

Authorised Version No. 033
Subordinate Legislation Act 1994

No. 104 of 1994

Authorised Version incorporating amendments as at
1 January 2011

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is—

- (a) to ensure that the power to make subordinate legislation is exercised subject to Parliament's authority and control;
- (b) to regulate the preparation, making, publication and scrutiny of subordinate legislation;
- (c) to provide for public participation in the preparation and scrutiny of subordinate legislation;
- (d) to amend the **Interpretation of Legislation Act 1984** in relation to incorporated documents, the incorporation of amendments and the admissibility of Acts and subordinate instruments.

2 Commencement

This Act comes into operation on 1 January 1995.

3 Definitions

In this Act—

amendment, in relation to a statutory rule, means the insertion, omission or substitution of words or expressions in the statutory rule by another statutory rule or subordinate instrument or by an Act;

authorising Act, in relation to a statutory rule or proposed statutory rule, means the Act or provision of an Act under which the statutory rule is, or is to be, made or purports to be made;

compliance certificate means a certificate issued by the responsible Minister under section 10(4);

S. 3 def. of *exception certificate* repealed by No. 78/2010 s. 4(2)(b).

* * * * *

S. 3 def. of *exemption certificate* substituted by No. 78/2010 s. 4(2)(a).

exemption certificate means a certificate issued in relation to a proposed statutory rule by—

(a) the responsible Minister under section 8; or

(b) the Premier under section 9;

S. 3 def. of *extension certificate* inserted by No. 78/2010 s. 4(1).

extension certificate means a certificate issued under section 5A(1) by the responsible Minister;

S. 3 def. of *extension regulation* inserted by No. 78/2010 s. 4(1).

extension regulation means a regulation made under section 5A extending the operation of a statutory rule;

Government Printer means the person appointed to be the Government Printer for Victoria under section 72 of the **Constitution Act 1975**;

guidelines means guidelines under section 26;

human rights certificate means a certificate issued by the responsible Minister under section 12A(1);

S. 3 def. of *human rights certificate* inserted by No. 78/2010 s. 4(1).

human rights exemption certificate means a certificate issued by the responsible Minister under section 12A(3);

S. 3 def. of *human rights exemption certificate* inserted by No. 78/2010 s. 4(1).

Minister means the Minister administering this Act;

responsible Minister means—

- (a) in relation to a statutory rule or proposed statutory rule which is an extension regulation, the Minister administering the authorising Act under which the statutory rule which would otherwise be revoked by section 5 is made;
- (b) in relation to any other statutory rule or proposed statutory rule, the Minister administering the authorising Act;

S. 3 def. of *responsible Minister* substituted by No. 78/2010 s. 4(3).

Scrutiny Committee means the Scrutiny of Acts and Regulations Committee of the Parliament;

section 13 certificate means a certificate issued by the Chief Parliamentary Counsel under section 13;

statutory rule means—

- (a) a regulation—
 - (i) made by the Governor in Council;
or
 - (ii) made with the consent or approval
of the Governor in Council; or
 - (iii) which the Governor in Council
has power to disallow—

other than a regulation made by a local
authority or by a person or body with
jurisdiction limited to a district or
locality; or
- (b) a rule relating to a court or tribunal or
the procedure, practice or costs of a
court or tribunal; or
- (c) an instrument or a class of instruments
prescribed to be a statutory rule or
statutory rules under section 4(1)(a); or
- (d) an instrument or class of instrument
that is deemed to be a statutory rule or
statutory rules by the authorising Act—

but does not include an instrument or class of
instrument specified in paragraph (a) or (b)
which is exempted under section 4(1)(b).

**4 Prescribing instrument to be a statutory rule or to
be exempt**

- (1) The Governor in Council may make regulations
under this Act—
 - (a) prescribing an instrument or class of
instruments to be a statutory rule or statutory
rules for the purposes of paragraph (c) of the
definition of *statutory rule* in section 3;

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- (b) exempting an instrument or class of instruments that is a statutory rule under paragraph (a) or (b) of the definition of **statutory rule** in section 3 and is not of a legislative character.
- (2) The Minister must consult the Scrutiny Committee before submitting a proposed regulation under subsection (1) to the Governor in Council.
- (3) If an instrument or class of instrument is prescribed to be a statutory rule or statutory rules—
- (a) this Act applies to the instrument or class of instrument; and
 - (b) any provision of the Act under which the instrument or class of instrument is made which is inconsistent with, or duplicates, any provision of this Act does not apply to the instrument or class of instrument.
- (4) If an instrument or class of instrument is exempt—
- (a) this Act (other than this subsection) does not apply to the instrument or class of instrument; and
 - (b) publication of the instrument in the Government Gazette is sufficient compliance with any requirements in relation to the publication of the instrument that are contained in the Act under which it is made; and
 - (c) unless provision is made to the contrary by the Act under which it is made, the instrument or a provision of it comes into operation at the beginning of the day on which the instrument is published in the Government Gazette or at the beginning of

such later day as is expressed in the instrument as the day on which the instrument or provision (as the case requires) comes into operation.

