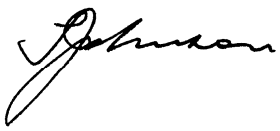
Guidelines for drafting local laws

1 July 2010

Guidelines issued under Legislative Standards Act 1992

This publication contains guidelines about the drafting practices to be observed in the drafting of local laws. They are issued under the *Legislative Standards Act 1992*, section 9, to apply to local laws made on or after 1 July 2010.



Theresa Johnson
Parliamentary Counsel
1 July 2010

© State of Queensland 2010

Office of the Queensland Parliamentary Counsel
111 George Street
Brisbane 4000

PO Box 15185
CITY EAST 4002

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

Guidelines for drafting local laws

Table of contents

CHAPTER 1: INTRODUCTION 2

BACKGROUND 2
ABOUT THESE GUIDELINES 2
PURPOSE OF GUIDELINES 2
OTHER RELEVANT DOCUMENTS 3
TERMS USED IN THESE GUIDELINES 3
STRUCTURE OF GUIDELINES 3

CHAPTER 2: STRUCTURE 4

SCOPE 4
GENERAL STRUCTURE 4
PROVISION UNITS 4
NUMBERING 5
PRELIMINARY PROVISIONS 6
HEADINGS 6
TABLE OF CONTENTS OF LOCAL LAW 7
CLEARLY IDENTIFIABLE DEFINITION PROVISIONS 7
OTHER GUIDELINES AFFECTING STRUCTURE 8

CHAPTER 3: RELATIONSHIP WITH THE ACTS 9

SCOPE 9
CONSISTENCY WITH ACT 9

CHAPTER 4: FORMAT AND PRINTING STYLE 11

SCOPE 11
FORMAT AND PRINTING STYLE 11

CHAPTER 5: DEFINITIONS 12

SCOPE 12
MEANING AND USE OF DEFINITIONS 12
LIST OF DEFINITIONS FOR ALL OF A LOCAL LAW 13
LIST OF DEFINITIONS FOR PART OF A LOCAL LAW, OTHER THAN A SINGLE SECTION 14
LIST OF DEFINITIONS FOR A SINGLE SECTION 14
ALPHABETICAL ORDER USED IN LISTS OF DEFINITIONS 14
TAG DEFINITIONS 15
VERB ALLOCATING MEANING TO DEFINITIONS 15
SIGNPOSTING DEFINITIONS 16

CHAPTER 6: EFFECTIVE COMMUNICATION 17

SCOPE 17
PLAIN ENGLISH 17
READABLE AND UNDERSTANDABLE LOCAL LAWS 18
STRUCTURE 18
CONTENT AND LANGUAGE 19
PRESENTATION 21

CHAPTER 7: GENDER-NEUTRAL LANGUAGE 22

SCOPE 22

GENDER-NEUTRAL LANGUAGE 22

CHAPTER 8: PENALTY AND OBLIGATION PROVISIONS 23

SCOPE 23
ENFORCEMENT OF OBLIGATIONS 23
CREATING OFFENCES AND FIXING PENALTIES 23
INSERTION OF MAXIMUM PENALTY CLAUSES 24
MAXIMUM PENALTY FOR A LOCAL LAW 25
CONTINUING PENALTIES 25
NO GENERAL OFFENCE PROVISION 26

CHAPTER 9: AMENDMENT LOCAL LAWS 27

SCOPE 27
GUIDELINES GENERALLY APPLY TO AN AMENDING LOCAL LAW 27
AMENDING OR REPEALING A LOCAL LAW 27
AMENDMENT RULES 28

CHAPTER 10: FUNDAMENTAL LEGISLATIVE PRINCIPLES 30

SCOPE 30
WHAT ARE FUNDAMENTAL LEGISLATIVE PRINCIPLES 30
LEGAL NATURE OF FLPS 31
HOW TO APPROACH FLPS IN DRAFTING 31
HAVING SUFFICIENT REGARD TO THE RIGHTS AND LIBERTIES OF INDIVIDUALS—ISSUES LISTED IN LEGISLATIVE STANDARDS ACT 1992 32
Defining administrative power, reviewing its use 32
Consistency with natural justice principles 32
Appropriateness of delegation of administrative power 33
Reversal of onus of proof in criminal proceedings 33
Judicial warrant required for entry, search and seizure 34
Protection against forced self-incrimination 34
Retrospectivity 35
Immunity from proceeding or prosecution 35
Compulsory acquisition of property 35
Aboriginal tradition and Island custom 36
Clarity, precision and no ambiguity 36
HAVING SUFFICIENT REGARD TO THE RIGHTS AND LIBERTIES OF INDIVIDUALS—OTHER EXAMPLES 37
Justification required to abrogate common law rights 37
Inappropriate imposition of responsibility 37
Undue restriction of ordinary activities 38
Proportionality 38
Appropriate defences 38
Continuous penalties 38
Discrimination prohibited 38
Extraordinary power only in urgent circumstances 39
Privacy issues and confidentiality issues 39
HAVING SUFFICIENT REGARD TO THE INSTITUTION OF PARLIAMENT—ISSUES LISTED IN THE *LEGISLATIVE STANDARDS ACT 1992* 39
Authorisation of local law 39
Consistency with objectives of authorisation 39
Appropriateness of matter to level of legislation 39
Local law may only amend a local law 40
Subdelegation 40

