

STATUTORY INSTRUMENTS AND LEGISLATIVE STANDARDS AMENDMENT BILL 1994

EXPLANATORY NOTE

**(Circulated by authority of the Premier, Minister for
Economic and Trade Development)**

OBJECTIVE

To amend the *Statutory Instruments Act 1992* and the *Legislative Standards Act 1992* as a result of the recommendations of the Parliamentary Committee of Electoral and Administrative Review on the Report of the Review of the Parliamentary Committees about the sunseting of subordinate legislation and requiring the preparation of regulatory impact statements for significant subordinate legislation and explanatory notes for Bills and significant subordinate legislation. Consequential amendments are required to be made of the *Acts Interpretation Act 1954*.

REASONS FOR THE BILL

The Electoral and Administrative Review Commission (EARC) in its Report on Review of Parliamentary Committees recommended that subordinate legislation should be sunsetted on a 7 year cycle, that rule making proposals and explanatory memoranda should be prepared for subordinate legislation and that the current explanatory notes for Bills should be expanded.

The Parliamentary Committee of Electoral and Administrative Review (PCEAR) in its Report on Review of Parliamentary Committees recommended that (EARC's) proposed scheme to sunset subordinate legislation be varied to provide that subordinate legislation be reviewed

every 10 years rather than every 7 years. PCEAR recommended that regulatory impact statements (RIS's) be prepared for subordinate legislation with some exceptions and that explanatory notes be prepared for Bills and for subordinate legislation.

ESTIMATED COST FOR GOVERNMENT

Because of uncertainty in the amount of subordinate legislation which is likely to impose appreciable costs on the community or a part of the community, it is difficult to estimate a cost for the implementation of this legislation.

CONSULTATION

Extensive consultation was conducted by EARC and PCEAR on these matters in the Review of the Office of the Parliamentary Counsel and the Review of Parliamentary Committees

All departments were consulted several times in the development of the legislation. The Parliamentary Service Commission was consulted on operational aspects of the policy.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states the short title of the Act.

PART 2—AMENDMENT OF STATUTORY INSTRUMENTS ACT 1992

Clause 2 states that this Part of the Act amends the *Statutory Instruments Act 1992*.

Clause 3 replaces section 5 of the Principal Act. It provides for a dictionary in Schedule 3 that defines particular words used in this Act. New section 5A states that the Act binds the State, continuing the effect of section 8.

Clause 4 omits existing Parts 5 and 6 of the Act. It provides for a new Part 5 and 6 to reflect the new arrangements. The Parts are based on Parts 5 and 6 of a proposed Bill attached to PCEAR'S Report on the Review of Parliamentary Committees.

The current Part 5 of the Act which becomes Part 6 provides for procedural matters relating to subordinate legislation. With the new requirement for the preparation of regulatory impact statements and explanatory notes, the process will be more comprehensive and more open to scrutiny and accountability, which will, in turn, lead to better regulation.

The new Part 5 sets out guidelines on procedures before making subordinate legislation. These guidelines are intended to help persons developing subordinate legislation to ensure that Queensland has an efficient and effective regulatory system.

PART 5—GUIDELINES FOR REGULATORY IMPACT STATEMENTS

Division 1—Introductory

The new section 40 provides for regulatory impact statements for subordinate legislation under guidelines in Division 2. Subsection (2) states that Division 2 is directory only and does not create rights or legally enforceable obligations on anyone.

The new section 41 states that failure to comply with Division 2 does not affect the validity of the subordinate legislation. Subsection (2) removes the RIS procedures from review under the *Judicial Review Act 1991*.

The new section 42 provides that subordinate legislation which is affected by other legislation requiring publication or consultation about the proposal is not affected by this Division.

Division 2—Regulatory Impact Statements

The new section 43 provides that RIS's must be prepared for significant subordinate legislation made or approved after 1 July 1995 (new section 60 refers). Significant subordinate legislation is legislation that is likely to impose appreciable costs on the community or a part of the community. This lead time is necessary to ensure that officers responsible for the development of subordinate legislation may be trained and to allow for adequate consultation time in preparing the significant subordinate legislation as well as preparing a comprehensive database for subordinate legislation.

The new section 44 states the form and content of a regulatory impact statement and emphasises that the RIS must be expressed in clear and precise language so that the public can understand it. The content of the RIS is based on an assessment of the ways of achieving the policy objectives rather than on the policy objectives themselves. This will assist in deciding whether subordinate legislation was the best option. Paragraph (g) ensures that all benefits and costs are stated either quantitatively or qualitatively. Where benefits and costs are not able to be quantitatively defined, they are to be included as a qualitative description of the impact of the proposed legislation in terms of benefits and costs.

