# Guidelines for Drafting University Statutes

# 4 April 2016


Office of the Queensland Parliamentary Counsel

# Guidelines issued under Legislative Standards Act 1992

This publication contains guidelines about the drafting practices to be observed in the drafting of university statutes. They are issued under the *Legislative Standards Act 1992*, section 9, to apply to university statutes made on or after 4 April 2016.

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Copies of the guidelines are available from—
http://www.legislation.qld.gov.au/Leg_Info/info_publications.htm

# Guidelines for drafting university statutes

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# Chapter 1: Introduction to guidelines

## Background

Under section 2 of the *Constitution Act 1867*, Queensland's laws may be made for the peace, welfare and good government of Queensland. [1]

Parliament may make laws by an Act or by authorising the making of subordinate legislation. If an Act provides for the making of subordinate legislation, it must delegate the authority to make the subordinate legislation to a body or person.

Queensland's Parliament has enacted the following Acts (each a ***university Act***) establishing public universities in Queensland—

- *Central Queensland University Act 1998*
- *Griffith University Act 1998*
- *James Cook University Act 1997*
- *Queensland University of Technology Act 1998*
- *University of Queensland Act 1998*
- *University of Southern Queensland Act 1998*
- *University of the Sunshine Coast Act 1998*.

Each of the university Acts expresses the intention of Queensland's Parliament about the way in which the relevant university is to operate. For example, the university Acts set up the governing bodies of the universities and state the governing bodies' functions and powers. Also, each of the university Acts provides for the relevant university's governing body to make university statutes about a stated list of matters and to make university rules under a university statute.

University statutes (***statutes***) are subordinate legislation. University rules are statutory instruments and these guidelines can be applied to the rules. For convenience, a reference in these guidelines to statutes usually includes a reference to university rules.

In making any form of statutory instrument, the body or person empowered to make the instrument must keep in mind a number of matters. When the governing body of a university makes a statute, it should consider the following—

[1] **2 Legislative Assembly constituted**

Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever.

See also the *Constitution of Queensland 2001*, s 8.

- has the governing body power to make the statute?
- has the process for making the statute been complied with?
- are there any special rules under the common law that are breached?
- does the statute comply with other relevant legislation, for example, the *Legislative Standards Act 1992*
- does the statute's form enhance the Queensland statute book, for example, by relying on the *Acts Interpretation Act 1954* rather than repeating existing provisions or defining words that are defined for all legislation?
- does the statute contain any material that may be the subject of adverse comment by a Parliamentary committee and result in a motion to disallow the statute?

## About these guidelines

University statutes are subordinate legislation and exempt instruments under the *Legislative Standards Act 1992*.

The Office of the Queensland Parliamentary Counsel (***OQPC***) does not draft university statutes or university rules. However, under section 9 of the *Legislative Standards Act 1992*, the Parliamentary Counsel may issue guidelines about the drafting practices to be observed in the drafting of exempt instruments.

## Purpose of guidelines

The purpose of these guidelines is to help universities in the drafting of statutes to ensure consistency and high quality in statutes throughout the State.

## Other relevant documents

These guidelines refer to, and need to be read in conjunction with, other documents about drafting legislation, particularly the following—

- *Acts Interpretation Act 1954*
- *Legislative Standards Act 1992*
- *Statutory Instruments Act 1992*
- *Reprints Act 1992*.

There are also a number of other Acts that apply to universities and that may need to be considered when drafting statutes, including the following Acts—

- *Anti-Discrimination Act 1991*
- *Crime and Corruption Act 2001*

- *Financial Accountability Act 2009*
- *Public Sector Ethics Act 1994*
- *Statutory Bodies Financial Arrangements Act 1982*
- *Public Interest Disclosure Act 2010.*

Also, OQPC's website www.legislation.qld.gov.au contains the following publications which include material relevant to the drafting process—

- *Finding Queensland Legislation and Information*
- *Working with OQPC on Queensland Legislation*

## Terms used in these guidelines

References in these guidelines to a university statute also usually include a reference to a university rule (which is made under a university statute).

References in these guidelines to the Minister are a reference to the Minister administering the university Acts.

## Structure of guidelines

These guidelines are divided into chapters.

A chapter usually contains a statement of its scope.

# Chapter 2: Structure

## Scope

The guidelines in this chapter cover—

- how a statute is divided into provisions
- basic provisions of a statute associated with the structure of a statute.

## General structure

1. The structure of a statute should as far as practicable be the same as an Act of the Queensland Parliament.

## Provision units

2. At the higher level, provisions may be divided into chapters, parts, divisions and subdivisions.

   **Note:**
   Depending on the size and subject matter of a particular statute, it may not be necessary to use all level provision units. Divisions should be used only to divide a part, and subdivisions should be used only to divide a division. Also, a statute should be divided into chapters only if 1 or more of the chapters is to be divided into parts. It may be sufficient to divide a statute into parts and divisions, or it may be unnecessary to divide a statute into chapters and parts at all.

3. At the lower level, the basic provision unit is the section.

4. A section may be divided into a number of subsections.

5. A section or subsection may contain paragraphs.

6. A paragraph may contain subparagraphs.

7. A subparagraph may contain sub-subparagraphs, though this is unusual.

8. A schedule at the end of a statute can be a useful device to gather information together.

**Example:**

a schedule containing a list of things to which the statute applies or a list of fees or definitions

## Numbering

9. Provisions in a statute should be numbered alphanumerically.

10. Figures should be used in the numbering of chapters, parts, divisions, subdivisions, sections and subsections.

11. Every sentence in a provision (other than sentences in an example or note) should be numbered.

12. Lower case letters should be used for provisions at paragraph level. Lower case roman numerals should be used for numbering provisions at subparagraph level. Upper case letters should be used for numbering provisions at sub-subparagraph level.

    **Example:**

    See section 41(1)(b)(i)(A) of the *University of Southern Queensland Act 1998*

13. Letters may be added to figures or letters if an amending statute inserts a new provision between existing provisions.

    **Notes:**

    1) If, under an amending statute, a new section or sections are to be inserted between section 19 and section 20 of a statute, the section or sections are inserted as section 19A,19B, 19C etc.

    2) If, under a subsequent amending statute, a new section or sections are to be inserted between section 19 and section 19A, the section or sections are inserted as section 19AA, 19AB, 19AC etc.

    3) If, instead of being inserted between section 19 and section 19A, the new section is to be inserted between section 19A and section 19B, the section or sections are inserted as section 19AA, 19AB, 19AC etc. If the new section is to be inserted between, for example, section 19M and section 19N, the section or sections are inserted as section 19MA, 19MB, 19MC etc.

    4) Note that rules 2 and 3 present the same numbering solution for different positions. If new sections are being inserted between provisions that themselves were inserted by amendment, it is often practical to recast or renumber the provisions.

5) Note also that if additional amendments are to be inserted before, for example, an AA number, then AAA is resorted to as a numbering solution. By that point there would need to be very good reason why provisions have not been recast or renumbered to avoid this level of number complexity.

## Preliminary provisions

14. A statute should be given a short title.

**Note:**
See sections 14F to 14J of the *Acts Interpretation Act 1954*, as applied by section 14 of the *Statutory Instruments Act 1992*, for important provisions facilitating reference to legislation. These provisions depend on the inclusion of a short title.

15. The title of a statute should reflect its subject matter and state the year of its making.

**Examples:**

1) A statute dealing with student misconduct and disciplinary proceedings may be titled—
   - *University of Queensland (Student Discipline and Misconduct) Statute 2015*

2) A second statute dealing with student misconduct and disciplinary proceedings made in the same year may be titled—
   - *University of Queensland (Student Discipline and Misconduct) Statute (No. 2) 2015*

3) A statute amending a statute for the first time in a calendar year may be titled—
   - *University of Queensland (Student Discipline and Misconduct) Amendment Statute 2015*

4) However, a statute amending a statute that has been previously amended in the same calendar year may be titled—
   - *University of Queensland (Student Discipline and Misconduct) Amendment Statute (No. 2[2]) 2015*

16. All provisions providing a point of time when the statute, or any part of the statute, is to take effect should, to the extent practicable, be gathered together in the preliminary provisions of the statute. If provisions dealing with the commencement of a statute, or part of the statute, are not gathered consistently at the front of the statute, they can easily go unnoticed.

