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| **Annotated template:**  **Drafting instructions for Bills, Amendments in Consideration in Detail and Subordinate Legislation**  This annotated template is designed to help instructing officers prepare the initial comprehensive drafting instructions required to authorise the drafting of legislation.  The format of drafting instructions can vary depending on the nature, length and complexity of the legislation and this template can be adapted to suit your project. However, to assist OQPC in preparing your legislation, please ensure that you address each of the issues identified in this template that are relevant to your legislation. Please also number the paragraphs in your drafting instructions for ease of reference.  As you work your way through the template and complete each part, please delete the green explanation boxes and yellow highlighted text. Also, where options are provided, please delete the options that don’t apply to your legislation.  To prepare effective and comprehensive drafting instructions, please also consider the following handbooks and legislation:   * Queensland Legislation Handbook (available at [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au)) * Queensland Cabinet Handbook (available at [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au)) * Queensland Executive Council Handbook (available at [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au)) * Working with OQPC on Queensland legislation(available at [www.oqpc.qld.gov.au](http://www.oqpc.qld.gov.au)) * *Acts Interpretation Act 1954* (available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)) * *Human Rights Act 2019* (available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)) * *Legislative Standards Act 1992* (available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)) * *Statutory Instruments Act 1992* (available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au))   The following checklists and guidelines have also been prepared by OQPC and are available at [www.oqpc.qld.gov.au](http://www.oqpc.qld.gov.au):   * Instructor’s Checklist for Departmental Officers – Bills and Amendments in Consideration in Detail * Instructor’s Checklist for Departmental Officers – Subordinate Legislation * Guideline for Instructors – Re-writing Subordinate Legislation * Guideline for Instructors – Fee amendment regulations   Please send drafting instructions to [Parliamentary.Counsel@premiers.qld.gov.au](mailto:Parliamentary.Counsel@premiers.qld.gov.au) |

Drafting Instructions

**[PROPOSED NAME/DESCRIPTION OF LEGISLATION]**

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| --- |
| For principal legislation, insert a suggested name for the legislation. For amending legislation, insert ‘Amendments to the XYZ Act 2021’. For amendments in consideration in detail, insert ‘Amendments in consideration in detail to the XYZ Bill 2021’. |

**Instructing Officers**

**Coordinating officer** [if more than 1 instructor]

|  |  |
| --- | --- |
| Name: | Phone: |
| Position: | Mobile: |
| Work area: | Email: |
| Availability: [Please insert any part-time arrangements/periods of leave] | |

**Other instructing officers**

|  |  |
| --- | --- |
| Name: | Phone: |
| Position: | Mobile: |
| Work area: | Email: |
| Availability: [Please insert any part-time arrangements/periods of leave] | |

**Alternative Contact**

Please advise the name and contact details of another officer we can contact about urgent matters in the event the instructors are unavailable.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name: | | | Phone: | | |
| Position: | | | Mobile: | | |
| Work area: | | | Email: | | |
| Availability: [Please insert any part-time arrangements/periods of leave] | | | | | |
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**PART 1 - AUTHORITY, URGENCY AND CRITICAL DATES**

## ****Authority to prepare *[For a Bill or ACiD only]*****

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| Please note that OQPC will be unable to provide drafts of the proposed legislation until authority to prepare the legislation has been given.  If any aspect of the instructions is not yet settled or is subject to further policy development, please advise OQPC in this part. |

1. On [date], Cabinet gave authority to prepare [proposed name/description of legislation] (Decision No. XXX).

***OR***

1. Authority to prepare [proposed name/description of legislation] will be sought from Cabinet on [date].

## Authority to draft *[For subordinate legislation only]*

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| For subordinate legislation, please advise whether:   * the instructions are final, or draft only and awaiting approval in accordance with your department’s processes * the subordinate legislation is significant subordinate legislation.   If any aspect of the instructions is not yet settled or is subject to further policy development, please advise OQPC in this part. |

1. The department confirms that the [proposed name/description of legislation] is to be drafted in accordance with the instructions.

***OR***

1. The drafting instructions are a draft only. The department will advise as soon as approval is received.
2. The subordinate legislation [is / is not] significant subordinate legislation.

