energy industry to flourish in Queensland, under appropriate laws to mitigate their impacts.

This unfairness is exacerbated by the intended retrospective operation of the requirement in the Bill, enabling the cancellation of any applications currently in assessment or to require them to commence the process again with these documents. This is contrary to fundamental legislative principles specified in the *Legislative Standards Act 1992* (Qld), particularly s4(3)(g) which states that legislation should have sufficient regard to the rights of individuals, including in ensuring that it 'does not adversely affect rights and liberties, or impose obligations, retrospectively'. While there are occasions when non-compliance with this standard is appropriate, for example in order to prevent mass panic clearing of vegetation when clearing laws are being tightened, the regulation of community benefits from renewable energy projects is not considered to be a sufficient reason to ignore this principle. This is particularly the case where renewable energy projects already negotiate with local governments to ensure that they provide for community benefits, for example through infrastructure agreements, as occurs for many other developments.

The reasoning provided by the Department of State Development, Infrastructure and Planning for these new requirements on the renewable energy sector is stated to be 'to increase rigour and provide better alignment for assessment and approval processes between renewable energy projects and other resource projects'.[2] However, there is no requirement for social impact assessments or community benefit agreements to be developed prior to development applications being submitted for any resource project, or indeed any other industry in Queensland. Further, many mining and gas projects are assessed without an environmental impact statement, let alone any consideration of their social impacts or community benefits being required.

The *Strong and Sustainable Resource Communities Act 2017* (Qld) (**SSRC Act**) requires large resource projects to undertake a social impact assessment.[3] The threshold for where a project is a 'large resource project' depends on whether an EIS is required or the proponent holds a site-specific EA and will involve a workforce of 100 or more workers (or a smaller amount as decided by the Coordinator-General).[4] The current thresholds for whether an EIS is required means that many

[1] Proposed Planning Act s 106ZC.
[2] State Development, Works and Infrastructure Committee - Department of State Development, Infrastructure and Planning Briefing- Planning Bill 2025.pdf, page 1.
[3] SSRC Act, s 9.
[4] SSRC Act, Schedule 1.

projects which may have detrimental social impacts are not necessarily being assessed for those impacts.[5] Exploration activities for mining and gas can have substantial impacts on the environment and communities, and yet these activities are subject to very limited assessment and no public input in the assessment and decision process.

Therefore, the requirements for social impact assessments and community benefit agreements should be equally applied to resource activities and other impactful developments. As for all other impact assessments and negotiations, these steps should more appropriately occur during the assessment process. Alternatively, if the government wishes to bring the resource sector into alignment with these rules, it should similarly require mining and gas proponents undertake social impact assessments and community benefit agreement prior to being allowed to make any applications for exploration or production in Queensland. These requirements should be subject to the same recommendations made below.

Recommendation 12:

(a) Remove the requirement that social impact assessment and community benefit agreements be required to be finalised for an application for renewable energy projects to be 'properly made' where this is an unfair burden on renewable energy industry.
(b) Apply a requirement more broadly that renewable energy projects, and any potentially impactful developments – including quarries and large supermarkets, as well as any gas and mining related application, amongst others, must provide for a social impact assessment and community benefit agreement as part of the assessment process.

Transparency and public input must be required for meaningful social impact assessment and community benefit agreements

The Bill proposes that community benefit agreements would be negotiated by the relevant local government(s) for communities impacted by the development and the project proponent. A prescribed public sector entity may also be party to a community benefit agreement.

The Bill, however, does not afford an opportunity for members of the community to participate in negotiations or provide input as to what kinds of benefits would be appropriate in a given context. Nor is there a process for the community to provide input into a social impact assessment.

This is particularly problematic as there is also a limitation on appeal rights for members of the public in appealing development conditions imposed in relation to social impacts and community benefit plans.[6]

[5] For example, for greenfield mining projects the threshold is 2 million tonnes ROM, for petroleum and gas projects the threshold is 2000 ha total disturbance at any given time. Both of these thresholds could therefore enable incredibly large and impactful projects to be assessed without social impact assessment.
[6] Proposed Planning Act s 106ZJL.

