

Version No. 031
Subordinate Legislation Act 1994
No. 104 of 1994

Version incorporating amendments as at 21 September 2007

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	1
3 Definitions	2
4 Prescribing instrument to be a statutory rule or to be exempt	4
5 Automatic revocation of statutory rules	5
PART 2—PREPARATION OF STATUTORY RULES	7
6 Consultation	7
6A Infringements offence consultation certificate	7
7 Circumstances in which regulatory impact statement is to be prepared	8
8 Exceptions to section 7	9
9 Exemptions from section 7	10
10 Regulatory impact statements	11
11 Comments and submissions	13
12 Notice of decision	14
12A Human rights certificate	14
PART 3—MAKING, TABLING AND COMMENCEMENT OF STATUTORY RULES	17
13 Section 13 certificate	17
14 Submission of statutory rules to Governor in Council	18
15 Statutory rules to be laid before Parliament	19
16 Time of commencement of statutory rules	19
PART 4—PUBLICATION AND AVAILABILITY	21
17 Statutory rule to be numbered, printed and published	21
18 Incorporation of amendments	21
19 Citation of statutory rules	22
20 Availability of statutory rules	23

<i>Section</i>	<i>Page</i>
PART 5—SCRUTINY, SUSPENSION AND DISALLOWANCE	25
21 Review of statutory rules by the Scrutiny Committee	25
22 Suspension of statutory rule or part of a statutory rule	27
23 Disallowance of statutory rule or part of a statutory rule	28
24 Effect of disallowance of statutory rule or part of a statutory rule	29
25 Notice of disallowance of statutory rule or part of a statutory rule	30
PART 6—GENERAL	31
26 Guidelines	31
27 Advisory role of Scrutiny Committee	31
28 Regulations	32
PART 7—<i>Repealed</i>	32
29–32 <i>Repealed</i>	32
PART 8—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS	33
33 Repeal of Subordinate Legislation Act 1962	33
34 Application and transitional provisions	33
35, 36 <i>Repealed</i>	34
—————	
SCHEDULES	35
SCHEDULE 1—Matters to be Included in Guidelines	35
SCHEDULE 2— <i>Repealed</i>	36
=====	
ENDNOTES	37
1. General Information	37
2. Table of Amendments	38
3. Explanatory Details	40

Version No. 031
Subordinate Legislation Act 1994
No. 104 of 1994

Version incorporating amendments as at 21 September 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is—

- (a) to ensure that the power to make subordinate legislation is exercised subject to Parliament's authority and control;
- (b) to regulate the preparation, making, publication and scrutiny of subordinate legislation;
- (c) to provide for public participation in the preparation and scrutiny of subordinate legislation;
- (d) to amend the **Interpretation of Legislation Act 1984** in relation to incorporated documents, the incorporation of amendments and the admissibility of Acts and subordinate instruments.

2 Commencement

This Act comes into operation on 1 January 1995.

3 Definitions

In this Act—

amendment, in relation to a statutory rule, means the insertion, omission or substitution of words or expressions in the statutory rule by another statutory rule or subordinate instrument or by an Act;

authorising Act, in relation to a statutory rule or proposed statutory rule, means the Act or provision of an Act under which the statutory rule is, or is to be, made or purports to be made;

compliance certificate means a certificate issued by the responsible Minister under section 10(4);

exception certificate means a certificate issued by the responsible Minister under section 8;

exemption certificate means a certificate issued by the responsible Minister under section 9(1) or the Premier under section 9(3);

Government Printer means the person appointed to be the Government Printer for Victoria under section 72 of the **Constitution Act 1975**;

guidelines means guidelines under section 26;

Minister means the Minister administering this Act;

responsible Minister, in relation to a statutory rule or proposed statutory rule, means the Minister administering the authorising Act;

Scrutiny Committee means the Scrutiny of Acts and Regulations Committee of the Parliament;

section 13 certificate means a certificate issued by the Chief Parliamentary Counsel under section 13;

statutory rule means—

(a) a regulation—

(i) made by the Governor in Council;
or

(ii) made with the consent or approval of the Governor in Council; or

(iii) which the Governor in Council has power to disallow—

other than a regulation made by a local authority or by a person or body with jurisdiction limited to a district or locality; or

(b) a rule relating to a court or tribunal or the procedure, practice or costs of a court or tribunal; or

(c) an instrument or a class of instruments prescribed to be a statutory rule or statutory rules under section 4(1)(a); or

(d) an instrument or class of instrument that is deemed to be a statutory rule or statutory rules by the authorising Act—

but does not include an instrument or class of instrument specified in paragraph (a) or (b) which is exempted under section 4(1)(b).

