

Queensland



LEGISLATIVE STANDARDS ACT 1992

Act No. 26 of 1992

Queensland



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Queensland



Legislative Standards Act 1992

Act No. 26 of 1992

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

[Assented to 1 June 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

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

Definitions

2. In this Act—

“Bill” means a Bill for an Act proposed for enactment by the Parliament;

“exempt instrument” means—

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

“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;

“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.

PART 2—LEGISLATIVE STANDARDS

Purposes of Act

3.(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 in both printed and electronic form.

(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.

Meaning of “fundamental legislative principles”

4.(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.¹

(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

¹ 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.

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 purposes and intent 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 the Act itself.

PART 3—OFFICE OF THE QUEENSLAND PARLIAMENTARY COUNSEL

Division 1—General

The Parliamentary Counsel and Office

5.(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.

Control of Office

6.(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.

Functions of Office

7. The functions of the Office are to—

- (a) draft all Government Bills and, on request, proposed Bills for units of the public sector other than departments; 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 instruments); and
- (f) draft, on request, other instruments for use in the Legislative Assembly (whether or not in relation to a Bill or amendment); and
- (g) provide advice to Ministers and units of the public sector 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 units of the public sector on the lawfulness of proposed subordinate legislation; and
- (j) ensure the Queensland statute book is of the highest standard; and
- (k) prepare—
 - (i) reprints of Queensland legislation; 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.

Drafting of government legislation otherwise than by Office

8.(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.

Drafting of exempt instruments

9.(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 printing and drafting style used in exempt instruments.

Private Members' Bills etc.

10.(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.

(3) Confidential communications between a Member or a member of the staff of a Member's office, and the Parliamentary Counsel or a member of the Office's staff, are subject to legal professional privilege.

(4) Without limiting subsection (3), the communications may not be disclosed by the Parliamentary Counsel or the member of the Office's staff without the consent of the Member.

(5) Subsections (3) and (4) have effect despite any other law to the contrary.

Division 2—Staff of the Office

Staff of Office

11.(1) The staff of the Office are to be appointed under the *Public Service Management and Employment Act 1988*.

(2) The Parliamentary Counsel has all the functions and powers of the chief executive of a department, so far as the functions and powers relate to the organisational unit comprising the Office's staff, as if—

- (a) the unit were a department within the meaning of the *Public Service Management and Employment Act 1988*; and

- (b) the Parliamentary Counsel were the chief executive of the department.

Duty of Parliamentary Counsel in relation to training

12. 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

Annual report

13.(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.

(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 printing and publication, a report that is given to the Clerk under subsection (4) is taken to have been laid before the

Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the Clerk.

(7) The first report must cover the Office's operations from the day on which this Act commences until 30 June 1993.

Division 4—Provisions relating to the Parliamentary Counsel

Appointment of Parliamentary Counsel

14.(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 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 *Public Service Management and Employment Act 1988* does not apply to the appointment of the Parliamentary Counsel.

Terms and conditions of appointment

15.(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.

Preservation of rights

16.(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.

Leave of absence

17. The Minister may grant leave of absence to the Parliamentary Counsel on such terms and conditions as the Minister considers appropriate.

Resignation

18. The Parliamentary Counsel may resign by signed notice given to the Governor.

Termination of appointment

19. The Governor in Council may terminate the appointment of the Parliamentary Counsel if the Parliamentary Counsel—

- (a) becomes a patient within the meaning of the *Mental Health Act 1974*; 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.

Delegation of powers

20. The Parliamentary Counsel may delegate powers under this or any other Act to a member of the Office's staff.

Acting Parliamentary Counsel

21. 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—MISCELLANEOUS**Regulations**

22. The Governor in Council may make regulations for the purposes of this Act.

**PART 5—AMENDMENT OF ACTS
INTERPRETATION ACT 1954****Amended Act**

23. The *Acts Interpretation Act 1954* is amended as set out in this Part.

Amendment of s.36 (Meaning of commonly used words and expressions)

24. Section 36—

insert—

“**Aboriginal people**” means people of the Aboriginal race of Australia;

“**Aboriginal tradition**” means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships;

“**community or group of Aboriginal people**” includes—

- (a) the descendants of the community or group; and
- (b) if there is only 1 surviving member of a community or group of Aboriginal people—that person;

“**community or group of Torres Strait Islanders**” includes—

- (a) the descendants of the community or group; and
- (b) if there is only 1 surviving member of a community or group of Torres Strait Islanders—that person;

“**descendant**” includes—

- (a) in relation to Aboriginal people—a descendant under Aboriginal tradition; and
- (b) in relation to Torres Strait Islanders—a descendant under Island custom;

“**Island custom**”, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships;

“**Torres Strait Islander**” is a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands;

“**unit of the public sector**” has the meaning given by the *Public Sector Management Commission Act 1990*.”

