



Australian Capital Territory

Subordinate Laws Act 1989

A1989-24

Republication No 4

Effective: 14 August 2001 – 12 September 2001

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(republication for amendments by A2000-71)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Subordinate Laws Act 1989* effective from 14 August 2001 to 12 September 2001.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws:

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the cover and at the bottom of each page.

Editorial amendments

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other amendments of a formal nature to a law when preparing it for republication. The amendments do not change the law. The amendments are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

If necessary, the penalties in this republication have been revised in accordance with the *Legislation Act 2001*, section 273.

The value of a penalty unit for an offence against this republished law at the date of publication is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

See the *Legislation Act 2001*, section 133 for additional information.



Australian Capital Territory

Subordinate Laws Act 1989

Contents

Page

Part 1 Preliminary

1 Short title

Part 2 Provisions about subordinate laws

- 2A Ambit of regulation-making power
- 3 Exercise of regulation-making power
- 4 Numbering and citation
- 5 Exercise of certain powers between notification and commencement of Act
- 6 Notification, tabling and disallowance
- 7 Retrospectivity
- 8 Prescribing matters by reference to other instruments
- 8A Amendment by Act
- 9 Application of Interpretation Act 1967

Part 3	Regulatory impact statements	
Division 3.1	Preliminary	
Division 3.2	Requirements for regulatory impact statements	
9F	When is preparation of a regulatory impact statement unnecessary?	
9G	When must a regulatory impact statement be tabled?	
9H	Effect of failure to comply with div 3.2	
Part 4	Disallowable instruments	
10	Disallowable instruments	
Part 5	Transitional	
11	Transitional provision—change of tabling and disallowance period etc	

Endnotes

1	About the endnotes
2	Abbreviation key
3	Legislation history
4	Amendment history
5	Earlier republications



Australian Capital Territory

Subordinate Laws Act 1989

An Act about subordinate laws and for other purposes related to legislation

Part 1 Preliminary

1 Short title

This Act may be cited as the *Subordinate Laws Act 1989*.

2 Notes

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

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Provisions about subordinate laws

2A Ambit of regulation-making power

- (1) A provision of an Act empowering the Executive to make regulations for the Act shall be taken to empower the Executive to make regulations, not inconsistent with the Act, prescribing matters—
 - (a) required or permitted by the Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.
- (2) The application of subsection (1) in relation to a provision of an Act is not displaced by reason only that the Act also empowers the Executive to make regulations under the Act in relation to specified matters.
- (3) In this section:
for an Act includes for the purposes of the Act.

3 Exercise of regulation-making power

Where an Act empowers the Executive to make regulations under the Act, it shall be sufficient if the regulations are signed by any 2 Ministers who are members of the Executive.

4 Numbering and citation

- (1) The subordinate laws made in each calendar year shall be numbered in regular arithmetic series as nearly as may be in the order in which they are made.
- (2) A subordinate law may, without prejudice to any other mode of citation provided by law, be cited by its number and the calendar year in which made.
- (3) In this section:
subordinate law means regulations, rules or by-laws, but does not include rules of court that relate only to dates of sittings of a court.

5 Exercise of certain powers between notification and commencement of Act

- (1) Where an Act (*the Act concerned*) being—

Section 6

(a) an Act that is not to commence on the day on which it is notified in the Gazette; or

(b) a converted ordinance that did not commence before self-government day;

confers power, or amends another Act in such a manner that the other Act, as amended, confers power, to make an appointment or to make a subordinate law or an instrument of an administrative nature, then, unless the contrary intention appears, the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, subordinate law or instrument into effect, before the Act concerned commences as if it had commenced.

(2) An appointment, subordinate law or instrument made by virtue of subsection (1) or, if such a law or instrument contains 2 or more provisions, each of those provisions, takes effect—

(a) on the day on which the Act concerned commences; or

(b) on the day on which the appointment, subordinate law, instrument or provision, as the case may be, would have taken effect if the Act concerned had been in operation when the appointment, subordinate law or instrument was made;

whichever is the later.

(4) Where this section applies to an Act because the Act amends another Act in the manner referred to in subsection (1) and that other Act has not commenced, this section has effect as if the references in subsections (1) and (2) to the commencement of the Act concerned were references to the commencement of the other Act as amended by the Act concerned.

(5) In subsections (1), (2), (3) and (4), a reference to *an Act* shall be read as including a reference to any provision or provisions of an Act.