4 Prescribing instrument to be a statutory rule or to be exempt

- (1) The Governor in Council may make regulations under this Act—
 - (a) prescribing an instrument or class of instruments to be a statutory rule or statutory rules for the purposes of paragraph (c) of the definition of *statutory rule* in section 3;
 - (b) exempting an instrument or class of instruments that is a statutory rule under paragraph (a) or (b) of the definition of *statutory rule* in section 3 and is not of a legislative character.
 - (2) The Minister must consult the Scrutiny Committee before submitting a proposed regulation under subsection (1) to the Governor in Council.
 - (3) If an instrument or class of instrument is prescribed to be a statutory rule or statutory rules—
 - (a) this Act applies to the instrument or class of instrument; and
 - (b) any provision of the Act under which the instrument or class of instrument is made which is inconsistent with, or duplicates, any provision of this Act does not apply to the instrument or class of instrument.
 - (4) If an instrument or class of instrument is exempt—
 - (a) this Act (other than this subsection) does not apply to the instrument or class of instrument; and
 - (b) publication of the instrument in the Government Gazette is sufficient compliance with any requirements in relation to the
-

publication of the instrument that are contained in the Act under which it is made; and

- (c) unless provision is made to the contrary by the Act under which it is made, the instrument or a provision of it comes into operation at the beginning of the day on which the instrument is published in the Government Gazette or at the beginning of such later day as is expressed in the instrument as the day on which the instrument or provision (as the case requires) comes into operation.

5 Automatic revocation of statutory rules

- (1) Subject to subsections (2) and (4), unless sooner revoked, a statutory rule is by virtue of this section revoked on the day which is 10 years after the making of the statutory rule.
- (2) Subject to subsection (4), unless sooner revoked, a statutory rule—
- (a) numbered in the series beginning with 271/1985 and ending with 290/1985 is revoked on 1 July 1996;
 - (b) numbered in the series beginning with 241/1988 and ending with 277/1988 is revoked on 1 July 1999;
 - (c) numbered in the series beginning with 109/1992 and ending with 140/1992 is revoked on 1 February 2002;
 - (d) numbered in the series beginning with 175/1992 and ending with 214/1992 is revoked on 1 February 2003.

Subordinate Legislation Act 1994
No. 104 of 1994
Part 1—Preliminary

s. 5

-
- (3) If the responsible Minister is satisfied that due to special circumstances there is insufficient time to enable compliance with Part 2 in respect of a proposed statutory rule before the statutory rule it is intended to replace is to be revoked by virtue of this section, the responsible Minister may so certify.
 - (4) The Governor in Council may, on the certificate and recommendation of the relevant responsible Minister under subsection (3), make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding 12 months.
 - (5) Only one extension of the operation of a statutory rule can be made under subsection (4).
-

PART 2—PREPARATION OF STATUTORY RULES

6 Consultation

The responsible Minister must ensure that where the guidelines require consultation—

- (a) there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule so as to avoid any overlap or conflict with any other existing or proposed statutory rule or legislation;
- (b) there is consultation in accordance with the guidelines with any sector of the public on which an appreciable economic or social burden may be imposed by a proposed statutory rule so that the need for, and the scope of, the proposed statutory rule is considered;
- (c) a certificate of consultation in accordance with the guidelines is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.

6A Infringements offence consultation certificate

- (1) If a proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the **Infringements Act 2006** or otherwise, the responsible Minister must certify—
 - (a) that the Department of Justice has been consulted about—
 - (i) the enforcement of the proposed statutory rule by infringement notice; and

S. 6A
inserted by
No. 12/2006
s. 177.

-
- (ii) the suitability of the proposed statutory rule to be an infringement offence enforced under the **Infringements Act 2006**; and
 - (b) that the Attorney-General's guidelines within the meaning of the **Infringements Act 2006** have been taken into account in the preparation of the proposed statutory rule; and
 - (c) that the Minister is satisfied that the proposed statutory rule—
 - (i) meets the requirements of those guidelines; or
 - (ii) does not meet the requirements of those guidelines but should be made despite not meeting those requirements because of the reasons specified in the certificate.
- (2) The responsible Minister must ensure that a copy of the certificate under subsection (1) is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.
- (3) A copy of the certificate under subsection (1) must be laid before each House of the Parliament at the same time as the statutory rule is so laid under section 15.

