

**OFFICE OF THE CHIEF PARLIAMENTARY COUNSEL
VICTORIA**

**NOTES FOR GUIDANCE ON
THE PREPARATION OF STATUTORY RULES**

(Issued May 2017)

USEFUL ADDRESSES (AS AT DECEMBER 2014)

Clerk of the Executive Council

c/o Cabinet Office
Department of Premier and Cabinet
3/1 Treasury Place
MELBOURNE VIC 3002

Tel: 9651 2285

Parliamentary Counsel

Office of the Chief Parliamentary Counsel
2/1 Macarthur Street
MELBOURNE VIC 3002

Tel: 9651 2103
Fax: 9651 2107

Ms Marina Farnan
Chief Parliamentary Counsel

Ms Jayne Atkins
Deputy Chief Parliamentary Counsel

(Enquiries about process of making Statutory Rules)

Ms Yedidah Lewis
Manager, Legislative Knowledge Management
(Enquiries about reprints of Statutory Rules)

Tel: 9651 2601

Parliament House

Legislative Council :

Mr Andrew Young
Clerk of the Legislative Council
Parliament House
MELBOURNE VIC 3002

Usher of the Black Rod Tel: 9651 8672

Legislative Assembly :

Mr Ray Purdey
Clerk of the Parliaments and
Clerk of the Legislative Assembly
Parliament House
MELBOURNE VIC 3002

Table Office Tel: 9651 8559

Office of Commissioner of Better Regulation

Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

Tel: 9092 5800

Victorian Government Gazette

The Gazette Officer
Victorian Government Gazette Office
BlueStar Print
Level 5, 460 Bourke Street
MELBOURNE VIC 3000

Tel: 8523 4601
Fax: 9600 0478
Email: gazette@bluestargroup.com.au

Contents

	Page
PART 1 INTRODUCTION	1
1.1 Role of Office of the Chief Parliamentary Counsel	1
1.2 Definition of <i>statutory rule</i> in the Subordinate Legislation Act 1994	2
1.3 Background material	3
1.4 Glossary of terms used in these Notes	3
1.5 Matters suitable for statutory rules	4
1.6 Manner of making statutory rules	5
PART 2—CONSULTATION REQUIREMENTS UNDER THE SLA	5
2.1 Regulatory Impact Statements	6
2.2 Exemption from RIS	6
2.3 Minister's exemption certificate	7
2.4 Premier's exemption certificate	7
2.5 Competition Policy	7
PART 3—PARLIAMENTARY COUNSEL'S REQUIREMENTS	
3.1 Draft statutory rule for settling	9
3.2 Settling process	10
3.3 Printing	11
3.4 Request for proof copy	11
3.5 Request for submission copy	11
3.6 Section 13 certificate	11
PART 4—CONTENT OF STATUTORY RULES	14
4.1. Language and style	14
4.2 Some general tips	15
4.3 Authorising Act and Charter Act	15
4.4 Commencement	16
4.5 Forms, plans, maps etc.	17
4.6 What is Incorporated Material?	18
4.7 What can be incorporated?	20
4.8 Table Of Applied, Adopted Or Incorporated Matter Required By Subordinate Legislation Regulations 2014	20
4.9 Requirements of section 32 of the Interpretation of Legislation Act 1984	20
4.10 Procedures for lodging matter applied, adopted or incorporated by or in a subordinate instrument with the Clerk of the Parliaments	22
PART 5—SUNSETTING AND EXTENSION REGULATIONS	22
5.1 Sunsetting regulations: 10 year expiry	22
5.2 Extending the operation of sunsetting rules (extension regulations)	24
PART 6—OTHER MATERIAL REQUIRED FOR MAKING	24
6.1 Explanatory memorandum	24
6.2 Minister's certificates under the SLA	25
6.3 No RIS required	26
6.4 RIS required—certificates and notices	26
6.5 Infringement offence certificate	27
6.6 Human rights certificates	27
6.7 Composite certificates	27
6.8 Premier's certificate	29
PART 7—MAKING AND AFTERWARDS	29
7.1. Submission to the Governor in Council	30
7.2 Printing and publication of made statutory rules	31
7.3 Rules to be tabled in Parliament and given to members	31

7.4	Requirements of SARC	32
7.5	Tabling of incorporated material under section 32 ILA	32
7.6	Availability of statutory rules	33
APPENDICES		34
APPENDIX 1—STATUTORY RULES - STYLE		
APPENDIX 2—FORMS		39
APPENDIX 3—AMENDING STYLE FOR STATUTORY RULES		45

PART 1 INTRODUCTION

1.1 Role of Office of the Chief Parliamentary Counsel

The Office of the Chief Parliamentary Counsel is an Administrative Office located within the Department of Premier and Cabinet. The Office provides drafting services for the State of Victoria in relation to legislation and also carries out the function of Government Printer in printing and publishing Victorian legislation.

In relation to statutory rules, OCPC has a specific function under section 13 of the **Subordinate Legislation Act 1994** for all statutory rules made by, or consented to or approved by, the Governor in Council. The Chief Parliamentary Counsel certifies that a proposed statutory rule is within power under its authorising Act and satisfies the other criteria listed in that section. This certificate is required before the statutory rule is put to the Governor in Council for making.

The matters considered by Chief Parliamentary Counsel go to the legality and effectiveness of the statutory rule and are considered in the course of settling any statutory rule. As part of this function OCPC settles, and in some cases, drafts, statutory rules.

These Notes for Guidance are designed to provide assistance as to OCPC's requirements regarding draft statutory rules prepared by you as Departmental officers for settling by OCPC.

If you have any general queries about the preparation of statutory rules, you can contact the Subordinate Legislation Manager, Jayne Atkins at OCPC on 9651 2103.

1.2 Definition of *statutory rule* in the Subordinate Legislation Act 1994

'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);'

Regulations under section 4(1)(b) of the **Subordinate Legislation Act 1994** may exempt an instrument or class of instruments—

- that is a statutory rule under paragraph (a) or (b) of the definition; and
- that is not of a legislative character.

Currently, no regulations have been made under section 4(1)(a) or (b) of the SLA.

1.3 Background material

When you are preparing draft statutory rules, you should be aware of the following material which can assist you in drafting statutory rules.

1. **Subordinate Legislation Act 1994**
See: LawToday: www.legislation.vic.gov.au
2. **Interpretation of Legislation Act 1984**
See: LawToday: www.legislation.vic.gov.au
3. **Charter of Human Rights and Responsibilities Act 2006** (the Charter Act)
4. **Subordinate Legislation Regulations 2014.**
S.R. No. 83/2014.
5. **Guidelines under the Subordinate Legislation Act 1994** ("the Subordinate Legislation Guidelines")
Guidelines are issued by the Premier under section 26 of the **Subordinate Legislation Act 1994** for the preparation and content of statutory rules. The current guidelines are those published in the Government Gazette on 28 August 2014 at page 1906.
6. **Parliamentary Committee Reports on Subordinate Legislation**
(Scrutiny of Acts and Regulations Committee (since October 1992) or Legal and Constitutional Committee (1986—1992) and SARC's practice notes on regulations.
See: www.parliament.vic.gov.au/sarc
7. **D.C. Pearce and S. Argument, Delegated Legislation in Australia,**
LexisNexis Butterworths, 4th edition, 2012.
8. **Tables of statutory rules**
Prepared by OCPC and published by Anstat are available on subscription. They are also available on OCPC's website at www.legislation.vic.gov.au.
9. **Office of Commissioner for Better Regulation (formerly) VCEC website**
OCBR publishes a range of very useful guidance material on RISs and other regulatory matters: see www.betterregulation.vic.gov.au

1.4 Glossary of terms used in these Notes

Charter Act means the **Charter of Human Rights and Responsibilities Act 2006**

exemption certificate means a certificate issued by either the responsible Minister under section 8 or by the Premier under section 9 of the SLA

Governor in Council means the law making body composed of the Governor and at least 2 Ministers, also known as **Executive Council**

ILA means the **Interpretation of Legislation Act 1984**

OCPC means the Office of the Chief Parliamentary Counsel

OCBR means the Office of the Commission for Better Regulation.

responsible Minister means the Minister administering the authorising Act under which a statutory rule is made

RIS means a Regulatory Impact Statement required under section 7 of the SLA

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

section 13 certificate means the certificate issued by the Chief Parliamentary Counsel under section 13 of the SLA, required for each statutory rule being made by the Governor in Council prior to the rule being made

SLA means the **Subordinate Legislation Act 1994**

Subordinate Legislation Guidelines means the guidelines issued by the Premier under section 26 of the **Subordinate Legislation Act 1994**.

1.5 Matters suitable for statutory rules

If possible, matters of detail subject to frequent change should be dealt with by subordinate legislation rather than primary legislation. Matters of policy and general principle should be dealt with in primary legislation, that is, in an Act. Significant matters should not be included in subordinate legislation, although subordinate legislation may deal with the same issue in terms of enforcement or related matters. Subordinate legislation must be consistent with the general objectives of the authorising Act.

Statutory rules can complete the details of a legislative scheme but cannot add new aims or ideas unless expressly authorised so to do.

The Subordinate Legislation Guidelines list the following matters that should be in primary legislation rather than subordinate legislation—

- matters of substance or important procedural matters (particularly if they also affect individual rights and liberties, e.g. provisions that reverse the onus of proof or certify evidentiary matters);
- matters relating to a significant question of policy in that they introduce new policy or fundamentally change existing policy;
- matters which have a significant impact on individual rights and liberties (e.g. powers of entry and search, arrest warrants, seizure and forfeiture), or which deal with property rights or traditional liberties and freedoms;
- matters imposing significant criminal penalties (such as fines exceeding 20 penalty units or imprisonment);

- provisions imposing taxes.