[2] The 3rd amending statute in that calendar year would be (No. 3), the 4th (No.4) and so on.

17. If appropriate, the preliminary provisions of a statute should contain a purpose provision.

    **Examples of when a purpose provision is appropriate:**

    1) if the statute is a particularly important implementation of university policy
    2) if a purpose provision makes it easier to interpret the statute

18. If a purpose provision for the whole statute is to be inserted, it should always be located in the preliminary provisions of the statute.

## Headings

19. Every chapter, part, division, subdivision and section of a statute should have a heading. Generally, each schedule to a statute should have a heading that includes the schedule's number and subject matter.

20. Other parts of a statute should not have a heading.

21. Headings should reflect their subject matter.

    **Examples:**

    1) A part of a statute dealing with administrative matters may be titled—

# Part 2 Administration

    2) A division of the part in example 1 dealing with the powers of authorised persons may be titled—

## Division 2 Powers of authorised persons

## Table of contents of statute

22. A statute should have a table of contents or provisions similar to the table of provisions in Acts of the Queensland Parliament.

## Clearly identifiable definition provisions

23. Definitions of something in a statute should be presented in a way that allows the definitions to be easily identified.

24. The style used to present definitions in an Act of the Queensland Parliament should be used to the extent practicable.

**Notes:**

1) There are established ways of defining terms so they are easily identified.

2) Definitions can be placed in a number of places in a statute, including, for example—
   - a definition section at the start of the statute with a list of defined words for the statute
   - a section with a list of definitions for part only of the statute, other than a single section
   - a subsection at the beginning or end of a section with a list of definitions for the section
   - a section that defines something for the statute or part of the statute
   - a dictionary schedule.

3) It is not acceptable to define a term in one section of a statute for the purpose of that section and another provision of the statute. An example of a provision that is unacceptable in this way is as follows—

> (5) In this section and section 15—
>
> ***registrar*** means the chief administrative officer of the university.

4) Chapter 5 deals in more detail with definitions.

## Other guidelines affecting structure

Definitions—see chapter 5

Effective communication—see chapter 6

Amendment statutes—see chapter 9.

# Chapter 3: Relationship with the Acts

## Scope

The guidelines in this chapter cover matters arising from the making of a university's statutes under the Act that established the university.

## Consistency with Act

25. Each university Act provides for the university's governing body to make university statutes about a stated list of matters and to make university rules under a university statute. A statute made by a university's governing body should be authorised by, and cannot be inconsistent with, the university Act under which it is made.

**Notes:**

1) Each university statute must be within power, that is, within the scope of the relevant university Act. Lawyers refer to subordinate legislation that is not within power as being ultra vires. To be lawful, subordinate legislation must have a sufficient connection with the Act under which it is made.

2) A simple illustration of a statute that would be ultra vires is a statute that allowed a penalty that exceeded the number of penalty units that the governing body is empowered by the university Act to impose. If the university Act stated that a statute may authorise the governing body to impose a penalty of not more than 10 penalty units for a breach of a university statute and the statute allowed the governing body to impose a penalty of 20 penalty units, the imposed penalty would be ultra vires. Similarly, if Parliament does not authorise a university to make a statute about a particular matter, a university cannot make a statute about the matter.

3) A university rule may be made about a matter only if the making of the rule is authorised by a university statute and authorising that matter to be dealt with by a university rule is appropriate, particularly considering section 4(5) of the *Legislative Standards Act 1992*.

4) *The Acts Interpretation Act 1954* and *Statutory Instruments Act 1992* contain important provisions that may affect the making of statutes.

5) Part 8 of the *Acts Interpretation Act 1954* contains provisions aiding the interpretation of laws.

6) Part 4, division 3 of the *Statutory Instruments Act 1992* contains provisions about the making of statutory instruments that apply to university statutes. In particular, part 4, division 3, subdivision 2 makes express provision for matters that may be provided for in university statutes and university rules.

26. The use of words and expressions in a statute should be consistent with their use in the relevant university Act. For example, if the relevant university Act uses the term ‘general staff’, it is appropriate to use those words in statutes and not to use a different term, for example, ‘non-academic staff’.

**Notes:**

If a word or expression is defined in the relevant university Act, it does not have to be defined in a statute made under the Act because it has the same meaning—see section 37 of the *Statutory Instruments Act 1992*. However, in a particular case, to prevent a provision being obscure or misleading, it may be appropriate to insert a signpost provision or footnote advising the reader that a particular word or expression is defined in the university Act.

Further, if a word is used in a university Act but not defined, it may be ultra vires to define the word in a statute made under the university Act.

# Chapter 4: Format and printing style

## Scope

The guidelines in this chapter cover the format and printing style of a statute.

Format is about how each particular type of provision or part of a provision is presented on the page, for example, where a heading is located, how a section, subsection, paragraph or subparagraph is set out.

Printing style is about how each character of a provision is printed, for example, the size and style to be used.

Together, format and printing style control how text is presented on a page.

## Format and printing style

27. The format and printing style of a statute should, as far as practicable, be the same as the format and printing style of Acts of the Queensland Parliament.

    **Notes:**

    1) In setting out a statute, recent Acts of the Queensland Parliament should be perused and a sensible and practical effort should be made to follow the same format and printing style.

    2) An example of a difference between a statute and an Act that may affect format and style is that a statute might be published in a way that uses the whole of an A4 page. Therefore, a sensible adaptation of the format of an Act is necessary.

28. The format and printing style of statutes made by a single university should, as far as practicable, be consistent.

# Chapter 5: Definitions

## Scope

The guidelines in this chapter cover the use of definitions and the preferred ways of defining terms.

## Meaning and use of definitions

29. A definition is a provision that—
    - gives a meaning to a word or expression; or
    - limits or extends the meaning of a word or expression.

30. A word or expression may be defined if it is necessary to give certainty to its meaning.

    ***Example:***

    ***assessment***, of a student, means work the student is required to complete—

    (a) for the fulfilment of educational purposes; or
    (b) to provide a basis for a record of achievement or certification of competence; or
    (c) to permit grading.

31. A word or expression may be defined to limit its ordinary meaning.

    ***Example:***

    ***decision-maker*** means an officer or body listed in section 10.

32. A word or expression may be defined to extend its ordinary meaning.

    ***Example:***

    ***student*** includes a person undertaking a course at the university.

33. A word or expression may be defined merely to avoid repetition.

***Example:***

***designated*** officer means any of the following—

(a) the vice-chancellor;
(b) a deputy vice-chancellor;
(c) a security officer.

## List of definitions for all of a statute

34. Definitions for all of a statute may be placed in the last schedule of the statute, called a 'Dictionary' and containing an alphabetical list of defined terms.

***Example:***

# Schedule Dictionary

section 4

***allegation notice*** means the notice the university gives a student to start misconduct proceedings.
***assessment***, of a student, means work the student is required to complete—
(a) for the fulfilment of educational purposes; or
(b) to provide a basis for a record of achievement or certification of competence; or
(c) to permit grading.

***Note:***
The benefits of using a dictionary include—

- removing bulky material from the preliminary provisions of a statute, allowing the preliminary provisions to be used for important statements

- the ability to conveniently contain a great many definitions and signpost definitions that can be an useful index of important terms.

35. If a statute contains a dictionary schedule, the following section should be inserted in the preliminary provisions of the statute—

***Example:***

**4 Definitions**

The dictionary in the schedule defines particular words used in this statute.

36. Definitions for the whole of a statute may also be placed in a section in the preliminary provisions of the statute.

***Example:***

**3 Definitions**

In this statute—

***allegation notice*** means the notice the university gives a student to start misconduct proceedings.

***assessment***, of a student, means work the student is required to complete—
(a) for the fulfilment of educational purposes; or
(b) to provide a basis for a record of achievement or certification of competence; or
(c) to permit grading.

