

LEGISLATIVE ASSEMBLY

Read 1° 24 October 1984

(Brought from the Legislative Council)

A BILL

for

An Act to make provision for adequate, effective and co-ordinated processes in the preparation and making of subordinate legislation which enable consultation, evaluation and review of subordinate legislation, to reduce the volume of subordinate legislation, to ensure that there is adequate scrutiny of subordinate legislation, to amend the *Subordinate Legislation Act 1962* and the *Parliamentary Committees Act 1968* and for other purposes.

5 BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

Short title.

1. This Act may be cited as the *Subordinate Legislation (Review and Revocation) Act 1984*.

Principal Act.

10 2. In this Act the *Subordinate Legislation Act 1962* is referred to as the Principal Act.

No. 6886.
Reprinted to No.
9486.
Subsequently
amended by No.
9765.

Commencement.

3. This Act shall come into operation on 1 July 1985.

Declaration of instrument which is not of a legislative character.

Amendment of
No. 6886.

4. (1) After section 2 (2) of the Principal Act there shall be inserted the following sub-sections: 5

“(3) The Attorney-General may on the advice of the Legal and Constitutional Committee declare by notice in writing published in the *Government Gazette* that an instrument or class of instrument which is a statutory rule within the meaning of paragraph (a), (b) or (c) of the interpretation of “statutory rule” is not of a legislative character but relates only to matters which are of a fundamentally declaratory or machinery nature. 10

(4) Where the Attorney-General makes a declaration under sub-section (3)—

(a) the provisions of this Act shall not apply to or in respect of that instrument or class of instrument; 15

(b) it shall be sufficient compliance with the requirements of the Act under which the instrument or class of instrument is made if the instrument is published in the *Government Gazette*; and 20

(c) unless provision is made to the contrary in the Act under which the instrument or class of instrument is made, the instrument shall come into operation on the day on which it is published in the *Government Gazette* or such later day or days as may be specified in the instrument.”. 25

(2) In section 10 of the Principal Act after paragraph (c) (ii) there shall be inserted the following sub-paragraph:

“(iia) the declaration of instruments under section 2 (3);”.

New section 3A inserted.

Amendment of
No. 6886.

5. After section 3 of the Principal Act there shall be inserted the following section: 30

Sunset provision for statutory rules.

“3A. (1) Unless sooner revoked, a statutory rule—

(a) made prior to 1 January 1962 and referred to in the Schedule to the *Subordinate Legislation (Revocation) Act* 1984 shall by virtue of this Act be revoked on 1 July 1985; 35

(b) made on or after 1 January 1962 and prior to 1 January 1972 shall by virtue of this Act be revoked on 30 June 1988;

(c) made on or after 1 January 1972 and prior to 1 July 1982 shall by virtue of this Act be revoked on 30 June 1992; and 40

(d) made on or after 1 July 1982 shall by virtue of this Act be revoked on the day which is 10 years after the day which is the earliest day on which any provision of the statutory rule came into operation.

5 (2) For the purposes of this section a reference to a statutory rule where a statutory rule has been amended by any other statutory rule, is a reference to the statutory rule as amended from time to time and not to any of the amending statutory rules.

10 (3) For the purposes of determining when a statutory rule was made where the statutory rule is a statutory rule to which sub-section (1) (b), (1) (c) or (1) (d) applies, the statutory rule shall be deemed to have been made on the day on which the *Government Gazette* containing the notice required by section 4 (2) was published.”.

Disallowance of statutory rules.

15 6. After section 6 (2A) of the Principal Act there shall be inserted the following sub-sections:

Amendment of
No. 6886 s. 6.

20 “(2B) Where the Legal and Constitutional Committee proposes to adversely report on a statutory rule and it is of the opinion that considerations of natural justice require that the operation of the statutory rule should be suspended pending the consideration by Parliament of the statutory rule, the Legal and Constitutional Committee may propose in the report, that the operation of the statutory rule shall be suspended.