By contrast, the following are more appropriately dealt with by subordinate legislation—

- matters relating to detailed implementation of policy, general principles and standards (rather than the policy, principle or standard itself);
- prescribing fees to be paid for various services;
- prescribing forms (if it is necessary that they be prescribed) for use in connection with legislation;
- times within which certain steps should be taken.

The Subordinate Legislation Guidelines discuss this at greater length. The decision as to whether statutory rules or another form of subordinate instrument is used is generally determined at the time a Bill for an Act is being drafted.

1.6 Manner of making statutory rules

An authorising Act may provide that statutory rules may be made—

- by the Governor in Council;
- by the Governor in Council on the recommendation of a Board, Committee or body;
- by a Board, Committee or body with the consent or approval of the Governor in Council;
- by a Board, Committee or body, subject to disallowance by the Governor in Council;
- by a Board, Committee or body, without being subject to consent or approval of the Governor in Council;
- by the Governor in Council on the certificate and recommendation of the responsible Minister.

The introductory words at the beginning of the statutory rule should indicate the method by which it is to be made and reflect the words of the regulation-making section of the Act under which they are made. You should ensure that this is checked before sending draft rules to OCPC for settling.

Generally, all statutory rules which are made or approved by the Governor in Council are made on the recommendation of the responsible Minister.

PART 2—CONSULTATION REQUIREMENTS UNDER THE SLA

Legislation officers will need to be familiar with all the requirements of the SLA for the making of statutory rules. You are referred to the Subordinate Legislation Guidelines for a more comprehensive review of these requirements. Your own Department may also have specific requirements of which you need to be aware. See also the summary of certificates required before making of a statutory rule in Part 6 below.

2.1 Regulatory Impact Statements

Section 7 of the SLA requires that, unless an exemption certificate is issued in respect of a statutory rule, an RIS (regulatory impact statement) must be prepared. Sections 10 and 11 of the SLA set out the requirements for an RIS including the requirements for advertising and calling for submissions and comments.

OCBR published guidance material, including a comprehensive guide to the RIS process and provides useful information and pro formas of certificates used in the RIS and regulation-making process. It also has a discussion of what constitutes an appreciable economic or social burden on a sector of the public. The Subordinate Legislation Guidelines provide assistance about the development of RISs.

An RIS should:

- state the objectives of the proposed statutory rule,
- explain the effect of the rule,
- if the proposed statutory rule amends fees, the RIS should include a table which compares the proposed fees with the existing fees. The table should also state the percentage increase or decrease for each fee,
- identify alternative practicable means of achieving these objectives,
- assess the costs and benefits of the rule and the alternatives and the reasons why the alternatives are not appropriate and
- include any other matters specified by the Subordinate Legislation guidelines
- includes a copy of the settled proposed statutory rule

Section 10(3) of the SLA requires the Minister to ensure that independent advice as to the adequacy of the RIS and of the assessment included in the RIS is obtained and considered in accordance with the Subordinate Legislation guidelines. This is normally the OCBR assessment.

Section 11 of the SLA requires the responsible Minister to ensure publication in the Government Gazette and in a daily newspaper (and, if appropriate, in other journals or publications) of a notice of the making of the RIS, including:

- the reasons for the statutory rule and the objectives to be achieved,
- a summary of the RIS's results,
- advice about where copies can be obtained and
- an invitation for comments and submissions on the statement within 28 days or a longer period specified in the notice (60 days is considered good practice: see the OCBR guidance material);

The publication of this notice has to be at least 8 weeks before the proposed statutory rule is to be made as at least 28 days have to be allowed for public submissions (section

11(2)(d) SLA). Depending on internal time constraints, Departments should also allow at least one week for consideration of submissions by the Department and at least 2 weeks must be allowed for printing and for the Chief Parliamentary Counsel to give a section 13 certificate.

Any changes made to the statutory rule as a result of the RIS process will need to be settled by OCPC if the changes involve new material.

Section 12 of the SLA requires notice of the decision to make the statutory rule to be published before the statutory rule is submitted to the Governor in Council for making.

A copy of the RIS and the compliance certificate under section 10(4) of the SLA from the responsible Minister specifying that the relevant requirements for RISs have been complied with and that, in the Minister's opinion, the statement adequately assesses the likely impact of the statutory rule must be sent to the SARC as soon as practicable after the statutory rule is made, together with the other documentation required under the SLA.

2.2 Exemption from RIS

The SLA sets out the grounds on which regulations may be exempted from the requirements of an RIS and provides that exempt regulations must be accompanied by certificates of exemption from the responsible Minister and in certain cases from the Premier.

2.3 Minister's exemption certificate (section 8, SLA)

The responsible Minister may issue an exemption certificate specifying that, in his or her opinion—

- the proposed statutory rule would not impose a significant economic or social burden on a sector of the public [section 8(1)(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 [section 8(1)(b) of the SLA]
- the proposed statutory rule is of a fundamentally declaratory or machinery nature [section 8(1)(c) of the SLA]
- 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 section 8 (the rate for the financial year commencing 1 July 2017 is 2.75 %); [section 8(1)(d) of the SLA]
- the proposed statutory rule—
 - only prescribes under section 4(1)(a) of the SLA an instrument or class of instrument to be a statutory rule; [section 8(1)(e)(i) of the SLA]
 - only exempts under section 4(1)(b) of the SLA an instrument or class of instrument from the operation of the Act [section 8(1)(e)(ii) of the SLA]
 - is an extension regulation [section 8(1)(e)(iii) of the SLA].

- 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 [section 8(1)(f) of the SLA]
- 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** [section 8(1)(g)(i) of the SLA]; or
 - Departments within the meaning of the **Parliamentary Administration Act 2005** [section 8(1)(g)(ii) of the SLA]
- 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 [section 8(1)(h) of the SLA].

2.4 Premier's exemption certificate (section 9 SLA)

The Premier may issue an exemption certificate under section 9(1) of the SLA if, in the Premier's opinion, in the special circumstances of the case, the public interest requires that the proposed statutory rule be made without an RIS. The Premier must not issue a 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; and
- the responsible Minister has given the Premier written reasons why the public interest requires that the proposed statutory rule be made without an RIS [section 9(2) SLA].

An exemption certificate must specify the reasons for the exemption and must be signed by the Premier and be dated with the date on which the certificate was signed [section 9(3) SLA].

See the Subordinate Legislation Guidelines for information on what is required to obtain a Premier's certificate and the circumstances in which they may be given and Part 6.5 of these Notes.

2.5 Competition Policy

The OCBR website provides information and resources about the impact of regulation on competition. See: www.betterregulation.vic.gov.au

Statutory rules for which a RIS is required must have accompanying the RIS an assessment of whether or not the proposed statutory rule contains a restriction on competition and if so, a description of the nature of the proposed restrictions.

If a restriction on competition is involved, the RIS must also be accompanied by an assessment showing that the proposed restriction satisfies the Guiding Legislative Principle. The Minister must issue a certificate stating that an assessment consistent with the requirement of the Subordinate Legislation Guidelines has been made. The competition policy certificate, with the documentation of the assessment attached, must be provided to the Clerk of the Executive Council. See further Victorian Guide to Regulation and the Subordinate Legislation Guidelines.

Proposed statutory rules which are exempted by section 9 of the SLA from the RIS process are not required to comply with the competition policy assessment requirements.

For further information contact OCBR (Tel: 9092 5800) or see the OCBR website.

PART 3—PARLIAMENTARY COUNSEL'S REQUIREMENTS

3.1 Draft statutory rule for settling

In general, drafts of proposed regulations are prepared by Departmental legislation officers. In limited circumstances, drafting of statutory rules may be undertaken by OCPC. Requests for drafting of statutory rules by OCPC should be made to the Chief Parliamentary Counsel.

Rules of Court and VCAT Rules are drafted by OCPC on the instruction of the appropriate Court or Tribunal or the relevant Rules Committee.

Amending regulations will generally amend a single set of principal regulations and do not follow the "omnibus" amending style that is often seen in Bills. This practice is intended to make the amended law easier for users to find. It also prevents complicating the objectives provisions of amending regulations and therefore simplifies the issuing of a section 13 certificate and other certificates under the SLA.

Omnibus regulations may be permitted if they have been made under a single authorising Act and the amendments are related or consequential in nature e.g. a new scheme has been established impacting on more than one set of Regulations made under the same authorising Act. In this case, a separate part is used for each Principal Regulations being amended by the omnibus regulations. The title must include the title of each Principal Regulations being amended.

A copy of a proposed statutory rule in draft form prepared in Word should be sent to the Chief Parliamentary Counsel or sent to the Subordinate Legislation Manager by email for settling advice

- **at least 6 to 8 weeks** before it is proposed to be made; or
- if an RIS is required, **at least 6 to 8 weeks** before the statement is proposed to be published.

If a shorter timeline is needed, please advise the Subordinate Legislation Manager at OCPC. If the regulations are large, a longer settling period may be required.

A covering letter should be included which sets out a brief explanation of the background about the need for the statutory rule and its intended effect. The following information assists OCPC to settle the draft statutory rule—

- a brief outline of the proposed statutory rule;
- a brief explanation of the changes effected by the proposed statutory rule and the reasons for making the proposed statutory rule;
- the contact details of the officer responsible for the draft statutory rule;
- whether an RIS will be prepared (this assists us in timing and resource allocation);
- a general outline of the timelines for making the rule. If the statutory rule is urgent, please advise us of this so it can be appropriately prioritised.

