

Drafting local laws

Fact Sheet

Local governments must adhere to stipulated guidelines and legislative principles when drafting local laws.

Statutory guidelines for drafting local laws

Sections 29(5) of the *Local Government Act 2009* and 30(5) of the *City of Brisbane Act 2010* provide that a local law must be drafted in accordance with the **Guidelines for drafting local laws** (drafting guidelines) issued by the Parliamentary Counsel under section 9 of the *Legislative Standards Act 1992*.

The drafting guidelines apply to all local laws and have been specifically developed to assist local governments in drafting high quality and consistent laws. They are a useful tool for local law drafters and include practical examples on the application of contemporary legislative drafting standards.

Matters covered by the guidelines include:

- if repealing or amending another local law, the local law must include a provision that repeals or amends an existing local law
- structure
- relationship of local laws with other legislation
- format and printing style
- dealing with definitions
- drafting style including language and clarity
- penalty and obligation provisions
- rules relating to amendment local laws
- the application of fundamental legislative principles.

Fundamental legislative principles

Fundamental legislative principles, designed to protect the rights and liberties of individuals, are defined in section 4 of the *Legislative Standards Act 1992*. Care should be taken to observe and apply fundamental legislative principles when drafting local laws.

The **Guidelines for drafting local laws** provide details about the fundamental legislative principles with practical examples on their application including, but not limited to:

- consistency with the principles of natural justice
- reversal of onus of proof
- judicial warrants to exercise entry, search and seizure powers
- protections against forced self incrimination
- implementing retrospective laws
- Aboriginal tradition and Island custom

- inappropriate imposition of responsibility
- undue restrictions imposed on ordinary activities
- proportionality of offences
- appropriate defences
- use of extraordinary powers only in exceptional or urgent circumstances.

It is important to note that while a departure from the fundamental legislative principles may be justifiable in certain circumstances any decision to do so must be based on sound reasoning.