(6) This section applies, so far as the context permits, to a subordinate law as if it were an Act, and in that application references in this section to the Act concerned shall be read as references to the subordinate law and references in this section to an Act other than the Act concerned shall be read as references to another subordinate law.

6 Notification, tabling and disallowance

(1) A subordinate law—

(a) shall be notified in the Gazette; and

(b) takes effect on the day of notification or, if that law otherwise provides, as so provided; and

-
- (c) shall be laid before the Legislative Assembly within 6 sitting days after the day of notification.
- (2) Publication in the Gazette of a notice of a subordinate law having been made and of the place or places where copies can be purchased shall be taken to be sufficient compliance with—
- (a) paragraph (1) (a); and
- (b) any requirement in any Act or subordinate law that the firstmentioned subordinate law be published or notified in the Gazette.
- (3) On the day of publication of a notice under subsection (2) or as soon as practicable after that day, copies of the subordinate law to which the notice relates shall be made available for purchase at the place, or at each of the places, specified in the notice.
- (4) Where, on the day of publication of a notice under subsection (2), there are no copies of the subordinate law to which the notice relates available for purchase at the place, or at any of the places, specified in the notice, the relevant Minister shall cause to be laid before the Legislative Assembly within 12 sitting days a statement that copies of the subordinate law were not so available and the reason why they were not so available.
- (5) Failure to comply with the requirement of subsection (3) or (4) shall not be taken to constitute a failure to comply with subsection (1).
- (6) If a subordinate law is not laid before the Legislative Assembly in accordance with subsection (1) (c), it ceases to have effect.
- (7) If the Legislative Assembly, pursuant to a motion of which notice has been given within 6 sitting days after a subordinate law has been laid before it, by resolution disallows that law or a provision of that law, that law or provision ceases to have effect.
- (7A) If, at the expiration of 6 sitting days after notice of a motion to disallow or amend a subordinate law or a provision of a subordinate law has been given in the Legislative Assembly (being notice given within 6 sitting days after the subordinate law was laid before the Legislative Assembly)—
- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;
- the subordinate law or provision specified in the motion shall be deemed to have been disallowed and ceases to have effect, or shall be deemed to have been amended, as the case requires.

Part 2 Provisions about subordinate laws

Section 6

(7B) If, before the expiration of 6 sitting days after notice of a motion to disallow or amend a subordinate law or a provision of a subordinate law has been given in the Legislative Assembly (being notice given within 6 sitting days after the subordinate law was laid before the Legislative Assembly)—

- (a) the Legislative Assembly is dissolved or expires; and
- (b) at the time of the dissolution or expiry—
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the subordinate law shall, for the purposes of subsections (7), (7A) and (11), be deemed to have been laid before the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Legislative Assembly.

(8) Where a subordinate law or a provision of a subordinate law ceases to have effect under this section, that has the same effect as a repeal of that law or provision.

(9) Where—

- (a) a subordinate law or a provision of a subordinate law (*the relevant law*) ceases to have effect under this section; and
- (b) the relevant law repealed, in whole or in part, a previous law that was in force immediately before the relevant law commenced;

the previous law is revived from and including the date on which the relevant law ceased to have effect, as if the relevant law had not been made.

(10) If—

- (a) a subordinate law or a provision of a subordinate law is disallowed or is to be deemed to have been disallowed under this section; and
- (b) another subordinate law the same in substance, or containing a provision the same in substance, as the law or provision so disallowed or to be deemed to have been disallowed is made within 6 months;

that other law or provision is of no effect unless—

- (c) if the first-mentioned law or provision was disallowed by resolution—the Legislative Assembly has rescinded the resolution; or
- (d) if the first-mentioned law or provision was to be deemed to have been disallowed—the Legislative Assembly by resolution has approved the making of a subordinate law the same in substance, or containing a

provision the same in substance, as the law or provision to be deemed to have been disallowed.