Recommendation 2:

In order to provide for meaningful social impact assessment and community benefit:

(a) There should be a requirement for community consultation on the content of social impact assessments and community benefit agreements.
(b) Mediation should be available, for example through the Planning and Environment Court, where the local government and proponent cannot agree on a proposed community benefit agreement, to facilitate agreement.
(c) Third party appeal rights should be maintained with respect to development conditions regarding social impact assessment and community benefit agreements.

It is further unclear in the Bill whether community benefit agreements are public documents or confidential. In our view, given the intention for the agreements to benefit the local community, members of the public should be afforded access to that agreement to provide transparency around those benefits.

The closed-door nature of negotiations and agreements could lead to possible or perceived corruption or unfair treatment of certain projects. Making finalised agreements open to the public will also ensure that local governments are taking a consistent approach across Queensland, and with respect to similar process.

Recommendation 3:

To ensure transparency, accountability and public participation, once finalised, community benefit agreements should be made public.

Ensuring skilled enforcement of conditions relating to social impact and community benefit agreements

The Bill introduces a power for any person to be nominated to undertake enforcement of relevant development conditions.[7] This has the effect that people without appropriate qualifications and experience, who are not public servants, or who may have conflicts of interest in relation to the conditions, may be appointed to enforce conditions including community benefit agreements. Typically, there are limitations placed on the outsourcing or delegation of enforcement powers, for example in similar provisions in the Planning Act and the *Environmental Protection Act 1994* (Qld) (**EP Act**) the delegation is limited to people who are 'appropriately qualified' and those who hold public service office positions.

Recommendation 4:

[7] Proposed Planning Act s 106ZG.

The power to nominate persons to undertake enforcement of development conditions, provided for under section 106ZG, be limited so that only public servants can be nominated, consistent with the general framework in the Planning Act, to ensure the important role of enforcement is undertaken by those with sufficient skills to do so.

Transparency and predictability in social impact assessment and community benefit agreement exemptions is needed

The Bill introduces a broad power to grant exemptions for the requirement to undertake a social impact assessment or obtain a community benefit agreement where the Director-General is of the view "it is appropriate in the circumstances".[8] This could lead to circumstances where projects are not assessed by the same criteria and are therefore arbitrarily treated differently.

Recommendation 5:

The power to give an exemption should be clarified so that there are clear criteria as to what circumstances would mean it is appropriate for a development application to be assessed despite no community benefit agreement. For example, the power to granted exemptions to social impact assessment should be narrowed in scope, to only apply where the Director-General is satisfied that there will be no social impact from a project.

Public right to bring actions in the Planning and Environment Court should not be diminished

The Bill removes or severely limits the general declaratory jurisdiction of the Planning and Environment Court over matters relating to social impact assessment reports or community benefit agreements. This has the effect of preventing third party enforcement of matters which are stated in, to be stated in or that should have been stated in a social impact assessment report,[9] or which are stated in, to be stated in or that should have been stated in a community benefit agreement.[10]

Recommendation 6:

Public rights to commence declaratory actions in the Planning and Environment Court with respect to social impact assessments and community benefit agreements should be maintained.

[8] Proposed Planning Act s 106ZE.
[9] Proposed P&E Court Act s 12A(1).
[10] Proposed P&E Court Act s 12A(2).

The Renewable Energy Zone framework is ideally placed to guide smart development of renewables and to facilitate community benefits

The *Energy (Renewable Transformation and Jobs) Act 2024* (Qld) established a Renewable Energy Zone framework allowing the identification of areas within Queensland for strategic rapid expansion of renewable energy generation projects and infrastructure. This presents a perfect opportunity for pre-consideration of the best locations for renewable energy projects to be placed to maximise benefits for communities and to minimise impacts. Further efforts could be made to integrate local consultation mechanisms to provide for negotiated community benefits, for example via Local Energy Hubs which bring together all stakeholders.

