



Queensland

Legislative Standards Act 1992

Current as at 23 September 2013

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Legislative Standards Act 1992

An Act relating to the standards of legislation, the drafting of legislation and for other purposes related to legislation

Part 1 Preliminary

1 Short title

This Act may be cited as the *Legislative Standards Act 1992*.

2 Definitions

Schedule 1 defines particular words used in this Act.

Part 2 Legislative standards

3 Purposes of Act

- (1) The purposes of this Act include ensuring that—
 - (a) Queensland legislation is of the highest standard; and
 - (b) an effective and efficient legislative drafting service is provided for Queensland legislation; and
 - (c) Queensland legislation, and information relating to Queensland legislation, is readily available.
- (2) The purposes are primarily to be achieved by establishing the Office of the Queensland Parliamentary Counsel with the functions set out in section 7.

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.

Part 3 Office of the Queensland Parliamentary Counsel

Division 1 General

5 The Queensland Parliamentary Counsel and office

- (1) There is to be a Queensland Parliamentary Counsel.
- (2) An office called the Office of the Queensland Parliamentary Counsel is established.
- (3) The office consists of the parliamentary counsel and the staff of the office.

6 Control of office

- (1) Subject to the Minister, the parliamentary counsel is to control the office.
- (2) Subsection (1) does not prevent the attachment of the office to the department for the purpose of ensuring that the office is supplied with the administrative support services that it requires to carry out its functions effectively and efficiently.

7 Functions of office

The functions of the office are to—

- (a) draft all government Bills and, on request, proposed Bills for government entities other than departments and public service offices; and
- (b) draft, on request, private members' Bills; and
- (c) draft all amendments of Bills for Ministers; and
- (d) draft, on request, amendments of Bills for other members; and
- (e) draft all proposed subordinate legislation (other than exempt subordinate legislation); and

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- (f) draft, on request, other instruments for use in or in connection with the Legislative Assembly (whether or not in relation to a Bill or amendment); and
 - (g) provide advice to Ministers and government entities on—
 - (i) alternative ways of achieving policy objectives; and
 - (ii) the application of fundamental legislative principles;in performing the office's functions under paragraphs (a), (c), (e) and (f); and
 - (h) provide advice to members on—
 - (i) alternative ways of achieving policy objectives; and
 - (ii) the application of fundamental legislative principles;in performing the office's functions under paragraphs (b), (d) and (f); and
 - (i) provide advice to the Governor in Council, Ministers and government entities on the lawfulness of proposed subordinate legislation; and
 - (j) ensure the Queensland statute book is of the highest standard; and
 - (k) prepare—
 - (i) reprints under the *Reprints Act 1992*; and
 - (ii) information relating to Queensland legislation; and
 - (l) make arrangements for the printing and publication of—
 - (i) Bills; and
 - (ii) Queensland legislation; and
 - (iii) information relating to Queensland legislation; and
 - (m) make arrangements for access, in electronic form, to—

- (i) Bills presented to the Legislative Assembly; and
- (ii) Queensland legislation; and
- (iii) information relating to Queensland legislation; and
- (n) perform another function conferred on the office under this or another Act; and
- (o) perform functions incidental to a function under another paragraph of this section.

8 Drafting of government legislation otherwise than by office

- (1) The parliamentary counsel may arrange or approve the drafting of a particular government Bill or particular proposed subordinate legislation by a person who is not a member of the office's staff.
- (2) When drafting of the Bill or proposed subordinate legislation is finished, it must be submitted to the parliamentary counsel for examination to determine whether it achieves an acceptable standard of legislative drafting.
- (3) If the parliamentary counsel is not satisfied that the Bill or proposed subordinate legislation achieves that standard, the parliamentary counsel must advise the Minister in writing.

9 Drafting of exempt instruments

- (1) The parliamentary counsel may issue guidelines with respect to the drafting practices that are to be observed by persons in the drafting of exempt instruments.
- (2) Without limiting subsection (1), guidelines under that subsection may make provision with respect to—
 - (a) the citation and numbering of exempt instruments; and
 - (b) the use of gender-neutral language in exempt instruments; and
 - (c) the application of fundamental legislative principles to exempt instruments; and

- (d) the drafting style used in exempt instruments.

9A Application of legal professional privilege to office

- (1) This section applies to communications made in or for the performance of the office's functions under section 7(a) to (i) or a function incidental to those functions.
- (2) Confidential communications between a client of the office, and the parliamentary counsel or any member of the office's staff, are subject to legal professional privilege.

Examples of office's clients—

- 1 a Minister to whom the office provides advice on the application of fundamental legislative principles to proposed subordinate legislation drafted by the office
 - 2 a member who asks the parliamentary counsel to draft a Bill, an amendment of a Bill or an instrument to be used in the Legislative Assembly
- (3) Without limiting subsection (2), the communications may not be disclosed by the parliamentary counsel or a member of the office's staff without the client's consent.
 - (4) This section has effect despite any other law.