25 (2C) Subject to sub-section (2D), where the Legal and Constitutional Committee proposes that the operation of a statutory rule shall be suspended, the Committee shall forthwith send a copy of the report to the relevant Minister and the Governor in Council and the operation of the statutory rule shall be suspended at the expiry of the under-mentioned period until each House of Parliament has considered the statutory rule unless within the period of 7 days after the sending of the report to the Governor in Council, the Governor in Council has otherwise declared under sub-section (2D).

35 (2D) The Governor in Council may on the recommendation of the relevant Minister within the period of 7 days referred to in sub-section (2C) by Order in Council published in the *Government Gazette* declare that the operation of a statutory rule shall not be suspended and the provision in a report of the Legal and Constitutional Committee providing for the suspension shall be of no force or effect.

40 (2E) Whilst the operation of a statutory rule is suspended under this section the statutory rule shall be deemed not to have been made.”.

New section 9B inserted.

7. After section 9A of the Principal Act there shall be inserted the following section:

Amendment of
No. 6886.

Availability of statutory rules.

“9B. (1) The Minister administering the Act under which any statutory rule is made shall ensure that a copy of the statutory rule printed in accordance with section 4 or where a reprint of the statutory rule has been prepared in accordance with section 9 a copy of the reprint and any subsequent amending statutory rule—

- (a) can be purchased on demand by any member of the public during normal office hours from the Sales Branch of the Government Printing Office or some other appropriate public office specified by the Minister by a notice published in the *Government Gazette*; or
- (b) is available for inspection by any member of the public without charge during normal office hours at the Department of the Minister or some other appropriate public office specified by the Minister by a notice published in the *Government Gazette*.

(2) In addition to and without derogating from section 3 (2), after a statutory rule or a provision of a statutory rule has come into operation—

- (a) a person shall not be convicted of an offence consisting of a contravention of the statutory rule or provision in question where it is proved that at the time of the alleged contravention a copy of the statutory rule or of the reprint of the statutory rule and any subsequent amending statutory rule could not be purchased or inspected as provided by sub-section (1); and
- (b) a person shall not be prejudicially affected or made subject to any liability by the statutory rule or provision in question where it is proved that at the relevant time a copy of the statutory rule could not be purchased or inspected as provided by sub-section (1).”

New Part II. inserted.

8. (1) After section 10 of the Principal Act there shall be inserted the following Part and Schedules:

“PART II.—PREPARATION AND MAKING OF STATUTORY RULES”**Guidelines.**

“11. (1) The Attorney-General shall in consultation with the Legal and Constitutional Committee prepare and issue and may from time to time amend guidelines with respect to the preparation and content of statutory rules and the procedures to be implemented and the steps to be undertaken for the purpose of ensuring consultation, co-ordination and uniformity in the preparation of statutory rules.

(2) Without in any way derogating from the generality of sub-section (1), the guidelines shall deal with the matters specified in Schedule 1.

5 (3) The Attorney-General shall cause guidelines prepared under this section to be—

- (a) published in the *Government Gazette*;
- (b) issued to all Ministers and any other persons and bodies whether corporate or unincorporate involved in the preparation of statutory rules;
- 10 (c) laid before each House of Parliament; and
- (d) forwarded to the Legal and Constitutional Committee.

(4) The Legal and Constitutional Committee may cause guidelines prepared under this section to be reviewed at regular intervals and where appropriate may make recommendations for their revision and amendment to the Attorney-General.

15 (5) Until the Attorney-General prepares and issues guidelines under this section, the guidelines specified in Schedule 2 shall apply.”

Regulatory impact statement.

20 “12. (1) Where a statutory rule is proposed to be made which is of a type or of a class in respect of which the guidelines operating under section 11 require the preparation of a regulatory impact statement the following provisions shall apply:

- 25 (a) A notice shall be published in the *Government Gazette* and in a daily newspaper and where appropriate any relevant trade, professional, business or public interest journal or publication—
 - (i) specifying the reasons for the proposed statutory rule and the objectives to be achieved;
 - 30 (ii) summarizing the results of the regulatory impact statement;
 - (iii) advising where a copy of the regulatory impact statement may be obtained; and
 - (iv) inviting public comments and submissions within such time being not less than 21 days from the publication of the notice as is specified in the notice;
- 35 (b) The Minister administering the Act under which the statutory rule is to be made shall cause all the comments and submissions received under this section to be considered before the statutory rule is made;
- 40 (c) A copy of the regulatory impact statement shall be forwarded to—
 - (i) the Director-General of the Department of Management and Budget; and

- (ii) the Legal and Constitutional Committee; and
- (d) A copy of all the comments and submissions received under this section shall be forwarded to the Legal and Constitutional Committee.