Recommendation 7:

We recommend further work be done to support smart planning to reduce the impacts of the renewable energy sector, by:

(a) Supporting the Renewable Energy Zone framework as a way to provide certainty for industry and community and to support smart planning for the appropriate location of renewables to minimise negative impacts to Queensland.

(b) Establishing and funding Local Energy Hubs in each Renewable Energy Zone to bring developers, communities and local councils together to negotiate the best outcomes for communities and the environment.

Brisbane Olympic and Paralympic Games amendments

The Bill proposes to deem development related to the Olympic and Paralympic games as legal, without any assessment or decision process outside of criteria related to building works. In addition, the Bill removes any civil proceeding rights which may impact on the timely delivery of games infrastructure. These two amendments are concerning on their own, but they become dangerous in combination. Existing powers to fast-track development should preferably be utilised, which integrated a level of impact assessment and accountability to ensure the quality and minimise the impacts of the development. These provisions, are, to our knowledge, unprecedented in Queensland and raise concerns about unintended legal and regulatory consequences.

Existing protections and checks and balances in environmental and planning decision-making must not be eroded

The Bill proposes to bypass the application of significant planning and environment laws for developments relevant to the Olympic and Paralympic Games. Specifically, it applies to the sporting venues listed in Schedules 1 and 2, the Villages listed in Schedule 3, and "games-related transport

infrastructure" listed in Schedule 4. The "development, use or activity" relating to these sites are effectively exempted from complying with the following Acts: [11]

(a) City of Brisbane Act 2010;
(b) Coastal Protection and Management Act 1995;
(c) ED Act;
(d) Environmental Offsets Act 2014;
(e) EP Act;
(f) Fisheries Act 1994;
(g) Integrated Resort Development Act 1987;
(h) Local Government Act 2009;
(i) Nature Conservation Act 1992;
(j) Planning Act;
(k) Queensland Heritage Act 1992;
(l) Regional Planning Interests Act 2014;
(m) South-East Queensland Water (Distribution and Retail Restructuring) Act 2009;
(n) Vegetation Management Act 1999; and
(o) Water Supply (Safety and Reliability) Act 2008.

The complete suspension of significant planning and environment legislation is not justified and is a disproportionate response to the need to roll out Olympics infrastructure. These laws exist to ensure that developments are safe, environmentally sustainable, and conducted in accordance with the public interest (informed by public consultation). A lack of preparation for the Olympic and Paralympic Games should not be used as a pretext to erode public participation and regulatory safeguards which are designed to protect the integrity and safety of development and to minimise impacts.

The suspension of the application of planning and environmental laws to Olympics related development is contrary to the principle of the rule of law and equality before the law

An overarching concern is the Bill's potential inconsistency with the principle of the rule of law. This Bill encroaches on the rule of law as it empowers the Queensland Government and developers to evade a plethora of pre-existing planning, environment and heritage laws. The rule of law is a fundamental principle of our legal system and provides that all individuals and institutions, including the government are subject to the same laws. Laws should be applied and enforced uniformly across society.

Broad removal of rights to seek civil remedies for wrongs or harms is dangerous and could have unintended consequences

The Bill seeks to prohibit the commencement of any civil proceeding in relation to a relevant development if there are reasonable prospects that the proceeding will delay the timely delivery or

[11] Proposed section 53DD of the Brisbane Olympic and Paralympic Games Arrangements Act 2021 (**BOGPA Act**).

completion of the development.[12] This removes the rights of the public from seeking redress from any harms or wrongs that they may suffer as a result of the government or developer's actions. This goes against all usual legal customs and norms and is against Queenslander's human rights including property rights.[13]

There is also the significant potential for unintended consequences arising from the wording of the proposed new section 53DD of the BOPGA Act due to how broadly it is framed. The provision may cover disputes the adjudication of which are in the best interests of the successful completion of Games development and infrastructure use, such as contractual disputes, property disputes, negligence claims, employment and anti-discrimination actions and workplace health and safety disputes. The prohibition not only hinders the rights of those who may be inadvertently impacted by development under this framework, but it may impair the ability to address poor performance of contractors and therefore undermine the quality and timeliness of project delivery.