7 Circumstances in which regulatory impact statement is to be prepared

Unless an exception certificate or an exemption certificate is issued in respect of a proposed statutory rule, the responsible Minister must ensure that a regulatory impact statement is prepared in respect of that proposed statutory rule.

8 Exceptions to section 7

- (1) Section 7 does not apply if the responsible Minister certifies in writing that in his or her opinion—
- (a) the proposed statutory rule increases fees in respect of a financial year by an annual rate that does not exceed the annual rate approved by the Treasurer in relation to the State Budget for the purposes of this section; or
 - (b) the proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (c) the proposed statutory rule only prescribes an indexation factor for the purposes of section 20 of the **Land Tax Act 2005**; or
 - (d) the proposed statutory rule only—
 - (i) prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or
 - (iii) extends under section 5(4) the operation of a statutory rule that would otherwise be revoked by virtue of section 5.
- (2) For the purposes of subsection (1)(a), in calculating the amount of an increase the amount is deemed to have been calculated in accordance with subsection (1)(a) if the calculation is made to the nearest whole \$1.

S. 8(1)(c)
amended by
Nos 30/2002
s. 18, 88/2005
s. 117(Sch. 2
item 7).

- (3) The responsible Minister must ensure that a copy of the exception certificate is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.
- (4) A copy of the exception certificate must be laid before each House of the Parliament at the same time as the statutory rule is so laid under section 15.

9 Exemptions from section 7

- (1) Section 7 does not apply if the responsible Minister certifies in writing that in his or her opinion—
 - (a) the proposed statutory rule would not impose an appreciable economic or social burden on a sector of the public; or
 - (b) the proposed statutory rule is required under a national uniform legislation scheme and an assessment of costs and benefits has been undertaken under that scheme; or
 - (c) the proposed statutory rule is of a fundamentally declaratory or machinery nature; or
 - (d) the proposed statutory rule deals with administration or procedures within or as between Departments or declared authorities within the meaning of the **Public Administration Act 2004**; or
 - (da) the proposed statutory rule deals with administration or procedures within or as between Departments within the meaning of the **Parliamentary Administration Act 2005**; or

S. 9(1)(d)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 191).

S. 9(1)(da)
inserted by
No. 24/1996
s. 35,
amended by
No. 20/2005
s. 52(5).

-
- (e) notice of the proposed statutory rule would render the proposed statutory rule ineffective or would unfairly advantage or disadvantage any person likely to be affected by the proposed statutory rule.
- (2) An exemption certificate under subsection (1) must specify the reasons for the exemption.
- (3) Section 7 does not apply if the Premier certifies in writing that in the Premier's opinion in the special circumstances of the case the public interest requires that the proposed statutory rule be made without complying with section 7.
- (4) The Premier must not issue an exemption certificate unless the proposed statutory rule is to expire on or before the day which is 12 months after the first day on which any provision of the statutory rule is to come into operation.
- (5) The responsible Minister must ensure that a copy of the exemption certificate is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.
- (6) A copy of the exemption certificate must be laid before each House of the Parliament at the same time as the statutory rule is so laid under section 15.

10 Regulatory impact statements

- (1) A regulatory impact statement must include—
- (a) a statement of the objectives of the proposed statutory rule;
- (b) a statement explaining the effect of the proposed statutory rule, including in the case of a proposed statutory rule which is to amend an existing statutory rule the effect on the operation of the existing statutory rule;

-
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
 - (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
 - (e) the reasons why the other means are not appropriate;
 - (f) any other matters specified by the guidelines;
 - (g) a draft copy of the proposed statutory rule.
- (2) The assessment of the costs and benefits must include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.
- (3) The responsible Minister must ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered in accordance with the guidelines.
- (4) The responsible Minister must before a statutory rule in respect of which a regulatory impact statement is required is made, give a certificate in writing specifying—
- (a) that the requirements relating to regulatory impact statements in this Act and the guidelines have been complied with; and
 - (b) that in his or her opinion the regulatory impact statement adequately assesses the likely impact of the proposed statutory rule.
-

-
- (5) The responsible Minister must ensure that a copy of the regulatory impact statement and the compliance certificate is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.