(2) Schedule 3 has effect with respect to regulatory impact statements.”. 5

Examination of proposed statutory rules.

“13. (1) Subject to sub-section (2), a proposed statutory rule shall not be submitted for making by or for the consent or approval of the Governor in Council unless there is submitted together with the proposed statutory rule a copy of the advice required to be obtained by sub-sections (3) and (4). 10

(2) It shall not be necessary to comply with sections 12 and 13 (1) if—

- (a) the Premier certifies in writing that in his opinion in the special circumstances of the particular case the public interest requires that the proposed statutory rule should be submitted for making by or for the consent or approval of the Governor in Council without complying with sub-section (1); and 15
- (b) a copy of the certificate is submitted with the proposed statutory rule. 20

(3) A proposed statutory rule shall be submitted to the Chief Parliamentary Counsel for advice as to whether the proposed statutory rule— 25

- (a) appears to be within the powers conferred by the Act under which it is proposed to be made;
- (b) appears without clear and express authority being conferred by the Act under which the statutory rule is to be made— 30
 - (i) to have a retrospective effect;
 - (ii) to impose any tax, fee, fine, imprisonment or other penalty;
 - (iii) to shift the onus of proof to a person accused of an offence; or
 - (iv) to sub-delegate powers delegated by the Act; 35
- (c) appears to be within the general objectives of the Act under which it is proposed to be made;
- (d) appears to be consistent with and to achieve the objectives set out in the proposed statutory rule or, where the proposed statutory rule is to amend an existing statutory rule, the objectives set out in the existing statutory rule; 40
- (e) appears to be inconsistent with principles of justice and fairness;

- (f) is expressed as clearly and unambiguously as is reasonably possible;
- (g) appears to significantly or substantially duplicate, overlap or conflict with other existing legislation or subordinate legislation.

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(4) Where a regulatory impact statement has been prepared under section 12, a proposed statutory rule shall be submitted to the Director-General of the Department of Management and Budget for advice as to whether the statement appears to adequately assess the likely impact of the proposed statutory rule.”

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Review of statutory rules by the Legal and Constitutional Committee.

“14. (1) Where the Legal and Constitutional Committee considers that a statutory rule laid before Parliament under section 5—

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(a) does not appear to be within the powers conferred by the Act under which the statutory rule was made;

(b) without clear and express authority being conferred by the Act under which the statutory rule was made—

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(i) has a retrospective effect;

(ii) imposes any tax, fee, fine, imprisonment or other penalty;

(iii) purports to shift the onus of proof to a person accused of an offence; or

(iv) provides for the sub-delegation of powers delegated by the Act;

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(c) does not appear to be within the general objectives, intention or principles of the Act under which the statutory rule was made;

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(d) makes unusual or unexpected use of the powers conferred by the Act under which the statutory rule was made having regard to the general objectives, intention or principles of that Act;

(e) contains any matter or embodies any principles, which matter or principles should properly be dealt with by an Act and not by subordinate legislation;

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(f) unduly trespasses on rights and liberties of the person previously established by law;

(g) unduly makes rights and liberties of the person dependent upon administrative and not upon judicial decisions;

(h) is inconsistent with principles of justice and fairness;

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(i) requires explanation as to its form or intention;

(j) has been prepared in contravention of any of the provisions of this Act or of the guidelines prepared under section 11 and the contravention is of a substantial or material nature; or

- (k) is likely to result in costs being incurred directly and indirectly in the administration of and compliance with the statutory rule which outweigh the likely benefits sought to be achieved by the statutory rule—

the Legal and Constitutional Committee may report to each House of Parliament as provided in sub-section (2). 5

(2) A report of the Legal and Constitutional Committee under this section may contain any of the following:

- (a) Such recommendations as the Legal and Constitutional Committee considers appropriate, including a recommendation that a statutory rule should be— 10

(i) disallowed in whole or in part; or

(ii) amended as suggested in the report;

- (b) A declaration that the statutory rule should be suspended in accordance with section 6 pending consideration by Parliament. 15



SCHEDULE 1

Section 11 (2)

MATTERS TO BE INCLUDED IN GUIDELINES

The Guidelines prepared under section 11 shall include the following matters:

1. Guidelines as to the types of matters appropriate for inclusion in statutory rules rather than in Acts or in instruments which are not of a legislative character.
2. Procedures to be followed to ensure co-ordination and consultation between government agencies empowered to make or responsible for preparing statutory rules.
3. Procedures to be implemented to ensure that—
 - (a) the need for a proposed statutory rule can be justified;
 - (b) objectives of a proposed statutory rule are formulated and included in any proposed principal statutory rule;
 - (c) alternative means of achieving the objectives sought to be achieved by a proposed statutory rule such as self regulation and voluntary codes of conduct have been considered;
 - (d) a proposed statutory rule embodies the alternative which achieves the objectives of that statutory rule at a financial and social cost which is less than the financial and social benefits which may result from the alternative;
 - (e) in appropriate cases a proposed statutory rule sets performance standards rather than prescribing detailed requirements; and
 - (f) a detailed examination of the financial and social benefits and the financial and social costs of the proposed statutory rule is undertaken.
4. Guidelines as to the types of statutory rules in respect of which a regulatory impact statement under section 12 is to be obtained.
5. Guidelines as to the style and language to be used in drafting statutory rules.
6. Guidelines as to the printing and submission of statutory rules to the Governor in Council.

SCHEDULE 2

Section 11 (5)

GUIDELINES**with respect to the preparation and content of****STATUTORY RULES**

1. In these guidelines, wherever costs and benefits, advantages and disadvantages are referred to, social and economic costs and benefits, advantages and disadvantages shall be taken into account and given due consideration.
2. In these guidelines, wherever consultation is required to take place, the consultation shall take place with the public, community groups, special interest groups and business interests as may be appropriate in each case.
3. Before a statutory rule is proposed to be made:
 - (a) The objectives sought to be achieved and the reasons for them shall be clearly formulated and defined;
 - (b) Those objectives shall be checked to ensure that they:
 - (i) Are reasonable and appropriate;
 - (ii) Accord with the objectives, principles, spirit and intent of the enabling Act;
 - (iii) Are not inconsistent with the objectives of other legislation, statutory rules and stated government policies;
 - (iv) Do not involve costs or disadvantages which are greater than the benefits or advantages sought to be achieved;
 - (c) Alternative means of achieving those objectives (whether wholly or substantially, and whether by way of self regulation, voluntary codes of conduct or otherwise) shall be considered and an evaluation made of the benefits and

SCHEDULE 2—*continued*

advantages expected to arise from each such alternative as compared with the costs and disadvantages, both direct and indirect, tangible and intangible;

- (d) Where a proposed statutory rule impinges upon or may affect the area of responsibility of another department or statutory body, consultation shall take place with a view to ensuring in advance that any differences are reconciled and that there shall be no overlapping or duplication of or conflict with legislation, statutory rules or stated government policies administered by such other department or statutory body;
- (e) (i) Where a proposed statutory rule is likely to impose any appreciable burden, disadvantage or cost, whether direct or indirect, tangible and intangible upon any sector of industry or commerce or of consumers or members of the public or of the State, consultation shall take place with appropriate representatives of that sector as to the need or otherwise for and consequences of the action proposed;
 - (ii) The nature and extent of the consultation with any such sector, and of the publicity for the proposal, shall be commensurate with the impact likely to arise for the particular sector from implementation of the proposal;
- (f) A regulatory impact statement shall be prepared under section 12, unless the proposed statutory rule relates only to matters which:
 - (i) Are of a fundamentally declaratory or machinery nature; or
 - (ii) Deal with relations, organization or procedures within or as between departments or statutory bodies; and
 - (iii) Impose no appreciable burden, cost or disadvantage upon any sector of the public.