A file is then created and allocated by the Subordinate Legislation Manager and the Chief Parliamentary Counsel to one or more drafters for settling. You will be sent a letter advising you of the person responsible for settling the statutory rule and, unless the statutory rule is urgent, indicating a date by which you may expect a first response.

3.2 Settling process

OCPC will consider the draft as to whether it is within power under the Act which authorises its making, and is suitable as to form and content. In undertaking this process, OCPC considers (among other things) all the criteria set out in section 13 of the SLA, being whether the proposed statutory rule—

- appears to be within the powers conferred by the authorising Act;
- appears without clear and express authority being conferred by the authorising Act—
 - to have a retrospective effect; or
 - to impose a tax, fee, fine, imprisonment or other penalty; or
 - to shift the legal burden of proof to a person accused of an offence; or
 - to sub-delegate powers delegated by the authorising Act;
- appears to be consistent with the general objectives of the authorising Act;
- 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;
- appears to be inconsistent with principles of justice and fairness;
- appears significantly or substantially to overlap or conflict with any other statutory rule or legislation;
- is expressed as clearly and unambiguously as is reasonably possible.

OCPC will also consider whether the statutory rule can be interpreted consistently with the Charter Act, in accordance with section 32 of the Charter Act.

You will receive a letter of advice which may include your draft with notations as to any changes required. You may also receive suggested draft provisions for inclusion in your next draft. You should incorporate the matters required and send a revised draft back for further settling, as required by the drafter dealing with your file. If the statutory rule is particularly complex, a meeting may be arranged.

Once the content is satisfactory to us and to you, and within the powers in the authorising Act, the proposed statutory rule is "settled" and you will receive a settling letter to this effect.

If the proposed statutory rule is subject to RIS, you can use the settled draft in your format for the RIS or, if necessary (if the document is already on OCPC's system or if you wish the document be in a form closer to the printed style of legislation), you can request an exposure draft to be prepared. Note that only a pdf of the exposure draft will be provided to you. You may request a Word version for use on your website for accessibility purposes, but such a Word version must not be altered by you. It is imperative for the integrity of the document and legislation generally that authorial control is maintained by OCPC.

If an RIS is required, the proposed statutory rule to be published with the RIS must be settled by OCPC. The compliance certificate under section 10(4) of the **Subordinate Legislation Act 1994** should not be issued unless the proposed rule has been settled by OCPC. OCBR will also need to know that the statutory rule has been settled before signing off on the RIS for advertising.

If the proposed rule is altered during any stage of the RIS process, it must be submitted to OCPC for resettling before it is printed for making.

If you are not undertaking an RIS, we then require a Word format electronic copy to be provided of the final settled version so that the document can be put into OCPC's templates for printing.

3.3 Printing

Before a statutory rule is made, it must be prepared for printing. OCPC arranges the preparation of a proof copy and when the proof copy is satisfactory, the preparation of the submission copies which are submitted to the Governor in Council (or Board, Committee or body) for the making of the statutory rule.

3.4 Request for proof copy

Generally, the legislation officer gives OCPC a clean copy of the draft, as settled by the relevant drafter and finally approved by the Department or Minister, in electronic form (Word) and in hard copy format, with a request for a proof copy.

OCPC then arranges for preparation of a final proof copy in the customised Word template and returns the proof copy to the legislation officer for checking. This copy will be clearly marked as a proof copy. The legislation officer must proof-read the proof copy, ensure that the proof copy satisfies all the Department's policy requirements and return the checked proof copy, with any corrections hand-marked on it, to the drafter dealing with the file in OCPC. If there are any significant changes, a further proof should be requested.

Departments should not make any electronic changes to proof copies provided to them in an electronic format (pdf). These proofs include a note that they are confidential proofs provided by OCPC. Departments should not attempt or purport to provide altered proofs even if they are only for use within the Department. The proofs are set up in OCPC's format and altering the draft electronically will disrupt the template that the Office uses.

3.5 Request for submission copy

When the final proof copy is settled, the legislation officer should advise the drafter that the proof copy is satisfactory and satisfies the requirements of the Department. If the legislation officer is satisfied that the statutory rule has been, or will be, approved by the Minister and the Secretary of the Department, the officer should request Parliamentary Counsel to arrange for the preparation of submission copies of the statutory rule and a section 13 certificate. That is, you can request the section 13 certificate at the same time as you request the preparation of submission copies.

3.6 Section 13 certificate

Ideally, a request for a section 13 certificate should be made at least 2 weeks before the date on which it is proposed to submit the statutory rule to the Minister for recommendation for making. You need to allow additional time to obtain any necessary Departmental approvals and the Minister's recommendation.

If the statutory rule is to be first made or approved by a Board, Committee or other body, the request should be made allowing sufficient time for the scheduled meetings of the Board, Committee or body and any necessary consideration within the Department or by the Minister before submission of the rule to the Board, Committee or body.

A request to the Chief Parliamentary Counsel for a section 13 certificate must be in writing, on letterhead, as the provision of a section 13 certificate is the exercise of a function under a statutory requirement. You can email OCPC a scanned copy of this letter. An e-mail request may be accepted at the discretion of the drafter, for example in urgent cases, but must be from a person with sufficient authority to authorise the printing of submission copies. A request must be accompanied by, or refer to, a clean, unaltered final proof copy of the proposed statutory rule or a proof with alterations marked on it, if necessary.

OCPC will arrange for the printing of submission copies of the statutory rule and the preparation of a section 13 certificate. The drafter will initial all submission copies of the statutory rule including the Reader's copy, attach the section 13 certificate to one initialled copy and return them to you together with one extra initialled copy. A copy of the statutory rule with a copy of the section 13 certificate is kept for OCPC's records.

The section 13 certificate relates to the copy of the statutory rule to which it is attached and the circumstances as at the date of the certificate. It has no validity except in relation to that copy. Under no circumstances should the section 13 certificate be detached from the copy to which it relates. Legislation officers should advise officers within their own Departments who may deal with the statutory rules not to detach the section 13 certificate from the statutory rules for photocopying, scanning or any other purpose. None of the initialled submission copies of the statutory rules should be unstapled or separated.

Any unstapling or tampering with the statutory rules may be queried by the Clerk of the Executive Council. This is essential for the Reader's copy which is the printer's copy of the statutory rules and, in effect, the master copy used by the Governor in Council for making the statutory rules and OCPC for printing the publication version.

If a proposed statutory rule is altered after the section 13 certificate is issued or amendments are needed, the submission copies all need to be reprinted and a new section 13 certificate is required before the statutory rule is submitted to the Governor in Council. This requirement does not apply if the alteration is only in the introductory words (e.g. in the name or portfolio of the responsible Minister). Such a change will normally be made by the Clerk of the Executive Council. If amendments are needed, the Department should return the section 13 certificate, the Reader's copy and all other copies of the rule to OCPC with a request for the alteration to the rule and a revised section 13 certificate. If the amendments are substantial, OCPC may prepare a fresh proof for approval by the Department for checking first.

It is the Department's responsibility to ensure that the statutory rule is made as soon as practicable after the issue of the certificate. If there is to be any significant delay in making the statutory rule or the Department becomes aware of any relevant change in circumstances after the issue of the certificate, the matter should be discussed with OCPC.

If the section 13 certificate is issued towards the end of a year and the statutory rule is not made before the end of the year, you will need to send it back to OCPC for the statutory rule to be reprinted with the new year and the certificate reissued.

A section 13 certificate may contain one or more of the following notes or qualifications—

- For statutory rules with a commencement provision, a time limit as to the advice about retrospectivity.
- For statutory rules made under section 5A of the **Subordinate Legislation Act 1994**, a time limit as to the advice about power to make an extending statutory rule i.e. it must be made before the sunset date.
- For statutory rules containing incorporated material that has not been examined by the Chief Parliamentary Counsel, a note that the certificate does not apply to any of the incorporated material.
- For amendments to existing objectives of a principal statutory rule.

Other qualifications may be included if circumstances so require.

PART 4—CONTENT OF STATUTORY RULES

4.1. Language and style

A statutory rule must be expressed—

- in language that is clear and unambiguous;
- in a way which ensures that its meaning is certain and there are no inconsistencies;
- in language that gives effect to its stated purpose;
- consistently with the language of the empowering Act; and
- in accordance with plain English drafting standards. See OCPC's website for our Plain English policy.

A statutory rule should—

- not duplicate, overlap or conflict with other statutory rules or legislation;
- clearly set out as part of its text—
 - the objectives of the rule; and
 - the precise provision authorising the rule;
- not deal with matters outside the scope of its objectives.

The format and printing style of a statutory rule is standardised and OCPC will prepare all proofs (and exposure drafts if necessary) for Departments in accordance with a customised template. The format of current statutory rules should be followed as closely as possible by Departments. Departments should attempt to draft rules in accordance with the structure, format and standard provisions of current statutory rules.

For further assistance see—

Appendix 1 which contains notes about common provisions in statutory rules and the order of those provisions.

Appendix 2 which sets out some examples of the style and form of those provisions.

Appendix 3 which sets out examples of the OCPC amending style. The style of amending statutory rules should generally follow that used for Acts.

