

Other legislation to understand for practitioners

Under the *Planning Act 2016*
2017



Overview

- Acts (what are they, types of Act, making Acts etc.)
- Reading Acts
- Legislation about legislation
 - *Acts Interpretation Act 1954*
 - *Statutory Instruments Act 1992*
 - *Legislative Standards Act 1992*



Acts

- Acts of Parliament – principal legislation
- Private Acts and public Acts
 - Private Acts – personal Acts and local Acts
 - Public Acts – All Acts passed by Queensland Parliament are public Acts (AIA – s11)
- Acts are good for -
 - Key entities
 - Functions and rights
 - Responsibilities and consequences (look for the consequence)
- Acts are bad for –
 - Aspirations
 - Details
 - “Soft law” – responsibilities with no consequences
- Intrinsic and extrinsic material



Reading Acts - general

- Doctrine of Parliamentary supremacy
- Common law and Statute law – Statutes prevail
- Rule of law - Authority must be based in law, and individual rights subject only to law
- Reading Acts permissively unless context dictates otherwise (functions and powers may be “read down” in some cases, particularly where a broad reading may prejudice rights)
- Rules of statutory interpretation
 - The literal rule
 - The golden rule
 - The mischief rule



Reading Acts - general

- Basic presumptions:
 - Acts presumed not to bind State
 - Acts do not act retrospectively WRT substantive law
 - Acts do not interfere with rights already vested
 - Acts do not oust the jurisdiction of courts
- However, an Act may itself overturn any of these presumptions



Reading Acts

- Separation of powers – legislative, executive (administrative) and judicial functions:
 - Literal separation under Commonwealth law (constitution e.g. Boilermakers case)
 - Separation not so strict under state law – sometimes complex with grey areas
 - Separation strongly reflected in *Planning Act 2016*
 - Functions of a legislative character subject to review on process but not on merits (Parliamentary supremacy again)
 - Functions of an administrative character should be subject to review and/or appeal – few exceptions (e.g. Ministerial call-in)
 - Courts will not involve themselves in “making” law (legislative function)
 - Courts have an “inherent jurisdiction” – jurisdiction to hear anything unless prevented by statute, e.g. through an “exclusive jurisdiction” – e.g. Emerald Towers and Landel cases.



Legislation about legislation

- Office of the Parliamentary Counsel (OQPC):
 - Drafts legislation for both government and private members
 - Advises government on alternative ways of achieving outcomes and FLP's
 - Advice to government on legislative reform and reducing regulatory burden
 - Does NOT provide legal advice
- Legislation OQPC administers:
 - *Acts Interpretation Act 1954*
 - *Statutory Instruments Act 1992*
 - *Legislative Standards Act 1992*



Acts Interpretation Act 1954

- Applies to all Acts (including itself) but “displaced by contrary intention” – i.e. default
- Sometimes confirms basic presumptions and sometimes overturns them
- Reference to a law includes reference to all statutory instruments under the law – i.e. “under this Act” means under the Act, regulation or any statutory instrument.
- Acts assumed to operate to full extent of Parliament’s power – if part exceeds power this does not affect the rest, including its application to person’s
- All Acts after 1852 are public Acts – private Acts do not become public Acts through amendment
- Acts do not affect native title except through express provision



Acts Interpretation Act 1954

- Acts do not affect Parliamentary privileges except through express intention
- Things that are part of an Act:
 - Chapter, part, division and subdivision headings
 - Section headings (after 1991)
 - Examples
 - Note in body of text
 - Schedule or appendix
 - Punctuation
- Things that are not part of an Act:
 - Footnotes
 - Editor's notes
 - Endnotes
- Interpretation best achieving Act's purpose preferred



Acts Interpretation Act 1954

- Extrinsic material –
 - Material in an official copy of the Act
 - Report of royal commission or other commission/committee tabled in Parliament
 - Parliamentary committee report
 - Treaty or international agreement
 - Explanatory notes or other documents tabled in Parliament by member introducing Bill
 - Parliamentary speeches
 - Hansard
 - Document declared by an Act
- Extrinsic material may be used if provision is ambiguous, ordinary meaning would lead to absurdity, or otherwise to confirm ordinary meaning
- Courts may be reluctant to use extrinsic material depending on approach to statutory interpretation



Acts Interpretation Act 1954

- How Acts may be referenced
- What references to Act include (e.g. Act as amended; references to repealed legislation immediately before repeal)
- “Enactment” or “passing” means when Act received assent
- Act commences on assent unless it says otherwise
- May commence in whole or in parts by proclamation – commencing a part may be difficult
- Laws commence automatically 1 year after assent unless a regulation made under the law before commencement states a later day
- Broad power to exercise powers between enactment and commencement BUT anything done (apart from some appointments) does not have effect until commencement



Acts Interpretation Act 1954

- Repeal or amendment of an Act does not:
 - Revive anything not in force
 - Affect the previous operation of the Act or anything “done, suffered or begun”
 - Affect a right acquired under the repealed Act
 - Affect a penalty incurred
 - Affect an investigation, proceeding or remedy
 - End a saving, transitional or validating effect
- Power to make instrument includes a power to amend or repeal by same process
- Extensive provisions about appointments and delegations
- Forms –
 - Approval by chief executive
 - Notified in gazette
 - Substantial compliance sufficient
 - “Properly made” requirements



Acts Interpretation Act 1954

- Meaning of terms:
 - Other parts of speech and grammatical forms have the same meaning
 - Definitions must be read in context
 - Definitions generally apply to entire Act (including instruments)
 - Words of each gender include each other gender
 - Singular includes plural/plural includes singular
 - Meaning of “may” and “must”