The new section 45 provides that the RIS having been prepared, a notice must be published so that stakeholders and the public are given the opportunity to comment on the proposal. Subsection (2) provides that, if the proposed subordinate legislation is likely to have a significant impact on a particular group of people, special attention needs to be given to ensure that these people have access to and understand the purpose and content of the notice. Subsection (3) states what information must be included in the notice. Subsection (4) provides for the minimum amount of time to be allowed for comment to be made. Subsection (5) requires the RIS to be available at the places stated in the notice and the cost of the RIS.

The new section 46 states certain types of subordinate legislation for which the preparation of a RIS or consultation need not occur. Subsection (2) provides an exemption to the RIS process for subordinate legislation if it would be against the public interest to undergo the RIS process because of the nature of the subordinate legislation. For example, if it was required to provide for some issue urgently, the impact of the 28 day minimum period for the notice of the preparation of a RIS could prove disastrous.

PART 6—PROCEDURES AFTER MAKING OF SUBORDINATE LEGISLATION

Division 1—Notification and making copies available

This Division provides for procedural matters after the making of subordinate legislation and replaces PART 5—PROCEDURAL MATTERS RELATING TO SUBORDINATE LEGISLATION of the Act.

Section 40 of the *Statutory Instruments Act 1992* (the Act) is now the new section 47. It continues the current requirement to either notify or publish subordinate legislation in the Gazette. However, exempt subordinate legislation must be published in full. Since 1 July 1991 subordinate legislation drafted by the Office of the Queensland Parliamentary Counsel has been published in the Subordinate Legislation Series.

Sections 41 and 42 of the Act are now the new section 48 which specifies that copies of the subordinate legislation must be available on the day the notice is published, or as soon as practicable after that day. Subsection (3) provides that if the copies of the subordinate legislation are not available on the day of publication of the notice, the Minister responsible for matters connected with Government printing and publishing must table a statement in the Legislative Assembly, within 14 sitting days of the notification day, advising that the subordinate legislation was not available and an explanation why the copies were not available.

Division 2—Tabling in Legislative Assembly

The new section 49 was section 43 in the Act and requires that subordinate legislation be tabled within 14 sitting days after notification otherwise it ceases to have effect.

Division 3—Disallowance procedures

The new section 50 replaces section 44 of the Act and gives the Legislative Assembly power to allow or disallow subordinate legislation. The number of sitting days is determined under section 29B of the *Acts Interpretation Act 1954*.

Division 4—General

The new section 51 replaces section 45 of the Act and saves the effect of anything done under the subordinate legislation before the subordinate legislation ceases to have effect under the new sections 49 and 50.

However if subordinate legislation which ceases to have effect because it has not been tabled or disallowed, amended or repealed other legislation, the other legislation is revived.

The new section 52 replaces section 46 of the Act and provides that the provisions in the Bill relating to notification, gazettal, tabling or disallowance of subordinate legislation override any provisions in this regard in any other Act.

**PART 7—STAGED AUTOMATIC EXPIRY OF
SUBORDINATE LEGISLATION**

This Part replaces the *Regulatory Reform Act 1986* and has been expanded to include the recommendations of the PCEAR.

New section 53 states the purposes of the Part that includes the objective of the *Regulatory Reform Act 1986* as set out in section 2 of that Act and the recommendation of the PCEAR.

The new section 54 replaces section 5 of the *Regulatory Reform Act 1986* by providing for a 10 year cycle for the review and remaking of subordinate legislation instead of a 7 year cycle. This amendment accords with the PCEAR recommendation. Also, in accordance with the PCEAR recommendation there is a limited exemption provision for subordinate legislation from expiry on certain grounds which are set out in the new section 56. Subsection (2) provides for subordinate legislation which has been exempted from expiry by a regulation made under this Act to expire when the period of exemption ends.

The new section 55 provides for the Parliamentary Counsel to have a statutory responsibility to notify an administering agency 6 months before the subordinate legislation expires. This is in line with the PCEAR

recommendation. The Office of the Queensland Parliamentary Counsel already has a substantial database of subordinate legislation and is taking steps to ensure that this database is comprehensive as soon as possible.

The new section 56 states that subordinate legislation may be exempted from expiry for not more than 1 year on the basis that the subordinate legislation is either being drafted, or will not be replaced, or if the subordinate legislation is substantially uniform or complementary with legislation of the Commonwealth or another State. In the latter case this is a specific exemption to align the Queensland Statute Book with complementary legislation in the Commonwealth or the other States. Subsection (3) allows this type of legislation to continue for further periods of not more than 5 years.