4.2 Some general tips

This is not an exhaustive list and but when drafting proposed statutory rules, you should keep the following in mind—

- What regulations are needed to complete the scheme of the Act?
- Use the active voice, present tense, singular
- Use "must" not "shall"

- Use "if" not "where" if you are referring to a condition
- Structure your draft in a logical order, for example follow the provisions or structure of the authorising Act if appropriate or divide your draft into topic-specific Parts if it is a long document
- Use useful headings. If you are inserting a new regulation, use the heading "New regulation 24A inserted". If you are substituting, use "Regulation 24A substituted". If you are making a small amendment to an existing regulation, use the heading of the existing regulation which you are amending so that the reader knows the subject matter of the amendment and the provision into which it is going.
- Break up the text: Consider the length of provisions, paragraphs etc
- Offences
 - Make elements of the offence clear
 - What is the activity to be controlled or prohibited? Who is to be controlled?
 - Use separate regulations or separate subregulations for each separate offence, especially if you intend to use infringement notices to enforce them
- Use notes and examples if appropriate, but sparingly. You should focus on making the provision itself clear.

4.3 Authorising Act and Charter Act

In preparing your draft statutory rule, you need to be familiar with the content and scheme of the Act which authorises the making of the statutory rule. You need to consider what matters need to be included in the statutory rule to complete the scheme or allow for the effective implementation of it, and whether there is sufficient power in the Act to support all the things you wish to include in the proposed statutory rule.

You will also need to consider the impact of the Charter Act on your proposed statutory rule and whether those rules could engage rights under the Charter Act. Section 32 of the Charter Act requires all legislation to be interpreted consistently with the Charter Act, so far as is consistent with the legislation's purpose. This may impact on the authorising powers under which you are making the statutory rule or the statutory rule itself. A statutory rule may be invalid if it is inconsistent with the Charter Act and not authorised by its empowering Act so to be. (Section 32(3)(b) of the Charter Act).

A human rights assessment has to be undertaken in preparing draft statutory rules as to Charter rights and you should refer to the Guidelines on the Charter Act prepared by the Human Rights Unit in the Department of Justice. Under section 12A of the SLA, every statutory rule has to have a human rights certificate, or, in very limited cases, a certificate of exemption under that section, before it can be made.

4.4 Commencement

It is highly recommended that a specific date is set out in the regulations to provide advance notice of the regulations, certainty of their commencement and to ensure the regulations can take full effect after allowing for all printing, publication and notification requirements under the SLA.

A statutory rule or a provision of a statutory rule comes into operation at the beginning of the day on which the statutory rule is made or at the beginning of such later day as is expressed in the statutory rule as the day on which the statutory rule or provision comes into operation. (SLA, section 16).

Section 13 of the ILA provides that regulations can be made and brought into operation in limited circumstances between the passage and commencement of the authorising Act. It is generally recommended that Departments do not rely on section 13 for this purpose except in exceptional circumstances. That section also empowers various administrative and machinery matters to be undertaken prior to the commencement of provisions of an Act.

Generally OCPC will try to ensure that the making and commencement of the regulations coincides with the proclamation and commencement of the authorising Act or provision by advising the Clerk of the Executive Council about proclamation of commencement of Acts. If Department have a commencement issue, this should be raised with OCPC in the course of settling the regulations.

Draft proclamations of commencement for Acts should be sent to Ms Catherine Schipano, Senior Parliamentary Counsel, or the Subordinate Legislation Manager for settling.

A statutory rule cannot be retrospective in effect unless this is expressly authorised by the empowering Act.

Sections 16 and 20 of the SLA provide for the limited effect of statutory rules despite their coming into operation. A person cannot be convicted of an offence or prejudicially affected or subjected to a liability if the statutory rule has not been printed and published by the Government Printer or if a Gazette notice of availability has not been published. However these limitations will not apply if reasonable steps have been taken to bring the purport of the statutory rule to the notice of the public or persons affected.

4.5 Forms, plans, maps etc.

If a form, plan, map or other art work is required to be included in a statutory rule (whether in a schedule or otherwise)—

- any form must clearly and succinctly set out the information to be given by, or in response to, the form;
- any form issued to the public under the authority of a statutory rule must be in or to the like effect of the prescribed form but does not need to be identical with it (section 53, ILA). Issued forms may be larger, may include details of the address and telephone number of the Department, instructions for filling in the forms or other additional but subsidiary information and may be designed with boxes, lines, colours or other aids.

The forms set out in the statutory rule should not include this additional material, if it is not necessary to understand what the form means or to meet the requirements of the authorising Act.

- reduced photocopies of forms, plans, maps etc., prepared for other purposes must not be used for printing in statutory rules unless the reduction in no way detracts from the clarity of the original;
- a plan or map should be an original prepared by or under the authority of the Surveyor-General suitable for printing in the rule;

- a plan or map should include a scale and should readily identify the location of the area.

Any doubts about the design or suitability of a form, plan, map or other art work should be discussed with OCPC. Images should be sent to OCPC in .jpg format to avoid problems in printing the images.

4.6 What is Incorporated Material?

Under section 32 of the **Interpretation of Legislation Act 1984**, a subordinate instrument (a statutory rule or other instrument that is made under an Act and contains regulations, rules, by-laws, proclamations, Orders in Council, orders or schemes or is otherwise of a legislative character) may apply, adopt or incorporate provisions of:

- a Victorian Act,
- a Commonwealth Act,
- Victorian statutory rule
- Commonwealth statutory rule
- various Codes and Laws specified in section 32(1) of the ILA.

If the authorising Act under which a statutory rule is made specifically authorises it, the statutory rule may apply, adopt, or incorporate provisions of any other document, for example an Australian Standard.

If you propose that a statutory rule will apply, adopt or incorporate material, the Department must consider the following—

- there must be express power in the authorising Act to empower the application, adoption or incorporation of material in a statutory rule;
- members of the public affected by the rule must be able to access the incorporated document so that they can understand the contents and effect of the rule;
- whether the incorporated material is readily available at a reasonable cost;
- the requirements set out in section 32 of the **Interpretation of Legislation Act 1984** which are designed to facilitate Parliamentary oversight of incorporation of material and to ensure that the material is publicly available.

Remember that the incorporated material may not be a self-contained document and may apply, adopt or incorporate other material.

In drafting a statutory rule which refers to an Australian Standard, consideration should be given as to whether the reference to an Australian Standard should be to a specific standard or to a specific version of a standard by reference to its date. This may be constrained by the empowering provisions in the authorising Act. Some Acts authorise incorporation of a document as in force from time to time, whereas others are more limited and only permit incorporation of a document as at the date of publication of the document or the date of making of the statutory rule.

In deciding whether to incorporate material by reference, Departments need to take care to balance the drafting convenience with ease of access to the incorporated material and understanding of it by those affected by it or required to comply with it. Departments

should reserve the use of incorporated detailed and extensive technical material to statutory rules concerning industries familiar with and using the material. In such cases Departments should also consider whether performance standards are a more appropriate means of regulation.

If you incorporate material such as Australian Standards, you will need to provide a copy of that material to OCPC during the course of settling the proposed statutory rule as OCPC need to be satisfied that there is power to incorporate material and will need to check the citation and publication details to ensure compliance with the requirements of the Subordinate Legislation Regulations.

OCPC will also check that the document is suitable for incorporation in a law but, due to the technical nature of some of these documents, we can only examine the documents from the perspective of whether or not it sets out a clear obligation if offences flow from contravention of the incorporated material, rather than recommendations which are not enforceable or certain. It is preferable that a copy of the material be sent to OCPC with the first draft of the statutory rules for settling.

A section 13 certificate cannot be issued if a document incorporated in a statutory rule is not in existence at the date of settling of the statutory rule or at the latest, the request for the section 13 certificate.

4.7 Table of Applied, Adopted or Incorporated Matter Required by Subordinate Legislation Regulations

The Subordinate Legislation Regulations provide for the publication with a statutory rule of a footnote or endnote containing a Table—

- specifying a document containing any matter that is applied, adopted or incorporated by the statutory rule; and
- indicating the provision of the statutory rule to which any such matter relates.

The Table is printed as an endnote at the end of the statutory rule.

It is the Department's responsibility to ensure that the content of the Table is correct. Section 13(2) of the SLA provides that the Chief Parliamentary Counsel may qualify a section 13 certificate by specifying that the certificate applies only to the proposed regulations and does not apply to any matter contained in a document incorporated or applied by the regulation.

The Table should specify each document that is referred to in the statutory rule that contains the matter that is applied, adopted or incorporated and indicate the provision of the statutory rule to which the matter applied, adopted or incorporated relates. The documents should be described in the order in which they are referred to in the statutory rule. The full title of the document should be included together with any applicable publication date or reprint or edition number.

This requirement does not apply to Victorian and Commonwealth Acts and Victorian and Commonwealth statutory rules and various Codes and Laws specified in section 32(1) of the **Interpretation of Legislation Act 1984**. Nor does it apply to a document or matter referred to in the statutory rule if that document or matter does not affect the operation of the statutory rule (see section 32(14) of the ILA).

This Table need only to refer to the incorporated documents referred to in the statutory rule itself, usually the "primary incorporated documents". If the statutory rule specifically refers to a secondary incorporated document, e.g., by modifying a document incorporated in a primary incorporated document, this secondary incorporated document should be included in the Table.

The content of the Table does not mean that the Department does not also have to comply with the requirements of section 32 of the ILA, which may result in the tabling in Parliament of secondary incorporated documents or tertiary incorporated documents if those documents affect the operation of the statutory rule.

The following is the Form of the Table to be included in the endnotes to a statutory rule. .