We further raise concern that these provisions could serve to also limit parties from seeking judicial review, even on the limited basis of jurisdictional error, and query the interaction in the Bill between sections 53DD and 53EG. Any attempts to oust the power to seek judicial review on the basis of jurisdictional error by Parliament would be in direct contradiction of established Constitutional law principles, including those affirmed by affirmed by the High Court in *Kirk's Case*.[14]

Privative clauses of the nature proposed under s53EG have become increasingly prevalent in Queensland's development laws. This trend is a dangerous erosion of the separation of powers and the rule of law, and we recommend caution be taken with allowing this to trend to be normalised further through the passing of this Bill.

Risk of regularising otherwise unintended unlawful activities such as the ongoing use or subsequent redevelopment

There is a significant risk that the provisions which deem Games related development as legal could be interpreted as encompassing ongoing use or subsequent redevelopment of games-related venues and infrastructure long after the conclusion of the Olympic and Paralympic Games, potentially unjustifiably excusing these from appropriate planning and environmental protection controls.

There are existing statutory pathways which facilitate timely development

Queensland's statutory framework already provides mechanisms to accelerate significant development via Ministerial Infrastructure Designations (under the Planning Act), coordinated project declarations (under the SDPWO Act), and priority area planning (*Economic Development Act 2012*). Each of these frameworks requires some consideration of relevant social and environmental impacts and other matters of public interest while still allowing for streamlined delivery.

[12] Proposed BOPGA Act s 53DD(3).
[13] Human Rights Act, s 24.
[14] *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531

It is unclear why a new process is required in place of expanding or modifying existing legislative tools. Greater clarity on this rationale, including the availability of any background reports or technical assessments, would assist stakeholders and the community in understanding the policy intent.

Removal of conflict of interest provisions reduces transparency and accountability of decision makers

The Bill removes the requirements of Councillors with respect to conflicts of interest that may arise in their role as directors under the BOPGA Act. This proposal reduces transparency and fairness in decision-making and the accountability decision makers when purportedly acting in the public interest. It could lead to the real or perceived risk of Councillor's making decisions to gain or prioritise personal benefits rather than acting to benefit the community.

Vague definition of Olympic games related infrastructure leaves open broad application of exemption of laws to any development

The issues described in this submission which apply to games related development are compounded by the poor definition of what development these proposed amendments would apply to. The Bill introduces four schedules which are intended to be periodically updated with "authority venues", "other venues", "villages" and "games-related transport infrastructure. However, authority venues, and other venues are defined in a circular manner in the Bill as merely being listed in the relevant Schedule.[15] Games-related infrastructure is defined to be transport infrastructure which has been identified by the chief executive as being required to ensure Queensland is ready to host the Olympic and Paralympic Games and able to perform its obligations under relevant games agreements.[16] These incredibly broad, vague and discretionary definition leave open the possibly that a wide range of developments could be captured at the whim of Parliament.

Recommendation 8:

The provisions of the Bill relating to changing the application of planning, development and environmental laws to the development of Brisbane Olympic and Paralympic Games venues and infrastructure should not be recommended for passing given the unorthodox and dangerous overreach of these sections and the existence of sufficient fast-tracking mechanisms.

