

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Hargreaves)

Subordinate Laws Amendment Bill 2000

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Subordinate Laws Amendment Bill 2000

A BILL

FOR

**An Act to amend the *Subordinate Laws Act 1989* to provide
for regulatory impact statements, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Subordinate Laws Amendment Act 2000*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

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Note 1 The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

5 *Note 2* A single day or time may be fixed, or different days or times may be fixed for different provisions (see *Interpretation Act 1967*, s 10C (1)).

Note 3 If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

PART 2—AMENDMENTS OF SUBORDINATE LAWS ACT

10 **3 Act amended by pt 2 and sch 1**

This Part and Schedule 1 amend the *Subordinate Laws Act 1989*.

4 Insertion

After section 9 the following Part is inserted:

“PART 3—REGULATORY IMPACT STATEMENTS

15 **“Division 3.1—Preliminary**

“9A Definitions for pt 3

In this Part:

20 *authorising law*, in relation to a proposed subordinate law, means the Act or subordinate law (and, if appropriate, the provision of the Act or subordinate law) under which the proposed law will be made.

benefits includes—
(a) advantages; and
(b) direct and indirect economic, environmental and social benefits.

costs includes—
(a) burdens and disadvantages; and
(b) direct and indirect economic, environmental and social costs.

scrutiny committee principles means the terms of reference of the Legislative Assembly's Standing Committee on Justice and Community Safety that apply to a subordinate law.

"9B Other publication or consultation requirements not affected

- 5 "“(1) Division 3.2 (Requirements for regulatory impact statements) does not affect any requirements in any other Territory law for publication or consultation about a proposal to make a subordinate law.
- “(2) Division 3.2 does not apply to the subordinate law if the requirements are of a comparable level to publication and consultation under the Division.
- 10

"9C Guidelines about costs of proposed subordinate laws

- “(1) The Minister may issue guidelines to be applied in deciding whether a proposed subordinate law is, or is not, likely to impose appreciable costs on the community or a part of the community.
- 15 “(2) Guidelines issued under this section are a disallowable instrument.
- “(3) The Minister must issue guidelines under subsection (1) within 6 months of the commencement of this section.
- “(4) Subsection (3) and this subsection cease to have effect 6 months after the commencement of this section.

20 ***“Division 3.2—Requirements for regulatory impact statements***

"9D Preparation of regulatory impact statements

- “(1) If a proposed subordinate law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the **“administering Minister”**) must arrange for a regulatory impact statement to be prepared for the proposed law.
- 25 “(2) However, this section does not apply to a proposed subordinate law if the administering Minister, by written instrument (the **RIS exemption instrument**), exempts the proposed law from subsection (1).
- 30 Note Sections 9B and 9G also state other circumstances when a regulatory impact statement is not required.
- “(3) The RIS exemption instrument is a disallowable instrument.

- “(4) If the RIS exemption instrument is disallowed under this Act after the subordinate law has been made in whole or in part, the administering Minister must arrange for a regulatory impact statement to be prepared for the law.
- 5 “(5) The regulatory impact statement prepared under subsection (4) must be laid before the Legislative Assembly within 15 sitting days after the disallowance of the RIS exemption instrument.
- 10 “(6) This Part (other than section 9H (When must a regulatory impact statement be tabled?)) applies to the subordinate law as if the law were a proposed subordinate law.
- “9E Content of regulatory impact statements**
- A regulatory impact statement for a proposed subordinate law must include the following information about the proposed law in clear and precise language:
- 15 (a) the authorising law;
- (b) a brief statement of the policy objectives of the proposed law and the reasons for them;
- (c) a brief statement of the way the policy objectives will be achieved by the proposed law and why this way of achieving them is reasonable and appropriate;
- 20 (d) a brief explanation of how the proposed law is consistent with the policy objectives of the authorising law;
- (e) if the proposed law is inconsistent with the policy objectives of other legislation—
- 25 (i) a brief explanation of the relationship with the other legislation; and
- (ii) a brief explanation for the inconsistency;
- (f) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making a subordinate law) and why the alternative was rejected;
- 30 (g) a brief assessment of the benefits and costs of implementing the proposed law that—
- (i) if practicable and appropriate, quantifies the benefits and costs; and

- (ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (f);
- 5 (h) a brief assessment of the consistency of the proposed law with the scrutiny committee principles and, if it is inconsistent with the principles, the reasons for the inconsistency.

“9F Notification and making regulatory impact statements available

“(1) Preparation of a regulatory impact statement for a proposed subordinate law must be notified in the Gazette and in a daily newspaper published in the ACT.

10 “(2) If the proposed law is likely to have a significant impact on a particular group of people, the notice must be published in a way likely to ensure members of the group understand the purpose and content of the notice.