S. 5
substituted by
No. 78/2010
s. 5.

5 Automatic revocation of statutory rules

- (1) Subject to section 5A, unless sooner revoked, a statutory rule is revoked by virtue of this section on the day which is the tenth anniversary of the making of the statutory rule.

Note

Section 25 of the **Interpretation of Legislation Act 1984** provides that if a subordinate instrument is expressed to cease to have effect on a particular day, the subordinate instrument continues in operation until the last moment of the day.

- (2) On the revocation of a statutory rule by this section—
 - (a) any other statutory rule that amends the statutory rule being revoked; and
 - (b) any provision in any other statutory rule that amends the statutory rule being revoked—is also revoked by virtue of this section, insofar as the amending statutory rule or provision relates to the statutory rule revoked by this section.

S. 5A
inserted by
No. 78/2010
s. 5.

5A Extension regulations

- (1) Subject to subsection (3), the responsible Minister may issue a certificate if satisfied that—
 - (a) due to special circumstances, there is insufficient time to enable compliance with Part 2 in respect of a proposed statutory rule before the statutory rule it is intended to replace is to be revoked by section 5; and
 - (b) the statutory rule which would otherwise be revoked by section 5 should be extended for a specified period not exceeding 12 months.

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- (2) An extension certificate must specify the special circumstances, including the reasons why the extension is necessary.
 - (3) Before issuing an extension certificate, the responsible Minister must obtain a certificate from the Premier which specifies that the Premier has agreed that the statutory rule which would otherwise be revoked by section 5 should be extended for the specified period.
 - (4) On the recommendation of the responsible Minister, the Governor in Council may make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by section 5 for a period specified in the regulation.
 - (5) Only one extension regulation can be made in respect of the operation of a statutory rule.

PART 2—PREPARATION OF STATUTORY RULES

6 Consultation

The responsible Minister must ensure that where the guidelines require consultation—

- (a) there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
- (b) there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
- (c) a certificate of consultation in accordance with the guidelines is issued for that statutory rule.

S. 6(b)
amended by
No. 78/2010
s. 6(1).

S. 6(c)
amended by
No. 78/2010
s. 6(2).

S. 6A
inserted by
No. 12/2006
s. 177.

S. 6A(1)
amended by
No. 9/2008
s. 43(a).

S. 6A(1)(a)(i)
amended by
No. 9/2008
s. 43(b).

6A Infringements offence consultation certificate

- (1) If a proposed statutory rule provides for the enforcement of an offence by an infringement notice, whether under the **Infringements Act 2006** or otherwise, the responsible Minister must certify—
 - (a) that the Department of Justice has been consulted about—
 - (i) the enforcement of the offence referred to in the proposed statutory rule by infringement notice; and

- (ii) the suitability of the offence referred to in the proposed statutory rule to be an infringement offence enforced under the **Infringements Act 2006**; and
- (b) that the Attorney-General's guidelines within the meaning of the **Infringements Act 2006** have been taken into account in the preparation of the proposed statutory rule; and
- (c) that the Minister is satisfied that the proposed statutory rule, insofar as it relates to an infringement offence—
- (i) meets the requirements of those guidelines; or
 - (ii) does not meet the requirements of those guidelines but should be made despite not meeting those requirements because of the reasons specified in the certificate.

S. 6A(1)(a)(ii) amended by No. 9/2008 s. 43(b).

S. 6A(1)(c) amended by No. 9/2008 s. 43(c).

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S. 6A(2)(3) repealed by No. 78/2010 s. 7.

7 Regulatory impact statement must be prepared

- (1) The responsible Minister must ensure that a regulatory impact statement is prepared for a proposed statutory rule.
- (2) Subsection (1) does not apply if an exemption certificate is issued for the proposed statutory rule.

S. 7 substituted by No. 78/2010 s. 8.

8 Exemption certificates

- (1) The responsible Minister may issue an exemption certificate in writing certifying that, in the opinion of the Minister—

S. 8 amended by Nos 30/2002 s. 18, 88/2005 s. 117(Sch. 2 item 7), substituted by No. 78/2010 s. 8.

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- (a) the proposed statutory rule would not impose a significant economic or social burden on a sector of the public; or
 - (b) the proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (c) the proposed statutory rule is of a fundamentally declaratory or machinery nature; or
 - (d) the proposed statutory rule only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget for the purposes of this section; or
 - (e) the proposed statutory rule—
 - (i) only prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) only exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or
 - (iii) is an extension regulation; or
 - (f) the proposed statutory rule is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme; or
 - (g) the proposed statutory rule deals with administration or procedures within or as between—
 - (i) Departments or declared authorities within the meaning of the **Public Administration Act 2004**; or

- (ii) Departments within the meaning of the **Parliamentary Administration Act 2005**; or
- (h) notice of the proposed statutory rule would render the proposed statutory rule ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed statutory rule.
- (2) For the purposes of subsection (1)(d), in calculating the amount of an increase, the amount is deemed to have been calculated in accordance with subsection (1)(d) if the calculation is made to the nearest whole \$1.
- (3) An exemption certificate must specify the reasons for the exemption.