ATTACHMENT 1 41

LEGISLATIVE STANDARDS ACT 1992, SECTION 4 41

ATTACHMENT 2 43
PARLIAMENT OF QUEENSLAND ACT 2001, SECTION 103 43

Chapter 1: Introduction

Background

Under section 28(1) of the *Local Government Act 2009*, local governments, other than the Brisbane City Council, may make local laws for good rule and government in their local government areas. Under section 29(1) of the *City of Brisbane Act 2010*, the Brisbane City Council may make local laws for the good rule and government of Brisbane. However, the Acts do provide some express limits to the local laws that a local government can make.

Local governments must not make local laws mentioned in section 28(2) of the *Local Government Act 2009*, or section 29(2) of the *City of Brisbane Act 2010*, namely—

- provisions with penalties of more than 850 penalty units
- provisions that purport to stop a local law being amended or repealed in the future
- provisions about a prohibited subject (i.e. network connections, election advertising or development processes)
- anti-competitive provisions (unless the local government has complied with the prescribed procedure for review of the anti-competitive provision).

Other provisions about local laws, including the process for making local laws, are set out in the *Local Government Act 2009*, chapter 3, part 1, and the *City of Brisbane Act 2010*, chapter 3, part 2.

About these guidelines

Local laws are statutory instruments under the *Statutory Instruments Act 1992* and are exempt instruments under the *Legislative Standards Act 1992*.

The Office of the Queensland Parliamentary Counsel does not draft local laws. 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 local governments in the drafting of local laws to ensure consistency and high quality in local laws 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*
- *Statutory Instruments Act 1992*
- *Legislative Standards Act 1992*
- *Reprints Act 1992.*

Terms used in these guidelines

References in these guidelines to a local law also usually include—

- an interim local law (which has effect for a maximum of 6 months)
- a subordinate local law (which is made under a local law)
- a model local law (which is a local law that has been approved by the Minister as suitable for adoption by all local governments).

References in these guidelines to the Minister are a reference to the Minister responsible for administering the *Local Government Act 2009.*

Structure of guidelines

These guidelines are divided into chapters.

A chapter usually includes a statement of its scope.

Chapter 2: Structure

Scope

The guidelines in this chapter cover—

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

General structure

1. The structure of a local law should, as far as practicable, be the same as that of 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 local law, it may not be necessary to use all higher level provision units. Divisions should be used only to divide a part, and subdivisions should be used only to divide a division. Also, a local law should be divided into chapters only if 1 or more of the chapters are to be divided into parts. It may be sufficient to divide a local law into parts and divisions, or it maybe unnecessary to divide a local law into chapters or 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 local law can be a useful device to gather information together.

   Example:
   a schedule containing a list of things to which the local law applies, or a list of fees or definitions

Numbering

9. Provisions in local laws 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) should be numbered.

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

    ***Example*:**
    See section 141(2)(b)(iii)(A) of the *Sustainable Planning Act 2009*.

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

    Notes:

    1) If, under an amending local law, a new section or sections are to be inserted before section 19 and for some reason a section number using 18 is unavailable, the section or sections are inserted as section 19AA, 19AB, 19AC etc.

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

    3) If, under a subsequent amending local law, 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.

    4) 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.

    5) Note that rules 1, 3 and 4 present the same numbering solution for different positions. The problems caused by this are more apparent than real. If new sections are being inserted between provisions that themselves were inserted by amendment, it is often more practical to recast or renumber the provisions.

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

Preliminary provisions

14. A local law should be given a short title.

Note:
See sections 14F to 14J of the *Acts Interpretation Act 1954*, as applied to statutory instruments[1] 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 local law should reflect its subject matter and state the year of its making.

Example:
A local law dealing with the regulation of dangerous dogs may be titled—

- Sunshine City Council (Animal Management for Dogs) Local Law 2010
- Sunshine City Council Local Law No. 10—Animal Management for Dogs 2010.

16. All provisions providing a point in time when the local law or any part of the local law is to take effect should, to the extent practicable, be gathered together in the preliminary provisions of the local law.