11 Comments and submissions

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice in accordance with subsection (2) is published in—
- (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) if the responsible Minister considers it appropriate, in such trade, professional or public interest publications as the responsible Minister determines.
- (2) A notice must—
- (a) state the reason for, and the objectives of, the proposed statutory rule;
 - (b) summarise the results of the regulatory impact statement;
 - (c) specify where a copy of the regulatory impact statement and of the proposed statutory rule can be obtained;
 - (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.

-
- (3) The responsible Minister must—
- (a) ensure that all comments and submissions are considered before the statutory rule is made; and
 - (b) ensure that a copy of all comments and submissions is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.

12 Notice of decision

- (1) If a regulatory impact statement has been prepared, the responsible Minister must ensure that a notice advising of the decision to make or not to make the proposed statutory rule is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria.
- (2) Notice of a decision not to make a proposed statutory rule must be published as soon as practicable after the decision has been made.
- (3) Notice of a decision to make a proposed statutory rule must be published before the proposed statutory rule is made.

12A Human rights certificate

- (1) The responsible Minister must ensure that a human rights certificate is prepared in respect of a proposed statutory rule, unless the proposed statutory rule is exempted under subsection (3).
- (2) A human rights certificate must—
 - (a) certify whether, in the opinion of the responsible Minister, the proposed statutory rule does or does not limit any human right set out in the Charter of Human Rights and Responsibilities; and

S. 12A
inserted by
No. 43/2006
s. 47(Sch.
item 7.1).

-
- (b) if it certifies that, in the opinion of the responsible Minister, the proposed statutory rule does limit a human right set out in the Charter of Human Rights and Responsibilities, set out—
- (i) the nature of the human right limited; and
 - (ii) the importance of the purpose of the limitation; and
 - (iii) the nature and extent of the limitation; and
 - (iv) the relationship between the limitation and its purpose; and
 - (v) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
- (3) Subsection (1) does not apply if the responsible Minister certifies in writing that in his or her opinion—
- (a) the proposed statutory rule is a rule which relates only to a court or tribunal or the procedure, practice or costs of a court or tribunal; or
 - (b) the proposed statutory rule only—
 - (i) prescribes under section 4(1)(a) an instrument or class of instrument to be a statutory rule; or
 - (ii) exempts under section 4(1)(b) an instrument or class of instrument from the operation of this Act; or
-

Subordinate Legislation Act 1994
No. 104 of 1994
Part 2—Preparation of Statutory Rules

s. 12A

- (iii) extends under section 5(4) the operation of a statutory rule that would otherwise be revoked by virtue of section 5.
-

**PART 3—MAKING, TABLING AND COMMENCEMENT OF
STATUTORY RULES**

13 Section 13 certificate

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council must be submitted to the Chief Parliamentary Counsel for the issue of a certificate by the Chief Parliamentary Counsel specifying whether the proposed statutory rule—

- (a) appears to be within the powers conferred by the authorising Act;
- (b) appears without clear and express authority being conferred by the authorising Act—
 - (i) to have a retrospective effect; or
 - (ii) to impose a tax, fee, fine, imprisonment or other penalty; or
 - (iii) to shift the onus of proof to a person accused of an offence; or
 - (iv) to sub-delegate powers delegated by the authorising Act;
- (c) appears to be consistent with the general objectives of the authorising Act;
- (d) appears to be consistent with and to achieve the objectives set out in the proposed statutory rule and, if the proposed statutory rule is to amend an existing statutory rule, appears to be consistent with the objectives set out in the existing statutory rule;
- (e) appears to be inconsistent with principles of justice and fairness;

- (f) appears significantly or substantially to overlap or conflict with any other statutory rule or legislation;
- (g) is expressed as clearly and unambiguously as is reasonably possible.

14 Submission of statutory rules to Governor in Council

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council when submitted to the Governor in Council must be accompanied by—

- (a) 4 copies (or such other number as may be prescribed) of the proposed statutory rule;
- (b) a copy of the section 13 certificate;
- (c) if a regulatory impact statement was not required, a copy of the exception certificate or exemption certificate;
- (d) if a regulatory impact statement was required, a copy of the compliance certificate;
- (e) if the proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, whether under the **Infringements Act 2006** or otherwise, a copy of the certificate under section 6A;
- (f) if a human rights certificate was required, a copy of the human rights certificate;
- (g) if a human rights certificate was not required, a copy of the responsible Minister's certificate under section 12A(3).