## List of definitions for part of a statute, other than a single section

37. A list of definitions for all of a chapter, part, division or subdivision may be placed in a section at the start of the chapter, part, division or subdivision.

***Example:***

**26 Definitions for pt 3**

In this part—

***allegation notice*** means the notice the university gives a student to start misconduct proceedings.

***assessment***, of a student, means work the student is required to complete—
(a) for the fulfilment of educational purposes; or
(b) to provide a basis for a record of achievement or certification of competence; or
(c) to permit grading.

## List of definitions for a single section

38. A list of definitions for a single section may be placed in the section, preferably at the end, less so at the start but never in the middle.

***Example (subsection (4) is the last subsection):***

(4) In this section—

***allegation notice*** means the notice the university gives a student to start misconduct proceedings.

***assessment***, of a student, means work the student is required to complete—
(a) for the fulfilment of educational purposes; or
(b) to provide a basis for a record of achievement or certification of competence; or
(c) to permit grading.

***Note:***

Experience suggests it is better to consistently insert the list of definitions for a section at the end of the section, as the last subsection. Otherwise, throughout a statute, lists of definitions for sections can appear haphazardly in various places within a section.

## Alphabetical order used in lists of definitions

39. In any list of definitions, all definitions should be ordered as set out below.

***Notes:***

1) First, any definitions starting with a figure are listed, with a lower number taking precedence over a higher number.

2) Then, any definitions starting with letters are listed in alphabetical order decided on a letter-by-letter basis ignoring spaces, hyphens etc.

3) If the definitions include a definition containing a figure anywhere, regard must be had to the figure when ordering the definitions, with a lower number taking precedence over a higher number.

***Examples:***

***1990 statute*** means ...
***1994 statute*** means ...
***breach of a 5 penalty unit provision*** means ...
***breach of a 10 penalty unit provision*** means ...

## Tag definitions

40. A word or expression may be defined by including the word or expression, highlighted as a definition and within brackets, in text effectively defining the word or expression.

***Examples:***

1) To start misconduct proceedings against a student, the university must give the student a notice stating the alleged misconduct (the allegation notice).
2) The university librarian (the librarian) or the manager of a branch library (also the librarian) must report any theft of library books to the registrar.

## Verb allocating meaning to definitions

41. In definitions, the verbs commonly used to allocate meaning are 'means', 'includes' and 'is'.

***Notes:***

1) In a list of definitions starting with the word to be defined (the most common form of definition), the verb allocating meaning is 'means' or 'includes'—
   - 'means' indicating the definition is exhaustive
   - 'includes' indicating the definition is not exhaustive, or is being used to enlarge the ordinary meaning of a word

2) Using both 'means' and 'includes' is to be avoided, if possible.

***Examples:***

***allegation notice*** means the notice the university gives a student to start misconduct proceedings.

***student*** includes a person undertaking a course at the university.

3) If the definition is presented in the form of a separate section, the verb 'is' can be used, or the word being defined may appear anywhere in the text, in the usual highlighted way, with the context indicating the meaning.

***Example:***

**5 Meaning of *assessment***

An ***assessment***, of a student, is work the student is required to complete—
(a) for the fulfilment of educational purposes; or
(b) to provide a basis for a record of achievement or certification of competence; or
(c) to permit grading.

## Use of 'and' and 'or' between paragraphs of a definition

42. The following is the practice if a definition contains a series of paragraphs—
    (a) use 'or' between each paragraph if the verb used in the definition to allocate meaning is 'means';
    (b) use 'and' between each paragraph if the verb used in the definition to allocate meaning is 'includes';
    (c) use neither if the general words before the list of paragraphs uses 'following' to introduce the paragraphs.

***Examples:***

***designated officer*** means—
(a) the vice-chancellor; or
(b) a deputy vice-chancellor; or
(c) a security officer.

***designated officer*** includes—
(a) the vice-chancellor; and
(b) the deputy vice-chancellor.

***designated officer*** means any of the following—
(a) the vice-chancellor;
(b) a deputy vice-chancellor;
(c) a security officer.

## Signposting definitions

43. Definitions included in the text of a statute other than in a list of definitions in a dictionary or definition section for all of the statute within the preliminary sections, should be signposted in the dictionary or definition section. This does not apply to a definition for a single section.

***Note:***

The purpose of this guideline is to ensure the reader can find the definition easily in the text, and also to ensure the reader's attention is drawn to its existence.

***Examples:***

***notice period*** see section 4.

***student***, for part 4, see section 25.

# Chapter 6: Effective communication

## Scope

The guidelines in this chapter deal with effective communication and encourage the use of structure, content, language and presentation in ways that make statutes more readable and understandable.

Effective communication is also the ideal underpinning many of the other guidelines in this document.

## Plain English

Plain English is commonly considered to be the best technique of effective communication in legislation. It is the technique used for drafting Acts of the Queensland Parliament.

Plain English involves focusing on the user and values simplicity as a way to achieve clear, effective communication.

A statute should contain only the degree of complexity necessary to achieve desired policy objectives in a legally effective way. A statute that is easy to understand is less likely to result in dispute and also helps those involved in administering it.

The Plain English technique does not involve the simplification of a statute to the point it becomes legally uncertain. In particular, care needs to be taken that legal uncertainty is not created when dispensing with terms having established meanings for users of legislation. The ordinary undergraduate student or member of university staff should be regarded as the ultimate user of a statute.

In drafting a statute, the objective should be to produce a statute that is—

- easily read and understood; and
- legally effective to achieve the desired policy objectives.

In fact, drafting a statute may involve a balancing of the outcomes of simplicity, clarity and legal certainty.

While the use of simple language alone may be insufficient to guarantee clear communication, there are many ways a statute can simply, accurately and unambiguously expose its intent—purpose clauses, clauses stating key or basic concepts and definitions, explanatory provisions, notes and examples. Using these, and many other simple devices to organise, orient and explain can help establish context and relevance and, ultimately, understanding.

## Suggested texts

***Plain English for Lawyers***, Richard C. Wydick, Carolina Academic Press, 5th edition, 2005

***Plain Language for Lawyers***, Michèle M. Asprey, Federation Press, 4th edition, 2010

***Writing in Plain English***, Robert D. Eagleson, Australian Government Publishing Service, 1997.

# Readable and understandable statutes

44. A statute should be structured, drafted and presented in ways that make the statute easy to read and understand.

# Structure

45. A statute should have a logical and coherent structure.

***Notes:***

1) The structure of a statute can be tested by asking whether it is easy to find things in the text and to move from one thing to another.

2) Achievement of a logical and coherent structure usually requires a specific organisation of ideas before starting to write.

3) Proposed policy should be reviewed and simplified.

***Suggestions:***

1) Put related material together.

2) Put the most important ideas first and the less important ideas, for example, unusual cases and procedural detail, later.

3) Put material of direct interest to the ordinary user of legislation before other provisions, for example, administrative provisions.

4) Use a consistent and easily understandable structure.

5) Consider whether an order according to time, alphabet or other commonly understood order is appropriate and should be used.

6) If practicable, arrange ideas for different subject matter in a parallel order.

7) Use a consistent approach to define words. It should be easy to work out how words are defined throughout the statute.

8) Select the most effective type of provisions to define words, whether in lists of definitions, section definitions, tag definitions or otherwise.

9) Place definitions for particular sections in the same place, for example, always at the end.

10) Work out what provision structure is appropriate for the groups of ideas, for example—
    - chapters, parts and divisions; or
    - parts; or
    - parts and divisions.

## Content and language

46. In a statute, content and language should be used in ways that promote effective communication.

***Notes:***

1) Break down a complicated message into manageable pieces and communicate them to the reader in an order that makes it easy for the reader to understand them.

   ***Example:***

   Complicated material could be presented as the main idea, a list of conditions, a list of consequences and a description of the steps in the procedure.