- (11) If the Legislative Assembly, pursuant to a motion of which notice has been given within 6 sitting days after a subordinate law has been laid before it, by resolution amends that law, then, subject to this section, that law is amended and has effect accordingly.
- (12) The relevant Minister shall cause notice of—
- (a) a resolution referred to in subsection (11); or
 - (b) the fact that a subordinate law is to be deemed to have been amended by virtue of subsection (7A);
- to be published in the Gazette.
- (13) An amendment made, or to be deemed to have been made, under this section takes effect—
- (a) on the day on which the notice referred to in subsection (12) is published in the Gazette; or
 - (b) on the commencement of the subordinate law, or the part of the subordinate law, amended or to be deemed to have been amended, as the case requires;
- whichever is the later or, if the amendment otherwise provides, as so provided.
- (14) An amendment made, or to be deemed to have been made, under this section shall, for the purposes of the application of sections 7, 8 and 9, be taken to have been made—
- (a) by a subordinate law under the Act containing the power to make the subordinate law amended or to be deemed to have been amended; and
 - (b) by the person or body so empowered; and
 - (c) in compliance with any condition precedent, and in accordance with any procedural requirement, applicable to the making of such a subordinate law.
- (15) Subject to subsection (16), an amendment of a subordinate law made, or to be deemed to have been made, under this section does not prevent the further amendment or repeal of that subordinate law by a later subordinate law.
- (16) Subsection (10) applies in relation to a subordinate law amended, or to be deemed to have been amended, under this section as if the reference in that subsection to a subordinate law disallowed or to be deemed to have been disallowed were a reference to the firstmentioned subordinate law before being so amended or deemed to have been amended, as the case requires.

Section 7

- (17) Notwithstanding subsections (7A) and (11), an amendment of a subordinate law made, or to be deemed to have been made, under this section which would, but for this subsection, have the effect of waiving or altering any fee, charge, penalty or other amount payable to the Territory is of no effect.
- (18) Notwithstanding subsections (7A) and (11), an amendment of a subordinate law, other than a regulation, rule or by-law, made, or to be deemed to have been made, under this section is of no effect.
- (19) In this section:

relevant Minister, in relation to a subordinate law, means—

- (a) the Minister administering the Act under which, or the part of the Act for the purposes of which, the subordinate law was made; or
- (b) if there are 2 or more such Ministers—either or any of them.

subordinate law means—

- (a) regulations, rules or by-laws; or
- (b) a determination made by a Minister pursuant to a provision of an Act empowering him or her to determine, by notice in writing, fees or charges for the purposes of the Act.

7 Retrospectivity

A subordinate law shall not be expressed to take effect from a date before the date of its notification in the Gazette where, if the law so took effect—

- (a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;

and where any subordinate law contains a provision in contravention of this section, that provision is void and of no effect.

8 Prescribing matters by reference to other instruments

- (1) Where an Act authorises or requires provision to be made for or in relation to any matter by a subordinate law, the subordinate law may, unless the contrary intention appears, make provision for or in relation to that matter by applying, adopting or incorporating, with or without modification—
- (a) the provisions—

- (i) of any Act or subordinate law; or
 - (ii) of any Commonwealth Act, or of any regulations, rules or disallowable instrument under a Commonwealth Act; or
 - (iii) of any State Act, or of any regulations or rules under a State Act;
as in force at a particular time or as in force from time to time; or
- (b) any matter contained in any other instrument or writing as in force or existing at the commencement of the subordinate law;

but, unless the contrary intention appears, the subordinate law shall not, except as provided by this section, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

- (2) In this section:

disallowable instrument means—

- (a) for an instrument under an Act—a disallowable instrument under section 10; or
- (b) for an instrument under a Commonwealth Act—a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

8A Amendment by Act

- (1) Where a subordinate law made under an Act has been amended by any Act, that subordinate law as so amended may be amended or repealed by a subordinate law made under the first-mentioned Act.
- (2) Subsection (1) applies in relation to amendments effected before or after the commencement of this section.

9 Application of Interpretation Act 1967

- (1) The *Interpretation Act 1967* applies in relation to a subordinate law or an instrument of an administrative nature made under an Act as if the subordinate law or instrument were an Act and as if each of its provisions were a section of an Act.
- (2) Unless the contrary intention appears, an expression used in a subordinate law or in an instrument referred to in subsection (1) has the same meaning as in the Act under which the subordinate law or instrument was made or the part of that Act for the purposes of which the subordinate law or instrument was made (as the case requires).

Part 2 Provisions about subordinate laws

Section 9

- (3) A subordinate law or an instrument referred to in subsection (1) shall be read and construed subject to the Act under which it was made and so as not to exceed the power conferred on the person or body by which it was made, to the intent that where the subordinate law or instrument would, but for this subsection, have been construed as being in excess of the power conferred upon that person or body, it shall be deemed to be a valid law or instrument to the extent to which it is not in excess of that power.