Note:
If provisions dealing with the commencement of a local law or part of the local law are not gathered consistently at the front of the local law, they can easily go unnoticed.

17. If appropriate, the preliminary provision of a local law should contain a purpose provision.

Examples of when a purpose provision is appropriate:

1) If the local law is a particularly important implementation of the policy of the local government.
2) If a purpose provision makes it easier to interpret the local law.

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

Headings

19. Every chapter, part, division, subdivision and section of a local law should have a heading. Generally, each schedule to a local law should have a heading that

[1] A local law is a statutory instrument under the *Statutory Instruments Act 1992*.

includes the schedule's number (if the local law has 2 or more schedules) and subject matter.

20. Other parts of a local law should not have a heading.

21. Headings should reflect their subject matter.

Examples:

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

Part 1 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 local law

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

Clearly identifiable definition provisions

23. Definitions of something in a local law 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 local law, including, for example—

- a definition section at the start of the local law with a list of defined words for the local law
- a section with a list of definitions for a part only of the local law, 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 local law or part of a local law
- a dictionary schedule.

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

(5) In this section and section 15—

elect includes re-elect.

4) The guidelines in chapter 5 deal in more detail with definitions.

Other guidelines affecting structure

Definitions—see chapter 5

Effective communication—see chapter 6

Penalty and obligation provisions—see chapter 8

Amendment local laws—see chapter 9

Chapter 3: Relationship with the Acts

Scope

The guidelines in this chapter cover matters arising from the making of local laws under the *Local Government Act 2009* and *the City of Brisbane Act 2010*.

Consistency with Act

25. A local law made by a local government, other than the Brisbane City Council, should be authorised by, and can not be inconsistent with, the *Local Government Act 2009*. A local law made by the Brisbane City Council should be authorised by, and can not be inconsistent with, the *City of Brisbane Act 2010*.

Notes:

1) Local governments may make local laws that are necessary or convenient for the good rule and government in their local government areas—see section 28(1) of the *Local Government Act 2009* and section 29(1) of the *City of Brisbane Act 2010.*

2) Local governments must not make local laws mentioned in section 28(2) of the *Local Government Act 2009,* or section 29(2) of the *City of Brisbane Act 2010*, namely—

- provisions with penalties of more than 850 penalty units
- provisions that purport to stop a local law being amended or repealed in the future
- provisions about a prohibited subject (i.e. network connections, election advertising or development processes) or
- anti-competitive provisions (unless the local government has complied with the prescribed procedure for review of the anti-competitive provision).

3) If there is an inconsistency between a local law and a law made by the State, the law made by the State prevails—see section 27 of the *Local Government Act 2009* and section 28 of the *City of Brisbane Act 2010.*

4) A subordinate local law may be made about a matter only if the making of a subordinate local law is expressly authorised by a local law—see section 26(5) and (6) of the *Local Government Act 2009* and section 27(5) and (6) of the *City of Brisbane Act 2010.*

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

6) The *Acts Interpretation Act 1954*, part 8, contains provisions aiding the interpretation of laws, including, for example, section 36 which contains the definitions of commonly used words and expressions.

7) The *Statutory Instruments Act 1992*, part 4, division 3, contains provisions about the making of statutory instruments that apply to local laws. In particular, part 4, division

3, subdivision 2, makes express provision for matters that may be provided for in local laws.

26. The use of words and expressions in a local law made by a local government, other than the Brisbane City Council, should be consistent with their use in the *Local Government Act 2009*. The use of words and expressions in a local law made by the Brisbane City Council should be consistent with their use in the *City of Brisbane Act 2010.*

Notes:

1) If a word or expression is defined in the *Local Government Act 2009*, it does not have to be defined in a local law made under the *Local Government Act 2009* because it has the same meaning in the local law—see section 37 of the *Statutory Instruments Act 1992*. However, in a particular case, to prevent a provision being significantly obscure or misleading, it may be appropriate to insert a signpost provision or note advising the reader that a particular word or expression is defined in the *Local Government Act 2009*.

2) For a local government, other than the Brisbane City Council, a local law referring to the local government should use the expression 'local government' in preference to 'council' for consistency with the *Local Government Act 2009*. For the Brisbane City Council, the expression 'council' is appropriate because that is the expression defined in the *City of Brisbane Act 2010*.

Chapter 4: Format and printing style

Scope

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

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, and how a section, subsection, paragraph and subparagraph is set out.

Printing style is about how each character of a provision is printed, for example, what size and what style.

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 local law 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 local law, 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 local law and an Act that may affect format and style is that a local law 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 the local laws made by a single local government 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.

Note:
See section 36 of the *Acts Interpretation Act 1954*.

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

Example:
reservoir means an artificial lake for storing or regulating the flow of water.

