

Parliamentary Service Amendment By-law (No. 1) 2016

Explanatory notes for SL 2016 No. 86

made under the

Parliamentary Service Act 1988

General Outline

Short title

Parliamentary Service Amendment By-law (No. 1) 2016

Authorising law

Section 50 of the *Parliamentary Service Act 1988*

Policy objectives and the reasons for them

The Speaker is responsible for major policies to guide the operation of the Parliamentary Service. The Speaker also has control over accommodation within the Parliamentary precinct and Electorate Offices.

The Speaker has approved a *Workplace Health and Safety Policy* for the Parliamentary Service, an important component of which is the management of conditions and practices within the workplace, including smoking.

The policy on smoking operates within the following legislative framework:

- the *Parliamentary Service Act 1988*
- the *Work Health and Safety Act 2011*
- the *Work Health and Safety Regulations 2011*
- the *Tobacco and Other Smoking Products Act 1998*
- the *Tobacco and Other Smoking Products Regulation 2010*

While the Queensland Parliament has a policy on smoking, the *Parliamentary Service Act 1988*, and the *Parliamentary Service By-law 2013* do not make reference to restrictions on smoking on the parliamentary precinct or make it an offence.

The objective of this regulation is to explicitly provide that, as part of the regulation under the *Parliamentary Service Act 1988*, smoking on the parliamentary precinct other than in a designated area will be an offence.

The amendment is designed to allow the Queensland Parliament to progressively eliminate smoking on the parliamentary precinct in an effort to reduce rates of smoking and involuntary exposure to second-hand smoke.

Achievement of policy objectives

The Parliamentary Service Amendment By-law (No. 1) 2016 achieves this objective by inserting new provisions under regulation that specifically ban smoking on the parliamentary precinct except in nominated outdoor smoking places.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objective of Section 50 of the *Parliamentary Service Act 1988* which allows the Speaker to make directions, which may take the form of by-laws, to all persons entering or upon the parliamentary precinct as to the behaviour, demeanour and conduct of such persons.

Inconsistency with policy objectives of other legislation

The *Tobacco and Other Smoking Products Act 1998* seeks to create smoke-free areas at prescribed government precincts (under regulation).

The Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015, which was passed on 23 February 2016 and is expected to be proclaimed to commence on 1 September 2016, provides that smoking is prohibited at any government precinct prescribed in regulation, including potentially the Legislative Assembly.

However, the Queensland Parliament (through the Speaker and the CLA) has the right to administer its internal affairs within the parliamentary precincts free from outside interference, including the executive and the courts. This principle is why the Parliament has its own service (the Parliamentary Service), separate appropriation and is excluded from some laws that would otherwise infringe the principle.

This by-law does not completely prohibit smoking on the parliamentary precinct, however it enacts outcomes similar in intent to the bill by introducing new provisions that restricts smoking to nominated outdoor smoking places, as part of a transition to a completely smoke-free environment.

Alternative ways of achieving policy objectives

While the Act contemplates directions of the Speaker being made other than by way of a By-law, by proceeding by way of a By-law ensures that the directions are publicly notified. Also, in accordance with section 50(3) of the Act directions made in the form of a By-law are deemed to have been directed to every person who thereafter enters the precinct.

Benefits and costs of implementation

The benefits of these provisions is that it provides the Queensland Parliament with a progressive transition to providing a smoke-free environment to members and staff. There is no cost to implement these provisions.

Consistency with fundamental legislative principles

Legislating to restrict ordinary activities, without sufficient justification, may be a breach of section (4)(2)(a) of the Legislative Standards Act, which requires legislation to have sufficient regard to the rights and liberties of the individual.

New section 12A, inserted by clause 4, makes it an offence to smoke on the parliamentary precinct unless a person is in a nominated outdoor smoking place. New section 12B, also inserted by clause 4, makes it an offence if a person who is contravening section 12A(1) fails to comply with a direction given by an authorised officer to stop the contravention.

Both offences carry a maximum penalty of 10 penalty units. These penalties are consistent with the maximum penalty for failure to comply with specified directions as to the behaviour, demeanour and conduct of persons entering or upon the parliamentary precinct under the *Parliamentary Service Act 1988*.

These offence provisions are necessary to encourage compliance with efforts to reduce people's exposure to second-hand smoke, reduce the rate of smoking, and provide environments to help people quit smoking.

Consultation

The Committee of the Legislative Assembly (CLA) was consulted by the Speaker to provide feedback on the policy regarding smoking on the precinct. The CLA supported the Speaker's proposed changes.