

ACTS INTERPRETATION (STATE COMMERCIAL ACTIVITIES) AMENDMENT BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objective of the legislation is to remove any doubt that the State of Queensland by administrative action may undertake commercial activities whether or not these are within the ordinary functions of State and whether or not such activities are wholly or partly within Queensland, within Australia and its Territories, or outside of Australia and its Territories.

Reasons for the Bill

There has been some doubt expressed as to whether the Executive Government of the State of Queensland has the power, in the absence of authorising legislation, to enable its departments and business units to make legally enforceable contracts for commercial purposes.

To remove these doubts, this proposed amendment to the Acts Interpretation Act declares that the Executive Government does have this power.

NOTES ON PROVISIONS

Clause 1 sets out the short title.

Clause 2 states that the Bill amends the *Acts Interpretation Act 1954*.

Clause 3 inserts a new PART 12—THE EXECUTIVE GOVERNMENT OF THE STATE. The sections inserted—

47 states the purpose of the Part is to declare certain matters and remove any doubt about the matters declared.

The Bill is intended to remove doubts that the State may undertake commercial activities.

47A defines the meaning of “the State” in the Part as the Executive Government of the State of Queensland.

47B confirms that the State has all the powers and legal capacity of an individual and states that these powers can be exercised inside and outside of Queensland and inside and outside of Australia.

The declarations made in the section remove doubts that the State has sufficient power and legal capacity to undertake commercial activities.

47C confirms that the State may undertake commercial activities without:

- further statutory authority; and
- prior appropriation from the public accounts.

It also enables commercial activities to be undertaken inside and outside Queensland and inside and outside Australia. The section defines the ambit of the terms “commercial activities” and “State”.

“**Commercial activities**” are defined as including:

- (a) commercial activities that are not within the ordinary functions of the State;
- (b) commercial activities of a competitive nature; and
- (c) activities declared by a regulation to be commercial activities.

“**State**” includes:

- (a) a department of government of the State; and
- (b) a part of a department of government of the State.

47D confirms that a Minister may carry out commercial activities on behalf of the State.

47E confirms that a Minister may delegate a power of the State to an officer of the State.

The section also empowers an officer of the State to sub-delegate a power to another officer of the State.

The section defines “officer of the State” as meaning:

- (a) a chief executive, or employee, of a unit of the public sector; or
- (b) an officer of the public service.

The operation of a delegated power may be limited, including a prohibition on sub-delegation.

Clause 4 inserts a new section 53 to empower the Governor in Council to make regulations. This will allow the prescription of particular activities to be, or not to be, commercial activities under section 47C.