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

Example:
political party means an organisation registered as a political party under the *Electoral Act 1992*.

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

Example:
conviction includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

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

Example:
quadrennial election means the election for local governments that is held in 2012, and every fourth year after 2012.

List of definitions for all of a local law

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

Example:

Schedule 3 Dictionary

section 3

land means freehold land.

place includes a vehicle.

Note:
The benefits of using a dictionary include—

- removing bulky material from the preliminary provisions of a local law, allowing the preliminary provisions to be used for important statements
- the ability to conveniently contain a great many definitions and signpost definitions that can effectively be an index of important terms.

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

Example:

3 Definitions

The dictionary in the schedule defines particular words used in this local law.

36. Definitions for the whole of a local law can alternatively be placed in a section in the preliminary provisions of the local law.

Example:

3 Definitions

In this local law—

land means freehold land.

place includes a vehicle.

List of definitions for part of a local law, other than a single section

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

Example:

3 Definitions for pt 3

In this part—

land means freehold land.
place includes a vehicle.

List of definitions for a single section

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

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

(4) In this section—

land means freehold land.
place includes a vehicle.

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 local law, 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 appearing before 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 appearing before a higher number.

Example:
1990 Act means …

1994 Act means …
adult means …
adult entertainment has the meaning …
benefit includes …
classification officer, for chapter 22, see …
classified, for chapter 22, see …
convicted of a 5-year offence means …
convicted of a 7-year crime means …
conviction includes …

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) The notice must state that submissions are to be given to the commission within 30 days after the notice is first published (the ***notice period***).

2) The day for holding the referendum (the ***referendum day***) must be a Saturday.

Verb allocating meaning to definitions

41. In definitions, the verbs commonly used to allocate meaning are 'means', 'includes' or '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
- using both 'means' and 'includes' to be avoided, if possible.

Examples:
conviction includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.
elector means a person entitled to vote in an election of councillors.

2) 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 *owner* of freehold land

The ***owner*** of freehold land is the registered proprietor of the land.

Signposting definitions

42. Definitions included in the text of a local law, other than in a list of definitions in a dictionary or definition section 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.
owner see section 5.

Chapter 6: Effective communication

Scope

The guidelines in this chapter cover effective communication and encourage the use of structure, content, language and presentation in ways that make local laws 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 for 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 local law should contain only the degree of complexity necessary to achieve desired policy objectives in a legally effective way. A local law that is easy to understand is less likely to result in dispute and litigation.

The plain English technique does not involve the simplification of a local law 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 person in the community should be regarded as the ultimate user of a local law.

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

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

In fact, drafting a local law may involve a balancing of the desired 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 local law can simply, accurately and unambiguously expose its intent—purpose clauses, preambles, 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, relevance and, ultimately, understanding.

Suggested texts

Plain English for Lawyers, Richard C Wydick, Carolina Academic Press, 4th edition, 1998

Plain Language for Lawyers, Michele M Asprey, Federation Press, 2nd edition, 1996

Writing in Plain English, Robert D. Eagleson, Australian Government Publishing Service, 1990.

Readable and understandable local laws

43. A local law should be structured, drafted and presented in ways that make the local law easy to read and understand.

Structure

44. A local law should have a logical and coherent structure.

Notes:

1) The structure of a local law 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 the 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 local law.
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

45. In a local law, content and language should be used in ways that promote effective communication.

Notes:

1) Clear, concise text is more easily read and understood.

2) Internal consistency in the use of language is important. In particular, different words and expressions should not be used for the same thing.

Suggestions:

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 local government must give the owner written notice' rather than 'Written notice must be given to the owner'.

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

Example:
'The local government may grant a licence only if the applicant has satisfied the following requirements' rather than 'The local government must not grant a licence unless the applicant has satisfied the following requirements'.

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 106(1) (for the use of 'or') and section 106(3) (for the use of 'and') of the *Local Government Act 2009*.

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. See, for example, sections 78(2) and 104(3) of the *Local Government Act 2009*.

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—

- Are the provisions short, easy to read, well structured and clear?
- Are the words used simple, active and specific?
- Is the range of words used appropriate for the audience?

Presentation

46. In a local law, the presentation or layout (design) of the local law 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 local law 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

47. Local laws should be drafted in gender-neutral language.

Note:
The *Reprints Act 1992*, section 24, 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')

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

Chapter 8: Penalty and obligation provisions

Scope

The guidelines in this chapter cover the ways in which offences and obligations are created and penalties for offences are fixed.

Enforcement of obligations

49. If a provision of a local law imposes an obligation on a person, consideration should be given to the way the obligation is to be enforced.