## Critical dates

|  |
| --- |
| The dates you include in this part of your drafting instructions should indicate a practical timetable for drafting the legislation that takes into account the periods required for internal departmental approvals and lodgement in the Cabinet bag or with the Executive Council Secretariat. As a guide, the drafting time required for legislation that has not been given particular priority by the government is approximately 3 months for legislation less than 20 pages and 12 months for legislation over 90 pages. For more information about establishing a practical timetable, see the Queensland Legislation Handbook, chapter 2.8 (Establishing a practical timetable).  Before finalising your instructions, OQPC would be happy to work with you to develop a practical timetable for your legislation.  If your legislation is required urgently, please insert the reasons for the urgency in this part of your drafting instructions. If your proposal is urgent, you may wish to consult with a Deputy Parliamentary Counsel before sending your instructions. |

1. *[For a Bill or ACiD]* The proposed timeframes for the legislation are as follows:

|  |  |
| --- | --- |
| Version of draft legislation required for department’s internal approval processes | [date] |
| Lodgement of advance authority to introduce (ATI) submission | [date] |
| Lodgement of final ATI submission | [date] |
| ATI submission considered by Cabinet | [date] |
| Legislation introduced into Parliament | [date] |

1. *[For subordinate legislation]* The proposed timeframes for the legislation are as follows:

|  |  |
| --- | --- |
| Version of draft legislation required for department’s internal approval processes | [date] |
| Lodgement of advance authority to forward (ATF) submission for significant subordinate legislation | [date or N/A] |
| Lodgement of final ATF submission | [date or N/A] |
| ATF submission considered by Cabinet | [date or N/A] |
| Certified version of proposed legislation required | [date] |
| Legislation considered by Governor in Council | [date] |

## Consultation

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| Consultation versions generally need to be reviewed by a senior drafter and given an editorial check before being finalised. Your timeframe for requiring a consultation version should provide sufficient time to allow these processes to occur. If a consultation version is required, you should consult your drafter as early as possible to work out a suitable timeframe. |

1. A consultation version of the draft legislation [is / is not] required.
2. The department will be consulting with [external stakeholders and/or the courts, or within government only].
3. The proposed timeframes for consultation are as follows:

|  |  |
| --- | --- |
| Consultation version of draft legislation required for department’s internal approval processes | [date] |
| Consultation period | [date] |
| Further instructions to be provided to OQPC following consultation | [date] |

**PART 2 - BACKGROUND AND POLICY RATIONALE**

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| In this part, set out the reason the legislation is required, including:   * the issues or problems the legislation is intended to address * why legislation, rather than an administrative arrangement, is required * the policy objectives to be achieved * a short summary/overview of the policy to be implemented – who it applies to, what has to be done and why.   Please also:   * attach any reports or other documents that are referred to in, or provide important background information to, the drafting instructions * if OQPC has previously been consulted about the drafting instructions, state who was consulted and when * provide an explanation of any technical or specialised terms used in the instructions. |

**PART 3 - LAW AND LEGISLATIVE ENVIRONMENT**

## Relevant legislation, legal advice and common law matters

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| This part should include relevant details about:   * the relationship between the proposed legislation and existing legislation or laws * for subordinate legislation, the authorising provisions (or heads of power) for the proposed legislation * the provisions of existing legislation that need to be amended or repealed * whether the proposed legislation is national uniform legislation * any similar legislative schemes in this or other jurisdictions that the department has considered in preparing the drafting instructions, including how the proposed legislation is to be similar to or different from the other legislation * any relevant legal advices (please attach copies) * any relevant court decisions (please attach copies or hyperlinks) * any other legislative proposals that may affect the proposed legislation |

## Effect on and consultation with other agencies

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| This part should discuss:   * any effects the proposed legislation may have on other departments or agencies, including effects on legislation administered by those departments or agencies * the extent to which the other departments or agencies have been or will be consulted.   The Queensland Cabinet Handbook, chapter 6.2 (Consultation within government) sets out requirements for consultation within government.  You should also:   * seek approval from the Department of Justice and Attorney-General for any amendments to the *State* *Penalties Enforcement Regulation 2014* * consult with any agencies that will be involved in administering the proposed legislation * consult with any agencies that are responsible for administering legislation that will be amended as a consequence of the proposed legislation. |

## Politically sensitive issues

1. [insert information about any politically sensitive issues].

**PART 4 - FUNDAMENTAL LEGISLATIVE PRINCIPLES**

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| For the meaning of fundamental legislative principles, see the *Legislative Standards Act 1992*, section 4. See also the Queensland Legislation Handbook, chapter 7 (Fundamental legislative principles). |

1. The proposed legislation is potentially inconsistent with the following fundamental legislative principles:

* [insert text].

1. [insert assessment of potential inconsistencies including reasons for inconsistency].

***OR***

1. No potential inconsistencies with fundamental legislative principles have been identified.

**PART 5 - HUMAN RIGHTS**

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| See also the Queensland Legislation Handbook, chapter 8 (Human Rights). |

1. The proposed legislation potentially limits the following human rights under the *Human Rights Act 2019*:

* [insert text].

1. [insert assessment of compatibility with human rights].

