

Queensland



PRIVATE PROPERTY PROTECTION BILL 2004



PRIVATE PROPERTY PROTECTION BILL 2004

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DICTIONARY

2004

A BILL

FOR

**An Act to provide for the proper consideration of the impact of
legislation on private property, and for the payment of
compensation for the impact**

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Division 1—Introduction 3

1 Short title 4

This Act may be cited as the *Private Property Protection Act 2004*. 5

Division 2—Interpretation 6

2 Definitions 7

The dictionary in the schedule defines particular words used in this Act. 8

3 Meaning of “private property” 9

(1) “**Private property**” means property consisting of— 10

(a) land, including any interest in land and improvements forming
part of land; or 11
12

(b) a right to take or use water. 13

(2) However, “**private property**” does not include property in the
ownership of the State, a State authority or a local government. 14
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4 Meaning of “private property impact legislation” 16

“**Private property impact legislation**” means legislation that has the
effect of diminishing, removing or restricting a person’s rights to the lawful
use or enjoyment of the person’s private property. 17
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Examples— 20

- legislation restricting or taking away a right a person previously had to the lawful
use or enjoyment of the person’s private property, or otherwise causing a lessening
in the extent to which the person may lawfully use or enjoy the private property 21
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- legislation imposing an additional liability on a person in relation to the person's use or enjoyment of the person's private property 1
2
- legislation imposing additional limitations on how private property may be developed 3
4

PART 2—PRIVATE PROPERTY IMPACT STUDIES 5

Division 1—Primary legislation 6

5 Private property impact study required for Bill for private property impact legislation 7 8

(1) This section applies if a Government Bill proposed to be presented to the Legislative Assembly will, when enacted, be private property impact legislation. 9
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(2) Before the Bill is presented, a private property impact study must be prepared for the proposed Bill under the requirements of this Act for a private property impact study. 12
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(3) The Minister who presents the Government Bill to the Legislative Assembly must, before the resumption of the second reading debate, circulate to members of the Assembly the private property impact study prepared for the Bill. 15
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(4) The private property impact study must be in order for circulating to members. 19
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Division 2—Subordinate legislation 21

6 Private property impact study required for subordinate legislation that is private property impact legislation 22 23

(1) This section applies if subordinate legislation proposed to be made will, when made, be private property impact legislation. 24
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(2) Before the legislation is made, a private property impact study must be prepared for the proposed subordinate legislation in accordance with the requirements of this Act for a private property impact study. 26
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(3) When the subordinate legislation is tabled in the Legislative Assembly, the responsible Minister for the subordinate legislation must ensure that the subordinate legislation is accompanied by the private property impact study prepared for the subordinate legislation.

(4) The private property impact study must be in order for tabling.

Division 3—Content of private property impact study

7 Content of private property impact study

(1) A private property impact study must include the following information about the proposed private property impact legislation it relates to—

- (a) a clear and specific identification of the substance of the proposed legislation and the purpose and aims of the proposed legislation;
- (b) an analysis of the extent to which the proposed legislation has the effect of diminishing, removing or restricting persons' rights to the lawful use or enjoyment of private property;
- (c) an identification of the extent to which future development would be restricted by the proposed legislation;
- (d) an analysis and quantification of the total financial cost to private property owners of the imposition of the proposed legislation;
- (e) an analysis and quantification of the benefits of the proposed legislation, and an identification of the persons, or classes of person, to whom benefit accrues;
- (f) an examination of the alternatives to causing, through the proposed legislation, the rights any person has to the lawful use or enjoyment of the person's private property to be diminished, removed or restricted.

(2) It is not necessary for a draft of the proposed legislation to accompany a private property impact study.

(3) However, there is a failure to comply with this Act if, when legislation is presented or made, it is not in substantial conformity with the substance of the legislation as identified in the private property impact study for the legislation.

<i>Division 4—Notification of private property impact study</i>	1
8 Notification and making private property impact study available	2
(1) Preparation of a private property impact study for proposed private property impact legislation must be notified—	3
(a) in the gazette; and	4
(b) in newspapers likely to be read by persons likely to be affected by the proposed legislation; and	5
(c) to all members of the Legislative Assembly; and	6
(d) to all organisations or groups that, in the reasonable opinion of the Minister who will administer the proposed legislation, represent persons likely to be affected by the proposed legislation.	7
(2) Each notice under subsection (1) must—	8
(a) include a brief statement of the policy objectives sought to be achieved by the proposed legislation; and	9
(b) state where copies of the private property impact study may be obtained or inspected; and	10
(c) if a draft of the proposed legislation may be obtained or inspected—state that the draft may be obtained or inspected and where; and	11
(d) state that a person may lodge an objection to the content of the private property impact study if the person’s rights to the lawful use or enjoyment of the person’s private property will be diminished, removed or restricted by the proposed legislation; and	12
(e) state how an objection may be made, and by when it must be made.	13
(3) Without limiting how copies of the private property impact study may be obtained and inspected, the administering department for the proposed legislation must ensure that—	14
(a) copies of the study may be obtained free, or on payment of a reasonable price, at offices of the department; and	15
(b) the study may be inspected on the department’s web site.	16

