

1994

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

SUBORDINATE LAWS (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

Circulated by the authority of the Attorney General

Terry Connolly MLA

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Outline

The Subordinate Laws Act 1989 ("the Principal Act") makes provision for subordinate laws including arrangements for their notification, tabling and disallowance. The Principal Act also provides that in some circumstances the arrangements which apply to subordinate laws apply to determinations of fees and charges made by a Minister under an Act and to disallowable instruments as described in section 12.

The Subordinate Laws (Amendment) Bill 1994 ("the Bill") amends the Principal Act for 3 purposes-

- to enable a determination of fees and charges and a disallowable instrument to be notified in the Gazette in the same way that a regulation, rule or by-law is notified, namely, by a simple notice of its making and advice of the place at which a copy may be purchased (clause 5);

- to explain the extent of the power to make regulations for the purposes of an Act so as to avoid the need for that to be stated in an Act on each occasion where a regulation-making power is included (clause 4); and

- to provide that where a subordinate law is amended by an Act the subordinate law may be subsequently amended or repealed by a further subordinate law (clause 6). In the absence of this change it would be necessary to state this in each amending provision.

Financial Implications

There are no financial implications arising from the Bill.

Details of the Bill follow.

Clause 1 provides for the Bill, when made, to be titled the Subordinate Laws (Amendment) Act 1994.

Clause 2 provides for the Act to commence when it is notified in the Gazette.

Clause 3 provides that a reference in the Bill to the Principal Act means the Subordinate Laws Act 1989.

Clause 4 inserts a new section 2A into the Principal Act relating to the ambit of the regulation-making power.

New subsection 2A (1) provides that the regulation-making power in an Act shall be taken to include the making of regulations which are required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The effect of new subsection 2A (1) is to remove the need for the ambit of the power to be stated in each Act where a regulation-making power is introduced and is therefore a useful shortening device for Acts.

New subsection 2A (2) makes it clear that subsection (1) is not affected by the fact that the Act also identifies specific matters in relation to which regulations may be made.

Clause 5 provides for similar amendment of subsections 6 (2), (3) and (4) of the Principal Act by replacing references to "regulations, rules or by-laws" with references to "subordinate law". The effect of the changes is that determinations of fees and charges and disallowable instruments as described in section 10 of the Principal Act may be dealt with in the same way as regulations, rules and by-laws for notification purposes.

This means that they may be notified by use of a simple notice of making including advice of the place at which a copy may be purchased. This is particularly important having regard to the increasing reference to manuals, standards and codes of practice in legislation which are designated disallowable instruments so as to ensure scrutiny by the Legislative Assembly.

In the absence of the amendment it is arguable that these instruments must be published in their entirety in the Gazette to satisfy notification requirements. Such a course is considered not to be justified having regard to the anticipated negligible public demand for such information.

Access to these instruments by interested members of the public is nevertheless ensured by having the instruments and their associated explanatory statements available for purchase.

Clause 6 inserts a new section 8A into the Principal Act.

New subsection 8A (1) clarifies that where an Act amends a subordinate law made under a particular Act that subordinate law may be subsequently amended or repealed by a subordinate law made under the particular Act. New subsection 8A (2) indicates that subsection (1) applies to amendments to subordinate laws made by enactments before or after the commencement of new section 8A.