S. 14(d)
amended by
No. 12/2006
s. 178(a).

S. 14(e)
inserted by
No. 12/2006
s. 178(b),
amended by
No. 43/2006
s. 47(Sch.
item 7.2).

S. 14(f)
inserted by
No. 43/2006
s. 47(Sch.
item 7.3).

S. 14(g)
inserted by
No. 43/2006
s. 47(Sch.
item 7.3).

15 Statutory rules to be laid before Parliament

- (1) On or before the 6th sitting day after notice of the making of a statutory rule has been published in the Government Gazette under section 17(2), a copy of the statutory rule must be laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the statutory rule but the Scrutiny Committee may report the failure to each House of the Parliament.
- (3) A copy of each statutory rule laid under subsection (1) must as soon as possible after being so laid be posted or delivered to each member of Parliament who has requested a copy of that statutory rule.

16 Time of commencement of statutory rules

- (1) A statutory rule or a provision of a statutory rule comes into operation at the beginning of—
 - (a) the day on which the statutory rule is made; or
 - (b) such later day as is expressed in the statutory rule as the day on which the statutory rule or provision comes into operation.
- (2) Despite the coming into operation of a statutory rule or of a provision of a statutory rule, a person cannot—
 - (a) be convicted of an offence against the statutory rule or provision; or
 - (b) be prejudicially affected or made subject to any liability by the statutory rule or provision—

if it is proved that at the relevant time the statutory rule had not been printed and published by the Government Printer or notice under section 17(3)

Subordinate Legislation Act 1994
No. 104 of 1994

Part 3—Making, Tabling and Commencement of Statutory Rules

s. 16

had not been published in the Government Gazette.

- (3) A person cannot rely on subsection (2) if it is proved that at the relevant time reasonable steps had been taken for the purpose of bringing the purport of the statutory rule or provision to the notice of—
- (a) the public; or
 - (b) persons likely to be affected; or
 - (c) the person concerned.
-

PART 4—PUBLICATION AND AVAILABILITY

17 Statutory rule to be numbered, printed and published

- (1) A statutory rule must forthwith after it is made be numbered, printed and published by the Government Printer.
- (2) A notice of the making of a statutory rule must be published in the next general edition of the Government Gazette published after the making of the statutory rule unless it is published in an earlier special edition of the Government Gazette.
- (3) As soon as practicable after the making of a statutory rule, a notice must be published in the Government Gazette stating—
 - (a) the place where copies of the statutory rule can be obtained; and
 - (b) the date on which copies of the statutory rule were first obtainable from that place.
- (4) A copy of the Government Gazette purporting to contain a notice published under subsection (3) with respect to any statutory rule is conclusive evidence that the statutory rule was printed and published by the Government Printer on the date specified in that notice as the date on which the statutory rule was first obtainable from the place specified in that notice.

18 Incorporation of amendments

- (1) If a statutory rule has been amended, then in any reprinting of the statutory rule the Government Printer must, unless the Chief Parliamentary Counsel otherwise approves, reprint the statutory rule as so amended.

-
- (2) There must be printed in a reprint of a statutory rule—
- (a) a reference to each statutory rule, subordinate instrument or Act by which the reprinted statutory rule is amended; and
 - (b) a reference (whether in a sidenote, footnote or endnote) to each provision of the reprinted statutory rule that is amended and the provision of the statutory rule, subordinate instrument or Act by which the amendment is made.
- (3) If a statutory rule is reprinted with the omission of any formal or introductory parts, there must be printed in that statutory rule—
- (a) a reference to the authorising Act;
 - (b) the date on which it was made;
 - (c) the date or dates, if any, on which it is expressed to come into operation.

19 Citation of statutory rules

- (1) A statutory rule may be cited—
- (a) by the short title authorised by the statutory rule; or
 - (b) if there is no short title authorised by the statutory rule, by the title appearing before the formal or introductory parts; or
 - (c) by the expression "Statutory Rule" or the expression "S.R.", followed by the number given to it and the year in which the statutory rule is made.
- (2) The title of a statutory rule appearing before the formal or introductory parts forms part of the statutory rule if there is no short title authorised by the statutory rule.