9 Premier's exemption certificate—statutory rules

- (1) The Premier may issue a certificate in writing that, in the Premier's opinion, in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with section 7(1).
- (2) The Premier must not issue an exemption certificate unless—
 - (a) the proposed statutory rule is to expire on or before the day which is 12 months after the first day on which any provision of the statutory rule is to come into operation; and
 - (b) the relevant responsible Minister has given the Premier written reasons why the public interest requires that the proposed statutory rule be made without complying with section 7(1).
- (3) An exemption certificate issued under subsection (1) must—
 - (a) specify the reasons for the exemption; and

S. 9
amended by
Nos 24/1996
s. 35, 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 191),
20/2005
s. 52(5),
substituted by
No. 78/2010
s. 8.

- (b) be signed by the Premier; and
- (c) be dated with the date of signing.

10 Regulatory impact statements

- (1) A regulatory impact statement must include—
 - (a) a statement of the objectives of the proposed statutory rule;
 - (b) a statement explaining the effect of the proposed statutory rule, including in the case of a proposed statutory rule which is to amend an existing statutory rule the effect on the operation of the existing statutory rule;
 - (ba) in the case of a proposed statutory rule which amends fees in an existing statutory rule, a table comparing the proposed fees and existing fees, including an indication of the percentage increase or decrease for each fee;
 - (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
 - (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
 - (e) the reasons why the other means are not appropriate;
 - (f) any other matters specified by the guidelines;
 - (g) a draft copy of the proposed statutory rule.
- (2) The assessment of the costs and benefits must include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

S. 10(1)(ba)
inserted by
No. 78/2010
s. 9(1).

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- (3) The responsible Minister must ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered in accordance with the guidelines.
- (4) The responsible Minister must before a statutory rule in respect of which a regulatory impact statement is required is made, give a certificate in writing specifying—
- (a) that the requirements relating to regulatory impact statements in this Act and the guidelines have been complied with; and
 - (b) that in his or her opinion the regulatory impact statement adequately assesses the likely impact of the proposed statutory rule.

* * * * *

S. 10(5)
repealed by
No. 78/2010
s. 9(2).

11 Comments and submissions

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice in accordance with subsection (2) is published in—
- (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) if the responsible Minister considers it appropriate, in such trade, professional or public interest publications as the responsible Minister determines.

- (2) A notice must—
- (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the regulatory impact statement;
 - (c) specify where a copy of the regulatory impact statement and of the proposed statutory rule can be obtained;
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
- (3) The responsible Minister must ensure that all comments and submissions are considered before the statutory rule is made.

S. 11(3)
substituted by
No. 78/2010
s. 10.

Note

See also section 15A.

12 Notice of decision

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in—
- (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria.
- (2) Notice of a decision not to make a proposed statutory rule must be published as soon as practicable after the decision has been made.
- (3) Notice of a decision to make a proposed statutory rule must be published before the proposed statutory rule is made.

- (4) A failure to comply with subsection (1), (2) or (3) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.

S. 12(4)
inserted by
No. 78/2010
s. 11.

12A Human rights certificate

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rule is exempted under subsection (3).
- (2) A human rights certificate must—
- (a) certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and
 - (b) if it certifies that, in the opinion of the responsible Minister, the proposed statutory rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—
 - (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitation and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

S. 12A
inserted by
No. 43/2006
s. 47(Sch.
item 7.1).

s. 12B

- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that in his or her opinion—
- (a) the proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (b) the proposed statutory rule only—
 - (i) prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or

S. 12A(3)(b)(iii)
repealed by
No. 78/2010
s. 12(a).

* * * * *

S. 12A(3)(c)
inserted by
No. 78/2010
s. 12(b).

- (c) the proposed statutory rule is an extension regulation.

S. 12B
inserted by
No. 78/2010
s. 13.

12B Certificates and composite certificates

- (1) A certificate issued under this Part must be—
- (a) signed by the responsible Minister issuing the certificate; and
 - (b) dated with the date of signing.
- (2) A certificate issued under this Part may be a composite certificate which incorporates the certificates required by sections 6, 6A, 8 and 10(4) or any combination of those certificates.

