

Queensland



LEGISLATIVE STANDARDS ACT 1992

**Reprinted as in force on 8 March 2002
(includes amendments up to Act No. 16 of 2000)**

Reprint No. 5B

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 8 March 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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LEGISLATIVE STANDARDS ACT 1992

[as amended by all amendments that commenced on or before 8 March 2002]

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

In this Act—

“**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.¹

“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 *Public Service Act 1996*, section 21.²

“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 the *Statutory Instruments Act 1992*.³

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

1 See also section 27 (References to exempt instruments).

2 *Public Service Act 1996*, section 21 (What is a “government entity”)

3 Because of the *Statutory Instruments Act 1992*, section 43 (Preparation of regulatory impact statement), a regulatory impact statement must generally be prepared for subordinate legislation made after 30 June 1995 if the subordinate legislation is likely to impose appreciable costs on the community or a part of the community.

- (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.

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.⁴

(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

4 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.

Legislative Standards Act 1992

- (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 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
- (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

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- (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 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.

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 printing and 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.

Division 2—Staff of the Office

11 Staff of Office

The staff of the Office are to be employed under the *Public Service Act 1996*.

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.

(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.

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 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 1996*.

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 significant subordinate legislation

(1) A Minister who presents a Government Bill to the Legislative Assembly must, before the resumption of the second reading debate, circulate to Members an explanatory note for the Bill.

(2) When significant subordinate legislation is tabled in the Legislative Assembly, it must be accompanied by an explanatory note prepared under the authority of the responsible Minister.⁵

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;
- (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;

⁵ See the *Statutory Instruments Act 1992*, section 49 (Subordinate legislation must be tabled) for the requirement to table subordinate legislation.

- (h) a simple explanation of the purpose and intended operation of each clause of the Bill.

(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 significant subordinate legislation

(1) An explanatory note for significant subordinate legislation must include the following information about the subordinate legislation in clear and precise language—

- (a) the legislation's short title and any number given to the legislation in the Queensland Subordinate Legislation Series;⁶
- (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—

⁶ Exempt subordinate legislation is not included in the subordinate legislation series because it is not drafted by the Office of the Queensland Parliamentary Counsel.

- (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) 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, 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.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 March 2002. Future amendments of the Legislative Standards Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key**Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 June 1992
2	to Act No. 68 of 1992	9 December 1992
3	to Act No. 70 of 1993	26 March 1994
4	to Act No. 83 of 1994	21 December 1994
4A	to Act No. 38 of 1995	15 August 1996
4B	to Act No. 37 of 1996	15 January 1997
5	to Act No. 37 of 1996	20 June 1997
5A	to Act No. 16 of 2000	30 March 2001

5 List of legislation

Legislative Standards Act 1992 No. 26

date of assent 1 June 1992
commenced on date of assent
amending legislation—

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992
commenced on date of assent

Local Government Act 1993 No. 70 pt 1, s 804 sch

date of assent 7 December 1993
ss 1–2 commenced on date of assent
remaining provisions commenced 26 March 1994 (see s 2(5))

Statutory Instruments and Legislative Standards Amendment Act 1994 No. 83 pts 1, 3

date of assent 1 December 1994
commenced on date of assent

Parliamentary Committees Act 1995 No. 38 ss 1, 35 sch 1

date of assent 15 September 1995
commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

6 List of annotations**Definitions**

- s 2** def “**benefits**” ins 1994 No. 83 s 7(2)
 def “**costs**” ins 1994 No. 83 s 7(2)
 def “**exempt instrument**” amd 1993 No. 70 s 804 sch
 sub 1994 No. 83 s 7
 def “**exempt subordinate legislation**” ins 1994 No. 83 s 7(2)
 def “**government entity**” ins 1996 No. 37 s 147 sch 2
 def “**responsible Minister**” ins 1994 No. 83 s 7(2)
 def “**significant subordinate legislation**” ins 1994 No. 83 s 7(2)

Meaning of “fundamental legislative principles”

- s 4** amd 1992 No. 68 s 3 sch 1; 1994 No. 83 s 8

Functions of Office

- s 7** amd 1992 No. 68 s 3 sch 1; 1994 No. 83 s 9; 1996 No. 37 s 147 sch 2

Application of legal professional privilege to office

- s 9A** ins 1995 No. 38 s 35 sch 1

Private Members’ Bills etc.

- s 10** amd 1995 No. 38 s 35 sch 1

Staff of Office

- s 11** amd 1996 No. 37 s 147 sch 2

Annual report

- s 13** amd R3 (see RA s 37)

Appointment of Parliamentary Counsel

- s 14** amd 1996 No. 37 s 147 sch 2

Termination of appointment

- s 19** amd 2000 No. 16 s 590 sch 1 pt 2

Delegation of powers

- s 20** amd 1992 No. 68 s 3 sch 1

PART 4—EXPLANATORY NOTES

- pt hdg** sub 1994 No. 83 s 10

Explanatory note must be tabled with Bill or significant subordinate legislation

- s 22** sub 1994 No. 83 s 10

Content of explanatory note for Bill

s 23 prev s 23 om R1 (see RA s 40)
 pres s 23 ins 1994 No. 83 s 10

Content of explanatory note for significant subordinate legislation

s 24 prev s 24 om R1 (see RA s 40)
 pres s 24 ins 1994 No. 83 s 10

Validity of legislation is not affected by failure to comply with Part

s 25 ins 1994 No. 83 s 10

PART 5—MISCELLANEOUS

pt hdg prev pt 5 hdg om R1 (see RA s 40)
 pres pt 5 hdg ins 1994 No. 83 s 10

Regulations

s 26 ins 1994 No. 83 s 10

References to exempt instruments

s 27 ins 1994 No. 83 s 10