50. If the obligation is to be enforced by a penalty for an offence, express provision should be made for that result.

51. The penalty for an offence should be proportionate to the offence.

Creating offences and fixing penalties

52. The preferred way to create an offence and fix the penalty for the offence is to insert a penalty clause immediately at the end of the relevant provision stating the duty.

Example:

66 Offence to obstruct authorised person

A person must not obstruct an authorised person.

Maximum penalty—20 penalty units.

Notes:

1) There are numerous ways of creating offences.

2) The above way is preferred because it is strikingly obvious, and does not involve adding to a provision impliedly creating an offence extra words necessary to expressly create the offence.

3) As to the general law, section 2 of the Criminal Code declares the common law and effectively defines how an offence is created in the most general terms—

‘An act or omission which renders the person doing the act or making the omission liable to punishment is called an ***offence***.’

4) As to statute law, sections 41 and 41A of the *Acts Interpretation Act 1954* mention some specific ways to create an offence and fix a penalty. These are not exclusive lists—

- Section 41 sets out the various ways in which offences are created and penalties are fixed by penalty clauses inserted at the end of a provision.
- Section 41 also specifically sets out rules relating the position of the penalty clause at the end of a provision to the creation of an offence by the provision or part of the provision.
- Section 41A deals with the situation when a penalty is situated other than at the end of a provision.
- Both sections distinguish between—
- penalty clauses that effectively create an offence and fix the penalty; and
- those that only fix the penalty because the provision expressly declares something to be an offence.
- Also, both sections distinguish between—
- a single penalty, which is taken to be the maximum; and
- a maximum and minimum penalty clause.

Insertion of maximum penalty clauses

53. If it is intended to create an offence or offences in a section with several subsections, then, despite sections 41 and 41A of the *Acts Interpretation Act 1952*, it is preferable to insert the maximum penalty provisions under each subsection intended to create an offence, unless every subsection creates an offence.

Example:

23 Authorised persons

(1) Authorised persons must be appointed by the chief executive.

(2) The chief executive must pay an authorised person the salary and allowances decided by the Governor in Council.

(3) A person must not pretend to be an authorised person.

Maximum penalty—20 penalty units.

(4) A person must not obstruct an authorised person.

Maximum penalty—20 penalty units.

Note:
This practice is preferable because it is obvious to a reader which provisions are offences and what the penalty is in each case.

54. If a penalty provision applies only to the last of several subsections and the others do not have penalties, the penalty clause should refer to the last subsection.

Example:

23 Chief executive may require person to rectify damage

(1) The chief executive may, by written notice given to a person, require the person .....

(2) The notice must state ....

(3) The chief executive must .....

(4) The person must comply with the notice.

Maximum penalty for subsection (4)—20 penalty units.

Notes:

1) This practice is desirable because otherwise, if the penalty provision is at the end of the whole section, other provisions in the section may inadvertently create offences.

2) However, it is not necessary to include the reference if the context makes it clear the penalty does not apply to the other subsections, e.g. if the provisions are merely 'setting the scene' for the provision to which the penalty applies.

Example:

23 Chief executive may require person to rectify damage

(1) The chief executive may by notice given to a person require the person to rectify damage.

(2) The person must comply with the notice.

Maximum penalty—20 penalty units.

Maximum penalty for a local law

55. Under section 28(2)(a) of the *Local Government Act 2009* and section 29(2)(a) of the *City of Brisbane Act 2010*, the maximum penalty that can be fixed as the penalty for an offence against a local law is 850 penalty units. This is the maximum penalty for each conviction of failing to comply with a local law, including each conviction when there is more than 1 conviction for a continuing offence or repeat offence.

Continuing penalties

56. A local law should not provide for a continuing penalty for an offence for a period before the offender has been dealt with by a court.

Notes:

1) This refers to a liability to a maximum penalty that increases according to the amount of time the offence continues, even though the offender has not been found guilty by a court.
2) A continuing penalty in the circumstance mentioned in the guideline is objectionable primarily because the maximum penalties can increase in a way unconnected with the appropriate application of the judicial sentencing discretion.
3) Also, the offender may be acting on incorrect advice that the offender has not committed an offence.
4) Generally, the preferred course is to fix a higher maximum penalty for a particular offence to clearly indicate its severity.
5) The same issue does not arise if the offender has been found guilty and continues to offend.
6) Also, the same issue does not arise if the object of the penalty is to provide a small penalty for each day, up to a reasonable maximum limit in total.

No general offence provision

57. A local law should not contain a provision that every contravention of its provisions is an offence.

Note:
General offence provisions are undesirable—

- because they fail generally to adequately distinguish between contraventions that should give rise to criminal consequences and other kinds of contraventions; and
- because they fail generally to adequately distinguish between offences according to their seriousness and may not provide appropriate penalty levels.