**PART 3—MAKING, TABLING AND COMMENCEMENT OF
STATUTORY RULES**

13 Section 13 certificate

(1) A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council must be submitted to the Chief Parliamentary Counsel for the issue of a certificate by the Chief Parliamentary Counsel specifying whether the proposed statutory rule—

S. 13
amended by
No. 78/2010
s. 14(2) (ILA
s. 39B(1)).

(a) appears to be within the powers conferred by the authorising Act;

(b) appears without clear and express authority being conferred by the authorising Act—

(i) to have a retrospective effect; or

(ii) to impose a tax, fee, fine, imprisonment or other penalty; or

(iii) to shift the legal burden of proof to a person accused of an offence; or

S. 13(1)(b)(iii)
amended by
No. 78/2010
s. 14(1).

(iv) to sub-delegate powers delegated by the authorising Act;

(c) appears to be consistent with the general objectives of the authorising Act;

(d) appears to be consistent with and to achieve the objectives set out in the proposed statutory rule and, if the proposed statutory rule is to amend an existing statutory rule, appears to be consistent with the objectives set out in the existing statutory rule;

(e) appears to be inconsistent with principles of justice and fairness;

s. 14

- (f) appears significantly or substantially to overlap or conflict with any other statutory rule or legislation;
- (g) is expressed as clearly and unambiguously as is reasonably possible.

S. 13(2)
inserted by
No. 78/2010
s. 14(2).

- (2) The Chief Parliamentary Counsel may qualify a section 13 certificate by specifying that the certificate applies only to the proposed statutory rule and not to any matter contained in a document applied, adopted or incorporated by the statutory rule if—
 - (a) the statutory rule to which the certificate relates makes provision for or in relation to a matter by applying, adopting or incorporating matter contained in a document; and
 - (b) the matter applied, adopted or incorporated is of such a detailed technical nature that the Chief Parliamentary Counsel is not qualified to advise about the matter.

S. 13(3)
inserted by
No. 78/2010
s. 14(2).

- (3) A section 13 certificate may specify that the certificate relates to the circumstances as at the date of the certificate.

14 Submission of statutory rules to Governor in Council

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council when submitted to the Governor in Council must be accompanied by—

S. 14(a)
amended by
No. 78/2010
s. 15(1).

- (a) 3 copies (or such other number as may be prescribed) of the proposed statutory rule;
- (b) a copy of the section 13 certificate;

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- | | |
|---|---|
| (c) if a regulatory impact statement was not required, a copy of the exemption certificate; | S. 14(c)
amended by
No. 78/2010
s. 15(2). |
| (d) if a regulatory impact statement was required, a copy of the compliance certificate; | S. 14(d)
amended by
No. 12/2006
s. 178(a). |
| (da) if the proposed statutory rule is an extension regulation, a copy of the extension certificate and a copy of the Premier's certificate under section 5A(3); | S. 14(da)
inserted by
No. 78/2010
s. 15(3). |
| (db) if consultation was required under section 6, a copy of the consultation certificate issued under that section; | S. 14(db)
inserted by
No. 78/2010
s. 15(3). |
| (e) if the proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the Infringements Act 2006 or otherwise, a copy of the certificate under section 6A; | S. 14(e)
inserted by
No. 12/2006
s. 178(b),
amended by
No. 43/2006
s. 47(Sch.
item 7.2). |
| (f) if a human rights certificate was required, a copy of the human rights certificate; | S. 14(f)
inserted by
No. 43/2006
s. 47(Sch.
item 7.3). |
| (g) if a human rights certificate was not required, a copy of the responsible Minister's certificate under section 12A(3). | S. 14(g)
inserted by
No. 43/2006
s. 47(Sch.
item 7.3). |

15 Statutory rules and related documents to be laid before Parliament

S. 15
(Heading)
inserted by
No. 78/2010
s. 16(1).

- (1) On or before the 6th sitting day after notice of the making of a statutory rule has been published in the Government Gazette under section 17(2), a copy of the statutory rule must be laid before each House of the Parliament.

s. 15A

S. 15(1A)
inserted by
No. 78/2010
s. 16(2).

- (1A) If any of the following documents have been issued or given in respect of the statutory rule, a copy of the document must also be laid before each House of the Parliament—
- (a) an extension certificate and the Premier's certificate under section 5A(3);
 - (b) a certificate issued under section 6;
 - (c) a certificate issued under section 6A;
 - (d) an exemption certificate;
 - (e) a compliance certificate under section 10(4);
 - (f) a human rights certificate;
 - (g) a human rights exemption certificate;
 - (h) a section 13 certificate;
 - (i) the accompanying recommendation to the Governor in Council to make the statutory rule.

S. 15(2)
amended by
No. 78/2010
s. 16(3).

- (2) A failure to comply with subsection (1) or (1A) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.
- (3) A copy of each statutory rule laid under subsection (1) must as soon as possible after being so laid be posted or delivered to each member of Parliament who has requested a copy of that statutory rule.