15 “(3) The notice must—

- (a) include a brief statement of the policy objectives sought to be achieved by the proposed law; and
- (b) state where copies of the regulatory impact statement may be obtained or inspected; and
- 20 (c) if a draft of the proposed law may be obtained or inspected—state that the draft may be obtained or inspected and where; and
- (d) state that anyone may comment on the proposed law; and
- (e) state how and when comments may be made; and
- (f) state how consultation about the proposed law will take place.

25 “(4) The notice must allow at least 28 days from publication of the notice for the making of comments.

“(5) A copy of the regulatory impact statement must be available free of charge, or on payment of a reasonable price, at the place or places stated in the notice.

30 **“9G When is preparation of a regulatory impact statement unnecessary?**

“(1) A regulatory impact statement need not be prepared for a proposed subordinate law if the proposed law only provides for, or to the extent it only provides for, the following:

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- (a) a matter that is not of a legislative nature, including, for example, a matter of a machinery, administrative, drafting or formal nature;
- (b) a matter that does not operate to the disadvantage of any person (other than the Territory or a Territory authority) by—
 - 5 (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person;
- (c) an amendment of a subordinate law to take account of current ACT legislative drafting practice;
- (d) the commencement of an Act or a subordinate law or a provision of an Act or a subordinate law;
- 10 (e) an amendment of a subordinate law that does not fundamentally affect the law's application or operation;
- (f) a matter of a transitional character;
- (g) a matter arising under a Territory law that is substantially uniform or complementary with legislation of the Commonwealth or a State;
- 15 (h) a matter involving the adoption of an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, the ACT;
 - 20 (i) a proposal to make rules of court;
 - (j) a matter advance notice of which would enable someone to gain unfair advantage;
- 25 (k) an amendment of a fee, charge or tax consistent with announced government policy.

“(2) A regulatory impact statement also need not be prepared for a proposed subordinate law if, or to the extent, it would be against the public interest because of the nature of the proposed law or the circumstances in which it is made.

Example

The subordinate law may need to be made urgently for controlling the spread of a disease or dealing with another urgent situation.

Note Sections 9B and 9D also state other circumstances when a regulatory impact statement is not required.

"9H When must a regulatory impact statement be tabled?

- "(1) This section applies if a regulatory impact statement for a proposed subordinate law has been prepared and the proposed law is made in whole or part.
- 5 "(2) The statement must be laid before the Legislative Assembly with the subordinate law.

"Division 3.3—Failure to comply with requirements for regulatory impact statements

"9I Effect of failure to comply with div 3.2

- 10 "(1) Failure to comply with Division 3.2 (Requirements for regulatory impact statements) in relation to a subordinate law does not—
- (a) affect the law's validity; or
 - (b) create rights or impose legally enforceable obligations on the Territory, a Minister or anyone else.
- 15 "(2) In addition, a decision made, or appearing to be made, under Division 3.2 is final and conclusive.
- "(3) In this section:
- decision* includes—
- (a) conduct engaged in to make a decision; and
 - (b) conduct related to making a decision; and
 - (c) failure to make a decision.”.

PART 3—AMENDMENT OF OTHER ACTS

5 Amendment of other Acts—sch 2

Schedule 2 amends the Acts mentioned in that Schedule.

SCHEDULE 1

(See s 3)

ADDITIONAL AMENDMENTS

[1.1] Title—

Omit the title, substitute the following title:

- 5 “An Act about subordinate laws and for other purposes related to legislation”.

[1.2] New Part heading—

Before section 1 insert the following Part heading:

“PART 1—PRELIMINARY”.

10 **[1.3] Substitution—**

Repeal section 2, substitute the following section and Part heading:

“2 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

15 **“PART 2—PROVISIONS ABOUT SUBORDINATE LAWS”.**

[1.4] New Part heading—

Before section 10 insert the following Part heading:

“PART 4—DISALLOWABLE INSTRUMENTS”.

[1.5] New Part heading—

- 20 After section 10 insert the following Part heading:

“PART 5—TRANSITIONAL”.

SCHEDULE 2

(See s 5)

AMENDMENT OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1989

[2.1] Schedule 1—

5 Omit “This Act does not apply to decisions made under Part 4 of the *Electoral Act 1992*.”, substitute the following:

- “This Act does not apply to decisions made under—
(a) the *Electoral Act 1992*, Part 4 (Electorates); and
(b) the *Subordinate Laws Act 1989*, Part 3 (Regulatory impact statements).”

10 ***Ombudsman Act 1989***

[2.2] Addition—

After paragraph 5 (2) (e), insert the following paragraph:

- 15 “(ea) action taken, or not taken, under Division 3.2 (Requirements for regulatory impact statements) of the *Subordinate Laws Act 1989*; or”.

Endnote

Act amended

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