The new section 57 states that the Part does not apply to subordinate legislation that is subject to a resolution of the Legislative Assembly to amend or repeal the status of land. These are subordinate legislation made under the provisions of the *Marine Parks Act 1982*, *Nature Conservation Act 1992*, *Forestry Act 1959* etc.

PART 8—FORMS

The new section 58 replaces section 47 of the *Statutory Instruments Act 1992* and continues its effect.

PART 9—MISCELLANEOUS

This Part replaces Part 6—Miscellaneous of the *Statutory Instruments Act 1992*.

The new section 59 replaces section 48 of the Act and continues its effect.

PART 10—TRANSITIONAL

The new section 60 nominates 1 July 1995 as the day after which the requirement to prepare a RIS commences. Any significant subordinate legislation made after this day should have a regulatory impact statement and an explanatory note prepared for them. This amount of time is necessary to implement the legislation effectively. Subsection (2) provides that if a responsible entity is in a position to comply with the relevant Division before that time then there is nothing to stop them from doing so.

The new subsection 61(1) states that the earliest that subordinate legislation will expire under this Act is 1 July 1997. This is intended to give the responsible entities time in which to review and remake those instruments which may have expired under the provisions of the *Regulatory Reform Act 1986* and have been exempted or continued under separate provisions of that same Act. This section also brings those instruments which would have expired under the *Regulatory Reform Act 1986* on a 7 year cycle into a 10 year cycle as the first expiry under that Act commenced in 1987. The effect of new section 61 is to allow subordinate legislation that would expire before 1 July 1997 to continue in force until that day.

New subsection 62(1) harmonises the subordinate legislation which will expire under the Act with section 22C of the *Acts Interpretation Act 1954* which provides amending subordinate legislation notified or published after 30 June 1994 is automatically repealed on the day after the last of its provisions take effect. Subsection (2) ties the amending subordinate legislation made before 30 June 1994 with legislation that has been exempted under this Act to continue with the legislation.

The new section 63 states that Part 8 (FORMS) does not apply to a form approved or made available before 1 July 1994. This continues the effect of section 47(10) of the Act.

Clause 5 inserts Schedule 3 that contains a dictionary of terms

PART 3—AMENDMENT OF LEGISLATIVE STANDARDS ACT 1992

This Part amends the *Legislative Standards Act 1992* to include provisions relating to explanatory notes for Bills and subordinate legislation.

Clause 6 states that this Part amends the *Legislative Standards Act 1992*.

PCEAR recommended that amendments about the requirement for explanatory notes for Bills and subordinate legislation should be included in the *Statutory Instruments Act 1992*, however, the Parliamentary Counsel's opinion was that it is more appropriate to amend the *Legislative Standards Act 1992*.

Clause 7 inserts a definition of “benefits” and “costs” into section 2 of the *Legislative Standards Act 1992* as well as cross referencing the definition of significant subordinate legislation and replacing the definition of “exempt instrument”.

Clause 8 makes a minor amendment to section 4 to reflect more correctly the purpose of the provision.

Clause 9 makes a minor amendment to clarify the section.

Clause 10 replaces Part 4 of the Act with a new Part 4 which includes the requirement to prepare explanatory notes.

PART 4—EXPLANATORY NOTES

The PCEAR recommended that explanatory notes for Bills and subordinate legislation should be prepared and presented to the House.

The new section 22 provides that explanatory notes must be prepared for Bills and significant subordinate legislation and be presented to the Legislative Assembly. As far as subordinate legislation is concerned the operative date is after 30 June 1995.

The new section 23 provides for the content of an explanatory note for a Bill.

The new section 24 provides for the content of an explanatory note for significant subordinate legislation and in this case also requires that the regulatory impact statement must accompany the explanatory note.

The new section 25 provides for the subordinate legislation to continue to have effect in the event an explanatory note is not prepared or presented.

PART 5—MISCELLANEOUS

This Part replaces Part 4—Miscellaneous of the *Legislative Standards Act 1992*.

The new section 26 replaces section 22 and continues the effect.

The new section 27 clarifies a reference.

PART 4—AMENDMENT OF ACTS INTERPRETATION ACT 1954

Clause 11 states that this Part amends the *Acts Interpretation Act 1954*.

Clause 12 makes a minor technical amendment to section 22C of the Act.

Clause 13 inserts a provision to clarify the determination of the number of sitting days for a resolution. This is necessary for those instruments mentioned in the new section 57.

Clause 14 replaces the definition “purpose” in section 36 to make a minor technical amendment.

PART 5—REPEALS

This Part provides those Acts which will be repealed by the commencement of this Act.

Clause 15 repeals the *Regulatory Reform Act 1986* and consequential amendments.