S. 15A
inserted by
No. 78/2010
s. 17.

15A Accompanying documents to be sent to Scrutiny Committee

- (1) When a statutory rule is made, the responsible Minister must ensure that a copy of each of the following is given to the Scrutiny Committee—
- (a) any applicable document referred to in section 15(1A) relating to the statutory rule;

-
- (b) if an exemption certificate has been issued under section 9 by the Premier, the reasons given by the relevant responsible Minister to the Premier as to why the public interest requires that the proposed statutory rule be made without complying with section 7(1);
 - (c) if a regulatory impact statement has been prepared—
 - (i) the regulatory impact statement for the statutory rule; and
 - (ii) a copy of all comments and submissions received.
- (2) The documents referred to in subsection (1) must be given to the Scrutiny Committee no later than the later of—
- (a) 10 working days after the making of the statutory rule; or
 - (b) 10 working days after the establishment of the Committee.
- (3) A failure to comply with subsection (2) does not affect the operation or effect of the statutory rule.

16 Time of commencement of statutory rules

- (1) A statutory rule or a provision of a statutory rule comes into operation at the beginning of—
- (a) the day on which the statutory rule is made; or
 - (b) such later day as is expressed in the statutory rule as the day on which the statutory rule or provision comes into operation.

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Part 3—Making, Tabling and Commencement of Statutory Rules

s. 16

(2) Despite the coming into operation of a statutory rule or of a provision of a statutory rule, a person cannot—

- (a) be convicted of an offence against the statutory rule or provision; or
- (b) be prejudicially affected or made subject to any liability by the statutory rule or provision—

if it is proved that at the relevant time the statutory rule had not been printed and published by the Government Printer or notice under section 17(3) had not been published in the Government Gazette.

(3) A person cannot rely on subsection (2) if it is proved that at the relevant time reasonable steps had been taken for the purpose of bringing the purport of the statutory rule or provision to the notice of—

- (a) the public; or
- (b) persons likely to be affected; or
- (c) the person concerned.

PART 4—PUBLICATION AND AVAILABILITY

17 Statutory rule to be numbered, printed and published

- (1) A statutory rule must forthwith after it is made be numbered, printed and published by the Government Printer.
- (2) After the making of a statutory rule, notice of the making of the statutory rule must be published—
 - (a) in the next general edition of the Government Gazette published after the making of the statutory rule; or
 - (b) a special edition of the Government Gazette within 10 working days of that making.
- (3) As soon as practicable after the making of a statutory rule, a notice must be published in the Government Gazette stating—
 - (a) the place where copies of the statutory rule can be obtained; and
 - (b) the date on which copies of the statutory rule were first obtainable from that place.
- (4) A copy of the Government Gazette purporting to contain a notice published under subsection (3) with respect to any statutory rule is conclusive evidence that the statutory rule was printed and published by the Government Printer on the date specified in that notice as the date on which the statutory rule was first obtainable from the place specified in that notice.

S. 17(2)
substituted by
No. 78/2010
s. 18.

18 Incorporation of amendments

- (1) If a statutory rule has been amended, then in any reprinting of the statutory rule the Government Printer must, unless the Chief Parliamentary Counsel otherwise approves, reprint the statutory rule as so amended.

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- (2) There must be printed in a reprint of a statutory rule—
- (a) a reference to each statutory rule, subordinate instrument or Act by which the reprinted statutory rule is amended; and
 - (b) a reference (whether in a sidenote, footnote or endnote) to each provision of the reprinted statutory rule that is amended and the provision of the statutory rule, subordinate instrument or Act by which the amendment is made.
- (3) If a statutory rule is reprinted with the omission of any formal or introductory parts, there must be printed in that statutory rule—
- (a) a reference to the authorising Act;
 - (b) the date on which it was made;
 - (c) the date or dates, if any, on which it is expressed to come into operation.

19 Citation of statutory rules

- (1) A statutory rule may be cited—
- (a) by the short title authorised by the statutory rule; or
 - (b) if there is no short title authorised by the statutory rule, by the title appearing before the formal or introductory parts; or
 - (c) by the expression "Statutory Rule" or the expression "S.R.", followed by the number given to it and the year in which the statutory rule is made.
- (2) The title of a statutory rule appearing before the formal or introductory parts forms part of the statutory rule if there is no short title authorised by the statutory rule.