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Insert the provision of the statutory rule which incorporates etc. the matter e.g. Regulation 4 (definition of <i>listed regulated poison</i>) Regulation 5(6) Regulations 7 and 8 Regulation 10	Insert full title of document incorporated etc. together with Reprint or Edition number if applicable. Poisons Code AS 1250—2005 Standards for Electrical Safety Edition 2 published by Standards Australia on 6 December 2005 Australian Standard 3959—2009 Construction of buildings in bushfire-prone areas, published by Standards Australia on 10 March 2009, as amended on 16 November 2009. Greater Melbourne Melway Street Directory, Edition 18, 1988	Indicate whether whole document is incorporated etc. or if only part of a document is incorporated etc. insert the appropriate page, section or item reference. Part 2 of Chapter 1 the whole the whole Map 65, page 276

An example where a secondary or further incorporated document is also referred to specifically in the statutory rule is:

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Insert the provision of the statutory	Insert full title of document	Indicate whether whole document

rule which incorporates etc. the matter	incorporated etc. together with Reprint or Edition number if applicable.	is incorporated etc. or if only part of a document is incorporated etc. insert the appropriate page, section or item reference.
Schedule 6, Item 13	Poisons Code which incorporates Appendix C of Part 5 of the Standard for the Uniform Scheduling of Drugs and Poisons as in force from time to time	Part 2 of Chapter 1
Schedule 2 Part 7 Clause 15(3) of the Principal Regulations	AS 4234—1994 as incorporated by AS/NZS 3500.4:2004 as incorporated by the Plumbing Code of Australia, produced by the National Plumbing Regulators Forum, published December 2004	Clauses 1.4.11, 1.4.13 and 3.1A

4.8 Requirements of section 32 of the Interpretation of Legislation Act 1984 for incorporated material

If a subordinate instrument that is required to be laid before Parliament applies, adopts or incorporates provisions of any document—

- the responsible Minister must ensure that a copy of the material is to be lodged with the Clerk of the Parliaments as soon as practicable after the subordinate instrument is tabled (section 32(3) ILA);
- the responsible Minister must ensure that a notice of the material and of the fact that copies have been lodged is to be published in the Government Gazette as soon as practicable after the lodging;
- the responsible Minister must ensure that a copy of the Government Gazette notice is to be laid before each House of the Parliament as soon as practicable after it is published.

Failure to comply with the lodging requirement does not affect the validity of the subordinate instrument. (Section 32(5) ILA)

Section 32(4) of the ILA requires the responsible Minister to lodge copies of later amendments with the Clerk of the Parliaments and to publish a notice in the Government Gazette. A copy of this notice must also be tabled. This is the responsibility of the Minister administering the Act under which the instrument is made, so the Department has the responsibility for ensuring this is complied with.

Note section 32(14) of the ILA which provides that a document is not incorporated only by reason of being referred to in a statutory rule if the document does not affect the operation of the statutory rule or other subordinate instrument. Sometimes this is a difficult matter to determine.

4.9 Procedures for lodging matter applied, adopted or incorporated by or in a subordinate instrument with the Clerk of the Parliaments

The incorporated documents are to be sent to the Clerk of the Parliaments on or as soon as possible after the day the subordinate instrument is made. This is to try and ensure that subordinate instruments are not tabled before attachments are received from the Department or statutory authority. Statutory rules are tabled at the next available opportunity after printed copies are sent to the Clerk.

The documents should be supplied and described in the order in which they are mentioned in the subordinate instrument.

Secondary level documents referred to in primary level documents (secondary incorporations) are also required to be lodged unless they do not affect the operation of the subordinate instrument. They should be attached together with the primary level document and supplied and described in the order that they appear in the primary level document. Tertiary and further level documents are to be treated similarly.

The covering memo to the Clerk is to be in the following form—

*Clerk of the Parliaments
Parliament House
Spring Street
MELBOURNE VIC 3002*

[Insert title of SR or subordinate instrument and number (if available)]

*As required by section 32 of the **Interpretation of Legislation Act 1984**, I supply the enclosed documents that are referred to in this statutory rule/subordinate instrument which both Houses of the Parliament will receive for tabling after printing.*

S.R. Reg.¹

Title of document²

Page of document³

Yours sincerely

Any queries concerning the Parliament's requirements should be directed to—

Legislative Assembly
Table Office
Tel: 9651 8559

Legislative Council
Usher of the Black Rod
Tel: 9651 8672

¹ Insert regulation/provision of Statutory Rule which refers to the attachment (e.g. regulation 5(6); Schedule 6, Item 13.)

² Insert full title of document to be attached, together with Reprint or Edition Number, if applicable (e.g. Australian Standard AS 1250—1975; Greater Melbourne Melway Street Directory, Edition 18, 1988).

³ If only part or a section of a document is supplied, insert the appropriate page, section or item reference.

PART 5—SUNSETTING AND EXTENSION REGULATIONS

5.1 Sunsetting regulations: 10 year expiry

Section 5 of the SLA provides for the automatic revocation of a statutory rule 10 years after it is made. Section 5, when read with sections 25 and 44(2) of the ILA, arguably means that the statutory rules are revoked at the end of the relevant day.

Departments must maintain accurate records of the sunset dates for all statutory rules administered by the Minister to whom the Department reports. It is essential that a Department allow sufficient time for the review of the continuing appropriateness of the statutory rules if they are to be made in whole, in part or in a modified form. Departments should keep records of these revocation dates for all statutory rules administered by the Department. Procedures for reviewing and remaking these statutory rules need to be in place to ensure that any necessary statutory rules are in force.

Departments should nominate an officer to be responsible for notifying OCPC of the Minister's intentions about remaking any statutory rule that is due to sunset and should notify OCPC at least 6 months before the sunset date so that OCPC is in a position to provide timely advice in settling the proposed new rule.

OCBR have a list of sunsetting regulations on their website, usually for the next 2 years. OCPC also notifies Departments to remind them of sunsetting regulations.

When drafting new statutory rules which are to replace rules due to sunset, you need to review the entire document to take into account any changes that have occurred in the past 10 year both to your authorising Act and to other Act referred to in the document. Redundant matters should be omitted and the document renumbered with consecutive numbers.

The old Principal Regulations will need to be revoked, as will all amending regulations which have altered the Principal Regulations over the past 10 years and which are still in force.

The new regulations should contain a commencement date that is no later than the day before the old regulations are due to sunset, to ensure a seamless transition.

5.2 Extending the operation of sunsetting rules (extension regulations)

A statutory rule may be extended in operation for a period not exceeding 12 months if the responsible Minister certifies and recommends to the Governor in Council that, due to special circumstances, there is insufficient time to comply with Part 2 of the SLA before the rule is due to be revoked. Before an extension certificate can be issued, the responsible Minister must obtain a certificate of agreement from the Premier [section 5A(3) of the SLA].

Only one extension of a statutory rule can be made [section 5A(5)].

When drafting the extension regulation, fix the date for the end of extension period as at least one day before the 12 month anniversary of the sunset date of the statutory rule to be extended. This is to ensure the 12 month extension period is not exceeded.

In order to extend a set of regulations the responsible Minister must issue certificates under sections 5A and 8 of the SLA. A certificate of agreement from the Premier is also required under section 5A(3) of the SLA and legislation officers should contact DPC Governance Branch in sufficient time for this to be agreed to and obtained.

The title of extension regulations should follow the naming convention Subordinate Legislation (ABC Regulations 2001) Extension Regulations 2016 (see definition of "extension regulation" in section 3 of the SLA).

See the model in Form 3 in Appendix 2.

PART 6—OTHER MATERIAL REQUIRED FOR MAKING

As a legislation officer, you have many other documents you need to ensure are in place for the making of a statutory rule. You should ensure you are familiar with the requirements of the SLA, the Subordinate Legislation Guidelines and the OCBR Guide to Regulation and your internal Departmental requirements and those of the Executive Council.

6.1 Explanatory memorandum

An Explanatory Memorandum must be prepared to accompany any statutory rule it is proposed to be put to the Governor in Council. This memorandum should set out the nature and extent of any changes effected by the new statutory rule and the reason for the changes, particularly in cases where no RIS has been prepared.

The Explanatory Memorandum should include—

- a brief outline of each provision;
- an explanation of the changes effected by each provision;
- a statement of the reasons for making the rule;
- if applicable, the reasons why no regulatory impact statement was prepared;
- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult.

6.2 Minister's certificates under the SLA

Section 12B of the SLA provides that all certificates under Part 2 of the Act must be signed by the Minister and dated with the date of signing.

6.3 No RIS required

Exemption certificate

Departments should ensure that the Minister's exemption certificate includes the following—

- the name of the proposed statutory rule;
- the paragraph of section 8(1) of the SLA under which the exemption is made;
- an outline of the nature and effect of the proposed rule including the proposed operative date and, if relevant, the reason for that date;
- the reason why the proposed rule falls within the relevant exemption, i.e. what is it about the nature and effect of the rule, including the operative date of the rule, which corresponds with the matters covered by the exemption.

For example, in an exemption certificate citing section 8(1)(a), the Minister must include detailed reasons as to why the proposed rule does not impose a significant economic or social burden on a sector of the public. It will not be sufficient to simply assert that there is no significant economic or social burden on a sector of the public in the exemption certificate.

The Act does not set out any form for the certificate that is to be provided to SARC under section 8 of the SLA, but example forms of certificate are available from Executive Council.

Consultation Certificate: section 6

A certificate of consultation may need to be prepared even if the responsible Minister concludes that a rule will not impose a significant burden and therefore justifies an exemption from an RIS process under section 8(1)(a) SLA. The Subordinate Legislation Guidelines set out when consultation and therefore a certificate is required.

6.4 RIS required—certificates and notices

Consultation Certificate

A certificate of consultation should be prepared under section 6 SLA.

Compliance Certificate

If an RIS has been prepared, the responsible Minister must ensure that, in accordance with section 10 of the SLA, a certificate is given specifying that the requirements of section 10(4) about RISs have been complied with.