4. In determining the course of action to be taken, the responsible Minister shall have regard to the following principles:

- (a) Administrative decisions shall be based on adequate information and consultation concerning the need for and consequences of proposed government action;
- (b) Regulatory action shall not normally be undertaken unless the potential benefits to the community from the proposed statutory rule outweigh the potential costs to the community;
- (c) Regulatory objectives shall be chosen to maximize the net benefits to the community;
- (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost or the greatest benefit to the community shall normally be chosen; and
- (e) Regulatory priorities shall be set with the aim of maximizing the aggregate net benefits to the community, taking into account the prospective effects of each proposal upon the economy and upon every sector of industry or commerce, or of consumers or members of the public or of the State which may be affected thereby.

5. A statutory rule shall:

- (a) Accord with the letter and intent of the enabling Act;
- (b) In the case of a principal statutory rule, clearly set out as part of its text—
 - (i) the objectives of the rule; and
 - (ii) the precise provision authorizing the rule;
- (c) Be directed towards those objectives and not go beyond them;
- (d) Adopt the means of achieving those objectives which appear likely to involve the least burden or the greatest advantage on the community;
- (e) Wherever appropriate, set performance standards rather than prescribe detailed requirements as to the manner in which those standards shall be achieved;
- (f) Be expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria.

SCHEDULE 2—*continued*

6. A statutory rule shall not:

- (a) Exceed the powers conferred by the Act under which the rule purports to be made;
- (b) Without clear and express authority in the enabling Act—
 - (i) have any retrospective effect;
 - (ii) impose any tax or fee, or any fine, imprisonment or other penalty;
 - (iii) purport to shift the onus of proof to a person accused of an offence;
 - (iv) provide for any further delegation of powers delegated by the Act;
- (c) Be inconsistent with the principles, objectives or intent of the enabling Act;
- (d) Make unusual or unexpected use of the powers conferred by the Act under which the rule is made having regard to the general objectives, intention or principles of that Act;
- (e) Embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation;
- (f) Unduly trespass on rights and liberties of the person previously established by law;
- (g) Unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (h) Is inconsistent with principles of justice and fairness;
- (i) Duplicate, overlap or conflict with other statutory rules or legislation.

7. Where a regulatory impact statement has been prepared under section 12 and a decision has been made that the proposed statutory rule the subject of that regulatory impact statement should be made the responsible Minister shall before the proposed statutory rule is submitted to the Governor in Council publish the decision in the *Government Gazette* and in a daily newspaper.

8. Where a regulatory impact statement has been prepared under section 12 and a decision has been made that the proposed statutory rule the subject of that regulatory impact statement should not be made or that an alternative means to the making of a statutory rule should be used to carry out the objectives specified in the regulatory impact statement the responsible Minister shall as soon as possible after the decision is made publish the decision in the *Government Gazette* and in a daily newspaper.

SCHEDULE 3

Section 12 (2)

PROVISIONS APPLYING TO REGULATORY IMPACT STATEMENTS

A regulatory impact statement shall include the following matters:

1. A statement of the objectives of the proposed statutory rule.
2. An identification of the different means by which the objectives of the statutory rule can be achieved.
3. An assessment of the monetary and social costs and benefits of each alternative including resource allocation, administration and compliance costs and where the benefits and costs cannot be assessed solely in monetary terms an outline of the social costs and benefits.
4. A summary of any alternatives to the making of a statutory rule which have been considered and of the reasons why such alternatives are not appropriate.

(2) The *Parliamentary Committees Act* 1968 shall be amended as follows:

- (a) In section 4B for paragraph (b) there shall be substituted the following paragraph:

“(b) such functions as are conferred on the Committee by the *Subordinate Legislation Act 1962.*”; and

(b) In section 4F for sub-section (5) there shall be substituted the following section:

“(5) Notwithstanding anything to the contrary in this section, the Legal and Constitutional Committee shall give priority to the functions conferred on the Committee by section 14 of the *Subordinate Legislation Act 1962.*”.

(3) Immediately preceding section 1 of the Principal Act there shall be inserted the following heading: 10

“PART I.—GENERAL PROVISIONS.”.