20 Availability of statutory rules

- (1) The Government Printer must make every effort to ensure that a copy of a statutory rule can be purchased on demand by any member of the public during normal office hours from a prescribed bookshop.
- (2) The responsible Minister must ensure that a copy of a statutory rule—
 - (a) is available for inspection by any member of the public without charge during normal office hours at the office of the Department of the responsible Minister; or
 - (b) can be inspected without charge or purchased on demand by any member of the public during normal office hours at a public office specified by the responsible Minister by a notice published in the Government Gazette.
- (3) In addition to and without limiting section 16, despite the coming into operation of a statutory rule or of a provision of a statutory rule, a person cannot—
 - (a) be convicted of an offence against the statutory rule or provision; or
 - (b) be prejudicially affected or made subject to any liability by the statutory rule or provision—

if it is proved that at the relevant time a copy of the statutory rule could neither be purchased or inspected as provided by subsections (1) and (2).

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- (4) In this section *copy of a statutory rule* means a copy of—
- (a) a statutory rule printed in accordance with section 17 or, if a reprint of the statutory rule has been prepared in accordance with section 18, the reprint; and
 - (b) any subsequent statutory rule which amends that statutory rule.
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PART 5—SCRUTINY, SUSPENSION AND DISALLOWANCE

21 Review of statutory rules by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament—
- (a) does not appear to be within the powers conferred by the authorising Act;
 - (b) without clear and express authority being conferred by the authorising Act—
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the legal burden of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
 - (c) appears to be inconsistent with the general objectives of the authorising Act;
 - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
 - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
 - (f) unduly trespasses on rights and liberties of the person previously established by law;

S. 21(1)(b)(iii)
amended by
No. 78/2010
s. 19.

Subordinate Legislation Act 1994
No. 104 of 1994
Part 5—Scrutiny, Suspension and Disallowance

s. 21

S. 21(1)(ga)
inserted by
No. 98/2000
s. 76.

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

(ga) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the **Information Privacy Act 2000**;

S. 21(1)(gb)
inserted by
No. 2/2001
s. 116.

(gb) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the **Health Records Act 2001**;

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

S. 21(1)(ha)
inserted by
No. 43/2006
s. 47(Sch.
item 7.4).

(ha) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(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 with respect to the statutory rule and the contravention is of a substantial or material nature;

(k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.

(2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a statutory rule should be—

- (a) disallowed in whole or in part; or
- (b) amended as suggested in the report.

22 Suspension of statutory rule or part of a statutory rule

- (1) If the Scrutiny Committee—
 - (a) proposes under section 21 to recommend that a statutory rule should be—
 - (i) disallowed in whole or in part; or
 - (ii) amended; and
 - (b) is of the opinion that considerations of justice and fairness require that the operation of the statutory rule or any part of the statutory rule should be suspended pending the consideration by the Parliament of the statutory rule—

the Scrutiny Committee may propose in the report under section 21 that the operation of the statutory rule or part of the statutory rule be suspended.

- (2) If the Scrutiny Committee proposes that the operation of a statutory rule or part of a statutory rule be suspended—
 - (a) the Scrutiny Committee must forthwith send a copy of the report to the responsible Minister and the Governor in Council; and
 - (b) subject to subsection (3), the operation of the statutory rule or part of the statutory rule is suspended at the end of the period of 7 days after the sending of the report to the Governor in Council until the end of the period during which the statutory rule or part of the statutory rule could be disallowed under section 23.

- (3) The Governor in Council, on the recommendation of the responsible Minister made within the period of 7 days referred to in subsection (2), may by Order published in the Government Gazette declare that the operation of the statutory rule or part of the statutory rule is not suspended.
- (4) As from the date on which the Order is published, the provision in a report of the Scrutiny Committee providing for the suspension ceases to have any force or effect.
- (5) While the operation of a statutory rule or part of a statutory rule is suspended under this section, the statutory rule is deemed not to have been made or to have been made without that part.

23 Disallowance of statutory rule or part of a statutory rule

- (1) This section applies to a statutory rule if—
 - (a) the authorising Act under which the statutory rule is made states that the statutory rule is subject to disallowance by the Parliament or by a House of the Parliament; or
 - (b) the Scrutiny Committee has in a report under section 21 recommended that the statutory rule be disallowed in whole or in part; or
 - (c) there was a failure to comply with section 15(1) or (1A) and the Scrutiny Committee has reported that failure to each House of the Parliament.
- (2) A statutory rule to which this section applies is disallowed in whole or in part if—
 - (a) a notice of a resolution to disallow the statutory rule is given in a House of the Parliament—

S. 23(1)(a)
substituted by
No. 78/2010
s. 20(1).

S. 23(1)(c)
amended by
No. 78/2010
s. 20(2).

S. 23(2)(a)
substituted by
No. 78/2010
s. 20(3).

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- (i) on or before the 18th sitting day of that House after the rule is laid before that House; or
 - (ii) in the case of a failure to comply with section 15(1) in respect of a statutory rule, on or before the 24th sitting day of that House after the notice of the making of the statutory rule has been published in the Government Gazette under section 17(2); and
- (b) the resolution is passed by that House on or before the 12th sitting day of that House after the giving of the notice of the resolution.
- (3) Notice of a resolution to disallow a statutory rule may be expressed to apply to the whole or to any part of the statutory rule.
 - (4) A resolution to disallow the whole or any part of a statutory rule has effect according to its tenor.
 - (5) If a House of the Parliament is prorogued or the Legislative Assembly is dissolved—
 - (a) the prorogation or dissolution does not affect the power of the House to pass a resolution disallowing a statutory rule; and
 - (b) the calculation of sitting days of the House is to be made as if there had been no prorogation or dissolution.