Notices

If an RIS has been prepared, the responsible Minister must ensure that, in accordance with section 11 of the SLA—

- a notice is published in the Government Gazette, a daily newspaper circulating generally throughout Victoria, and if the responsible Minister considers it appropriate, any trade, professional or public interest publications as the responsible Minister determines;
- the notice sets out—
 - the reason for, and the objective of, the proposed statutory rule;
 - a summary of the results of the RIS;
 - the locations (including the Government Internet site) where a copy of the RIS and the proposed statutory rule can be obtained;
 - an invitation for public comments or submissions within a specified time not less than 28 days from the publication of the notice.

Section 12 of the Act requires the relevant Minister to publish a notice confirming whether or not a proposed statutory rule is to be made in the Government Gazette and in a daily newspaper circulating throughout Victoria.

Competition policy certificate

See Part 1 and the OCBR Guide to Regulation.

6.5 Infringement offence certificate

Section 6A of the **Subordinate Legislation Act 1994** requires that if a proposed statutory rule provides for the enforcement of an offence against the statutory rule by an infringement notice, the responsible Minister must certify that the Department of Justice has been consulted about the suitability of the proposal and that the Attorney-General's guidelines made under the **Infringements Act 2006** have been taken into account in the preparation of the proposed rule and the Minister is satisfied that the proposed rule meets the requirements of the guidelines.

The Department of Justice's Infringements System Oversight Unit is the contact point for consultation on all infringement offence proposals. The Unit should be contacted as early on in the development of the proposal as possible. It should be contacted when new infringement offences are proposed, when higher infringement penalties for existing offences are being considered and when existing infringement offences are being reviewed or re-made.

Section 6A also provides for the situation where the Minister wishes to certify that the requirements of the guidelines have not been met but that the statutory rule should be made despite not meeting those requirements. It is expected that this option will be rarely exercised by Ministers. Any certification to this effect should be justified in detail by the Minister in the certificate.

All section 6A certificates must be laid before each House of the Parliament with the statutory rule.

6.6 Human rights certificates

Section 12A of the SLA requires that a human rights certificate be prepared by the responsible Minister stating whether or not a proposed statutory rule limits any of the human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

Section 12A(3) provides for specific exemptions from the requirement to provide a human rights certificate. Under subsection (3), an exemption certificate must be prepared for:

- a 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; (court rules) or
- a proposed statutory rule that prescribes under section 4(1)(a) of the Act an instrument or class of instrument to be a statutory rule (bringing an instrument under the operation of the SLA); or
- a proposed statutory rule that exempts under section 4(1)(b) of the Act an instrument or class of instrument from the operation of the SLA; or

-
- a statutory rule that extends, under section 5A of the Act, the operation of a statutory rule that would otherwise be revoked by virtue of section 5 (an extension regulation).

Further guidance on the impact of the Charter Act and the assessments that have to be undertaken in preparing draft statutory rules are set out in the Guidelines prepared by the Human Rights Unit in the Department of Justice.

6.7 Composite certificates

Section 12B of the SLA provides that all or any of the following certificates may be included in a composite certificate—

- a certificate of consultation [section 6 of the SLA]
- an infringement certificate [section 6B of the SLA]
- an exemption certificate issued by the responsible Minister [section 8 of the SLA]
- a certificate that the requirements relating to an RIS have been met [section 10(4)].

6.8 Premier's exemption certificate

Section 9 of the SLA gives the Premier the power to exempt a proposed statutory rule from the RIS process where the Premier is of the opinion that, in the special circumstances of the particular case, the public interest requires that the proposed statutory rule be made without complying with the RIS process under section 7 of the SLA. This power is for use in cases of emergency or overriding public interest.

Departments should not seek the Premier's views as to the granting of an exemption certificate unless there are overwhelming grounds on which the Premier could reach the opinion that in the special circumstances of the particular case the public interest requires that the proposed rule be made **without** complying with the RIS process.

A copy of the settled statutory rule should be provided with the request for the Premier's certificate together with a copy of the section 13 certificate provided by the Chief Parliamentary Counsel. The application for a Premier's certificate must set out evidence of the public interest to enable the Premier to form the requisite opinion argued on its merits.

Departments should not make requests for Premier's certificates lightly. The Premier's power to grant exemptions is not intended to operate as an alternative means of making statutory rules or circumventing the RIS process. Contact should be made with DPC legal as to DPC's requirements.

Departments should not expect that a 12 month period will automatically be the period allowed. Premier's certificates are generally given for a period not exceeding either 6 or 12 months. A statutory rule made under a Premier's certificate will normally include the word "Interim" in the title to indicate the short-term operation of the rule. For example "ABC Interim Regulations 2016".

Note also that section 9(2)(b) of the SLA requires that the relevant responsible Minister has given the Premier written reasons why the public interest requires that the proposed statutory rule be made without complying with section 7(1).

PART 7—MAKING AND AFTERWARDS

7.1. Submission to the Governor in Council

If a statutory rule is to be made by the Governor in Council, or the consent or approval of the Governor in Council is required for the making of a statutory rule, the following must be sent to the Clerk of the Executive Council in accordance with their procedures and requirements—

- the Agenda sheet;
- the Minister's recommendation;
- the section 13 certificate with the proposed statutory rule attached. The certificate **must not** be detached from the statutory rule that it certifies;
- the Reader's copy and 1 extra copy of the proposed statutory rule, all initialled by OCPC and identical with the copy to which the section 13 certificate is attached. Section 14(a) of the **Subordinate Legislation Act 1994** requires 3 copies of a proposed statutory rule to be submitted to the Executive Council. In practice, this is the copy attached to the section 13 certificate, the Reader's Copy and 1 spare copy. The Reader's Copy is the master copy from which OCPC prints the made statutory rule for publishing purposes;
- if the proposed rule is to be made on the recommendation of a Board, Committee or body, a copy of the recommendation;
- if the regulations are extension regulations, a certificate from the Minister under section 5A(1) of the SLA and a certificate of agreement from the Premier under section 5A(3) of the SLA;
- if the Subordinate Legislation guidelines require consultation under section 6, a copy of the certificate of the relevant responsible Minister under section 6;
- if an RIS was required, a copy of the compliance certificate in section 10(4) of the SLA;
- if an RIS was required, a copy of the appropriate competition policy certificate if required;
- if an RIS was not required, a copy of the exemption certificate;
- if the statutory rule provides for the enforcement of an offence against the statutory rule by infringement notice, a copy of the certificate of the relevant responsible Minister under section 6A;
- a human rights certificate under section 12A of the SLA, or in cases exempted by section 12A(3), a human rights exemption certificate under the appropriate ground in section 12A(3);
- one copy of an explanatory memorandum for the rule. The explanatory memorandum should also—

- explain in some detail the purpose and operation of the rule (see Subordinate Legislation Guidelines, Part 3, and SARC's Practice Notes in its Annual Reviews of Regulations);
- if the rule amends or substitutes fees or charges, set out the previous fees or charges, the new fees or charges and setting out any percentage increase in each of those fees or charges.

7.2 Printing and publication of made statutory rules

All statutory rules will be in the submission copy format prepared by OCPC before submission for making. Legislation officers should allow adequate time for all the procedures necessary to have these prints checked, proof-read and printed by the Government Printer.

In the case of statutory rules made by the Governor in Council, after a statutory rule has been made by the Governor in Council, the Clerk of the Executive Council gives it a statutory rule number and arranges for notification of the making in the Government Gazette and sends—

- the Reader's copy to OCPC for printing;
- one copy to the Department or Board, Committee or body responsible for the rule;

In the case of statutory rules made by Boards etc., with consent of the Governor in Council, if a statutory rule requires consent or approval or confirmation by the Governor in Council, the Board, Committee or other body making the rule must follow the procedures for preparation of a submission copy and forwarding to the Executive Council.

The Clerk of the Executive Council returns the copies, duly signed or otherwise endorsed, to the Department for sending on to the Board, Committee or body making the rule. The Board, Committee or body must then—

- make the rule (unless made before submission to the Governor in Council), and endorse the Reader's copy accordingly by signing (including sealing if necessary) and dating the Reader's copy and then endorse each copy with a certificate stating that the copy is a true copy of the rule;
- arrange for one copy of the endorsed rule in hard copy format to be sent on the day of making to OCPC for numbering, printing and notification in the Government Gazette;
- attach or include a list of the names of the people who made the rule by signing and dating the Reader's copy.

OCPC then arranges for the allocation of a statutory rule number and for the printing, publication and notification of the statutory rule in the Government Gazette.

For Rules made by a Court, Tribunal, Board, Committee or other body not requiring the consent or approval of Governor in Council, the Court, Tribunal, Board, Committee or body must—

- follow the procedures for obtaining a submission copy from OCPC;
- after making the rule endorse the Reader's copy accordingly by signing (including sealing if necessary) and dating;
- attach a list of the names of the people who made the rule by signing and dating the Reader's copy;
- send one copy of the endorsed rule in hard copy format to OCPC as soon as practicable after making for numbering, printing and notification in the Government Gazette.

OCPC then arranges for the allocation of a statutory rule number and for the printing, publication and notification in the Government Gazette.

7.3 Rules to be tabled in Parliament and given to members

Section 15 of the SLA requires a copy of each statutory rule to be laid before each House of Parliament on or before the 6th sitting day after notice of the making of the statutory rule is published in the Government Gazette under section 17(2) of the SLA.

The Government Printer arranges for the delivery of the copies of statutory rules to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council who arrange for the rules to be tabled in the relevant House.

Section 15 also provides that a copy of the statutory rule must also be posted or delivered to each Member of Parliament. The Government Printer arranges for this to be done.

