

STATUTE LAW REVISION BILL (No. 2) 1995**EXPLANATORY NOTES****Policy objective and reasons for it**

The objective of this Bill is to further the aim of ensuring that the Queensland statute book is of the highest standard. The Bill does so by—

- making amendments that are concise, of a minor nature and non-controversial; and
- repealing Acts and provisions that are spent or obsolete.

The Queensland statute book is all Queensland legislation taken as a body of law. A statute book that is well maintained significantly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand.

Maintenance of the statute book is necessary for a number of reasons. First, the law is constantly changing and the statute book needs to be updated continuously to take account of the changes. Second, the Queensland statute book has been created over a period of some 135 years during which drafting practices, language usage and printing formats and styles have changed markedly. The Queensland statute book also still includes some Imperial and New South Wales laws made over a considerably longer period. Third, the statute book is created by a complex mosaic of individual amending and non-amending items of legislation (both Acts and subordinate legislation). Individual items of legislation interact with other items (and the common law) to produce the totality of the statute book and cannot be considered in isolation.

Statute Law Revision Bills are an important part of maintaining and enhancing the standard of Queensland law. The Bills provide an opportunity to make amendments and repeals that, taken alone, would be of insufficient importance to justify separate legislation. However, the cumulative effect of the amendments and repeals can have a substantial impact on the overall quality of Queensland law.

Ways in which policy objective will be achieved by the Bill

The Office of the Queensland Parliamentary Counsel is responsible under the *Legislative Standards Act 1992* for ensuring that Queensland legislation is of the highest standard (section 7(j)). To give effect to this responsibility, the office is undertaking a number of current projects that are supported or implemented by amendments in this Bill.

First, the office is identifying and accounting for all Queensland legislation. This includes an examination of all Queensland Acts passed since Queensland was established as a colony and all earlier New South Wales Acts that apply (or could apply) in Queensland. At the present time, it is not possible to know with complete certainty the exact status of the Queensland statute book; for example, how many Acts and instruments of subordinate legislation are in force in Queensland and what they are. However, all Acts passed in New South Wales before Queensland was established as a colony and all Queensland Acts passed have now been identified. As spent or obsolete Acts are identified, they are repealed in Statute Law Revision Bills. This Bill continues that process.

Second, the office is endeavouring to reduce the fragmentation that exists in Queensland legislation. Fragmentation reduces access to the law by making it difficult to reprint, keep up-to-date, and find. The Bill addresses this problem in 2 main ways.

(a) Repeal of amending Acts

The Bill continues the process of repealing amending Acts that have commenced. In the past, substantive provisions (usually of a transitional, savings or validating nature) were commonly included in amending Acts. These provisions have been identified and, if necessary, the provisions have been relocated to an appropriate Act. The amending Acts are then repealed. If necessary, a savings or transitional provision is made. Usually this would involve the application of the *Acts Interpretation Act 1954*, section 20A. An example of the relocation of provisions from an amending Act is the amendments of the *Legal Aid Act Amendment and Public Defence Act Repeal Act 1991*.

(b) Relocation

The Bill proposes to relocate substantive provisions from a number of Acts to other Acts. The Acts from which provisions are relocated are then proposed to be repealed. Some of these Acts are amending Acts mentioned above. Other Acts are not amending Acts.

In 3 cases, the resulting Acts represent a consolidation of the law in the areas they cover. These are—

- (1) *Supreme Court Act 1921* (to be renamed the *Supreme Court Act 1995*), which is a consolidation of provisions from some 19 Acts.
- (2) *Law Reform (Abolition of the Rule of Common Employment) Act 1951* (to be renamed the *Law Reform Act 1995*), which is a consolidation of 5 Acts and provisions replacing other Acts.
- (3) *Legal Practitioners Act Amendment Act 1968* (to be renamed *Legal Practitioners Act 1995*), which is a consolidation of provisions from some 7 Acts.

In other cases, provisions are simply relocated to other Acts. Examples of simple relocation include the following—

- (1) *Decentralisation of Magistrates Courts Act 1965* provisions relocated to *Justices Act 1886*.
- (2) *District Courts (Venue of Appeals) Act 1988* provisions relocated to *District Courts Act 1967*.
- (3) *University of Queensland (Confirmation of Powers) Act 1985* provisions relocated to *University of Queensland Act 1965*.

Third, the office is reprinting all current Queensland Acts and subordinate legislation. The office is endeavouring to have all Acts reprinted by early 1996 and all subordinate legislation reprinted by mid 1996. The Bill includes a number of amendments to facilitate the reprinting of particular Acts. The reprinting process is also supported by the repeal of spent and obsolete Acts.