(4) All notices under subsection (1) must be given, as far as reasonably practicable, at the same time. 1
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Division 5—Objections 3

9 Objection to content of private property impact study 4

(1) A person may lodge an objection with the court about the content of a private property impact study prepared for private property impact legislation. 5
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(2) However, a person may lodge an objection only if the person's rights to the lawful use or enjoyment of the person's private property will be diminished, removed or restricted by the proposed legislation. 8
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(3) The objection must be lodged with the court within 60 days after the notice about the preparation of the private property impact study is published in the gazette. 11
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(4) The only ground on which an objection may be lodged is that the content of the private property impact study does not properly include the information required under this Act for a private property impact study. 14
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10 Notification of objection on web site 17

As soon as practicable after the administering department for the proposed legislation becomes aware of an objection, the department must make an appropriate notation on the department's web site, at the place where the private property impact study may be inspected, notifying that an objection has been lodged with the court. 18
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11 Status of private property impact study if no objection lodged 23

If no objection is lodged with the court within the required time, or if all objections that are lodged within the required time are withdrawn before being finally dealt with by the court, the private property impact study is taken to be in order for circulating or tabling. 24
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12 Dealing with objection 28

(1) An objection lodged with the court under this part must be dealt with as a proceeding brought in the court for a declaration. 29
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(2) Subsection (1) applies subject to particular rules of court made, or particular directions given by the court, in relation to the lodging and hearing of objections under this part.

(3) The parties to an objection lodged under this part are—

(a) the person who lodged the objection, who is taken to be the appellant; and

(b) the State, as represented by the administering department for the proposed legislation, who is taken to be the respondent.

(4) The court may combine 2 or more objections for the 1 hearing.

13 Court's role for objection

In hearing the objection, the court must decide whether the content of the private property impact study properly includes the information required under this Act for a private property impact study.

14 Study found to comply

(1) If the court decides that the content of the private property impact study properly includes the information required under this Act for a private property impact study, it may make a declaration to that effect.

(2) If the court makes a declaration under subsection (1), the private property impact study is in order for circulating or tabling.

(3) A declaration under subsection (1) may be the subject of an appeal to the Land Appeal Court as for an appeal against a decision of the Land Court under the *Land Court Act 2000*.

(4) Subsection (2) has effect subject to the outcome of any appeal mentioned in subsection (3).

15 Study found not to comply

(1) If the court decides that the content of the private property impact study does not properly include the information required under this Act for a private property impact study, it may make an order (a “redrafting order”)—

-
- (a) declaring that the study does not properly include the information required under this Act for a private property impact study; and
- (b) requiring the administering department for the proposed legislation to redraft the study, in accordance with directions or guidance given by the court, to ensure that it includes the information required under this Act for a private property impact study.
- (2) Without limiting subsection (1), the redrafting order may require the department, in redrafting the study, to have regard to particular evidence given by expert witnesses in the hearing of the objection.
- (3) The redrafting order must require the resubmission of the study to the court for its further consideration to the extent necessary to satisfy itself that the redrafting order has been complied with.
- (4) The redrafting order—
- (a) may be the subject of an appeal to the Land Appeal Court as for an appeal against a decision of the Land Court under the *Land Court Act 2000*; and
- (b) has effect subject to the outcome of any appeal mentioned in paragraph (a).
- 16 Further consideration of study**
- (1) If, after the court's further consideration of a private property impact study under a redrafting order, the court decides that the administering department for the proposed legislation has complied with the redrafting order in redrafting the study, it may make a declaration to that effect.
- (2) If the court makes a declaration under subsection (1), the private property impact study is in order for circulating or tabling.
- (3) Unless the court otherwise orders—
- (a) the person who lodged the objection with the court is not entitled to be heard in the court's further consideration of the study under subsection (1); and
- (b) the declaration under subsection (1) can not be the subject of an appeal to the Land Appeal Court under the *Land Court Act 2000*.

Division 6—Miscellaneous**17 Validity of legislation is not affected by failure to comply with private property impact study requirements**

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

(2) This part is directory only and does not create rights or impose legally enforceable obligations on the State, a Minister or anyone else.

(3) However, it is Parliament's intention that this part be complied with in relation to private property impact legislation.

(4) Subsection (2) does not limit the operation of division 5 in relation to an objection lodged with the court, but the State can not be stopped from withdrawing from a proceeding before the court relating to an objection.

(5) Also, the court's powers to require a party to a proceeding before the court to pay costs in the proceeding are not affected by subsection (2), even if the State withdraws from the hearing of an objection.