If any of the following documents have been made or issued in respect of the statutory rule, a copy of the document must also be laid before each House of Parliament—

- an extension certificate and the Premier's certificate under section 5A(3);
- a certificate issued under section 6;
- a certificate issued under section 6A;
- an exemption certificate;
- a compliance certificate under section 10(4);
- a human rights certificate;
- a human rights exemption certificate;
- a section 13 certificate;
- the accompanying recommendation to the Governor in Council to make the statutory rule.

A copy of the certificates should be sent to the Clerk of each House of the Parliament on or as soon as possible after the day on which the statutory rule is made, to ensure that the Clerks receive them **before the statutory rule is tabled**.

The covering memorandum to the Clerks should be to the following effect—

Clerk of the Legislative Assembly/Legislative Council
Parliament House
Spring Street
Melbourne Vic 3000

[Insert title of statutory rule and number (if available)]

As required by section 6A(3)/8(4)/9(6)* of the **Subordinate Legislation Act 1994**, I enclose a copy of the infringement/exception/exemption* certificate relating to this statutory rule which you will receive for tabling.

Yours sincerely

*Delete as appropriate

Any queries about the tabling of any infringement certificate, exception or exemption certificate should be directed to—

Legislative Assembly
Table Office
Tel: 9651 8559

Legislative Council
Usher of the Black Rod
Tel: 9651 8672

7.4 Requirements of SARC

Under section 15A of the SLA, within 10 working days after a statutory rule is made, the Department, Board, Committee or body responsible for the rule must send to the Secretary of SARC—

- any documents referred to in section 15(1A) of the SLA relating to the statutory rule; and
- if an exemption certificate was issued by the Premier under section 9 of the SLA the reasons given by the responsible Minister as to why the public interest requires that the proposed statutory rule be made without complying with section 7(1) of the SLA; and
- if an RIS was prepared, a copy of the RIS and copies of all comments and submissions received in connection with the RIS; and

All certificates required under the SLA are to be signed and dated when signing.

Section 15(3) of the SLA provides that copy of each statutory rule laid before each House of the Parliament 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.

Seven copies of the explanatory memorandum for the statutory rule prepared for the Governor in Council must also be provided to SARC.

7.5 Tabling of incorporated material under section 32 ILA

If documents are incorporated in the statutory rule the tabling in Parliament under section 32 of the ILA should occur at this stage. See further 4.7 and 4.8 above.

Section 32(3)(b) and (4)(c) of the ILA also requires a copy of incorporated material (or incorporated material as amended) to be kept available for inspection during normal office hours and without charge, at the principal office of the Department or body responsible for administering the statutory rule.

7.6 Availability of statutory rules

The Government Printer must ensure that a copy of a statutory rule can be purchased on demand during normal office hours from a prescribed bookshop (section 20(1) SLA).

The prescribed bookshop is specified in the Subordinate Legislation Regulations.

The Minister administering the Act under which a statutory rule is made must ensure that a copy of the statutory rule—

- is available for inspection without charge during normal office hours at the office of the Minister's Department; and
- can be inspected without charge or purchased on demand during normal office hours at a public office specified by the Minister by notice published in the Government Gazette. (section 20(2) SLA).

Statutory rules that have been amended may be reprinted under the Reprint program of OCPC. Any queries about the reprint program should be directed to the Legislative Knowledge Manager at OCPC on 9651 2601.

APPENDICES

APPENDIX 1

STATUTORY RULES - STYLE

1. Order of provisions—framework

Title

Introductory words for making and, if necessary, approval or consent.

Clauses (as applicable)

- Objective(s)
- Authorising provision(s)
- Commencement
- Principal Regulations
- Revocation
- Definitions
- Substantive or amending provisions
- Expiry

Schedule(s) (as applicable)

Endnotes: Including table of incorporated material if applicable.

2. Title

- 1 A short title for a statutory rule is not necessary, see section 19 of the **Subordinate Legislation Act 1994**. If the rule has no short title, the rule can be cited by the title appearing before the formal or introductory parts and that title will form part of the statutory rule. This is now the standard form.
- 2 Wherever possible, the title of the Regulations should include the name of the authorising Act (eg. Regulations under the Bees Act should be called Bees Regulations).
- 3 The title should be as concise as possible (e.g. "Bees (Committees) Regulations" rather than "Bees (Committee of Management and Advisory Committee) Regulations"). The primary purpose of the title is to identify rather than describe.
- 4 The title for an amending rule should generally include a reference to "Amendment" to distinguish it from principal regulations. eg "Bees (Committees) Amendment Regulations". Generally, the style should follow the style of amending Bills if possible. If you have any queries regarding the title, contact the Subordinate Legislation Manager or discuss it with the drafter settling the draft statutory rule.
- 5 The title for an amending rule should not include a reference to an amendment number. The exceptions are Court and Tribunal Rules.

- 6 If the Regulations are to operate for a limited period of months or years e.g. because of the requirements for a Premier's certificate, "Interim" should be included in the Title immediately before "Regulations".

3. Types of clauses

- Objectives

- 1 This clause must be included in all statutory rules (see Subordinate Legislation Guidelines).
- 2 This clause should be included in amending statutory rules. Note that the subject-matter of amending rules may make it necessary to amend the objectives of the Principal Regulations. (Note also that the certificate under section 13(d) of the SLA refers to the objectives of the Principal Regulations).
- 3 The statement of objectives should be concise.

- Authorising provision

- 1 This clause, stating the provision(s) authorising the rule, must be included.
- 2 The clause will generally cite the general regulation-making power as well as other regulation-making powers that support the making of the statutory rule. The sections that actually confer the regulation making power need to be cited e.g. "The Governor in Council may make regulations..." or "the regulations may...". Other references to "prescribed matters" should not be cited. These provisions should be referred to in the substantive provision of the regulations that is providing for that matter e.g. "For the purposes of section X of the Act, the prescribed matter is...".

- Commencement clause

- 1 A commencement clause is only strictly needed if the statutory rule, or any provision of it, is to commence after the date on which it is made, however it is recommended that a commencement clause be included in most cases as it is helpful to the user of the legislation and give time for the public to become aware of the new law.
- 2 A commencement clause must specify a day on which the statutory rule or provision is to come into operation. The rule or provision comes into operation at the beginning of that day or, if no commencement is specified, at the beginning of the day on which it is made. (section 16 SLA). It is preferable to specify a date rather than an event such as the commencement of an Act.
- 3 If provisions of a statutory rule are to come into operation on different days, the preliminary provisions should come into operation on the day of making or the first day on which any other provision takes effect.
- 4 In the case of extension regulations or remaking sunseting regulations, the date of commencement should be no later than the day before the expiry or

sunsetting. When remaking sunseting regulations, this date should be specified in the regulations.

- Principal statutory rule

- 1 A clause for the citation of the principal statutory rule is only required in statutory rules that make several amendments to a principal statutory rule. It is useful as a shortening provision to save repeating the title, particularly if it is long and there are multiple references to principal statutory rule being amended.
- 2 An endnote number is placed after the title of the principal statutory rule (in the Principal Regulations clause or, if there is no Principal Regulations clause, in the first substantive clause referring to the principal statutory rule that is not the objectives clause) and an endnote added giving the SR number, and the number and year of each amending statutory rule (see Subordinate Legislation Guidelines and the forms in Appendix 3).

- Revocation clause

- 1 This clause is needed in a statutory rule making a new principal statutory rule to replace an earlier statutory rule.
- 2 If the earlier principal statutory rule has been amended, each amending statutory rule should also be revoked.
- 3 It may be appropriate to use a schedule to list the revoked statutory rules if they are numerous.
- 4 A revocation clause is unnecessary if the earlier principal statutory rule has been directly revoked or has expired or ceased to have effect because of the operation of another legislative instrument (for example, section 5 of the SLA or an expiry provision in the earlier principal statutory rule).

In the case of sunseting regulations, any statutory rule amending the principal statutory rule that is sunseting will need to be revoked. Even if a revocation clause is unnecessary, an endnote may be included setting out the circumstances of the revocation or expiry.

- Definition clause

This clause sets out any definitions used in the statutory rule.

Definitions are generally only necessary to remove ambiguity or as a shortening device.

Definitions used in the authorising Act should not be repeated in the statutory rule as they apply to the statutory rule by reason of section 23 of the ILA.

In a principal statutory rule, it is often necessary to define "the Act" (i.e. the authorising Act).

Definitions are not usually needed in amending statutory rules.

Do not define terms that do not appear in the statutory rule or only appear once or twice.

Do not include substantive matter in definitions.

- Expiry clause

This clause is needed for statutory rules that are to operate only for a limited period, e.g. for 6 or 12 months.

It is also included in extension regulations, fixing the day after the end of the extension period as the expiry date. This is so that these extension regulations, once spent, do not remain on the statute book for 10 years until they sunset under section 5 of the SLA.

- Endnotes and footnotes

If a statutory rule refers to another statutory rule, an endnote or footnote should be included (See Subordinate Legislation Guidelines). A number should be placed after the title of the rule referred to and an endnote or footnote added giving the number and year of the rule referred to and of each amending statutory rule. (See form 1 in Appendix 3).

Endnotes and footnotes can refer to reprinted statutory rules.

If a statutory rule identified in an endnote or footnote has been reprinted the note can refer to the reprinted statutory rule. The note should refer to the SR number and year, the reprint number and date, the last statutory rule incorporated in the reprint and the number and year of each statutory rule which has amended the statutory rule after the reprint. (See form 2 in Appendix 2).

Endnotes are the preferred style and should be used unless there are exceptional circumstances.