24 Effect of disallowance of statutory rule or part of a statutory rule

- (1) Subject to subsection (2), if a statutory rule or a part of a statutory rule is disallowed by the Parliament or by a House of the Parliament, the disallowance has the same effect as a revocation of the statutory rule or part.

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- (2) If a statutory rule or a part of a statutory rule is disallowed by the Parliament or by a House of the Parliament—
- (a) any statutory rule or Act or part of a statutory rule or Act that had been revoked or repealed by the disallowed statutory rule or part is revived as from the beginning of the day on which the statutory rule or part was disallowed; and
 - (b) any statutory rule or Act that had been amended by the disallowed statutory rule or part takes effect without that amendment as from the beginning of the day on which the statutory rule or part was disallowed in all respects as if the disallowed statutory rule or part had not been made.

25 Notice of disallowance of statutory rule or part of a statutory rule

If a statutory rule, or part of a statutory rule, is disallowed, the Clerk of the Parliaments must cause notice of the disallowance to be published in the Government Gazette.

PART 6—GENERAL

26 Guidelines

- (1) The Minister may make guidelines for or with respect to—
 - (a) the preparation, content, publication and availability of statutory rules; and
 - (b) 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 limiting the generality of subsection (1), the guidelines must deal with the matters specified in Schedule 1.
- (3) The Minister must cause the guidelines 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;
 - (c) laid before each House of the Parliament;
 - (d) forwarded to the Scrutiny Committee.

27 Advisory role of Scrutiny Committee

The Scrutiny Committee may advise the Minister about any matter relating to the administration or operation of this Act including—

- (a) the making of regulations under section 4(1);
and
- (b) the making of guidelines.

28 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) providing for and regulating the preparation and publication with or as part of a statutory rule, a table—
 - (i) specifying a document containing any matter that is applied, adopted or incorporated by the statutory rule; and
 - (ii) indicating the provision of the statutory rule to which any such matter relates;
- (b) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Pt 7
(Heading and
ss 29–32)
repealed by
No. 74/2000
s. 3(Sch. 1
item 120.1).

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**PART 8—CONSEQUENTIAL AND TRANSITIONAL
PROVISIONS**

33 Repeal of Subordinate Legislation Act 1962

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S. 33(1)
repealed by
No. 78/2010
s. 21(1).

(2) Any reference in any Act, regulation, local law, subordinate instrument or other document whatsoever to the **Subordinate Legislation Act 1962** is to be construed as a reference to the **Subordinate Legislation Act 1994**, unless the contrary intention appears.

(3) Without limiting subsection (2), a reference to section 5, 6 or 6A of the **Subordinate Legislation Act 1962** is to be construed as a reference to section 15, 22 and 23 or 24 respectively of this Act.

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S. 34
repealed by
No. 78/2010
s. 21(2).

**35 Transitional provisions—Part 2 of Subordinate
Legislation Amendment Act 2010**

S. 35
repealed by
No. 74/2000
s. 3(Sch. 1
item 120.2),
new s. 35
inserted by
No. 78/2010
s. 22.

(1) An exemption certificate issued under section 8 as in force immediately before 1 January 2011 is to be taken, on and from 1 January 2011, to be an exemption certificate issued on the equivalent ground under section 8 as substituted by Part 2 of the **Subordinate Legislation Amendment Act 2010**.

(2) An exemption certificate issued under section 9 as in force immediately before 1 January 2011 is to be taken, on and from 1 January 2011, to be an exemption certificate issued on the equivalent ground under section 8 as substituted by Part 2 of

the **Subordinate Legislation Amendment Act 2010**.