Part 3 **Regulatory impact statements**

Division 3.1 **Preliminary**

9A **Definitions for pt 3**

In this part:

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**

- (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.

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.
- (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.

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.
- (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).

Note Sections 9B and 9F 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) 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.
- (6) This part (other than section 9G (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:

- (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;

- (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—
 - (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;
- (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);
- (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 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:
 - (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—
 - (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;
 - (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;
 - (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;
 - (i) a proposal to make rules of court;
 - (j) a matter advance notice of which would enable someone to gain unfair advantage;
 - (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.

9G 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.
- (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

9H Effect of failure to comply with div 3.2

- (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.

- (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 4 Disallowable instruments

10 Disallowable instruments

(1) In this section:

disallowable instrument means a statutory instrument that is declared by an Act or subordinate law to be a disallowable instrument for this Act, whether or not the instrument is declared to be a disallowable instrument for the purposes of this section.

(2) The following sections of this Act apply to a disallowable instrument as if it were a subordinate law:

- section 6 (Notification, tabling and disallowance)
- section 7 (Retrospectivity)
- section 8 (Prescribing matters by reference to other instruments)
- section 8A (Amendment by Act)
- section 9 (Application of Interpretation Act 1967).

Part 5 Transitional

11 Transitional provision—change of tabling and disallowance period etc

- (1) Section 6 as in force immediately before the commencement of this section continues to apply to a subordinate law (within the meaning of that section) that was notified in the Gazette before the commencement.
- (2) The reference in subsection (1) to section 6 includes a reference to that section as applied by section 10.
- (3) This section ceases to have effect 1 year after the day it commences.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation (Republication) Act 1996*, section 13 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	orig = original
amdt = amendment	p = page
ch = chapter	par = paragraph
cl = clause	prev = previous
def = definition	(prev...) = previously
dict = dictionary	prov = provision
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
ins = inserted/added	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
notfd = notified	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced

3 Legislation history

Legislation before self-government

Legislation	Year and number	Gazette notification	Commencement
Subordinate Laws Ordinance 1989	1989 No 24	3 May 1989	ss 1 and 2: 3 May 1989 remainder: 11 May 1989 (see s 2 (2) and Gaz 1989 No S164)

Legislation after self-government

Subordinate Laws (Amendment) Act 1991	1991 No 15	30 Apr 1991	30 Apr 1991
Subordinate Laws (Amendment) Act 1994	1994 No 12	6 May 1994	6 May 1994
Subordinate Laws (Amendment) Act (No. 2) 1994	1994 No 20	20 May 1994	20 May 1994
Subordinate Laws (Amendment) Act (No. 3) 1994	1994 No 106	22 Dec 1994	22 Dec 1994
Subordinate Laws (Amendment) Act 1999	1999 No 52	17 Sept 1999	17 Sept 1999
Law Reform (Miscellaneous Provisions) Act 1999	1999 No 66	10 Nov 1999	10 Nov 1999
Subordinate Laws Amendment Act 2000	2000 No 71	21 Dec 2000	ss 1 and 2: 21 Dec 2000 remainder (ss 3-5): 21 June 2001
Statute Law Amendment Act 2000	2000 No 80	21 Dec 2000	21 Dec 2000

4 Amendment history

title	am 2000 No 71 amdt 1.1
pt 1 hdg	ins 2000 No 71 amdt 1.2
s 2	sub 2000 No 71 amdt 1.3
s 2A	ins 1994 No 20 am 1999 No 66 s 6 sch 3
s 5	am 2000 No 80 amdt 2.33
s 6	am 1991 No 15; 1994 Nos 12, 20 and 106; 1999 No 52 s 4
ss 7, 8	am 1999 No 66 s 6 sch 3

Endnotes

5 Amendment history

s 9am 1999 No 66 s 6 sch 3
pt 3 hdgins 2000 No 71 s 4
ss 9A-9Hins 2000 No 71 s 4
s 10sub 1999 No 66 s 6 sch 3
s 11ins 1999 No 52 s 5

5 Earlier republications

Republication No	Amendments to	Republication date
1	1991 No 15	31 August 1991
2	1994 No 106	28 February 1995
3	1999 No 66	1 March 2000

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