Acts Interpretation Act 1954

- Many commonly used terms are defined (often inclusively) – e.g. aboriginal tradition, amend, appropriately qualified, business day, change, coastal waters, commencement, corporation, department, document, entity, gazette, instrument, land, lease, native title, person, provision, public holiday, Queensland waters, repeal, under (for an Act),
- Reckoning of time – period excludes day of Act or event, and sometimes last day
- Service of documents – deliver, give, notify, send, serve etc – service affected by post when received in “ordinary course”



Statutory Instruments Act 1992

- Sets out types of statutory instrument and rules about their use and interpretation
- May be displaced by another instrument
- A **Statutory instrument** is any instrument made under an Act or another statutory instrument
- Must be a regulation, order in council, rule, local law, by-law, ordinance, subordinate local law, statute, proclamation, notification of a public nature, standard of a public nature, guideline of a public nature, or “another instrument of a public nature by which the entity making the instrument unilaterally affects a right or liability of another”
- A **Statutory rule** is a statutory instrument made or approved by the Governor in Council (definition really for purposes of SIA only)



Statutory Instruments Act 1992

- **Subordinate legislation is -**
 - A statutory rule that is a regulation, rule, ordinance, bylaw, order in council or proclamation; or
 - Another statutory instrument declared under an Act to be subordinate legislation
- Subordinate legislation –
 - Must be drafted by OQPC
 - Is subject to Parliamentary disallowance
 - Mostly expires after 10 years unless exempted by regulation
- General rule of statutory interpretation
 - Principal legislation prevails over subordinate legislation
 - Subordinate legislation prevails over other statutory instruments



Statutory Instruments Act 1992

- Statutory instruments
 - Presumed properly made in the absence of evidence to contrary
 - Continue if removed or replaced by another instrument through an amendment, but not under a new law
 - Assumed to operate to full extent of authorising law
 - May “apply, adopt or incorporate” an Act, statutory instrument, law or other document in two ways
 - May be of general or limited application
 - May prohibit
 - May provide for review or appeal (statutory rule only)
 - May prescribe fee as a “reasonable amount”
 - Beneficial provisions may be retrospective
 - Terms have same meaning as in authorising law



Legislative Standards Act 1992

- Establishes Office of Queensland Parliamentary Counsel (OQPC)
- Requires OQPC to draft all principal and subordinate legislation
- Establishes other OQPC functions:
 - provide advice on regulatory reform
 - alternative ways of achieving policy objectives
 - the application of fundamental legislative principles
 - providing reprints and other legislative information
- Sets standards for explanatory notes



Legislative Standards Act 1992

- Fundamental legislative principles (FLP's):
 - Make rights, liberties and obligations subject to legislative power only if the power is sufficiently defined and subject to review
 - Consistent with natural justice
 - Delegation only in appropriate circumstances to appropriate persons
 - Do not reverse onus of proof without adequate justification
 - Powers of entry etc. only with warrant
 - Protection against self-incrimination
 - Do not adversely affect rights and liberties retrospectively
 - Do not confer immunity from proceeding or prosecution without adequate justification
 - Provide for compulsory acquisition only with fair compensation
 - Sufficient regard for Aboriginal tradition and Island custom
 - Unambiguous and clearly drafted



Legislative Standards Act 1992

- Fundamental legislative principles (FLP's):
 - Delegation of legislative power only in appropriate cases to appropriate persons
 - Sufficiently subject delegated legislative power to the scrutiny of the legislative assembly
 - Authorises amendment of an Act only by another Act (Henry VIII)
 - Subordinate legislation has sufficient regard to the institution of Parliament, has appropriate content, is consistent with authorising law, amends statutory instruments only and allows sub-delegation only in appropriate circumstances.



Economy Development Act 2012

- Brings together the powers and functions of the Minister for Industrial Development Queensland (delivered through the Property Services Group) and the Urban Land Development Authority (ULDA).
- Establishes the Minister for Economic Development Queensland (MEDQ) who also has responsibility for a new unit within the Department of State Development, Infrastructure and Planning known as Economic Development Queensland (EDQ)
 - EDQ identifies and drives economic development and development for community purposes in consultation and partnership with local government
- Provides greater emphasis on supporting, facilitating and fast-tracking economic development in Queensland by refining and improving existing processes



Building Act 1975

- Governs all building work in Queensland
- Empowers the regulation of certain aspects of buildings and structures
- Provides for what building work is assessable development for the Planning Act
- Imposes additional requirements to those under the Planning Act
- Provides the laws for the assessment of building development application and self-assessable building work
- Provides for the giving of final inspection certificates and other inspection documents for particular building
- Regulates private building certifiers. Licensing, investigations, and disciplinary proceedings
- Provisions for fire safety for budget and residential care buildings
- Swimming pool safety and other particular building assessment work



Regional Planning Interests Act

- Identifies and protects areas of Queensland that are of regional interest
 - This is to manage the impact and support coexistence of resource activities and other regulated activities in areas of regional interest
- seeks to strike an appropriate balance between protecting priority land uses and delivering a diverse and prosperous economic future for our regions
- It protects:
 - living areas in regional communities
 - high-quality agricultural areas from dislocation
 - strategic cropping land
 - regionally important environmental areas
- It provides for a transparent and accountable process for the impact of proposed resource activities and regulated activities on areas of regional interest to be assessed and managed

