

STATUTORY INSTRUMENTS AND ANOTHER ACT AMENDMENT BILL 1999

EXPLANATORY NOTES

1. GENERAL OUTLINE

1.1 REASONS FOR THE BILL

The regime in Part 7 of the *Statutory Instruments Act 1992* (SI Act) is designed to require regular review of Queensland's subordinate legislation by causing most subordinate legislation to expire automatically on 1 September first occurring 10 years after the day that it was made.

While this review process is important, it lacks flexibility. Subordinate legislation due to expire automatically cannot be extended for more than one year, unless it is substantially uniform with legislation of the Commonwealth or another State, and may only be extended on the basis that either replacement subordinate legislation is being drafted and will be remade before the end of the period of extension, or that it is not proposed that the subordinate legislation be replaced. There is currently no ability to extend subordinate legislation on the basis that it would be impractical to remake it as it is made under an Act or provision which is subject to review.

Forty-one items of subordinate legislation extended until 1 July 1999 by SL no. 334 of 1998 are made under an Act or provision which is undergoing review, generally in compliance with National Competition Policy. These reviews have been critically affected by the recent election.

Much of this subordinate legislation is more than 20 years old, some was made in the 1920s and 1930s. In many cases, it is not appropriate for the subordinate legislation to be remade under existing heads of power, as this would breach fundamental legislative principles. Therefore the heads of power in the relevant principal legislation will need to be amended before the subordinate legislation can be remade.

It would be a considerable waste of Departmental resources to remake subordinate legislation to meet the 30 June 1999 timeframe, particularly where a Regulatory Impact Statement will be required, if it is likely that it

will need to be remade following the review of the relevant Act or provision. In some cases, a Bill to amend the principal legislation has either already been introduced to the Legislative Assembly, or is planned to be introduced in the near future.

The *Traffic Regulation 1962* has also been extended for the maximum period allowed under the SI Act and will expire on 30 June 1999 unless exempted from the operation of Part 7.

It is inappropriate for this Regulation to be remade as it is currently being extensively reviewed as part of a national scheme and is to be replaced by separate regulations to be made under the *Transport Operations (Road Use Management) Act 1995* before the end of the year. Any matters not covered by the new regulations will be inserted into the *Transport Operations (Road Use Management) Regulation 1995*.

There is also a need to provide greater certainty in the exemption of subordinate legislation on the basis that it is uniform with legislation of the Commonwealth or another State.

The Bill also amends the *Transport Infrastructure Act 1994* by preserving provisions of the repealed *Harbours Act 1955*, and subordinate legislation made under these provisions, until 1 July 2000.

These provisions are currently subject to self effecting expiry under the *Transport Infrastructure Act 1994* which will cause these provisions and related subordinate legislation to expire on 30 June 1999. The provisions will be replaced by new regulation making powers to be inserted into the *Transport Infrastructure Act 1994* before the end of the year.

1.2 OBJECTIVES OF THE BILL

The objectives of this Bill are to:

- I. ensure the continued effectiveness of Part 7 of the SI Act by providing that subordinate legislation which is due to expire automatically, may be exempted from expiry for periods of up to 1 year on the basis that it is made under an Act or a provision which is subject to review;
- II. exempt the *Traffic Regulation 1962* from the operation of Part 7 by inserting it into Schedule 2A to the Act;
- III. provide certainty in the exemption of uniform subordinate

legislation;

- IV. preserve provisions of the repealed *Harbours Act 1955*, and subordinate legislation made under these provisions, until 1 July 2000.

A. Exemption where Act or provision is subject to review

Way in which objective is to be achieved:

The Bill amends Part 7 of the SI Act to authorise the exemption by regulation of subordinate legislation where the Act or provision that it is made under is subject to review. Subordinate legislation exempted on this basis may only be extended by regulation for a period of up to one year at a time, but may be further extended by regulation for additional periods of up to one year if the review is not finalised.

The Minister responsible for administering subordinate legislation to be further extended because the relevant Act or provision is still subject to review, must report to the Legislative Assembly within 7 sitting days of the making of the extending regulation. It is intended that this report would be tabled before the Legislative Assembly debates any disallowance motion in relation to the further extension.

