



Fundamental Legislative Principles

In Queensland, fundamental legislative principles (FLPs) require that legislation (both Bills and subordinate legislation) should have sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* (Qld). This states that “*fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law*”.

Regarding FLPs, Section 4(3) of the *Legislative Standards Act 1992* states that

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
- (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.

Section 4(4) of the *Legislative Standards Act 1992* states that

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.

Section 4(5) of the *Legislative Standards Act 1992* states that

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.

Queensland Parliament Factsheet

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Background to FLPs in Queensland

In Queensland the former Committee of Subordinate Legislation began examining whether subordinate legislation ‘trespassed unduly on rights previously established by law’ in 1975.

Two reviews in 1991 and 1992¹ by the Queensland Electoral and Administrative Review Commission recommended that Queensland replace the Committee of Subordinate Legislation with a Scrutiny of Legislation Committee that would be given an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new Scrutiny of Legislation Committee to ‘examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation’.

Queensland’s new committee system and FLPs

In 2010, a review of the functions and role of Queensland’s Parliamentary committees led to the instigation of a new system of portfolio-based committees in mid-2011.

One of the key roles of the Parliament’s new portfolio committees is set out in section 93 of the amended *Parliament of Queensland Act 2001* which now makes each portfolio committee responsible for examining all Bills and subordinate legislation within its portfolio area, rather than this being done by a distinct Scrutiny of Legislation Committee (which was abolished under the reforms).

The expanded roles of the portfolio committees mean they must also consider the policy to be given effect by the legislation (a function not previously undertaken by the former scrutiny committees), the application of FLPs to the legislation, and, in respect of subordinate legislation, the lawfulness of the subordinate legislation as made.

Those committees also monitor whether Explanatory Notes or Regulatory Impact Statements provided with legislation contain the information required by the Legislative Standards Act.

Compliance is determined by the Parliament

Compliance with FLPs is not mandatory and it is for the Parliament to determine whether legislation has ‘sufficient regard’ to one or more of the FLPs and whether sufficient justification is given in the Bill’s explanatory notes for any departure from them.

There may be a number of situations where common rights and liberties need to be qualified or curtailed for a legitimate social objective (eg. during times of war or natural disasters). Legislative measures taken to protect society may also intrude on individual rights and involve an acceptable breach of FLPs. For example one of the FLPs requires that any compulsory acquisition of property (by the State from an individual) can only occur if the individual is fairly compensated for their loss. A permissible exception to this FLP would be legislation that allows the State to seize assets bought using the proceeds of crime. This is because it has been determined that there is a societal expectation that criminals should not be allowed to profit from their crimes, and seizing ‘ill-gotten gains’ presents a deterrence to future criminal activity.

¹ Electoral and Administrative Review Commission (1991) ‘*Report on Review of the Office of the Parliamentary Counsel*’, Government Printer, Brisbane; Electoral and Administrative Review Commission (1992) ‘*Report on Review of Parliamentary Committees*’, Government Printer, Brisbane