***OR***

1. No potential limits on human rights have been identified.

**PART 6 - PRELIMINARY MATTERS**

## Commencement *[For a Bill or ACiD only]*

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| For the commencement of Acts, see the *Acts Interpretation Act 1954*, part 5. See also the Queensland Legislation Handbook, chapter 2.12.2 (Commencement and expiry).  Please state whether the proposed legislation is to commence on assent, on a particular date or on a day to be fixed by proclamation, or a combination of these.  If any aspect of the legislation is to commence retrospectively, this must be specifically stated. Unless otherwise requested, OQPC will draft all provisions to have prospective effect only. A provision that retrospectively adversely affects rights and liabilities must be specifically argued as a justifiable breach of fundamental legislative principles. Criminal liability is never imposed retrospectively by the creation of a new offence. |

1. The proposed legislation is to commence on [assent OR a particular date OR a day to be fixed by proclamation].

## Commencement *[For subordinate legislation only]*

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| For the commencement of subordinate legislation, see the *Statutory Instruments Act 1992*, part 4, division 3, subdivision 3.  Please state whether the proposed legislation is to commence on notification, on a particular date or on the occurrence of a particular event (such as the commencement of an authorising Act or provision), or a combination of these.  If any aspect of the legislation is to commence retrospectively, this must be specifically stated. Unless otherwise requested, OQPC will draft all provisions to have prospective effect only. Under the *Statutory Instruments Act 1992*, section 34, a beneficial provision of a statutory instrument may be given retrospective operation. |

1. The proposed legislation is to commence on [notification OR a particular date OR the occurrence of a particular event].

## Application of the legislation *[for Bills and ACiDs only]*

### Extraterritorial application

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| You should explain if the new law is to be applied outside Queensland. Generally, it is unnecessary to expressly apply the legislation extraterritorially as there are adequate provisions in the Criminal Code, sections 12 to 14, the *Crimes at Sea Act 2001* and the *Acts Interpretation Act 1954*, part 12.  However, sometimes the nature of the scheme requires an extraterritorial statement. These generally occur in national laws, the object being to create a seamless law across jurisdictions. In other legislation, the terms of the provisions of the legislation may make it desirable to include an extraterritorial statement to ensure the effectiveness of the provisions.  The essential issue is whether the legislation spells out clearly enough the connection to Queensland that is necessary to make the legislation constitutionally valid as being within the plenary power of the State.  For more information about extraterritorial application, see the Queensland Legislation Handbook, chapter 1.4 (The power of the Parliament of Queensland). |

1. The legislation [will/will not] apply extraterritorially.
2. [insert details of any extraterritorial application].

### Binding the State

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| For more information about binding the State or another Australian body politic, see the Queensland Legislation Handbook, chapter 2.12.1 (General application provisions). |

1. The legislation [will / will not] bind the State.

***OR***

1. The legislation will bind the State, and as far as the legislative power of the Parliament permits, the Commonwealth and other States. The Commonwealth or a State [can / cannot] be prosecuted for an offence against the legislation.

**PART 7 - DETAILED INSTRUCTIONS AND POLICY TO BE IMPLEMENTED**

## Purpose/objectives of the legislation

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| In this part, please outline the purpose or objectives of the proposed legislation. Your drafter will advise whether it would be useful for interpretive purposes for the proposed legislation to include a specific list of objectives (known as an objectives provision). If an objectives provision is included, care needs to be taken about the legal effect. Mere aspirational statements can cause difficulty in interpretation—a court may hold the government to the lofty aims expressed.  As a general rule, the objectives in an objectives provision need to connect to the provisions by which the objectives are achieved, including using consistent language. |

1. The purpose/objectives of the legislation are to [set out the purpose/objectives of the legislation].

## [Policy area 1]

### Current legal framework

1. [insert text].

### Issues and policy

1. [set out the issues/problems to be addressed and the intended policy outcomes].

### Instructions

1. Please [insert / amend / omit / replace] to [set out the intended outcome].

## [Policy area 2]

### Current legal framework

1. [insert text].

### Issues and policy

1. [set out the issues/problems to be addressed and the intended policy outcomes].

### Instructions

1. Please [insert / amend / omit / replace] to [set out the intended outcome].

## Required regulation-making powers *[for Bills and ACiDs only]*

1. The following matters are intended to be dealt with in subordinate legislation:

* [insert text]

## Transitional issues

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| For more information about considering transitional issues, see the Queensland Legislation Handbook, chapter 2.12.12 (Transitional and savings provisions). |

1. Transitional provisions are required to [detail the transitional arrangements required to ensure a smooth transition from the current law to the new legislation].

***OR***

1. No transitional provisions are required.

## Consequential amendments

1. [set out the provisions of legislation that will require amendment as a consequence of the proposed legislation and how they are to be amended].

***OR***

1. No consequential amendments are required.