Fourth, the office is rationalising the types of subordinate legislation currently in use and standardising the legislative provisions dealing with subordinate legislation. The existence of older provisions in Acts dealing with subordinate legislation is a source of confusion and potential difficulty. The provisions can also operate to prevent appropriate parliamentary oversight. In addition, subordinate legislation types need to be rationalised to enable subordinate legislation to be reprinted efficiently and then kept up-to-date. The Bill includes many amendments in support of this project and the reprinting of subordinate legislation.

Finally, as part of the process of reprinting and updating subordinate legislation, the office is removing forms from legislation. The *Statutory Instruments Act 1992* contains provisions dealing with the notification and availability of forms (see section 58). In addition, under the *Acts Interpretation Act 1954*, section 49(5), a form may only require information reasonably necessary for the form's purpose.

If appropriate, any reasonable alternative

The policy objective can only be achieved by statutory amendments and this is the reason the Bill is both reasonable and appropriate.

Administrative cost to government

Apart from costs associated with the need to approve and notify forms, there will be no administrative costs to government of implementing the Bill. This cost will be offset by the savings which stem from removing the need to prescribe forms for use via legislation. Increased access to legislation flowing from the Bill will produce substantial savings in costs for government and other users of legislation.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles. Moreover, the Bill significantly advances fundamental legislative principles, especially by ensuring that Acts have sufficient regard to the institution of Parliament. The Bill contains, for example, numerous amendments to ensure that the exercise of delegated legislative power is subject to the scrutiny of the Legislative Assembly and omits provisions authorising the amendment of Acts by subordinate legislation.

Consultation

All Government departments were consulted on at least 2 separate occasions and agree with the amendments of the Acts administered by them.

Any reasonable alternative

There is no reasonable alternative that will achieve the policy objective. Administrative arrangements would not be possible as the provisions remaining in existing Acts would override them.

Notes on clauses

Clause 1 provides for the Act's citation.

Clause 2 deals with the Act's commencement. Subclause (1) draws attention to the fact that commencement provisions may be provided in schedules 1 and 2 for some amendments. Subclause (2) deals with the commencement of repeals made by the Bill. As the Bill contains amendments relocating provisions from Acts that are to be repealed, all repeals commence on the day after the day of assent.

Clause 3 states the Act's purpose.

Clause 4 gives effect to the amendments made by schedules 1 and 2.

Clause 5 gives effect to the repeals made by schedules 3 to 8 and the transitional provisions made by schedules 9 and 10.

Clause 6 declares that explanatory notes, and certain provision references, in the Bill do not form part of it. They are, however, available as extrinsic aids to interpretation in the same way as this explanatory note (see *Acts Interpretation Act 1954*, section 14B).

Schedule 1 contains both minor amendments for statute law revision and statute law revision amendments of lesser significance. If an Act has amendments of both types, all the amendments of the Act are included in schedule 1.

Schedule 2 contains only amendments by way of statute law revision that are of lesser significance.

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Schedule 3 repeals an amending Act with provisions that have remained uncommenced for at least 2 years. Uncommenced provisions in Acts made on or after 1 January 1995 commence automatically under the *Acts Interpretation Act 1954*, section 15DA.

Schedules 4 and 5 deal with the repeal of amending Acts. Schedule 4 repeals amending Acts with substantive provisions (usually of a savings or transitional nature) that are no longer needed. Schedule 5 repeals other amending Acts. The operation of amending Acts that have commenced is not affected by their repeal (see *Acts Interpretation Act 1954*, section 19). Amending Acts passed since 1 July 1994 are automatically repealed under the *Acts Interpretation Act* (see section 22C).

Schedules 6, 7 and 8 deal with the repeal of non-amending Acts (and laws). Schedule 6 repeals Acts (and a regulation) that are spent. Schedule 7 repeals other obsolete Acts. Schedule 8 repeals obsolete Imperial Acts that may still apply in Queensland.

Schedules 9 and 10 contain savings provisions. Under the *Acts Interpretation Act 1954*, section 20A the declaratory effect of savings or transitional provisions, and the effect of validating provisions, are not ended by their repeal or expiry. To remove any doubt about the application of the section, the schedule declares various Acts repealed by the Bill to be laws to which the section applies. Schedule 10 has special transitional provisions for certain Acts repealed by the Bill.

Because of the large number of minor amendments made by the Bill, notes on individual amendments are contained at the end of the amendments of each Act. Brief explanatory notes are also included for schedules 3 to 9.