2) Use simpler and fewer concepts.

3) Use everyday words.

4) Be mindful that ambiguity will cause difficulty for those using the legislation.

5) Omit unnecessary words.

***Examples:***

- Use a simple form rather than a compound construction—use 'if' rather than 'in the event that'.
- Use a specific word rather than a string of synonyms—use 'allow' rather than 'suffer or permit'.
- Avoid nominalisations (verbs made into nouns)—use 'act' rather than 'take action'.

6) Use words, including defined terms, that deliver the most direct or easily grasped meaning.

7) Avoid acronyms, unless the acronym is in everyday use. If you use an acronym, define it.

8) Use the active voice rather than the passive voice.

   ***Example:***

   'The designated officer must give the student written notice' rather than 'Written notice must be given to the student'.

9) Emphasise the positive and avoid the use of double negatives.

   ***Example:***

   'The disciplinary board may set aside the designated officer's decision only if ...' rather than 'The disciplinary board must not set aside the designated officer's decision unless...'.

10) Keep to the present tense and singular number.

11) Make it clear whether a matter is mandatory or discretionary by using 'must' and 'may'. See also section 32CA of *the Acts Interpretation Act 1954*.

    ***Note:***

    'Must' is to be used in preference to 'shall'.

12) Make it clear whether a list of things is to be read in the alternative or cumulatively. Do this by using the disjunctive 'or' or the conjunctive 'and' which is repeated between each item. For example, see section 11(1) (for the use of 'or') and section 11(3) (for the use of 'and') of the *University of Southern Queensland Act 1998*. An exception is where the introductory words to the list make it clear whether the list is to be read in the alternative or cumulatively.

    The expression 'and/or' should never be used.

13) Arrange words with care.

***Examples:***

- Avoid wide gaps between the subject, the verb and the object or between any words and the words they govern.
- Use lists.
- Use variations of sentence structure and terminology only if the variations are justified.

14) Use short sentences.

***Examples:***

- As a rule of thumb, if a provision continues for more than 5 lines of unbroken text, the provision should be broken up into separate provisions, or breaks in the text (for example, paragraphs) should be introduced.
- Similarly, if a section containing a number of subsections is noticeably long, the section should be broken up into separate sections.

15) A section or subsection should contain only 1 sentence.

16) Use 'if' to introduce a set of facts, conditions or cases. Also use 'if' when it is possible, but not certain, that something will happen. If an event is so certain that 'if' is inappropriate, use 'when'.

17) Express a number, year, date, time, amount of money, quantity or measurement of a thing in figures, rather than words, for example, '25' rather than 'twenty-five'.

18) Express other matters in a way that is consistent with current legislative drafting practice.

***Examples:***

See section 29 of the *Reprints Act 1992*.

19) Constantly test the provision style and word style of the text—

20) Are the provisions short, easy to read, well structured and clear?

21) Are the words used simple, active and specific?

22) Is the range of words used appropriate for the audience?

## Presentation

47. In a statute, the presentation or layout (design) of the statute should be used to promote effective communication.

***Notes:***

1) Presentation techniques include the use of headings, tables of provisions, page headers, white space and typefaces that help readability.

2) See chapter 4 for guidelines about format and printing style.

***Suggestions:***

1) Limit the number of ideas in each provision so each provision is easily understood.

2) Limit the number of provisions that make up a higher provision so the content of the higher provision is easily understood.

3) Use headings to enable the reader to grasp the flow of the statute through the subject matter indicated by the headings—the table of contents should provide a meaningful outline.

4) Use outlines, steps, examples, notes, diagrams, charts, tables and schedules if that makes the local law more readable.

5) Limit punctuation to the essential.

# Chapter 7: Gender-neutral language

## Scope

The guidelines in this chapter cover using gender-neutral language.

## Gender-neutral language

48. Statutes should be drafted in gender-neutral language.

    ***Note:***
    Section 24 of the *Reprints Act 1992* has examples of how to avoid the gender-specific terms 'he', 'him', 'his' and 'her'.

    ***Examples of commonly used words that avoid gender specificity***:

    - 'chairperson' (rather than 'chairman')
    - 'councillor' (rather than 'alderman')
    - 'police officer' (rather than 'policeman')

49. Words that are, or could be taken to be, gender specific should not be used unless the statute is intended to refer to a specific gender only.

# Chapter 8: Disciplinary proceedings

## Scope

The guidelines in this chapter cover disciplinary proceedings provided for in statutes. The chapter covers the general power to take disciplinary proceedings and some of the most general principles about how to build provisions intended to be used to deal with disciplinary breaches. It also covers some of the main incidents of how natural justice should be afforded a person alleged to have breached a disciplinary statute.

However, given the flexible nature of the requirement to afford natural justice, details of how processes should provide for natural justice are limited to a few basic matters that have come to the attention of Parliamentary committees examining legislation.

## General power

Each of the university Acts provides for statutes to be made for the disciplining of students and other persons undertaking courses at the relevant university (***disciplinary statutes***). In each case, the university Act states that, without limiting this power, a statute may authorise the university council (for the University of Queensland, its senate) to impose a penalty of not more than 10 penalty units for a breach of a disciplinary statute. Each also provides that statutes may provide for the recovery and enforcement of penalties.

## Prescribed breaches should be relevant

50. Types of breaches prescribed by a disciplinary statute should be relevant having regard to the objectives sought to be achieved by conferring the power to make disciplinary statutes.

    ***Note:***
    In considering whether a provision of a university's disciplinary statute is relevant, regard should be had to the statement of functions of the university set out in the relevant university Act.

    ***Example of irrelevant disciplinary provision***:
    A provision that simply declares 'frightening birds' and 'wearing green hair' to be examples of disorderly conduct is an irrelevant disciplinary provision. The provision needs to include further elements giving a reasonable indication of the link between the conduct and the functions of the university.

## Types of breaches should be precisely defined

51. A provision of a disciplinary statute that defines a disciplinary breach should state with precision the elements that will constitute the breach.

***Note:***

This is because persons required to comply with a statute are entitled to know with precision what is expected of them.

## Types of breaches should be precisely defined in a way that ensures breaches are capable of practical proof

52. The facts prescribed to constitute a disciplinary breach should be expressed in a way that allows them to be proved in a practical way.

***Note:***

This is because persons required to enforce a statute should be able to do so in a practical way.

***Examples of imprecise breach for guidelines 50 and 51***:

1) A provision that states that 'a student is guilty of misconduct who, without reasonable cause, divulges confidential information relating to any University matter', without further definitions, has a number of problems—
   - what is meant by 'divulge'? Is every disclosure wrong?
   - what is meant by 'confidential information'? What are the criteria?
   - what is a 'university matter'?

2) A provision that states a student is guilty of misconduct who fails to comply with any action taken under a statute, without further definition, is likely to be too wide. There will be actions under the statute that are immaterial to what is sought to be achieved by disciplining students.

## Proportionate penalty

53. The maximum penalty prescribed for a disciplinary breach should be proportionate to the offence. Although there is less scope in disciplinary statutes than in other legislation for wide ranging monetary penalties, consideration needs to be given to each particular type of breach to determine whether the maximum penalty available under the relevant university Act should be prescribed in the statute for the breach, as opposed to a lower maximum penalty.

***Notes:***

1) Current Queensland legislative instruments do not prescribe general penalties, that is, the same maximum monetary penalty for all breaches. Each offence is separately allocated an appropriate penalty.

2) See also chapter 10, guideline 81.

## Punishment must fit the breach

54. A statute must provide for a person to be dealt with for a disciplinary breach in a way that is appropriate to the nature of the breach.

***Notes:***

1) Except for punishment of a generic nature, for example, payment of a fine, if the punishment provided under a statute is for the person committing the disciplinary breach to do an act, then the act required of the person must have a reasonable connection to the type and severity of the breach.

2) See also chapter 10, guideline 81.