Amendments to Economic Development Act 2012

Maintaining integrity and accountability of Economic Development Queensland appointments

This Bill proposes to amend the ED Act to allow the Governor in Council to remove the CEO of Economic Development Queensland (**EDQ**), and the Executive Officer of the EDQ employing office, "at any time". No conditions are placed upon this removal power. This replaces the existing removal

[15] Proposed BOGPA Act ss 5A, 5B and 5C.
[16] Proposed BOGPA Act ss 53DA and 53DB.

powers in sections 32V and 32ZP of the ED Act, which limit the circumstances where the CEO and Executive Officer may only be removed where the person:

(a) has engaged in inappropriate or improper conduct in an official capacity or in a private capacity (where that private conduct reflects seriously and adversely on the office); or
(b) has become incapable of performing their functions; or
(c) has neglected their duties or performed their functions incompetently; or
(d) has become disqualified under the ED Act from continuing as CEO.

This change has the effect of removing the current requirement that the removal be "on the Minister's recommendation" (currently, the Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations), and the requirement that it meets one of the criteria set out in subsections 32(v)(a)-(d). Instead, dismissal would be at the Governor in Council's (that is, the Cabinet's) sole discretion.

Reasons for removing this additional layer of accountability have not been provided. In the Explanatory Speech introducing the Bill, the Deputy Premier stated that amendments to the ED Act will "promote increased administrative efficiency, flexibility and allow Economic Development Queensland to work effectively towards the government objective of releasing land across Queensland to deal with the housing crisis. […] With a sharp focus on making land attractive for development and bringing EDQ back to its core business of residential, industrial and commercial development, we can deliver a place to call home for more Queenslanders and a place to do business."

Recommendation 9:

Closely consider the proposal to remove accountability and transparency mechanisms around the removal of the CEO and executive officer of Economic Development Queensland, where this raises concerns as to why the current criteria are seen to be no longer relevant or required.

Cultural heritage provisions

Chapter 4, Part 2, Clause 66 of the Bill introduces an alternate cultural heritage rights and processes with respect to areas which will house Olympics related venues, villages and infrastructure. In short, the cultural heritage provisions of the Bill:

(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.

Lack of free, prior and informed consent

Article 19 of the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**) provides:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The Bill was introduced without any regard to these obligations, and in the absence of 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 accompanying 23 page Regulation and provide submissions. To our knowledge there was no targeted consultation with affected stakeholders, including specifically First Nations People.

Erosion of First Nations rights under proposed reforms

We note there are a number of deficiencies relating to the existing framework under the Cultural Heritage Acts.[2] However, the proposed amendments further erode the minimal rights afforded under the Cultural Heritage Acts and significantly undermine the protection of Aboriginal and Torres Strait Islander cultural heritage in respect of the development of Olympics related venues, villages and infrastructure. Both in process and substance, the Bill fails to reflect the principle of free, prior and informed consent with respect to development relating to Olympics infrastructure that may impact cultural heritage.

The Bill is incompatible with the Human Rights Act

The cultural heritage provisions of the Bill are incompatible with section 28 of the *Human Rights Act 2019* (Qld), which protects the distinct cultural rights of Aboriginal and Torres Strait Islander people in Queensland, including the right to maintain, control, protect and develop their cultural heritage,

traditional knowledge and traditional cultural expression (reflecting article 31 of UNDRIP). The Statement of Compatibility to the Bill acknowledges the following adverse impacts on these rights:[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.[17]

Despite this acknowledgement, the Statement of Compatibility fails to adequately engage with 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.

The withdrawal of access to remedies in the Land Court to protect cultural heritage presents a significant access to justice issue

The Bill proposes to prevent First Nations People from seeking stop work orders,[18] and preventing groups, or members of groups from applying to the Land Court for an injunction to stop the doing of an act that is part of the games project.[19] The removal of these rights presents a significant access to justice issue and prevents First Nations People from accessing remedies of the Court to enforce the protection their cultural heritage from development.

Recommendation 10:

To ensure that the reforms are progressed with the free, prior and informed consent of First Nations people, the parts of the Bill which impact the rights of Aboriginal and Torres Strait Islander peoples should be withdrawn, and appropriate consultation should occur with and as guided by affected First Nations communities.

[17] Statement of Compatibility, p 22.
[18] Proposed BOGGA Act s 53DU(2).
[19] Proposed BOGGA Act s 53DU(3).