20 Availability of statutory rules

- (1) The Government Printer must make every effort to ensure that a copy of a statutory rule can be purchased on demand by any member of the public during normal office hours from a prescribed bookshop.
- (2) The responsible Minister must ensure that a copy of a statutory rule—
 - (a) is available for inspection by any member of the public without charge during normal office hours at the office of the Department of the responsible Minister; or
 - (b) can be inspected without charge or purchased on demand by any member of the public during normal office hours at a public office specified by the responsible Minister by a notice published in the Government Gazette.
- (3) In addition to and without limiting section 16, despite the coming into operation of a statutory rule or of a provision of a statutory rule, a person cannot—
 - (a) be convicted of an offence against the statutory rule or provision; or
 - (b) be prejudicially affected or made subject to any liability by the statutory rule or provision—

if it is proved that at the relevant time a copy of the statutory rule could neither be purchased or inspected as provided by subsections (1) and (2).

- (4) In this section *copy of a statutory rule* means a copy of—
- (a) a statutory rule printed in accordance with section 17 or, if a reprint of the statutory rule has been prepared in accordance with section 18, the reprint; and
 - (b) any subsequent statutory rule which amends that statutory rule.
-

PART 5—SCRUTINY, SUSPENSION AND DISALLOWANCE

21 Review of statutory rules by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament—
- (a) does not appear to be within the powers conferred by the authorising Act;
 - (b) without clear and express authority being conferred by the authorising Act—
 - (i) has a retrospective effect; or
 - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
 - (iii) purports to shift the onus of proof to a person accused of an offence; or
 - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
 - (c) appears to be inconsistent with the general objectives of the authorising Act;
 - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
 - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
 - (f) unduly trespasses on rights and liberties of the person previously established by law;

Subordinate Legislation Act 1994
No. 104 of 1994
Part 5—Scrutiny, Suspension and Disallowance

s. 21

-
- (g) makes rights and liberties of the person unduly dependent upon administrative and not upon judicial decisions;
- S. 21(1)(ga) inserted by No. 98/2000 s. 76.
- (ga) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the **Information Privacy Act 2000**;
- S. 21(1)(gb) inserted by No. 2/2001 s. 116.
- (gb) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the **Health Records Act 2001**;
- (h) is inconsistent with principles of justice and fairness;
- S. 21(1)(ha) inserted by No. 43/2006 s. 47(Sch. item 7.4).
- (ha) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;
- (i) requires explanation as to its form or intention;
- (j) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature;
- (k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.
- (2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a statutory rule should be—
-

- (a) disallowed in whole or in part; or
- (b) amended as suggested in the report.

22 Suspension of statutory rule or part of a statutory rule

- (1) If the Scrutiny Committee—
 - (a) proposes under section 21 to recommend that a statutory rule should be—
 - (i) disallowed in whole or in part; or
 - (ii) amended; and
 - (b) is of the opinion that considerations of justice and fairness require that the operation of the statutory rule or any part of the statutory rule should be suspended pending the consideration by the Parliament of the statutory rule—

the Scrutiny Committee may propose in the report under section 21 that the operation of the statutory rule or part of the statutory rule be suspended.

- (2) If the Scrutiny Committee proposes that the operation of a statutory rule or part of a statutory rule be suspended—
 - (a) the Scrutiny Committee must forthwith send a copy of the report to the responsible Minister and the Governor in Council; and
 - (b) subject to subsection (3), the operation of the statutory rule or part of the statutory rule is suspended at the end of the period of 7 days after the sending of the report to the Governor in Council until the end of the period during which the statutory rule or part of the statutory rule could be disallowed under section 23.

-
- (3) The Governor in Council, on the recommendation of the responsible Minister made within the period of 7 days referred to in subsection (2), may by Order published in the Government Gazette declare that the operation of the statutory rule or part of the statutory rule is not suspended.
 - (4) As from the date on which the Order is published, the provision in a report of the Scrutiny Committee providing for the suspension ceases to have any force or effect.
 - (5) While the operation of a statutory rule or part of a statutory rule is suspended under this section, the statutory rule is deemed not to have been made or to have been made without that part.

23 Disallowance of statutory rule or part of a statutory rule

- (1) This section applies to a statutory rule if—
 - (a) the power to make the statutory rule is expressed to be subject to the statutory rule being disallowed by the Parliament or by a House of the Parliament; or
 - (b) the Scrutiny Committee has in a report under section 21 recommended that the statutory rule be disallowed in whole or in part; or
 - (c) there was a failure to comply with section 15(1) and the Scrutiny Committee has reported that failure to each House of the Parliament.
 - (2) A statutory rule to which this section applies is disallowed in whole or in part if—
 - (a) a notice of a resolution to disallow the statutory rule is given in a House of the Parliament on or before the 18th sitting day of that House after the rule is laid before that House; and
-

-
- (b) the resolution is passed by that House on or before the 12th sitting day of that House after the giving of the notice of the resolution.
 - (3) Notice of a resolution to disallow a statutory rule may be expressed to apply to the whole or to any part of the statutory rule.
 - (4) A resolution to disallow the whole or any part of a statutory rule has effect according to its tenor.
 - (5) If a House of the Parliament is prorogued or the Legislative Assembly is dissolved—
 - (a) the prorogation or dissolution does not affect the power of the House to pass a resolution disallowing a statutory rule; and
 - (b) the calculation of sitting days of the House is to be made as if there had been no prorogation or dissolution.

