



TASMANIA

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**SUBORDINATE LEGISLATION ACT 1992**

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**No. 30 of 1992**

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## SUBORDINATE LEGISLATION ACT 1992

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No. 30 of 1992

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**AN ACT relating to the making of certain subordinate legislation**

**[Royal Assent 10 December 1992]**

**B**E 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:—

### **PART 1**

#### **PRELIMINARY**

##### **Short title**

**1**—This Act may be cited as the *Subordinate Legislation Act 1992*.

##### **Commencement**

**2**—This Act commences on a day to be proclaimed.

## Interpretation

3—In this Act—

“**Consumer Price Index**” means the Consumer Price Index: All Groups Index for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

“**responsible Minister**”, in connection with subordinate legislation, means the Minister administering the Act under which the subordinate legislation is or is proposed to be made;

“**subordinate legislation**” means a regulation, rule or by-law—

(a) that is made by the Governor; or

(b) that is made by a person or body other than the Governor, but is required by law to be approved, confirmed or consented to by the Governor;

“**Subordinate Legislation Committee**” means the committee for the time being constituted under the *Subordinate Legislation Committee Act 1969*.

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## PART 2

### REQUIREMENTS REGARDING THE MAKING OF SUBORDINATE LEGISLATION

#### Guidelines

4—The responsible Minister must ensure that before subordinate legislation is made the guidelines set out in Schedule 1 are complied with so far as is reasonably practicable.

#### Regulatory impact statements

5—(1) The responsible Minister must ensure that before subordinate legislation is made a regulatory impact statement complying with Schedule 2 is prepared in connection with those parts of the proposed subordinate legislation which would impose a burden, cost or disadvantage on any sector of the public.

(2) The responsible Minister must ensure that before subordinate legislation is made—

- (a) a notice is published in the *Gazette* and in at least 3 daily newspapers published and circulated generally throughout Tasmania—
  - (i) stating the objects of the proposed subordinate legislation; and
  - (ii) where a regulatory impact statement is prepared under subsection (1), advising where a copy of the regulatory impact statement may be obtained or inspected; and
  - (iii) advising whether, and (if so) where, a copy of the proposed subordinate legislation may be obtained or inspected; and
  - (iv) inviting comments and submissions within a specified time, but not less than 21 days from publication of the notice; and
- (b) consultations take place with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed subordinate legislation; and
- (c) all comments and submissions received are appropriately considered.

(3) The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are to be commensurate with the impact likely to arise for consumers, the public, relevant interest groups, and any sector of industry or commerce, from the making of the subordinate legislation.

**Regulatory impact statements not necessary in certain cases**

6—A Minister need not comply with section 5 if—

- (a) the Chief Parliamentary Counsel certifies in writing that the proposed subordinate legislation comprises or relates to matters set out in Part 1 of Schedule 3 or comes within any of the categories set out in Part 2 of that Schedule; or
- (b) the Premier certifies in writing that, in his or her opinion in the special circumstances of the case, the public interest requires that the proposed subordinate legislation should be made without complying with section 5.

**Examination of proposed subordinate legislation**

7—(1) In this section, “**relevant Act**” means the Act under which it is intended to make the proposed subordinate legislation.

(2) Proposed subordinate legislation must be submitted to the Chief Parliamentary Counsel for advice as to whether it—

- (a) appears to be within the powers conferred by the relevant Act; and
- (b) appears without clear and express authority being conferred by the relevant Act—
  - (i) to have a retrospective effect; or
  - (ii) to impose a tax, fee, fine, imprisonment or other penalty; or
  - (iii) to sub-delegate powers delegated by the relevant Act; and
- (c) appears to be within the general objectives of the relevant Act; and
- (d) is expressed in as clear and unambiguous language as is reasonably possible.

**Requirements before making subordinate legislation**

**8**—Proposed subordinate legislation must not be submitted for making by the Governor, or for the approval, confirmation or consent of the Governor, unless there is submitted with the proposed subordinate legislation—

- (a) a copy of a certificate of the responsible Minister certifying that the provisions of this Act relating to the proposed subordinate legislation have been complied with; and
- (b) a copy of any relevant certificate under section 6; and
- (c) a copy of the advice given by the Chief Parliamentary Counsel under section 7.