10 Private members' Bills etc.

- (1) A member may request the parliamentary counsel to draft a Bill, an amendment of a Bill or an instrument to be used in the Legislative Assembly (whether or not in relation to a Bill or amendment).
- (2) The parliamentary counsel must comply with the request unless the parliamentary counsel considers that it would not be possible to comply with the request without significantly and adversely affecting the Government's legislative program.

10A Authorisation relating to Queensland legislation and Bills

- (1) The parliamentary counsel may authorise—
 - (a) a reprint prepared under the *Reprints Act 1992*; or

- (b) a copy of Queensland legislation; or
 - (c) a copy of a Bill introduced into, moved in, tabled in, or circulated to members of, the Legislative Assembly.
- (2) A note that the parliamentary counsel has authorised a document mentioned in subsection (1) must appear in the document in an appropriate place.
- (3) The production of a document mentioned in subsection (1) purporting to have been authorised by the parliamentary counsel is, in the absence of evidence to the contrary, taken to have been authorised by the parliamentary counsel.

Note—

See the *Evidence Act 1977*, sections 43(h), 46A and 47 for evidentiary provisions relating to documents authorised under subsection (1).

Division 2 Staff of the office

11 Staff of office

The staff of the office are to be employed under the *Public Service Act 2008*.

12 Duty of parliamentary counsel in relation to training

It is the duty of the parliamentary counsel to ensure that the office's staff are adequately and appropriately trained to enable the office to carry out its functions effectively and efficiently.

Division 3 Accountability requirements

13 Annual report

- (1) The parliamentary counsel must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the office's operations during the year.

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- (2) Without limiting subsection (1), the parliamentary counsel must include in the report—
 - (a) an outline of the office’s goals and objectives; and
 - (b) particulars of the office’s principal activities for the year; and
 - (c) an outline of the office’s organisational structure and resources; and
 - (d) an assessment of the progress made towards achieving the purposes of this Act.
 - (3) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 days after the Minister receives it.
 - (4) If, at the time the Minister would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the Clerk of the Parliament.
 - (5) The Clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.
 - (6) For the purposes of its publication, a report given to the clerk under subsection (4) is taken to have been laid before the Legislative Assembly, and to have been ordered to be published by the Legislative Assembly, when it is given to the clerk.

Division 4 Provisions relating to the parliamentary counsel

14 Appointment of parliamentary counsel

- (1) The parliamentary counsel is to be appointed by the Governor in Council.
- (2) A person is not eligible for appointment as parliamentary counsel unless the person is a barrister, solicitor, barrister and

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solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory of not less than 7 years standing.

- (3) Subject to sections 18 and 19, the parliamentary counsel holds office for such term (not longer than 7 years) as is specified in the instrument of appointment, but is eligible for reappointment.
- (4) The parliamentary counsel is to be appointed under this Act, and not under the *Public Service Act 2008*.

15 Terms and conditions of appointment

- (1) The parliamentary counsel is to be paid such remuneration and allowances as are determined by the Governor in Council.
- (2) The parliamentary counsel holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

16 Preservation of rights

- (1) This section applies if an officer of the public service is appointed as the parliamentary counsel.
- (2) The person retains and is entitled to all rights that have accrued to the person because of employment as such an officer, or that would accrue in the future to the person because of that employment, as if service as parliamentary counsel were a continuation of service as an officer of the public service.
- (3) At the end of the person's term of office or on resignation—
 - (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as parliamentary counsel; and
 - (b) the person's service as parliamentary counsel is to be regarded as service of a like nature in the public service

for the purpose of determining the person's rights as an officer of the public service.

17 Leave of absence

The Minister may grant leave of absence to the parliamentary counsel on such terms and conditions as the Minister considers appropriate.

18 Resignation

The parliamentary counsel may resign by signed notice given to the Governor.

19 Termination of appointment

The Governor in Council may terminate the appointment of the parliamentary counsel if the parliamentary counsel—

- (a) becomes mentally or physically incapable of satisfactorily performing the duties of office; or
- (b) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the parliamentary counsel were an officer of the public service; or
- (d) is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any year.

20 Delegation of powers

The parliamentary counsel may delegate powers under this or any other Act to a member of the office's staff or another officer of, or person employed in, the public service.

21 Acting parliamentary counsel

The Governor in Council may appoint a person to act as parliamentary counsel—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the parliamentary counsel is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

Part 4 Explanatory notes

22 Explanatory note must be tabled with Bill or subordinate legislation

- (1) When introducing a Bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill.
- (2) When subordinate legislation is tabled in the Legislative Assembly, it must be accompanied by an explanatory note prepared under the authority of the responsible Minister.

Note—

See the *Statutory Instruments Act 1992*, section 49 for the requirement to table subordinate legislation.