Chapter 9: Amendment local laws

Scope

The guidelines in this chapter cover the repeal and amendment of a local law.

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

Guidelines generally apply to an amending local law

58. These guidelines apply to the amending or repealing local law in the same way they do to a new local law.

Amending or repealing a local law

59. A local government must amend or repeal a local law by making another local law that amends or repeals the local law to the extent necessary.

    Notes:

    1) A subordinate local law can amend or repeal only another subordinate local law.

    2) A subordinate local law ceases to have effect if the authorising local law is repealed.

    3) Expiry of an interim local law that amended or repealed a local law revives the previous form of the local law and any associated subordinate local law—see section 30 of the *Local Government Act 2009* and section 33 of the *City of Brisbane Act 2010.*

60. If a local law replaces another local law, the replacement local law must contain the provision that repeals the existing local law.

61. A local government should not amend a local law by merely making a new local law that overwrites the existing local law. To amend the existing local law, the new local law should specifically omit any inconsistent material.

62. A local law that amends another local law must contain a provision that states the name of the local law that is to be amended.

Amendment rules

63. A local government, in making a local law that amends another local law, 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 legislation 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 an 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 omitted] to [last word 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 6 (Pest animals)
Section 6, 'rabbit'—

omit.

3 Amendment of s 6 (Pest animals)
Section 6, 'rabbit'—

omit, insert—

'rat'.

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 19 (Road works)

After section 19(2)—

insert—

'(2A) Subsection (2) does not apply to pedestrian malls.'.

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

Part 3, before section 20—

insert—

'20AA Application of pt 3

'This part applies to parks and reserves.'.

7 Amendment of s 21 (Fire bans)

Section 21(2A) and (3)—

renumber as section 21(3) and (4).

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 30 (Register of appointments)

Section 30—

omit, insert—

'30 Register of appointments

'The local government must keep a register of appointments.'.

Chapter 10: Fundamental legislative principles

Scope

The guidelines under this chapter cover the application of fundamental legislative principles to local laws, as provided for in section 9(2)(c) of the *Legislative Standards Act 1992*.

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 basic principle and are 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 64 to 74.

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 has sufficient regard to the institution of Parliament. These examples are dealt with in guidelines 84 to 88.

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 local law has sufficient regard to FLPs are set out in guidelines 75 to 83. 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 should be based on sound reasoning.

Under section 29A(2)(b)(iii) of the *Local Government Act 2009,* and section 31(2)(b)(iii) of the *City of Brisbane Act 2010*, local governments are required to give the Minister particular information required under a regulation before making a proposed local law. One area of information required under the regulations is the justification for any infringement of FLPs by a proposed local law.

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 Scrutiny of Legislation Committee (the ***Scrutiny Committee***) is a Standing Committee of the Legislative Assembly with responsibility for monitoring the operation of section 4 of the *Legislative Standards Act 1992* and the application of FLPs to particular Bills and subordinate legislation. The committee's reports are an excellent reference tool for 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 role of the committee.

The Scrutiny Committee's reports include special reports about particular matters and Legislation Alerts dealing with the Bills introduced into, and subordinate legislation tabled in, the Legislative Assembly.

The reports of the 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

64. A local law 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:

1) If a local law gives an authorised person discretionary powers to impose conditions on the grant of a licence, the local law should clearly define this administrative power by outlining the factors the authorised person will take into account in making the decision.

2) 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 local law to provide that the decision-maker give a person affected by the decision written reasons for the decision, together with information on review/appeal rights.

3) An authorised officer's power to give a notice requiring work specified in the notice to be done within a specified period is sufficiently defined if the local law requires the work, and the period that may be specified, to be reasonable.

Example of subject to appropriate review:
See section 34B of the *Local Government Regulation 1994*.

Consistency with natural justice principles

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

Notes:

1) The principles of natural justice are principles developed by the common law.

2) 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.

Example:
Unless there is sufficient justification, a local law should not provide that an authorised person may immediately suspend a licence, without receiving and considering submissions from the licence holder, even if the suspension is subject to subsequent review and appeal processes.

3) The decision-maker must be unbiased.

4) The principles of natural justice require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

Examples:

1) Natural justice includes a person's right to know the criteria necessary to satisfy a local government's requirements in a particular area.
2) Natural justice includes a person's right to answer allegations made against the person.
3) Depending on the nature of the consequence resulting from a complaint made to a local government, natural justice may include a requirement that a local government investigate whether the complaint is genuine before the consequence follows.
4) Depending on the seriousness of a decision and the consequences that follow, natural justice may include a requirement that a reviewer of a decision be separate from the original decision-maker.

