



**SUBORDINATE LEGISLATION AMENDMENT
ACT 1994**

No. 77 of 1994

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**SUBORDINATE LEGISLATION AMENDMENT
ACT 1994**

No. 77 of 1994

AN ACT to amend the *Subordinate Legislation Act 1992*

[Royal Assent 16 December 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Subordinate Legislation Amendment Act 1994*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Subordinate Legislation Act 1992** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

- (a) by omitting “In this Act” and substituting “(1) In this Act”;
- (b) by inserting in subsection (1) the following definition after the definition of “responsible Minister”:—
 “**Secretary**” means Secretary of the Department;
- (c) by omitting from subsection (1) the definition of “subordinate legislation” and substituting the following definition:—

 “**subordinate legislation**” means—

- (a) a regulation, rule or by-law that is—
 - (i) made by the Governor; or
 - (ii) made by a person or body other than the Governor but required by law to be approved, confirmed or consented to by the Governor; or
- (b) any other instrument of a legislative character that is—
 - (i) made under the authority of an Act; and
 - (ii) declared by the Treasurer under subsection (2) to be subordinate legislation for the purposes of this Act;
- (d) by adding the following subsections:—

(2) The Treasurer, by notice published in the *Gazette*, may declare an instrument of a legislative character that is made under the authority of an Act to be subordinate legislation for the purposes of this Act.

* No. 30 of 1992.

(3) A notice under subsection (2) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Section 3A inserted

5—After section 3 of the Principal Act, the following section is inserted in Part 2:—

Guidelines

3A—(1) The Treasurer, by notice in the *Gazette*, may issue guidelines for the preparation of subordinate legislation.

(2) A notice under subsection (1) may contain such guidelines as the Treasurer considers necessary or expedient for the purposes of ensuring that—

- (a) the objectives of proposed subordinate legislation are clearly formulated and that those objectives are—
 - (i) reasonable and appropriate; and
 - (ii) in accordance with the objectives, principles, spirit and intent of the Act which would authorize the proposed subordinate legislation to be made; and
 - (iii) not inconsistent with the objectives of other Acts, subordinate legislation or government policies; and
- (b) the advantages and disadvantages of the proposed subordinate legislation are properly identified and considered; and
- (c) the impact of the proposed subordinate legislation on competition is properly identified and considered; and
- (d) alternative options for achieving the objectives of the proposed subordinate legislation, and the option of not proceeding with any legislative action, are properly considered; and
- (e) the preparation of subordinate legislation is effectively co-ordinated; and
- (f) the procedures for the preparation of subordinate legislation are, as far as possible, standardized.

(3) A notice under subsection (1) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

(4) The Treasurer may from time to time rescind guidelines issued under subsection (1) and issue new guidelines under that subsection.

Section 4 amended (Compliance with guidelines)

6—Section 4 of the Principal Act is amended by omitting “set out in Schedule 1” and substituting “issued under section 3A”.

Section 5 amended (Regulatory impact statements)

7—Section 5 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “burden” and substituting “significant burden”;

(b) by inserting the following subsections after subsection (1):—

(1A) The question of whether any part of proposed subordinate legislation would or would not impose a significant burden, cost or disadvantage on any sector of the public is to be determined by the Secretary after considering the advice of the responsible Department in relation to the Act which would authorize the proposed subordinate legislation to be made.

(1B) The Secretary, on making a determination under subsection (1A), must provide a certificate setting out particulars of the determination to the responsible Minister.

(1C) A determination of the Secretary under subsection (1A) is conclusive.