The Bill provides a transitional provision to allow the new review exemption to extend to subordinate legislation already extended under the existing provisions. This will provide the benefit of additional extensions where subordinate legislation which has already been extended is still not able to be re-made because the relevant Act or provision is subject to review.

Alternative way of achieving objective

An alternative to this Bill is to amend relevant principal legislation to exempt subordinate legislation from the operation of the automatic expiry regime in Part 7 of the SI Act.

This could potentially require the amendment of many Acts and would greatly reduce the effectiveness of the reform regime. Wherever possible, subordinate legislation due to expire automatically under Part 7 of the SI Act should only be granted an exemption under a provision of the SI Act.

B. Exemption of *Traffic Regulation 1962***Way in which objective is to be achieved:**

The Bill inserts the *Traffic Regulation 1962* into Schedule 2A to the SI Act, exempting it from the automatic expiry regime in Part 7.

This regulation must be preserved beyond 30 June 1999. It is significant subordinate legislation as it regulates road use management, driver licensing, vehicle safety and other related matters.

It is not appropriate for it to be remade as it is subject to extensive review related to national road safety reform and is to be replaced by substantially uniform subordinate legislation before the end of the 1999. The *Traffic Regulation* is not able to be extended by the amendments to the SI Act proposed above, as the *Traffic Act 1949* is not subject to review.

While it is acknowledged that it is generally not desirable for subordinate legislation to be granted total exemption from the review regime, this is considered to be the most appropriate option to extend the operation of this Regulation until it is replaced.

Alternative way of achieving objective

The *Traffic Regulation* could also be preserved by amending the *Traffic Act 1949* to exempt it from Part 7 of the SI Act. As discussed above, it is appropriate that any exemption required be granted pursuant to the SI Act.

C. Certainty in the exemption of uniform subordinate legislation**Way in which objective is to be achieved:**

The Bill clarifies the extension of uniform statutory instruments, by providing power to make a regulation declaring subordinate legislation to be uniform. In cases where people may reasonably differ on the question of whether the subordinate legislation is uniform, a declaration under a regulation will provide legal certainty.

D. Preservation of provisions of the repealed *Harbours Act 1955*

Way in which objective is to be achieved:

The Bill amends the *Transport Infrastructure Act 1994* by preserving provisions of the repealed *Harbours Act 1955*, and subordinate legislation made under these provisions, until 1 July 2000.

1.3 COST FOR GOVERNMENT IMPLEMENTATION

This Bill will reduce administrative costs as subordinate legislation will not need to be remade prematurely.

1.4 CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill is consistent with fundamental legislative principles.

1.5 CONSULTATION

All Government Departments were consulted in relation to this Bill. In particular, the Business Regulation Reform Unit is satisfied that this Bill provides the best options to manage subordinate legislation due to expire automatically affected by review of an Act or provision, and to preserve the *Traffic Regulation 1962* until it is replaced.

2. ANALYSIS OF THE BILL

Short title

Clause 1 provides that the short title for the Act is the *Statutory Instruments and Another Act Amendment Act 1999*.

Act amended

Clause 2 states that the Act amends the *Statutory Instruments Act 1992*, and that the schedule amends the *Transport Infrastructure Act 1994*.

Replacement of s 56 (Exemptions from expiry)

Clause 3 amends Part 7 of the SI Act by replacing section 56 with 2 provisions dealing separately with the extension of uniform subordinate legislation (proposed section 56) and the extension of other subordinate legislation (proposed section 56A).

Proposed section 56 does not affect the process for exempting uniform statutory instruments, other than to simplify the legislation by dealing with uniform subordinate legislation separately from other subordinate legislation.

Proposed section 56A deals with the exemption of subordinate legislation, other than uniform subordinate legislation.

The existing regime for exemptions is preserved and a new ground of exemption is provided under which a regulation may exempt subordinate legislation from expiring automatically for up to 1 year for the stated reason that the Act or provision that it is made or preserved under is subject to review. Subordinate legislation exempted from expiring may be further extended by regulation for additional periods of up to 1 year if it, or a part of it, is made under an Act or provision which is subject to review.