- (3) A Premier's certificate issued under section 9(3) as in force immediately before 1 January 2011—
- (a) is to be taken, on and from 1 January 2011, to be an exemption certificate issued by the Premier under section 9 as substituted by Part 2 of the **Subordinate Legislation Amendment Act 2010**; and
 - (b) has full force and effect despite not being accompanied by the Minister's written reasons under section 9(2)(b) or not including the reason for the exemption under section 9(3)(a).
- (4) If a statutory rule has been made before 1 January 2011 but section 15 as in force immediately before 1 January 2011 has not been complied with before that date—
- (a) section 15 as amended by Part 2 of the **Subordinate Legislation Amendment Act 2010** and section 15A must be complied with; and
 - (b) for that purpose, any certificate or other documentation required by this Act which was prepared before 1 January 2011 is taken to comply with this Act as amended.
- (5) If, before 1 January 2011, a regulatory impact statement has been prepared in accordance with Part 2 as in force immediately before 1 January 2011 for a proposed statutory rule but that statutory rule is not made before 1 January 2011, the regulatory impact statement prepared in accordance with Part 2 as in force immediately before 1 January 2011 is taken to comply with this Act as amended by Part 2 of the **Subordinate**

Legislation Amendment Act 2010 for the purposes of the statutory rule to which it relates.

**36 Regulations dealing with transitional matters—
Subordinate Legislation Amendment Act 2010**

S. 36
repealed by
No. 74/2000
s. 3(Sch. 1
item 120.2),
new s. 36
inserted by
No. 78/2010
s. 40.

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Subordinate Legislation Amendment Act 2010** (including the repeals and amendments made by that Act).
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that the **Subordinate Legislation Amendment Act 2010** receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or instruments or a class of persons or instruments from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary—
 - (a) in any Act (other than this Act, the **Charter of Human Rights and Responsibilities Act 2006** or the **Subordinate Legislation Amendment Act 2010**); or
 - (b) in any subordinate instrument.

SCHEDULES

Sch. 1
amended by
No. 78/2010
s. 23.

SCHEDULE 1

MATTERS TO BE INCLUDED IN GUIDELINES

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. Guidelines as to alternative means of achieving the objectives sought to be achieved by a proposed statutory rule such as self regulation or voluntary codes of conduct.
3. Guidelines as to the appropriate cases in which a proposed statutory rule should set performance standards rather than prescribing detailed requirements.
4. Guidelines as to procedures to be adopted to ensure that—
 - (a) the need for a proposed statutory rule can be justified;
 - (b) the objectives of a proposed statutory rule are formulated and included in any proposed statutory rule.
5. Guidelines as to the procedures to be adopted to ensure that—
 - (a) an agency preparing or considering a proposed statutory rule identifies and consults any other agency relevant to the subject matter of the proposed statutory rule;
 - (b) where appropriate, independent advice is obtained as to the nature and content of the proposed statutory rule;
 - (c) proper consultation takes place with any sector of business or the public which may be affected by the proposed statutory rule;
 - (d) proper consultation takes place in circumstances where consultation is required under section 6.

Subordinate Legislation Act 1994
No. 104 of 1994

Sch. 1

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6. Guidelines as to circumstances in which a statutory rule imposes a significant economic or social burden on a sector of the public.
 7. Guidelines as to the application, adoption or incorporation of matter in a statutory rule.
 8. Guidelines as to the style and language to be used in drafting statutory rules.
 9. Guidelines as to the printing and submission of statutory rules to the Governor in Council and the provision of statutory rules to the Scrutiny Committee.

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Sch. 2
repealed by
74/2000
s. 3(Sch. 1
item 120.3).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 November 1994

Legislative Council: 6 December 1994

The long title for the Bill for this Act was "A Bill to re-enact with amendments the law relating to subordinate legislation, to amend the **Interpretation of Legislation Act 1984**, to repeal the **Subordinate Legislation Act 1962** and the **Amendments Incorporation Act 1958**, to make consequential amendments to certain Acts and for other purposes."

The **Subordinate Legislation Act 1994** was assented to on 13 December 1994 and came into operation on 1 January 1995: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Subordinate Legislation Act 1994** by Acts and subordinate instruments.

Public Sector Management and Parliamentary Officers (Amendment) Act 1996, No. 24/1996

Assent Date: 2.7.96
Commencement Date: S. 33(1) on 16.11.93: s. 2(2); rest of Act on 2.7.96: s. 2(1)
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 120) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Information Privacy Act 2000, No. 98/2000

Assent Date: 12.12.00
Commencement Date: S. 76 on 1.9.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: S. 116 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

State Taxation Legislation (Further Amendment) Act 2002, No. 30/2002

Assent Date: 12.6.02
Commencement Date: S. 18 on 13.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 191) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

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Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 52(5) on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 7) on 1.1.06: s. 2
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Infringements Act 2006, No. 12/2006

Assent Date: 11.4.06
Commencement Date: Ss 177, 178 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 7) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Infringements and Other Acts Amendment Act 2008, No. 9/2008

Assent Date: 18.3.08
Commencement Date: S. 43 on 1.7.08: Special Gazette (No. 172) 27.6.08 p. 1
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Subordinate Legislation Amendment Act 2010, No. 78/2010

Assent Date: 19.10.10
Commencement Date: Ss 4–23, 40 on 1.1.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

3. Explanatory Details

No entries at date of publication.