24 Effect of disallowance of statutory rule or part of a statutory rule

- (1) Subject to subsection (2), if a statutory rule or a part of a statutory rule is disallowed by the Parliament or by a House of the Parliament, the disallowance has the same effect as a revocation of the statutory rule or part.
- (2) If a statutory rule or a part of a statutory rule is disallowed by the Parliament or by a House of the Parliament—
 - (a) any statutory rule or Act or part of a statutory rule or Act that had been revoked or repealed by the disallowed statutory rule or part is revived as from the beginning of the day on which the statutory rule or part was disallowed; and

- (b) any statutory rule or Act that had been amended by the disallowed statutory rule or part takes effect without that amendment as from the beginning of the day on which the statutory rule or part was disallowed in all respects as if the disallowed statutory rule or part had not been made.

25 Notice of disallowance of statutory rule or part of a statutory rule

If a statutory rule, or part of a statutory rule, is disallowed, the Clerk of the Parliaments must cause notice of the disallowance to be published in the Government Gazette.

PART 6—GENERAL

26 Guidelines

- (1) The Minister may make guidelines for or with respect to—
 - (a) the preparation, content, publication and availability of statutory rules; and
 - (b) the procedures to be implemented and the steps to be undertaken for the purpose of ensuring consultation, co-ordination and uniformity in the preparation of statutory rules.
- (2) Without limiting the generality of subsection (1), the guidelines must deal with the matters specified in Schedule 1.
- (3) The Minister must cause the guidelines to be—
 - (a) published in the Government Gazette;
 - (b) issued to all Ministers and any other persons and bodies whether corporate or unincorporate involved in the preparation of statutory rules;
 - (c) laid before each House of the Parliament;
 - (d) forwarded to the Scrutiny Committee.

27 Advisory role of Scrutiny Committee

The Scrutiny Committee may advise the Minister about any matter relating to the administration or operation of this Act including—

- (a) the making of regulations under section 4(1); and
- (b) the making of guidelines.

28 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) providing for and regulating the preparation and publication with or as part of a statutory rule, a table—
 - (i) specifying a document containing any matter that is applied, adopted or incorporated by the statutory rule; and
 - (ii) indicating the provision of the statutory rule to which any such matter relates;
- (b) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Pt 7
(Heading and
ss 29–32)
repealed by
No. 74/2000
s. 3(Sch. 1
item 120.1).

* * * * *

PART 8—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

33 Repeal of Subordinate Legislation Act 1962

- (1) The **Subordinate Legislation Act 1962** is repealed.
- (2) Any reference in any Act, regulation, local law, subordinate instrument or other document whatsoever to the **Subordinate Legislation Act 1962** is to be construed as a reference to the **Subordinate Legislation Act 1994**, unless the contrary intention appears.
- (3) Without limiting subsection (2), a reference to section 5, 6 or 6A of the **Subordinate Legislation Act 1962** is to be construed as a reference to section 15, 22 and 23 or 24 respectively of this Act.

34 Application and transitional provisions

- (1) Subject to this section, this Act applies to a statutory rule whether made before, on or after the commencement of this Act.
- (2) If the requirements of any provision of the **Subordinate Legislation Act 1962** have been complied with in respect of a statutory rule or proposed statutory rule, the corresponding requirements of this Act are deemed to have been complied with.
- (3) Subject to subsection (4), where any act, matter or thing has been commenced in respect of a statutory rule or proposed statutory rule, that act, matter or thing may be continued subject to and in accordance with this Act.