(1D) If it is necessary to prepare a regulatory impact statement in respect of proposed subordinate legislation, the responsible Minister must, after the statement is prepared, obtain a certificate from the Secretary in respect of the statement certifying that—

- (a) it complies with the requirements of Schedule 2; and
- (b) the nature and extent of the consultation proposed to be undertaken pursuant to subsection (2) is appropriate.
- (c) by omitting from subsection (2) “The responsible Minister must ensure that before subordinate legislation is made” and substituting “If it is necessary to prepare a regulatory impact statement in respect of proposed subordinate legislation, the responsible Minister must, subject to subsection (2A), ensure that before the proposed subordinate legislation is made”;
- (d) by omitting from subsection (2) (a) (ii) “where a regulatory impact statement is prepared under subsection (1),”;
- (e) by omitting from subsection (2) (a) (iii) “whether, and (if so) where,” and substituting “where”;
- (f) by inserting the following subsection after subsection (2):—

(2A) The responsible Minister must not take the action referred to in subsection (2) in respect of proposed subordinate legislation before obtaining the certificate referred to in subsection (1D).

- (g) by omitting from subsection (3) “The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are” and substituting “For the purposes of subsection (2), the nature and extent of the consultation regarding the proposal is”.

Section 6 amended (Regulatory impact statements not necessary in certain cases)

8—Section 6 of the Principal Act is amended as follows:—

- (a) by omitting “A Minister need not comply with section 5” and substituting “The responsible Minister need not comply with sections 4 and 5”;

- (b) by omitting from paragraph (a) “Chief Parliamentary Counsel” and substituting “Secretary”;
- (c) by omitting from paragraph (b) “Premier” and substituting “Treasurer”;
- (d) by omitting from paragraph (b) “section 5.” and substituting “sections 4 and 5; or”;
- (e) by inserting the following paragraph after paragraph (b):—
 - (c) the person or body that would be responsible to the responsible Minister for administering the proposed subordinate legislation is a State Authority within the meaning of the *State Authorities Financial Management Act 1990* and the Secretary certifies in writing that—
 - (i) the proposed subordinate legislation exclusively concerns the setting of fees, charges or tariffs or other commercial operations of that State Authority; and
 - (ii) the proposed subordinate legislation does not concern the public regulatory functions or powers or the administrative operations of that State Authority; and
 - (iii) the Secretary is satisfied that the commercial operations of that State Authority would be impeded or its commercial efficiency diminished if the Minister were to comply with sections 4 and 5.

Section 8 amended (Requirements before making subordinate legislation)

9—Section 8 of the Principal Act is amended by omitting everything after “the proposed subordinate legislation” and substituting “the advice given by the Chief Parliamentary Counsel under section 7 and—

- (a) if a certificate has been issued under section 6—that certificate; or

- (b) if no certificate has been issued under section 6 and it was not necessary to prepare a regulatory impact statement—a certificate of the responsible Minister certifying that section 4 has been complied with; or
- (c) if no certificate has been issued under section 6 and it was necessary to prepare a regulatory impact statement—the certificate of the Secretary under section 5 (1D).”.

Section 9 amended (Certain documents to be sent to Subordinate Legislation Committee)

10—Section 9 of the Principal Act is amended as follows:—

- (a) by omitting subsection (1) and substituting the following subsections:—

(1) In this section, “**subordinate legislation**” does not include an instrument referred to in paragraph (b) of the definition of “subordinate legislation” in section 3.

(1A) If subordinate legislation is made the responsible Minister must send to the Subordinate Legislation Committee a copy of the advice given by the Chief Parliamentary Counsel under section 7 and—

- (a) if a certificate has been issued under section 6—a copy of that certificate; or
- (b) if no certificate has been issued under section 6 and it was not necessary to prepare a regulatory impact statement—a copy of the certificate of the responsible Minister certifying that section 4 has been complied with; or
- (c) if no certificate has been issued under section 6 and it was necessary to prepare a regulatory impact statement—a copy of the certificate of the Secretary under section 5 (1D) together with—
 - (i) a copy of the regulatory impact statement; and
 - (ii) a copy of the comments and submissions, if any, received pursuant to section 5 (2) (a) (iv).