23 Content of explanatory note for Bill

- (1) An explanatory note for a Bill must include the following information about the Bill in clear and precise language—
 - (a) the Bill's short title;
 - (b) a brief statement of the policy objectives of the Bill and the reasons for them;

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- (c) a brief statement of the way the policy objectives will be achieved by the Bill and why this way of achieving the objectives is reasonable and appropriate;
 - (d) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives and why the alternative was not adopted;
 - (e) a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs but not the cost of developing the Bill;
 - (f) a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency;
 - (g) a brief statement of the extent to which consultation was carried out in relation to the Bill;
 - (h) a simple explanation of the purpose and intended operation of each clause of the Bill;
 - (i) if the Bill is substantially uniform or complementary with legislation of the Commonwealth or another State—
 - (i) a statement to that effect; and
 - (ii) a brief explanation of the legislative scheme.
- (2) If the explanatory note does not include the information mentioned in subsection (1), it must state the reason for non-inclusion.

24 Content of explanatory note for subordinate legislation

- (1) An explanatory note for subordinate legislation must include the following information about the subordinate legislation in clear and precise language—
- (a) the legislation's short title and, for subordinate legislation other than exempt subordinate legislation, the number given to the legislation when it is notified;

- (b) the provision of the Act or subordinate legislation under which the legislation was made (the *authorising law*);
 - (c) a brief statement of the policy objectives of the legislation and the reasons for them;
 - (d) a brief statement of the way the policy objectives will be achieved by the legislation and why this way of achieving them is reasonable and appropriate;
 - (e) a brief explanation of how the legislation is consistent with the policy objectives of the authorising law;
 - (f) if the legislation is inconsistent with the policy objectives of other legislation—
 - (i) a brief explanation of the relationship with the other legislation; and
 - (ii) a brief statement of the reasons for the inconsistency;
 - (g) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making subordinate legislation) and why the alternative was not adopted;
 - (h) a brief assessment of the benefits and costs of implementing the legislation that—
 - (i) if practicable and appropriate, quantifies the benefits and costs; and
 - (ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (g);
 - (i) a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.
- (2) The explanatory note must also include—
- (a) if consultation took place about the subordinate legislation—

- (i) a brief statement of the way the consultation was carried out; and
 - (ii) an outline of the results of the consultation; and
 - (iii) a brief explanation of any changes made to the legislation because of the consultation; or
- (b) if consultation did not take place—a statement of the reason for no consultation.
- (3) For significant subordinate legislation, the explanatory note must be accompanied by the regulatory impact statement prepared for the subordinate legislation.
- (4) If for any reason the explanatory note does not include the information mentioned in subsection (1) or (2), the explanatory note must state the reason for non-inclusion.
- (5) However, for significant subordinate legislation, information is taken to be included in the explanatory note if it is—
- (a) included in the accompanying regulatory impact statement; and
 - (b) referred to in the explanatory note and, if necessary, supplemented or updated.

25 Validity of legislation is not affected by failure to comply with part

Failure to comply with this part does not affect the validity of legislation.

Part 5 Miscellaneous

26 Regulations

The Governor in Council may make regulations under this Act.

27 References to exempt instruments

A reference in an Act or a regulation under this Act to a statutory instrument that is subordinate legislation and an exempt instrument, is a reference to subordinate legislation that is exempt subordinate legislation.

Schedule 1 Dictionary

section 2

benefits includes—

- (a) advantages; and
- (b) direct and indirect economic, environmental and social benefits.

Bill means a Bill for an Act proposed for enactment by the Parliament.

costs includes—

- (a) burdens and disadvantages; and
- (b) direct and indirect economic, environmental and social costs.

exempt instrument means—

- (a) a local law; or
- (b) a statutory rule (other than a regulation) declared not to be subordinate legislation by—
 - (i) an Act; or
 - (ii) a regulation under the *Statutory Instruments Act 1992*; or
- (c) exempt subordinate legislation.

exempt subordinate legislation means a statutory rule (other than a regulation) declared to be exempt subordinate legislation by—

- (a) an Act; or
- (b) a regulation under this Act.

Note—

See also section 27 in relation to references to exempt instruments that are subordinate legislation.

fundamental legislative principles has the meaning given by section 4.

government Bill means a Bill presented, or proposed to be presented, to the Legislative Assembly by a Minister acting in that capacity.

government entity see the *Public Service Act 2008*, section 24.

member means a member of the Legislative Assembly.

office means the Office of the Queensland Parliamentary Counsel.

private member's Bill means a Bill that is not a government Bill.

proposed Bill means a Bill proposed for consideration by the Government as a Bill.

responsible Minister, for subordinate legislation, means the Minister who administers the law or provision of the law under which the subordinate legislation is made.

significant subordinate legislation means subordinate legislation for which a regulatory impact statement must be prepared under guidelines, for a regulatory impact statement system, approved by the Treasurer.