- (4) Despite anything to the contrary in this Act—
- (a) if a notice has been published under section 12(1)(a) of the **Subordinate Legislation Act 1962** in respect of a proposed statutory rule before the commencement of this Act, Part 2 of this Act does not apply to the proposed statutory rule and a compliance certificate is not required if section 12 of the **Subordinate Legislation Act 1962** is complied with before the statutory rule is made;
 - (b) if a statutory rule has been laid before each House of Parliament before the commencement of this Act, section 6 of the **Subordinate Legislation Act 1962** continues to apply in respect of the statutory rule as if this Act had not been enacted;
 - (c) if a statutory rule has been made and notice of the making of the statutory rule has been given under section 4(2) of the **Subordinate Legislation Act 1962** before the commencement of this Act, sections 5 and 6 of the **Subordinate Legislation Act 1962** continue to apply in respect of the statutory rule as if this Act had not been enacted.

Ss 35, 36
repealed by
No. 74/2000
s. 3(Sch. 1
item 120.2).

* * * * *

SCHEDULES

SCHEDULE 1

MATTERS TO BE INCLUDED IN GUIDELINES

1. Guidelines as to the types of matters appropriate for inclusion in statutory rules rather than in Acts or in instruments which are not of a legislative character.
 2. Guidelines as to alternative means of achieving the objectives sought to be achieved by a proposed statutory rule such as self regulation or voluntary codes of conduct.
 3. Guidelines as to the appropriate cases in which a proposed statutory rule should set performance standards rather than prescribing detailed requirements.
 4. Guidelines as to procedures to be adopted to ensure that—
 - (a) the need for a proposed statutory rule can be justified;
 - (b) the objectives of a proposed statutory rule are formulated and included in any proposed statutory rule.
 5. Guidelines as to the procedures to be adopted to ensure that—
 - (a) an agency preparing or considering a proposed statutory rule identifies and consults any other agency relevant to the subject matter of the proposed statutory rule;
 - (b) where appropriate, independent advice is obtained as to the nature and content of the proposed statutory rule;
 - (c) proper consultation takes place with any sector of business or the public which may be affected by the proposed statutory rule;
 - (d) proper consultation takes place in circumstances where consultation is required under section 6.
-

Subordinate Legislation Act 1994
No. 104 of 1994

Sch. 1

6. Guidelines as to circumstances in which a statutory rule imposes an appreciable cost or burden on a sector of the public.
7. Guidelines as to the application, adoption or incorporation of matter in a statutory rule.
8. Guidelines as to the style and language to be used in drafting statutory rules.
9. Guidelines as to the printing and submission of statutory rules to the Governor in Council and the provision of statutory rules to the Scrutiny Committee.

Sch. 2
repealed by
74/2000
s. 3(Sch. 1
item 120.3).

* * * * *

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 November 1994

Legislative Council: 6 December 1994

The long title for the Bill for this Act was "A Bill to re-enact with amendments the law relating to subordinate legislation, to amend the **Interpretation of Legislation Act 1984**, to repeal the **Subordinate Legislation Act 1962** and the **Amendments Incorporation Act 1958**, to make consequential amendments to certain Acts and for other purposes."

The **Subordinate Legislation Act 1994** was assented to on 13 December 1994 and came into operation on 1 January 1995: section 2.

Subordinate Legislation Act 1994
No. 104 of 1994

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Subordinate Legislation Act 1994** by Acts and subordinate instruments.

Public Sector Management and Parliamentary Officers (Amendment) Act 1996, No. 24/1996

Assent Date: 2.7.96
Commencement Date: S. 33(1) on 16.11.93: s. 2(2); rest of Act on 2.7.96: s. 2(1)
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 120) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Information Privacy Act 2000, No. 98/2000

Assent Date: 12.12.00
Commencement Date: S. 76 on 1.9.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: S. 116 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

State Taxation Legislation (Further Amendment) Act 2002, No. 30/2002

Assent Date: 12.6.02
Commencement Date: S. 18 on 13.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 191) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Subordinate Legislation Act 1994**

Subordinate Legislation Act 1994
No. 104 of 1994

Endnotes

Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 52(5) on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Subordinate Legislation Act 1994**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 7) on 1.1.06: s. 2
Current State: This information relates only to the provision/s
amending the **Subordinate Legislation Act 1994**

Infringements Act 2006, No. 12/2006

Assent Date: 11.4.06
Commencement Date: Ss 177, 178 on 1.7.06: Government Gazette 29.6.06
p. 1315
Current State: This information relates only to the provision/s
amending the **Subordinate Legislation Act 1994**

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 7) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Subordinate Legislation Act 1994**

Endnotes

3. Explanatory Details

No entries at date of publication.