Section 11 amended (Staged repeal of subordinate legislation)

11—Section 11 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) Subject to subsection (5), unless it sooner ceases to be in force, subordinate legislation made before a date specified in Column 1 below is repealed on the date specified opposite in Column 2—

COLUMN 1	COLUMN 2
1 January 1954	1 January 1996
1 January 1964	1 January 1997
1 January 1967	1 January 1998
1 January 1973	1 January 1999
1 January 1977	1 January 2000
1 January 1981	1 January 2001
1 January 1984	1 January 2002
1 January 1987	1 January 2003
1 January 1991	1 January 2004
date of commencement of this Act	1 January 2005

(b) by omitting from subsection (2) “published” (twice occurring) and substituting “made”;

(c) by inserting the following subsections after subsection (4):—

(5) The Governor, by order, may postpone by a period not exceeding 12 months the date on which any subordinate legislation specified in the order would otherwise be repealed under subsection (1).

(6) An order under subsection (5) is to be made before the date on which the subordinate legislation to which the order applies would, but for the order, be repealed under subsection (1).

Section 12 amended (Provisions regarding publication)

12—Section 12 (1) of the Principal Act is amended by omitting “been published” and substituting “been made”.

Section 14 amended (Regulations and orders)

13—Section 14 of the Principal Act is amended as follows:—

(a) by omitting “The Governor” and substituting “(1) The Governor”;

(b) by adding the following subsections:—

(2) The Governor, by order, may do either of the following:—

(a) amend Schedule 2 or Schedule 3 or both of those schedules;

(b) repeal Schedule 2 or Schedule 3 or both of those schedules and substitute, in each case, a new schedule.

(3) The power of the Governor under subsection (2) is not exercisable after 31 December 1995.

Section 18 repealed

14—Section 18 of the Principal Act is repealed.

Schedule 1 amended (Guidelines for the preparation of subordinate legislation)

15—Schedule 1 to the Principal Act is amended as follows:—

(a) by omitting paragraph (d) from clause 2 and substituting the following paragraph:—

(d) consideration must be given to the advantages and disadvantages expected to arise from each such option as compared with the advantages and disadvantages (direct and indirect, and tangible and intangible) expected to arise from proceeding with the subordinate legislation; and

(b) by inserting in clause 2 the following paragraph after paragraph (d):—

(da) consideration must be given to the impact of the proposed subordinate legislation on competition and, where a significant restriction on competition is identified, consideration must also be given to whether the advantages of the proposed restriction outweigh the likely disadvantages and, if so, whether the proposed restriction represents the absolute minimum that is necessary in the public interest; and

(c) by inserting in clause 3 (b) “and competition” after “economy”;

(d) by inserting in clause 3 the following paragraph after paragraph (b):—

(ba) regulatory restrictions should not be imposed on competition unless it can be clearly demonstrated that it is in the public interest for the restriction to be imposed;

Schedule 2 amended (Provisions applying to regulatory impact statements)

16—Clause 1 of Schedule 2 to the Principal Act is amended by inserting the following paragraph after paragraph (d):—

(da) an assessment of the impact of the proposed subordinate legislation on competition and, where a significant restriction on competition is identified, an evaluation of whether the benefits of the proposed restriction outweigh the likely costs and, if so, whether the restriction represents the absolute minimum that is necessary in the public interest; and

Schedule 3 amended (Exempt matters and categories)

17—Part 1 of Schedule 3 to the Principal Act is amended by inserting the following clauses after clause 4:—

5—Matters of a declaratory, machinery or procedural nature.

6—Matters involving relations between bodies that are departments within the meaning of the *Administrative Arrangements Act 1990*.

7—Matters involving the administrative or financial organization or the procedures of bodies that are departments within the meaning of the *Administrative Arrangements Act 1990*.

8—An order of the Governor under section 11 (5) or 14 (2) of this Act.

Transitional provision

18—(1) In this section, “**Principal Act**” means Principal Act as amended by this Act.

(2) Until guidelines are issued by the Treasurer under section 3A of the Principal Act, the guidelines set out in Schedule 1 to the Principal Act are taken to be the guidelines that the Treasurer has issued under that section of the Principal Act.

[Second reading presentation speech made in:—
House of Assembly on 11 October 1994
Legislative Council on 27 October 1994]