Appropriateness of delegation of administrative power

66. A law 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 Scrutiny Committee has 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 (Alert Digest No. 4 of 1996, para 1.17).
2) If significant powers are delegated to a broad category of people, the local law should require the delegate to be 'appropriately qualified'.
3) The 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 criminal proceedings

67. A law should not reverse the onus of proof in criminal proceedings without adequate justification—see section 4(3)(d) of the *Legislative Standards Act 1992*.

Examples:

1) A local law should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence, for example, by disproving a fact the prosecution would otherwise be obliged to prove, unless there is adequate justification.

2) A local law 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.

   For example, if a local law prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.

3) A local law requiring executive officers of a corporation to ensure the corporation complies with a local law and providing that, if the corporation commits an offence, each executive officer also commits an offence, effectively reverses the onus of proof. Generally, a person can not be found guilty of an offence unless the person is a party to the offence. This is potentially objectionable even if the local law provides a defence if the executive officer took reasonable steps to ensure compliance or that he or she was not in a position to influence the corporation's conduct.

   A similar local law making a corporation guilty of offences committed by its executive officers may also infringe this fundamental legislative principle.

4) A local law should not provide that something is conclusive evidence of a fact, without adequate justification. Generally, a local law may provide that a certificate or something else is evidence of a fact. However, a defendant should always be given the opportunity to disprove the fact.

Judicial warrant required for entry, search and seizure

68. A law 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:
For the application of this fundamental legislative principle, see the powers under the *Local Government Act 2009*, chapter 5, part 2, division 1, subdivision 3 or the *City of Brisbane Act 2010*, chapter 5, part 2, division 1, subdivision 3.

Protection against forced self-incrimination

69. A law 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) If, for sufficient reason, a local law requires a person to provide anything to an official that incriminates the person, the local law should generally provide that the self-incriminating evidence is not admissible in evidence against the person in any proceeding other than proceedings where the admission of the evidence is justifiable, for example, a proceeding on a charge that the evidence provided was false.

Retrospectivity

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

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

Example:
A local law can not be made and its operation backdated to cover circumstances that arose before it was made if the retrospectivity decreases a person's rights or imposes liability on a person.

Immunity from proceeding or prosecution

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

Example:
A provision attempting to protect a local government from liability should not extend to liability for negligence. The local government should remain liable for damage caused by the negligence of it, its officers or employees. The provision should include a qualification similar to 'if acting in good faith and without negligence'.

Compulsory acquisition of property

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

Notes:

1) If property may be seized and sold under a local law, there should be a specific requirement for the local government to pay any surplus after lawful deductions to the previous owner.
2) If property may be forfeited under a local law because, after reasonable inquiries, the owner has not been located, the local law should specify a minimum enquiry period.
3) If the surrender of property is required as a condition to a consent, such as a subdivision approval, the acquisition is not compulsory as the developer has the option not to continue with the subdivision—see Lloyd v Robinson (1962) 107 CLR 142.
4) See guideline 68 for the obligation to obtain a warrant before property is seized.

Aboriginal tradition and Island custom

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

Note:
The Scrutiny Committee commended a criminal justice Bill that recognised the significance of—

- consulting with Aboriginal and Islander people about criminal justice issues
- allowing persons in designated remote areas to be dealt with for certain offences by persons who have a similar cultural background
- allowing a person living within a designated remote area to be dealt with within the person's local community (Alert Digest No. 7 of 1997, paragraph 1.4 to 1.6).

Clarity, precision and no ambiguity

74. A law 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 local law should be user-friendly and accessible so ordinary Queenslanders can gain an understanding of the local laws relating to a particular matter without having to refer to multiple local laws.
2) A local law should contain coherent provisions addressing foreseeable matters.
3) A local law should contain provisions that are precisely drafted.
4) Terms should be sufficiently defined, particularly when they may have substantial consequences. This principle is particularly important in an offence provision.
5) If a provision of a local law 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 local law should, wherever possible, not use the expression 'such other information as the local government may require' but should specify the information required or state that it is 'as prescribed by a subordinate local law'. If the general expression must be used, it should at least limit the information that may be required to information relevant to the licence or other issue concerned.
7) Tautology, for example, 'practising practitioner', should be avoided.
8) A local law 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

75. A Local law should not abrogate common law rights without sufficient justification.

Examples:

1) *Common law right to silence*—a local law should not make it an offence for a person to omit relevant material particulars from a statement the person is required to provide unless the privilege against self-incrimination is preserved. This would be an abrogation of the common law right to silence.

2) *Common law rights to freedom of movement and association*—ordinarily, a local law 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.

3) *Common law right of an owner of land to the use and enjoyment of the land*.