## Natural justice

55. The enforcement of a disciplinary statute against a person alleged to have breached the statute should be provided for by statute in a way that is consistent with the principles of natural justice. The principles require procedural fairness and an unbiased decision-maker.

***Note:***

See chapter 10, guideline 68.

## Natural justice—who will hear and decide the disciplinary allegation

56. A disciplinary statute must make it clear who will constitute the body that will hear and decide disciplinary breaches. The body must not include anyone who would be biased or seen to be biased in relation to the matter.

## Natural justice—notice of alleged breach

57. A disciplinary statute must provide for a person alleged to have breached a disciplinary statute to be given notice of the alleged breach. The notice should set out particulars of the breach sufficient to inform the person of the statute alleged to have been breached and the occasion on which it is alleged to have been breached. Information about further particulars, or how to obtain further particulars, should also be provided for to the extent necessary to ensure the person is able to fully assess and respond to the allegations.

***Note:***

Natural justice requires that a person should not be taken by surprise at a hearing of a disciplinary breach alleged against the person.

## Natural justice—how notice is given

58. Provisions of a disciplinary statute relating to how a person is given notice of an alleged breach or a hearing of a breach must be sufficient to ensure the person is aware of the allegation or hearing and, if the person is not aware because of the method of service, sufficient to allow the person to take action to retrieve the situation once the person becomes aware.

***Note:***

The former Scrutiny of Legislation Committee expressed concern that merely posting a notice to a person at the person's last known address may be insufficient, particularly if the consequences of not responding to a notice are significant.

## Natural justice—notice of hearing

59. The procedure stated in a disciplinary statute for the hearing of an allegation of a disciplinary breach should require that the person alleged to have breached the statute be given a notice making it clear the person is required to attend the hearing at a stated time and place if the person wishes to respond to the allegation. The procedure should require notice be given in sufficient time before the hearing to enable the person to fully prepare for the hearing. The procedure should also ensure the person served with the notice is left in no doubt about the consequences of an adverse decision.

***Note:***

The basic procedure provided for the enforcement of a breach should make it completely clear what are the proceedings at which the alleged breach will be dealt with.

## Natural justice—procedure at hearing

60. The procedure stated in a disciplinary statute for the hearing of an allegation of a disciplinary breach should be consistent with the principles of natural justice.

***Note:***

See chapter 10, guideline 68.

## Review

61. A disciplinary statute should make provision for a review of the actions of a disciplinary body on application by an aggrieved person. The review body must not include anyone who would be biased or seen to be biased in relation to the matter.

# Chapter 9: Amendment statutes

## Scope

The guidelines in this chapter are about the repeal and amendment of a statute.

The object of these guidelines is to ensure the accurate amendment of the text of a statute in a way that allows for the proper consolidation of the statute.

## Guidelines generally apply to an amending statute

62. These guidelines apply to an amending or repealing statute in the same way as they do to a new statute.

## Amending or repealing a statute

63. A university must amend or repeal a statute by making another statute that amends the statute to the extent necessary or repeals the statute.

    ***Notes:***

    1) A university statute should amend or repeal only another university statute.

    2) A university rule should amend or repeal only another university rule.

    3) A university rule ceases to have effect if the authorising university statute is repealed.

64. If a statute replaces another statute, the replacement statute must contain the provision that repeals the existing statute.

65. A university should not amend a statute by merely making a statute that overwrites the existing statute. To amend the existing statute, the new statute should specifically omit any inconsistent material.

## Amendment rules

66. A university, in making a statute that amends another statute, should follow the same practice as an Act of the Queensland Parliament.

***Notes:***

1) Use only 2 types of command—
   - the first type of command (the location command) identifies the place in the statute where the amendment is to be made.
   - the other type of command (the action command) is the amendment action to be taken at the identified place.

2) Deal with the location command before the action command, that is, keep the 2 commands separate.

3) Include all the words identifying where the amendment is to be made in the location command and not in the action command.

4) To omit particular words, include in the location command 'from '[first word to be omitted]' to '[last word to be omitted]' '. However, if all words in the introduction or end of a provision are to be omitted, it is sufficient to say 'all the words before '[quote word(s)]' ' or 'from '[quote word(s)]' '.

5) In the location command, use light single quotes around the text that is part of the location.

***Examples:***

**3 Amendment of s 4 (Discipline review panel)**

Section 6, 'vice-chancellor'—

*omit.*

**4 Amendment of s 4 (Discipline review panel)**

Section 6, 'vice-chancellor'—

*omit*, *insert*—

designated officer

6) Use only the following action commands—
   - omit
   - insert
   - omit, insert
   - renumber.

7) The examples above use the action commands 'omit' and 'omit, insert'.

8) Following are examples of the action commands 'insert' and 'renumber'.

***Examples:***

**5 Amendment of s 7 (Rule-making and notification)**

After section 7(1)—

*insert—*

(1A) The council may, by resolution, amend or repeal a rule.

**6 Insertion of new s 20AA (Application of pt 3)**

In part 3, before section 20—

*insert—*

**20AA Application of pt 3**

This part applies to an appeal from a decision of the disciplinary board.

**7 Amendment of s 7 (Rule-making and notification)**

Section 7(1A) and (2)—

*renumber* as section 7(2) and (3).

9) When the action commands 'omit, insert' are used to replace a whole provision, refer to the replacement of the provision in the section heading for the amending section.

***Example:***

**8 Replacement of s 5 (Roll)**

Section 5—

*omit, insert—*

**5 Alumni roll**

The designated officer must keep a roll of QUT alumni.

# Chapter 10: Fundamental legislative principles

## Scope

The guidelines in this chapter deal with the application of fundamental legislative principles to statutes.

## What are fundamental legislative principles

Fundamental legislative principles (***FLPs***) are defined in the *Legislative Standards Act 1992*. See attachment 1.

Section 4(1) of the *Legislative Standards Act 1992* contains the basic statement that FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. All other statements about FLPs in section 4 are illustrative of this principle and not a complete list of its application.

Section 4(2) of the *Legislative Standards Act 1992* establishes that, in order to comply with basic FLPs, legislation must have sufficient regard to—

- the rights and liberties of individuals
- the institution of Parliament.

Section 4(3) of the *Legislative Standards Act 1992* sets out a list of examples of issues that may be involved in considering whether particular legislation has sufficient regard to the rights and liberties of individuals. These examples are dealt with in guidelines 67 to 77.

Section 4(5) of the *Legislative Standards Act 1992* sets out a list of examples of issues that may be involved in considering whether particular subordinate legislation, for example, a university statute, has sufficient regard to the institution of Parliament. These examples are dealt with in guidelines 89 to 93.

As mentioned, these lists of examples are not exhaustive of the basic principle.

For this reason, additional examples of issues that may be involved in considering whether a statute has sufficient regard to FLPs are set out in guidelines 78 to 88. These may involve the following, in relation to affecting rights and liberties of individuals—

- reasonableness
- fairness
- traditionally accepted liberties

- treatment of individuals by a law maker in the same ways that an Act of Parliament requires individuals to treat each other.

## Legal nature of FLPs

FLPs are principles to be observed in drafting legislation, not rules of law. In having regard to FLPs, the purpose of the *Legislative Standards Act 1992* to be achieved is that of ensuring Queensland legislation is of the highest standard.

Departures from the principles are sometimes justifiable but must be based on sound reasoning. Before a statute containing a departure from the principle is made, the university concerned should ensure the proposed departure is justifiable and be ready to explain its reasoning.

## How to approach FLPs in drafting

FLPs flag crucial matters to be addressed in the drafting process. In considering whether sufficient regard is had to FLPs, a drafter should consider the following—

- what other values are being furthered?
- can those values be realised in other ways?
- do those values justify departure from the principles?