An Act or provision is “subject to review” if:

- the Act or provision is being reviewed by any Minister; or
- because of a review of an Act or provision by any Minister:
 - a Bill for an Act to repeal or amend the Act or provision is being drafted or has been introduced into the Legislative Assembly; or
 - an Act repealing or amending the Act or provision has been enacted, but the repeal or amendment has not yet entirely commenced.

This effectively provides that a “review” encompasses the entire reform process, starting with the consideration of an Act or provision by a Minister and ending with the commencement of a new Act or provision.

The new provision allows considerable scope to exempt subordinate legislation in appropriate circumstances. For example, an exemption may be available under s 56A(1)(b) if only part of the Act under which subordinate legislation is made is under review. A review to comply with national competition policy or being undertaken as part of a national uniform

approach or to rationalise parallel State Schemes such as integrated planning may impact significantly on the content of, or even the need for, the subordinate legislation. This provision recognises that a review under the *Statutory Instruments Act 1992* should complement other review processes and allows the Minister the flexibility to progress the reviews as an integrated project.

If subordinate legislation is extended for an additional period, the Minister responsible for administering the relevant Act or provision must table a report in the Legislative Assembly. This report must:

- be tabled within 7 sitting days of the making of the regulation granting the further extension;
- state how the Act or provision is being reviewed; and
- state the extent to which the Act or provision is being reviewed and when the Minister expects the review to end, unless a Bill to repeal or amend the relevant Act or provision is already being drafted, has been introduced into the Legislative Assembly, or has been enacted.

The extension regulation will not be invalidated by a failure to comply with this requirement.

Amendment of Section 59 (Regulations)

Clause 4 amends section 59 by providing that a regulation may declare subordinate legislation to be uniform subordinate legislation for the SI Act.

This provision, in conjunction with the definition to be inserted into schedule 3 by clause 9, will allow certainty in the exemption of uniform subordinate legislation, as any ambiguity will be able to be resolved by making a regulation declaring an instrument to be uniform subordinate legislation.

Insertion of new part 10, Division 1 heading

Clause 5 inserts a new heading into part 10 of the SI Act which relates to Section 62, a transitional provision for Act No. 83 of 1994.

Amendment of Section 62

Clause 6 removes a provision that would otherwise expire this section on 1 July 2005 to reflect current drafting practice.

Insertion of new part 10, Division 2 heading

Clause 7 inserts a new heading into part 10 of the SI Act which relates to a transitional provision for the *Statutory Instruments and Another Act Amendment Act 1999*, and inserts new provision 62A.

New provision 62A(1) is a transitional provision that recognises that subordinate legislation may be stated to be “subject to review” on the basis that a Bill for an Act to repeal or amend the relevant Act or provision is being drafted, has been introduced into the Legislative Assembly, or has been enacted but has not yet entirely commenced, even though the drafting, introduction or enactment occurred before the enactment of the *Statutory Instruments and Another Act Amendment Act 1999*.

New provision 62A(2) is a transitional provision that allows subordinate legislation already extended by regulation to be re-extended because the relevant Act or provision is still subject to review. It also provides a transitional link for exemptions for uniform subordinate legislation already extended for up to 5 years.

Amendment of schedule 2A (Subordinate legislation to which part 7 does not apply)

Clause 8 amends the SI Act by inserting the *Traffic Regulation 1962* into schedule 2A, exempting it from the automatic expiry regime in part 7.

Amendment of sch 3 (Dictionary)

Clause 9 inserts a definition of “uniform subordinate legislation” into schedule 3. It differs from the definition currently stated in section 56(5) by stating that “uniform subordinate legislation” includes subordinate legislation which is declared under a regulation to be uniform subordinate legislation

This definition, in conjunction with the amendment to be made under clause 4, will allow certainty in the exemption of uniform subordinate

legislation, as any ambiguity will be able to be resolved by making a regulation declaring an instrument to be uniform subordinate legislation.

Schedule—Amendment of *Transport Infrastructure Act 1994*

The Bill amends sections 228(3), 232(8), 235(5) and 240(2) of the *Transport Infrastructure Act 1994* to provide that the repealed sections of the *Harbours Act 1955*, and subordinate legislation made under the provisions, will expire on 1 July 2000 instead of 1 July 1999.