18 Other subordinate legislation requirements are not affected

If other legislation about a particular type of subordinate legislation provides requirements for publication about a proposal to make subordinate legislation, this part does not affect the requirements.

**PART 3—PRIVATE PROPERTY IMPACT
COMPENSATION****19 Compensation payable for diminishing, removing or restricting of rights**

(1) A person is entitled to be paid compensation by the State for the diminishing, removing or restricting of the person's rights to the lawful use or enjoyment of the person's private property because of new legislation.

(2) The amount of compensation payable is the amount equivalent to any reduction in the fair market value of the property that, at the commencement of the legislation, is reasonably attributable to the impact

of the legislation on the person's rights to the lawful use or enjoyment of the property.

(3) For subsection (2), it is not necessary for the impact to have been identified in a private property impact statement for the legislation.

20 When compensation is not payable

If a matter for which compensation is payable under section 19 is also a matter for which compensation is payable under another Act, the claim for compensation must be made under the other Act.

21 How to claim compensation

(1) A claim for compensation under section 19 must be written and be given to the chief executive within 1 year after the new legislation relevant to the claim commences.

(2) The chief executive may, in special circumstances, allow a longer period under subsection (1).

(3) The claim must be signed by the claimant.

(4) Also, the claim must state the following—

- (a) the name and address of the claimant;
- (b) a description of the property the subject of the claim;
- (c) details of the claimant's interest in the property;
- (d) details of—
 - (i) the impact of the legislation on the claimant's rights to the lawful use or enjoyment of the property; and
 - (ii) the extent to which the rights have been diminished, removed or restricted by the legislation;
- (e) the amount of compensation claimed;
- (f) a statement demonstrating how the amount of compensation claimed has been worked out.

22 Deciding claim for compensation

(1) The chief executive must consider, and decide, a claim for compensation under section 21.

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(2) In deciding the claim, the chief executive must—	1
(a) grant the claim; or	2
(b) grant part of the claim and refuse the rest of the claim; or	3
(c) refuse the claim.	4
(3) The chief executive must, as soon as practicable after deciding the claim, give the claimant an information notice about the decision.	5 6
(4) In this section—	7
“ information notice ”, about the decision, means a notice stating each of the following—	8 9
(a) the decision;	10
(b) the reasons for the decision;	11
(c) if the decision is to pay compensation—the amount of compensation to be paid;	12 13
(d) that the person given the notice may appeal against the decision within 30 days after the day the notice is given and how the person may appeal.	14 15 16
 23 Failure to decide claim for compensation	 17
If the chief executive fails to decide a claim for compensation under section 21 within 60 days after the day the claim is made, the failure is taken to be a decision by the chief executive to refuse the claim.	18 19 20
 24 When compensation is payable	 21
If compensation is payable under this part, the compensation must be paid within 30 days after—	22 23
(a) the last day an appeal could be made against the chief executive’s decision about the payment of compensation; or	24 25
(b) if an appeal is made—within 30 days after the day the appeal is finally decided.	26 27
 25 Starting an appeal	 28
(1) An appeal against a decision under section 22 (the “ original decision ”) is started by—	29 30

- (a) filing a notice of appeal with the court; and 1
 - (b) complying with rules of court applicable to the appeal. 2
 - (2) The notice of appeal must be filed within 30 days after the day the 3
appellant receives notice of the decision or the decision is taken to have 4
been made. 5
 - (3) The court may extend the period for filing the notice of appeal. 6
- 26 Powers of court on appeal** 7
- (1) In deciding the appeal, the court may— 8
 - (a) confirm the original decision; or 9
 - (b) substitute another decision for the original decision. 10
 - (2) If the court substitutes another decision for the original decision, the 11
substituted decision is, for this part (other than section 25), taken to be the 12
decision of the chief executive. 13

SCHEDULE	1
DICTIONARY	2
section 2	3
“administering department” , for proposed private property impact legislation, means the department in which the legislation will be administered.	4 5 6
“Bill” means a Bill for an Act proposed for enactment by the Parliament.	7
“court” means the Land Court.	8
“Government Bill” means a Bill presented, or proposed to be presented, to the Legislative Assembly by a Minister acting in that capacity.	9 10
“lawful use or enjoyment” , of private property, does not include use or enjoyment of the private property that infringes the rights of a person who owns other private property.	11 12 13
“legislation” means—	14
(a) an Act of the Parliament; or	15
(b) subordinate legislation.	16
“new legislation” means private property impact legislation that commences after the commencement of this Act.	17 18
“original decision” see section 25(1).	19
“private property” see section 3.	20
“private property impact legislation” see section 4.	21
“private property impact study” means a document that examines the impact of proposed legislation on the rights of owners of private property affected by the legislation.	22 23 24
“redrafting order” see section 15.	25
“responsible Minister” , for subordinate legislation, means the Minister who administers the law or provision of the law under which the subordinate legislation is made.	26 27 28