It is better to identify an issue concerning FLPs, and work it through, than to ignore the issue. Reliance on a precedent that failed to have sufficient regard to fundamental legislative principles does not justify a subsequent failure to have sufficient regard to the principles.
The Parliamentary committees responsible for examining legislation are the portfolio committees established under the *Parliament of Queensland Act 2001*. These are standing committees of the Legislative Assembly with responsibilities that include monitoring the operation of section 4 of the *Legislative Standards Act 1992* and the application of FLPs to particular Bills and subordinate legislation.
Previously this role was performed by the Scrutiny of Legislation Committee (***former scrutiny committee***). The reports of the portfolio committees and the former scrutiny committee are an excellent reference tool in drafting legislation in a way that has sufficient regard to FLPs.

Attachment 2 contains an extract from the *Parliament of Queensland Act 2001* stating the portfolio committees' area of responsibility relating to legislation.

The former scrutiny committee's reports include special reports about particular matters, for example, Scrutiny Committee Report No. 14, University Statutes, 9 November 1999, and Legislation Alerts dealing with the Bills introduced into, and subordinate legislation tabled in, the Legislative Assembly.

The reports of the portfolio committees and the former scrutiny committee are the major source of authority for the practical application of FLPs and are applied on a daily basis in the work of the Office of the Queensland Parliamentary Counsel.

# Having sufficient regard to the rights and liberties of individuals—issues listed in *Legislative Standards Act 1992*

## Defining administrative power, reviewing its use

67. A statute should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review—see section 4(3)(a) of the *Legislative Standards Act 1992*.

***Examples of 'sufficiently defined':***

Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, compliance with this fundamental legislative principle may require a statute to provide that the decision-maker give a person affected by the decision written reasons for the decision, together with information on the person's rights to review or appeal the decision.

The former scrutiny committee took issue with provisions that do not stipulate, or that insufficiently stipulate, the matters to which a decision-maker must have regard in exercising a statutory administrative power: Legislative Assembly of Queensland, Scrutiny of Legislation Committee Annual Report 1998–1999 paragraph 3.10.

***Examples of 'subject to appropriate review':***

1) Again, depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in a university statute without providing for a merits-based review of the decision.

2) If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review. In the context of disciplinary statutes, the former scrutiny committee has criticised the following reviews as insufficient—
   - a review limited to whether the original decision-maker complied with procedural requirements (This would exclude from appropriate review a decision that is wrong on the facts but for which procedural requirements were satisfied.)
   - a review of the record of the original decision that did not require the reviewer to accept further submissions when serious penalties, including expulsion, were imposed.

3) A university statute should ordinarily provide for review of a decision having substantial consequences by an independent body as there may otherwise be a perception that the decision-maker lacks impartiality: Legislative Assembly of

Queensland, Scrutiny of Legislation Committee Report No. 14, University Statutes, 9 November 1999, paragraphs 3.7 and 3.8.

4) Occasionally, for other legislation, the former scrutiny committee considered appropriate a 2-tiered system with an internal review of the original decision-maker's decision and a subsequent right of appeal to a court or tribunal. See, for example, part 5 of the Transport Planning and Coordination Act 1994 (Review of and appeals against decisions).

5) The former scrutiny committee has commented that a statute should provide an avenue of appeal against the following decisions because the decisions could have very serious implications—
   - a registrar's decision not to exercise a discretion provided under a statute to release results for a student, despite unpaid fines, on the grounds of hardship
   - an interim suspension of a student charged with misconduct until the student's case is decided—the committee noting the suspension period could be 6 weeks.

6) Note also that the former scrutiny committee has commented in relation to other legislation that the lack of opportunity to make representations before an immediate suspension is made arguably denies the suspended person natural justice—Parliament of Queensland, Scrutiny of Legislation Committee Alert Digest No. 6 of 2000, Food Production (Safety) Bill 2000, paragraphs 20–28.

7) Ideally, review provisions should provide—
   - the period within which a person may apply for review
   - the way application is made
   - whether the reviewer may consider new material or hear the matter afresh
   - that the principles of natural justice apply and specify some of the contentious points that often arise in questions of procedural fairness, for example, whether persons seeking review may be legally represented
   - whether the reviewer may—
   - confirm the decision being reviewed
   - set aside the decision being reviewed and substitute another decision
   - set aside the decision being reviewed and refer the matter back to the original decision-maker with appropriate directions
   - entitlement to written reasons of the reviewer.

***Notes about related issues:***

***Reasons for decision and information on review/appeal rights***

8) Related to this FLP, and consistent with having sufficient regard to the rights and liberties of individuals, is a requirement that the decision-maker provide reasons for the decision, together with information on review/appeal rights. See section 27B of the *Acts Interpretation Act 1954* (Content of statement of reasons for decision).

***Non-exclusion of judicial review***

9) Another related issue is the non-exclusion of judicial review, about which the former scrutiny committee made the following comments in relation to the Local Government Amendment Bill 1996—

> Whenever ordinary rights of review are removed, thereby preventing individuals from having access to the courts or a comparable tribunal, the committee takes particular care in assessing whether sufficient regard has been had to individual rights...Such a removal of rights may be justified by the overriding significance of the objectives of the legislation.
>
> The purpose of judicial review is to deal with those actions of public officials who act beyond the powers that are intended for them. It acts to protect the legislative intention approved by Parliament and proposed by the Executive. As such, ouster clauses should rarely be contemplated and even more rarely implemented—Scrutiny of Legislation Committee Alert Digest No. 2 of 1996, paragraphs 6.20–6.23.
>
> There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Consistency with natural justice principles

68. A statute should be consistent with the principles of natural justice—see section 4(3)(b) of the *Legislative Standards Act 1992*.

***General notes:***

1) The principles of natural justice are principles developed by the common law. The principles require procedural fairness and an unbiased decision-maker.

2) This guideline recognises the indefinite number of ways in which natural justice may be afforded. However, it is likely that a portfolio committee would have concerns about any process purporting to afford natural justice that is not transparent. This means that the process should be reliable because it is made clear to all concerned precisely how natural justice will be afforded and that breaches of natural justice will be avoided and not concealed.

***Notes on disciplinary statutes:***

3) The issue of consistency with the principles of natural justice clearly arises in the context of disciplinary statutes. The university Acts do not limit enforcement to enforcement by courts, for example, under the Justices Act 1886. Each university has established procedures local to it for enforcing its disciplinary statutes, as opposed to enforcement before a court. Care therefore needs to be taken that the basic requirements of natural justice are met in dealing with disciplinary breaches. See chapter 8, guidelines 55 to 61.

4) For a full discussion of the requirements of natural justice for dealing with disciplinary breaches outside the court system, see—

***Disciplinary Tribunals***, JRS Forbes, Federation Press; 2nd edition, 1996

***The Laws of Australia***, Thomson Reuters

## Procedural fairness

The principles require procedural fairness. This involves a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case. The usual requirements of natural justice may be reduced by circumstances of urgency.

The principles require that something should not be done to a person that will deprive the person of some right, or interest, or legitimate expectation of a benefit, without the person being given an adequate opportunity to present the person's case to the decision-maker.

***Aspects of procedural fairness include:***

**adequate notice of particular hearings, for example, a disciplinary hearing**

Persons who are entitled to be heard are entitled to prior notice. The notice should give the recipient sufficient time and information to prepare and present the person's case and to arrange to attend the hearing or make written submissions. The person should also be put on notice of the possible consequences of an adverse decision: The Laws of Australia, Thomson Reuters, Volume 2.5, paragraph [2.5.460].

The former scrutiny committee has made the following comments about adequate notice of a disciplinary hearing—

It is insufficient to merely post notice of a hearing to a student as the mail might not be received. (Perhaps certified post would be an acceptable minimum procedure.)

Natural justice includes a student's right to know the elements and particulars of the alleged breach or misconduct. Natural justice includes the right of a person to be made aware of evidence adverse to the person and to make submissions in relation to it—Scrutiny of Legislation Committee Alert Digest No. 9 of 2000, Children Services Tribunal Bill 2000, paragraph 34.

**observance of natural justice in the conduct of a hearing**

Natural justice includes a person's right to answer allegations made against the person.