Inappropriate imposition of responsibility

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

Examples:

1) A local law should not make executive officers of a corporation vicariously liable for alleged offences of a corporation unless it is a practical necessity and unless appropriate safeguards are provided. The preferred approach is to make the individuals behind the corporation liable only if—

- they had actual knowledge of the offence; or
- they had imputed knowledge of it; or
- they were in a position to influence corporate conduct and failed to influence it.

2) A local law should not ordinarily make the owner of land liable for actions/ omissions on the land that may have been caused by an occupier of the land other than the owner and of which the owner may not be aware.

3) A local law should not ordinarily make the owner of land responsible for the maintenance of a grid installed, adjacent to the land, on a road for which the local government has control.

Undue restriction of ordinary activities

77. A local law should not, without sufficient justification, unduly restrict ordinary activities.

Example:
A local law should not provide an absolute ban for all rental properties on smoking in any room designated for sleeping or on sleeping in any room not designated for sleeping.

Proportionality

78. Consequences provided by a local law should be proportionate to the actions resulting in the consequences.

Example:
A penalty should be proportionate to the offence. A local law should provide a higher penalty for an offence of greater seriousness than for a lesser offence.

General offence provisions should be avoided—see guideline 57.

Appropriate defences

79. A local law should provide appropriate defences to offences.

Note:
The words 'without reasonable excuse' are often used to provide appropriate defences in provisions creating offences in Acts of the Queensland Parliament. See, for example, section 55(8) of the *Local Government Act 2009*.

Continuous penalties

80. A local law should not provide for a continuing penalty for an offence for a period before the offender has been dealt with by a court.

Note:
See guideline 56.

Discrimination prohibited

81. A local law should not be discriminatory.

Example:
A local law should not require electrical power points to be provided in camping facilities only in shower blocks for men.

Extraordinary power only in urgent circumstances

82. A local law should provide for the exercise of extraordinary powers only in urgent situations.

Privacy issues and confidentiality issues

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

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

Authorisation of local law

84. A local law should be within the power that, under an Act or subordinate legislation (the ***authorising law***), allows the local law to be made—see section 4(5)(a) of the *Legislative Standards Act 1992*.

Note:
See also guideline 25

Consistency with objectives of authorisation

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

Appropriateness of matter to level of legislation

86. A local law, particularly an interim or subordinate local law, should contain only matters appropriate to that level of legislation—see section 4(5)(c) of the *Legislative Standards Act 1992*.

Notes:

1) The Scrutiny Committee has a policy on the delegation of legislative power to create offences and prescribe penalties.

2) The view of the Scrutiny Committee is that legislative power to create offences and prescribe penalties may be delegated in limited circumstances if the following safeguards apply—

- Rights and liberties of individuals should not be affected, and the obligations imposed on persons by the delegated legislation should be limited.
- The maximum penalties should be limited, generally, to 20 penalty units.

- If possible, the types of offences foreseeable at the time of drafting the Bill should be made offences by the Bill.
- If the types of offences are not reasonably foreseeable at the time of drafting the Bill, a sunset clause (for a maximum period of 2 years) should be included to allow time to identify the necessary offences and penalties.

The primary way of creating offences should always be through Acts of Parliament rather than delegated legislation (Alert Digest No. 4 of 1996, para 1.31).

Local law may only amend a local law

87. A local law should amend only a local law and a subordinate local law should amend only a subordinate local law—see section 4(5)(d) of the *Legislative Standards Act 1992*.

Subdelegation

88. A local law should allow the subdelegation of a power delegated by an Act only—

- in appropriate cases and to appropriate persons; and
- if authorised by an Act—see section 4(5)(e) of the *Legislative Standards Act 1992*.

Note:
The Scrutiny Committee has a policy on delegation of powers. See the notes to guideline 66.

Example:
If a local law authorises a subordinate local law to fix criteria for a particular matter, it would be an invalid delegation for a subordinate local law to purport to authorise an authorised person to decide some or all of the criteria.

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.[2]

(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

---

[2] Under section 7 (Functions of office), a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

(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 103

103 Area of responsibility of Scrutiny of Legislation Committee

(1) The Scrutiny of Legislation Committee's area of responsibility is to consider—

(a) the application of fundamental legislative principles to particular Bills and particular subordinate legislation; and

Editor's 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.

(b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation.

(2) The committee's area of responsibility includes monitoring generally the operation of—

(a) the following provisions of the *Legislative Standards Act 1992*—

- section 4 (Meaning of *fundamental legislative principles*)
- part 4 (Explanatory notes); and

(b) the following provisions of the *Statutory Instruments Act 1992*—

- section 9 (Meaning of *subordinate legislation*)
- part 5 (Guidelines for regulatory impact statements)
- part 6 (Procedures after making of subordinate legislation)
- part 7 (Staged automatic expiry of subordinate legislation)
- part 8 (Forms)
- part 10 (Transitional).