**Certain documents to be sent to Subordinate Legislation Committee**

**9**—(1) If subordinate legislation is made the responsible Minister must send to the Subordinate Legislation Committee—

- (a) a copy of—
  - (i) any regulatory impact statement prepared in respect of the legislation in accordance with section 5 and all written comments and submissions received; or
  - (ii) any certificate issued under section 6; and
- (b) a copy of the advice given by the Chief Parliamentary Counsel under section 7.

(2) The documents referred to in subsection (1) must be sent to the Subordinate Legislation Committee—

- (a) within 7 days of the subordinate legislation, or notification of its making, being published in the *Gazette*; or
- (b) if the subordinate legislation, or notification of its making, is not required to be published in the *Gazette*, within 7 days of the subordinate legislation being made.

**Compliance with Part**

**10**—(1) A failure to comply with a provision of this Part does not affect the validity of subordinate legislation.

(2) The provisions of this Part regarding the requirements to be complied with before subordinate legislation is made, approved, confirmed or consented to are in addition to, and do not affect, the provisions of any other Act.

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### PART 3

#### STAGED REPEAL OF SUBORDINATE LEGISLATION

##### Staged repeal of subordinate legislation

11—(1) Unless it sooner ceases to be in force, subordinate legislation published 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 September 1994
1 January 1963	1 September 1995
1 January 1967	1 September 1996
1 January 1971	1 September 1997
1 January 1976	1 September 1998
1 January 1980	1 September 1999
1 January 1984	1 September 2000
1 January 1987	1 September 2001
date of commencement of this Act	1 September 2002

(2) Unless it sooner ceases to be in force, subordinate legislation published on or after the commencement of this Act is repealed on the tenth anniversary of the date on which it was published.

(3) For the purposes of this section, a reference to “subordinate legislation” is a reference to the subordinate legislation as amended from time to time and not to any of the amending subordinate legislation.

(4) Where subordinate legislation is repealed by virtue of this section, any subordinate legislation which amends that subordinate legislation and any provision in subordinate legislation which is a provision that amends that subordinate legislation is also repealed.



### Provisions regarding publication

12—(1) Subordinate legislation is, for the purposes of this Part, to be taken to have been published on the date on which it was published, or notification of its making was published, in the *Gazette*.

(2) If subordinate legislation made under one Act is by law to be treated as made under another, the date of its publication is, for the purposes of this Part, the date it was originally published.

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## PART 4

### MISCELLANEOUS

#### Procedure when Subordinate Legislation Committee not in office

13—If the Subordinate Legislation Committee is not in office when material is required to be sent to it under section 9, the material is to be sent to a person nominated by the Clerk of the Legislative Council and the Clerk of the House of Assembly for the attention of the Committee after its appointment.

#### Regulations

14—The Governor may make regulations for the purposes of this Act.

#### *Subordinate Legislation Committee Act 1969* amended

15—The *Subordinate Legislation Committee Act 1969\** is amended by inserting after section 8 (1) (a) the following paragraph:—

(ab) to examine whether the requirements of the *Subordinate Legislation Act 1992* have been complied with to the extent that they are applicable to a regulation; and

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\* No. 44 of 1969. Amended by No. 27 of 1973.

**Acts Interpretation Act 1931 amended**

16—Section 47 (9) of the *Acts Interpretation Act 1931*\* is repealed.

**Rules Publication Act 1953 amended**

17—Section 9 of the *Rules Publication Act 1953*† is amended by omitting paragraph (f) and substituting the following paragraph:—

- (f) providing for and regulating the examination and revision of drafts of statutory rules proposed to be made by rule-making authorities and prohibiting the making by rule-making authorities of statutory rules until the drafts have, in accordance with the regulations, been examined and, if necessary, revised.

**Administration of Act**

18—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Premier; and  
(b) the Department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

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\* 22 Geo. V No. 59. For this Act, as amended to 1 July 1986, see the continuing Reprint of Statutes. Subsequently amended by Nos. 88 and 92 of 1986, No. 13 of 1987, Nos. 4 and 41 of 1990 and No. 43 of 1991.