Persons who are entitled to be heard must be given a reasonable opportunity to present their case and to respond to any adverse material of which the decision-maker has informed itself: The Laws of Australia, Thomson Reuters, Volume 2.5, paragraph [2.5.630].

What is appropriate depends on the circumstances. In a disciplinary proceeding, any of the following matters may be important in ensuring consistency with natural justice—

- information made available to a disciplinary body adverse to the person must be disclosed to the person
- the person must always be permitted to put his or her case
- the person may be entitled, having regard to all the circumstances, to put the case orally
- the person may be entitled, having regard to all the circumstances, to be represented, even legally represented
- the person may be entitled to a hearing on the issue of punishment that is separate to the hearing on the question of guilt of a breach.

It would be useful for a statute to address the contentious points that often arise concerning these matters.

**legal representation**

It was the former scrutiny committee's view that, as a general rule, representation by a lawyer enhances a person's right to natural justice because it gives the person the means to most efficiently present the person's case. The committee considered this principle is most applicable in proceedings where there is a binding outcome imposed by a third party umpire. This happens, for example, in court proceedings or arbitration but not in mediation (an informal dispute resolution process where the outcome, if any, is agreed to by the parties themselves). For mediation, the committee examined whether the representation allowable provides for equality of representation— Scrutiny of Legislation Committee Alert Digest No. 5 of 2000, Queensland Competition Authority Amendment Bill 2000, paragraphs 27–32.

However, even where the principle is most applicable, the committee has acknowledged that the following factors may support arguments that the exclusion of lawyers promotes the effective and even-handed operation of the decision-maker—

- the cost of legal representation and the ability of all parties to afford it
- the possible lengthening of proceedings
- the nature of the subject matter being practical rather than technical—Scrutiny of Legislation Committee Alert Digest No. 9 of 2000, Children Services Tribunal Bill 2000, paragraph 30.

**unbiased decision-maker**

The principles of natural justice also require that the decision-maker must be unbiased and free from any reasonable apprehension of bias.

## Appropriateness of delegation of administrative power

69. A statute should allow the delegation of administrative power only in appropriate cases and to appropriate persons—see section 4(3)(c) of the *Legislative Standards Act 1992*.

***Notes:***

1) The former scrutiny committee had a policy on delegation of powers—if a power being delegated is significant, the category of delegate should be limited and the

qualifications or office specified—Scrutiny of Legislation Committee Alert Digest No. 4 of 1996, para 1.17.

2) If significant powers are delegated to a broad category of people, the statute should require the delegate to be 'appropriately qualified'.

3) The former scrutiny committee has explained that a power being delegated is significant if the power is extensive, may affect the rights or legitimate expectations of others, or appears to require particular expertise or experience.

***Example of a 'significant power':***

Power to grant, suspend or cancel registration

## Reversal of onus of proof in disciplinary proceedings

70. A statute should not reverse the onus of proof in disciplinary proceedings without adequate justification: see section 4(3)(d) of the *Legislative Standards Act 1992*.

***Notes:***

1) A statute should not provide that in disciplinary proceedings it is the responsibility of a person alleged to have breached a statute to prove innocence, for example, by disproving a fact the university would otherwise be obliged to prove, unless there is adequate justification.

2) A statute merely requiring a person to prove something peculiarly within the person's knowledge that is inherently impracticable to establish by any alternative evidentiary means may not breach this fundamental legislative principle.

***Examples:***

1) If a statute prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a person to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the university's case.

2) A further example of 'adequate justification' may be circumstances indicating that the provision cannot be practically administered otherwise, for instance, disciplinary breaches concerning the late return or non-return of library books. This type of justification is used in relation to traffic offences in Queensland's traffic legislation.

3) A statute should not provide that something is conclusive evidence of a fact, without adequate justification. Generally, a statute may provide that a certificate or something else is evidence of a fact, provided it relates to matters that are essentially non-controversial. A person subject to university proceedings should always be given the opportunity to disprove the fact.

## Judicial warrant required for entry, search and seizure

71. A statute should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer—see section 4(3)(e) of the *Legislative Standards Act 1992*.

***Note***:
There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Protection against forced self-incrimination

72. A statute should provide appropriate protection against self-incrimination—see section 4(3)(f) of the *Legislative Standards Act 1992*.

***Notes:***

1) It is a long established and strong principle of common law that an individual should not be forced to incriminate himself or herself.

2) There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Retrospectivity

73. A statute should not adversely affect rights and liberties, or impose obligations, retrospectively—see section 4(3)(g) of the *Legislative Standards Act 1992*.

***Notes:***

1) Unless there is a good reason for including a commencement provision in a university statute, it is preferable to be silent in the statute about commencement as it then commences under section 32 of the *Statutory Instruments Act 1992* on the day on which it is notified or published. Inclusion of a commencement provision in a university statute may inadvertently result in a purported retrospective commencement of questionable validity if, for example, there are procedural delays after the statute is made.

2) See section 34 of the *Statutory Instruments Act 1992* (Beneficial retrospective commencement).

## lmmunity from proceeding or prosecution

74. A statute should not confer immunity from proceeding or prosecution without adequate justification—see section 4(3)(h) of the *Legislative Standards Act 1992*.

***Note:***

There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Compulsory acquisition of property

75. A statute should provide for the compulsory acquisition of property only with fair compensation— see section 4(3)(i) of the *Legislative Standards Act 1992*.

***Note:***
There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Aboriginal tradition and Island custom

76. A statute should have sufficient regard to Aboriginal tradition and Island custom—see section 4(3)(j) of the *Legislative Standards Act 1992*.

## Clarity, precision and no ambiguity

77. A statute should be unambiguous and drafted in a sufficiently clear and precise way—see section 4(3)(k) of the *Legislative Standards Act 1992*.

***Examples:***

1) A statute should be user friendly and accessible so ordinary Queenslanders can gain an understanding of the laws relating to a particular matter without having to refer to multiple Acts of Parliament.

2) A statute should contain coherent provisions, addressing foreseeable matters.

3) A statute should contain provisions that are precisely drafted.

4) Terms should be sufficiently defined, particularly when they may have substantial consequences.

5) If a provision of a statute is expressed to operate in particular circumstances that depend on an official's opinion, it may be necessary to state the matters to which the official should have regard in reaching the opinion.

6) A statute should not use the expression 'such other information as (X) may require' but should specify the information required or state that it is 'as prescribed by a statutory rule'. If the general expression must be used, it should at least limit the information that may be required to information relevant to the issue concerned.

7) Tautology should not be used.

8) A statute should not use a format that may adversely impact on its clear interpretation.

# Having sufficient regard to the rights and liberties of individuals—other examples

## Justification required to abrogate common law rights

78. A statute should not abrogate common law rights without sufficient justification.

***Notes:***

1) Rights associated with elections—voting rights are examined by the portfolio committees. The former scrutiny committee has expressed concern about provisions in a statute that meant that technically an election could be held on the same day as the ballots were sent. The committee has also expressed concern about a provision in a statute providing that an election was not invalidated by reason of certain things. This removed safeguards designed to ensure the proper conduct of elections, and the protection of the rights of candidates and people eligible to vote.

2) In the context of a statute giving a chancellor power to enquire into complaints about election processes and to confirm or annul an election, the former scrutiny committee expressed concern about a provision in the statute purporting to make the chancellor's decision 'final and conclusive' and about the absence of guidelines for the chancellor.

3) Common law rights to freedom of movement and association—ordinarily, a statute should not exclude a person from a public place. Excluding a person from a public place may be justified on the basis that the restriction protects the rights of the majority of users by ensuring they are free to use the place without fear of assault or intimidation. The exclusion powers arguably promote the common law rights of the majority.

4) There appears to be little or no scope for a statute to breach common law rights to freedom of movement and association.

## lnappropriate imposition of responsibility

79. A statute should not ordinarily make a person responsible for actions or omissions over which the person may have no control.

