

1994

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SUBORDINATE LAWS (AMENDMENT) BILL (NO. 3) 1994

EXPLANATORY MEMORANDUM

Circulated by the authority of the Attorney General

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Outline

The Subordinate Laws Act 1989 ("the Principal Act") makes general provision for matters relating to the subordinate laws of the Territory. In particular, section 6 details requirements for the notification of a subordinate law in the Gazette, its tabling in the Legislative Assembly and its possible disallowance by the Assembly.

The Subordinate Laws (Amendment) Bill (No. 3) 1994 ("the Bill") amends the Principal Act to remove any doubt about the application of the simplified process of notifying the making of a subordinate law in the Gazette as provided for in subsection 6(2).

The Subordinate Laws (Amendment) Act (No. 2) 1994 (the amending Act) introduced, among other things, amendments of the Principal Act which were intended to facilitate the simplification of the process of gazetting disallowable instruments and determinations of fees or charges and also to achieve consistency with the process for gazetting all other legislation.

However recent legal advice suggests that the intention has not been fully achieved. This view is that the amending Act did not displace the requirement in some empowering Acts and subordinate laws that a disallowable instrument or a determination of a fee or charge be notified by publishing it in full in the Gazette. In other words, where an empowering Act or subordinate law requires the publication in the Gazette of the instrument in question then it is not possible to rely on the simplified process of gazettal allowed for under subsection 6(2). That subsection is restricted in its application to those instruments where the empowering Act or subordinate law is silent as to gazettal requirements.

The Bill also includes a saving provision to ensure the validity of prior gazettals of instruments where the simplified process provided in subsection 6(2) was utilised.

Financial Implications

There are no financial implications arising from the Bill.

Details of the Bill follow.

Clauses 1, 2 and 3 are formal clauses relating to the short title of the Bill, to its commencement and to the definition of the Principal Act, respectively.

Clause 4 inserts into section 6 of the Principal Act a new paragraph (2)(b) which provides that the publication in the Gazette of a notice of the making of a subordinate law (including a disallowable instrument and a determination of a fee or charge) and details of where a copy may be purchased is sufficient to comply with the requirement in an empowering Act or subordinate law that the subordinate law be published or notified in the Gazette.

Clause 5 is a saving provision which ensures that a prior notification in the Gazette of a subordinate law is protected by applying **Clause 4** of the Bill to that notification.