† No. 50 of 1953. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 5, p. 399. Subsequently amended by No. 11 of 1979, No. 99 of 1982, No. 5 of 1990 and No. 46 of 1991.

## SCHEDULE 1

Section 4

GUIDELINES FOR THE PREPARATION OF SUBORDINATE  
LEGISLATION

1—Where costs and benefits are referred to in these guidelines, economic, social and environmental costs and benefits are to be taken into account and given due consideration.

2—Before subordinate legislation is proposed to be made—

- (a) the objectives sought to be achieved and the reasons for them must be clearly formulated; and
- (b) those objectives are to be checked to ensure that they—
  - (i) are reasonable and appropriate; and
  - (ii) accord with the objectives, principles, spirit and intent of the enabling Act; and
  - (iii) are not inconsistent with the objectives of other Acts, subordinate legislation and stated government policies; and
- (c) alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered; and
- (d) an evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the subordinate legislation; and
- (e) if the subordinate legislation would impinge on or may affect the area of responsibility of another Government department, within the meaning of the *Tasmanian State Service Act 1984*, or a State authority as defined in that Act, consultation must take place with a view to ensuring in advance that (as far as is reasonably practicable in the circumstances)—
  - (i) any differences are reconciled; and
  - (ii) there will be no overlapping of or duplication of or conflict with Acts, subordinate legislation or stated government policies administered by the other Government department or State authority.

SCHEDULE 1—*continued*

3—In determining whether and how the objectives should be achieved, the responsible Minister is to have regard to the following principles:—

- (a) administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action;
- (b) implementation by means of subordinate legislation should not normally be undertaken unless the anticipated benefits to the community from the proposed subordinate legislation outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce, that may be affected;
- (c) the alternative option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the range of alternative options available to achieve the objectives.

4—Subordinate legislation must be expressed plainly and unambiguously, and consistently with the language of the enabling Act.

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## SCHEDULE 2

## Section 5

## PROVISIONS APPLYING TO REGULATORY IMPACT STATEMENTS

1—A regulatory impact statement must include—

- (a) a statement of the objectives sought to be achieved and the reasons for them; and
- (b) an identification of the alternative options by which those objectives can be achieved (whether wholly or substantially); and
- (c) an assessment of the costs and benefits of the proposed subordinate legislation, including the costs and benefits relating to resource allocation, administration and compliance; and
- (d) an assessment of the costs and benefits of each alternative option to the making of the subordinate legislation (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance; and
- (e) an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community; and
- (f) a statement of the consultation programme undertaken and to be undertaken.

2—(1) Where costs and benefits are referred to in this Schedule, economic, social and environmental costs and benefits, both direct and indirect, are to be taken into account and given due consideration.

(2) Costs and benefits must, where possible, be quantified. If this is not possible, the anticipated impacts of the proposed action and of each alternative must be stated and presented in a way that permits a comparison of the costs and benefits.

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**SCHEDULE 3**

Section 6 (1)

**MATTERS AND CATEGORIES IN RESPECT OF WHICH  
REGULATORY IMPACT STATEMENTS ARE NOT REQUIRED****PART 1**

1—Matters involving corrections to existing subordinate legislation.

2—Matters of a savings or transitional nature.

3—Matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

4—Matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.

**PART 2**

1—Fees—where the rate of increase of a fee or group of fees does not exceed the rate of increase in the Consumer Price Index since the fee or fees were last fixed.

2—Court procedures—that do not impose fees, but relate to the procedure, practice or costs of a court or of a tribunal exercising judicial or quasi judicial powers.

3—Remade subordinate legislation—that by way of consolidation and without substantive amendment, remake the provisions of earlier subordinate legislation, where—

- (a) the provisions have been in operation at some time in the preceding 12 months; and
- (b) not more than 10 years have elapsed since the making of the earlier subordinate legislation; and
- (c) a regulatory impact statement was prepared in relation to the earlier subordinate legislation.