***Note:***

There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Undue restriction of ordinary activities

80. A statute should not, without sufficient justification, unduly restrict ordinary activities.

***Note:***
There appears to be little or no scope for a statute to breach this fundamental legislative principle.

## Proportionality

81. Consequences provided by a statute should be proportionate to the actions resulting in the consequences.

***Notes:***
1) A penalty should be proportionate to the misconduct. A statute should provide a higher penalty for misconduct of greater seriousness than for misconduct of lesser seriousness.
2) General penalty provisions should be avoided—see chapter 8, guideline 53.

## Appropriate standard of proof

82. Any change from the common law standard of proof should be justified.

***Example:***
The former scrutiny committee has expressed concern about a statute prescribing the balance of probabilities as the standard of proof to be used by a disciplinary review panel when considering student disciplinary matters. The committee noted that in the absence of any express provisions, the common law would imply a sliding scale between 'on the balance of probabilities' and 'beyond reasonable doubt', depending on the seriousness of the consequences of an adverse finding.

## Appropriate defences

83. A statute should provide appropriate defences to disciplinary breaches.

***Note:***
The words 'without reasonable excuse' are often used in provisions creating offences in Acts of the Queensland Parliament to provide appropriate defences.

## Continuous penalties

84. A statute should not provide for a continuing penalty for a disciplinary breach for a period before the person has been dealt with by the relevant body.

***Note:***
Continuous penalties accumulating before a person is dealt with can artificially inflate the penalty to which the person is liable at a time before the relevant body has considered the lawfulness of the person's behaviour.

## Discrimination prohibited

85. A statute should not be discriminatory.

## Extraordinary power only in urgent circumstances

86. A statute should provide for the exercise of extraordinary powers only in urgent situations.

**Example:**
If a statute provides that an appeal suspends the implementation of a disciplinary decision but gives power to direct that the decision is to be implemented despite the appeal, the power should be limited to urgent circumstances.

## Privacy issues and confidentiality issues

87. In resolving privacy issues and confidentiality issues, sufficient regard should be had to the rights and liberties of individuals.

## Unintended adverse impact

88. A statute should not have an unintended adverse impact on individuals.

***Example:***
A statute should be checked to ensure that there are no gaps that adversely affect individuals. For example, if a statute changes the way a university deals with something, there should be sufficient transitional clauses to protect individuals who are affected by the transition from the existing statute to the statute as changed.

# Having sufficient regard to the institution of Parliament—issues listed in the *Legislative Standards Act 1992*

## Authorisation of statute

89. A statute should be within the power that, under a university Act, allows the statute to be made—see section 4(5)(a) of the *Legislative Standards Act 1992*.

***Note:***

See also chapter 3, guideline 25.

***Examples:***

1) The former scrutiny committee raised concerns that the university Acts do not authorise a statute to—
   - deal with persons who have ceased to be students or
   - provide any of the following sanctions for nonpayment of student fees—
     - withholding of results, an academic transcript or award certificate
     - loss of the right to re-enrol
     - loss of access to computing services, libraries and other facilities or
   - impose penalties that restrict the use of motor vehicles.

2) The former scrutiny committee also had concerns about whether the university Acts authorise a statute about student discipline to require a student to pay restitution of an amount that is not limited in the statute.

## Consistency with objectives of authorisation

90. A statute should be consistent with the policy objectives of the authorising University Act—see section 4(5)(b) of the *Legislative Standards Act 1992*.

## Appropriateness of matter to level of legislation

91. A statute should contain only matter appropriate to that level of legislation—see section 4(5)(c) of the *Legislative Standards Act 1992*.

***Notes:***

1) The former scrutiny committee had a policy on the delegation of legislative power to prescribe penalties—Scrutiny of Legislation Committee Alert Digest No. 4 of 1996, paragraph 1.31.

2) The former scrutiny committee has noted that the matters listed as being suitable for statutes no longer include the conduct of persons on university land and control of traffic and that these topics have been relocated to the university Acts. The committee considered this relocation appropriate because of their potential to

affect individual rights and liberties—Scrutiny of Legislation Committee Alert Digest No. 11 of 1997, paragraph 1.16. Because traffic control has been relocated, the committee has questioned whether penalties restricting the use of motor vehicles are appropriate for statute.

## Statute should only amend a statute

92. A university statute should amend only a university statute and a university rule should amend only a university rule—see section 4(5)(d) of the *Legislative Standards Act 1992*.

## Subdelegation

93. A statute should allow the subdelegation of a power delegated by an Act only—
    (a) in appropriate cases and to appropriate persons; and
    (b) if authorised by an Act—see section 4(5)(e) of the *Legislative Standards Act 1992*.

***Notes:***

1) The former scrutiny committee had a policy on delegation of powers. See the notes to guideline 69.

2) Part of the rationale for this guideline is to ensure sufficient parliamentary scrutiny of a delegated legislative power: see section 4(4)(b) of the *Legislative Standards Act 1992*. For this reason, it seems inappropriate to delegate matters of significance to university rules. While university statutes are subject to the tabling and disallowance provisions of part 6 of the *Statutory Instruments Act 1992*, university rules are not.

When considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, the former scrutiny committee, in the context of non-university legislation, took into account the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation—Scrutiny of Legislation Committee Alert Digest No. 4 of 1999 Coal Mining Safety and Health Bill 1999, paragraphs 1.65 to 1.67

***Examples:***

1) If a university Act authorises a statute to make provisions about a particular matter and also authorises the university council to make university rules under the statute, the statute should not sub-delegate the entire power to the rules. The former scrutiny committee has commented that the university statute should at least contain guidelines and limitations on the rules that may be made.

2) If a statute authorises a university rule to fix criteria for a particular matter, it would be an invalid delegation for a university rule to purport to authorise an authorised person to decide some or all of the criteria. For example, the former scrutiny committee has commented adversely on a university statute that subdelegated to the registrar authority to give notice of rules in a way the registrar considers appropriate. The committee considered it would be more appropriate for the notification of rules to contain more specific requirements.

# Attachment 1

## Legislative Standards Act 1992, section 4

### 4 Meaning of *fundamental legislative principles*

(1) For the purposes of this Act, ***fundamental legislative principles*** are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

*Note—*

Under section 7, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

(2) The principles include requiring that legislation has sufficient regard to—

(a) rights and liberties of individuals; and

(b) the institution of Parliament.

(3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(b) is consistent with principles of natural justice; and

(c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

(d) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(f) provides appropriate protection against self-incrimination; and

(g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(h) does not confer immunity from proceeding or prosecution without adequate justification; and

(i) provides for the compulsory acquisition of property only with fair compensation; and

(j) has sufficient regard to Aboriginal tradition and Island custom; and

(k) is unambiguous and drafted in a sufficiently clear and precise way.

(4) Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill—

(a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(c) authorises the amendment of an Act only by another Act.

(5) Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation—

(a) is within the power that, under an Act or subordinate legislation (the ***authorising law***), allows the subordinate legislation to be made; and

(b) is consistent with the policy objectives of the authorising law; and

(c) contains only matter appropriate to subordinate legislation; and

(d) amends statutory instruments only; and

(e) allows the subdelegation of a power delegated by an Act only—

(i) in appropriate cases and to appropriate persons; and

(ii) if authorised by an Act.

# Attachment 2

## Parliament of Queensland Act 2001, section 93

### 93 Legislation

(1) A portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider—

(a) the policy to be given effect by the legislation; and

(b) the application of fundamental legislative principles to the legislation; and

*Note—*

*Fundamental legislative principles* are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act 1992*, section 4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

(c) for subordinate legislation—its lawfulness.

(2) The committee's responsibility includes monitoring, in relation to legislation in its portfolio area, the operation of—

(a) the *Legislative Standards Act 1992*, section 4 and part 4; and

(b) the *Statutory Instruments Act 1992*, section 9 and parts 6 to 8 and 10; and

(c) for subordinate legislation—the guidelines, for a regulatory impact statement system, approved by the Treasurer.

*Editor's note—*

The guidelines may be accessed on the website of Queensland Treasury at www.treasury.qld.gov.au.