4. Amending style

The style of amending statutory rules should generally follow that used for Acts, except "revoke" is used instead of "repeal". See Appendix 3 for details of amending styles for statutory rules.

5. Fees and charges

Fees or charges prescribed by a statutory rule should include the \$ sign against each amount, rather than be set out in columns headed by a \$ sign. A narrative format is preferred to a table to ensure effective prescription of the fee.

If fees or charges are fixed by reference to fee units, you should be aware that section 8(1) of the **Monetary Units Act 2004** requires fees fixed in fee units to be not less than one fee unit. That is, you cannot prescribe a fee of 0.5 fee units; such a fee must be expressed in a dollar amount. The statutory rule should set out in an endnote an explanation about the value of a fee unit and the method of calculating fees and charges expressed in fee units. (See form 5 in Appendix 2).

6. Penalties

If penalties are fixed by reference to penalty units, the statutory rule may set out in an endnote an explanation about the value of a penalty unit and the method of calculating penalties expressed in penalty units. (See form 5 in Appendix 2).

APPENDIX 2

FORM 1 - NEW PRINCIPAL STATUTORY RULE MADE BY GOVERNOR IN COUNCIL

STATUTORY RULES 2016

S.R. No. 1/2016

Guardianship and Administration Act 1986

Guardianship and Administration (Fees) Regulations 2016

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

AB
Attorney-General

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to provide for the payment of fees under the **Guardianship and Administration Act 1986**.

2 Authorising provision

These Regulations are made under section 58A of the **Guardianship and Administration Act 1986**.

3 Commencement

These Regulations come into operation on 1 November 2016.

4 Revocation

The Guardianship and Administration Board (Fees) Regulations 2009¹ are **revoked**.

5 Definitions

In these Regulations—

estate means an estate which is subject to an administration order in the year ending on the 30 June 1995 or any financial year after that year;

the Act means the **Guardianship and Administration Act 1986**.

6 Assessment of fortnightly income

The fortnightly income of an estate shall be assessed by dividing all the income received or accrued by the estate during the previous financial year by 26.

7 Annual fees

(1) The annual fee for an estate is—

(a) in the case of an estate with a fortnightly income of less than \$380.00, nil;

(b) in the case of an estate with a fortnightly income of \$380.00, \$50.00;

(c) in the case of an estate with a fortnightly income exceeding \$380.00, 50.00 plus an additional \$1.00 for each dollar of fortnightly income in excess of \$380.00.

(2) The maximum annual fee for any estate is \$100.00.

8 When fees payable

The annual fee for an estate is payable on or before 31 December following the end of the financial year in which the fortnightly income of the estate was assessed.

9 Waiver of fees

The Tribunal may of its own motion or on application by the administrator waive all or part of the fee payable under these Regulations if the Tribunal is of the opinion that the fee would cause undue hardship to the represented person.

10 Fees for last financial year

Despite regulation 8, the annual fee for an estate which is the subject to an administration order in the year ending on 30 June 2016 is payable on or before 28 February 2017.

=====

ENDNOTES

¹Reg. 3: S.R. No. 130/2009.

FORM 2 - AMENDING STATUTORY RULE MADE BY GOVERNOR IN COUNCIL

STATUTORY RULES 206

S.R. No. 1/2016

Road Safety Act 1986

**Road Safety (General) Amendment
Regulations 2016**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

BC
Minister for Transport

Clerk of the Executive Council

1 Objectives

The objectives of these Regulations are—

- (a) to make further provision relating to the calculation of demerit points; and
- (b) to amend a definition for driver licensing purposes.

2 Authorising provision

These Regulations are made under section 95 of the **Road Safety Act 1986**.

3 Commencement

These Regulations come into operation on 30 September 2016.

4 Principal Regulations

In these Regulations, the Road Safety (General) Regulations 2009¹ are called the Principal Regulations.

5 Categories of motor vehicles

In regulation 205(3) of the Principal Regulations—

- (a) in the definition of *heavy combination vehicle*, in paragraph (b) **omit** "heavy";
- (b) in the definition of *light rigid vehicle*, in paragraph (b) after "(including the driver)" **insert** "and does not exceed 8 tonnes maximum loaded mass".

6 Demerit points

- (1) In regulation 230(2)(d) of the Principal Regulations, for " Schedule 7 to the **Magistrates' Court Act 1989**" **substitute** "the **Infringements Act 2006**".
- (2) After regulation 230(2) of the Principal Regulations **insert**—

"(2A) Demerit points recorded under subregulation (2) must be recorded as having been incurred on the date on which the relevant offence is alleged to have occurred."

=====

ENDNOTES

¹Reg. 4: S.R. No. 28/2009. Reprint No. 1 as at 6 March 2013. Reprinted to S.R. No. 36/2012. Subsequently amended by S.R. Nos 110/2012, 127/2013, and 15/2014.

FORM 3 - EXTENSION REGULATIONS

STATUTORY RULES 2016

S.R. No. XX/2016

Subordinate Legislation Act 1994

Subordinate Legislation (Pathology Services Accreditation Regulations 2006) Extension Regulations 2016

The Governor in Council, on the recommendation of the Minister for Health, makes the following Regulations:

Dated:

Responsible Minister:

MINISTER'S NAME

Minister for Health

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to extend the operation of the Pathology Services Accreditation Regulations 2005, which would otherwise be revoked by virtue of section 5(1) of the **Subordinate Legislation Act 1994**, for the period specified in regulation 3.

2 Authorising provisions

These Regulations are made under sections 5A and 28 of the **Subordinate Legislation Act 1994**.

3 Extension of operation

The operation of the Pathology Services Accreditation Regulations 2006¹ is extended for the period beginning on [enter sunset date] and ending on [enter date not exceeding 12 months].

4 Expiry

These Regulations expire on [enter date which is day after end of extension period].

=====

ENDNOTES

¹ Reg. 3: S.R. No. 30/2006. Reprint No. 1 as at 6 October 2010. Reprinted to S.R. No. 426/2010. Subsequently amended by S.R. No. 36/2011.

FORM 4—ENDNOTE FOR FEE UNITS

A principal or amending statutory rule that refers to fee units must include the following information in an end note to the rule.

Fee Units

These Regulations provide for / These Regulations amend the (*insert name of statutory rule*) to provide for / fees by reference to fee units within the meaning of the **Monetary Units Act 2004**. The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2017 is \$14.22. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

FORM 5—ENDNOTE FOR PENALTY UNITS

A principal or amending statutory rule that refers to penalty units may include the following information in an end note to the rule.

Penalty Units

These Regulations provide for / These Regulations amend the (*insert name of statutory rule*) to provide for / penalties by reference to penalty units within the meaning section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

In accordance with section 11 of the **Monetary Units Act 2004**, the value of a penalty unit for the financial year commencing 1 July 2017 is \$158.57. The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

APPENDIX 3

AMENDING STYLE FOR STATUTORY RULES

1. INSERTING

1.1 Inserting a Part

After Part 5 of the Principal Regulations **insert—**

"PART 5A—LICENCES".

1.2 Inserting a Division

After Division 3 of Part 5 of the Principal Regulations **insert—**

"Division 3A—Licence applications".

1.3 Inserting a regulation

X New regulation 58 inserted

After regulation 57 of the Principal Regulations **insert—**

"58 Payment of licence fee".

1.4 Inserting a subregulation (in a regulation that already has subregulations)

After regulation 57(3) of the Principal Regulations **insert—**

"(3A) The Minister may issue a notice.....".

1.5 Inserting a subregulation (in a regulation that does not have subregulations)

At the end of regulation 57 of the Principal Regulations **insert—**

"(2) The Minister may issue a notice.....".

Note that the "(1)" will be automatically inserted by virtue of section 39B(2) of the **Interpretation of Legislation Act 1984**.

1.6 Inserting a paragraph

After regulation 57(3)(c) of the Principal Regulations **insert—**

"(ca) the applicant's name and address; and".

1.7 Inserting a subparagraph

After regulation 57(3)(c)(iii) of the Principal Regulations **insert—**

"(iia) the applicant's name and address; and".

1.8 Inserting a word or words

In regulation 57(3)(c) of the Principal Regulations, after "cat" **insert** "or dog".

1.9 Inserting words (multiple occurrences)

In regulation 57(3) of the Principal Regulations, after "cat" (where first occurring) **insert** "or dog".

In regulation 57(3) of the Principal Regulations, after "cat" (where secondly and thirdly occurring) **insert** "or dog".

In regulation 57(3) of the Principal Regulations, after "cat" (wherever occurring) **insert** "or dog".

1.10 Inserting a penalty provision

At the foot of regulation 57(3) of the Principal Regulations **insert**—

"Penalty: 50 penalty units."

1.11 Inserting definitions

In regulation 3(1) of the Principal Regulations **insert** the following definitions—

" *duty* means duty chargeable under these Regulations;

fee means a fee for a licence;

licence means a licence granted under regulation 16;"

1.12 Inserting a note

At the foot of regulation 57(3) of the Principal Regulations **insert**—

Note

See the definition of "duty" in regulation 3(1).'

1.13 Inserting an example

At the foot of regulation 57(3) of the Principal Regulations **insert**—

Example

An example of publication is publication on the Internet."

1.14 Inserting a regulation heading (existing heading inserted before 1 January 2001)

Insert the following heading to regulation 57 of the Principal Regulations—

"Payment of licence fee".

2. SUBSTITUTING

2.1 Substituting a Part

For Part 5 of the Principal Regulations **substitute**—

"PART 5—LICENCES".

2.2 Substituting a Division

For Division 3 of Part 5 of the Principal Regulations **substitute**—

"Division 3—Licence applications".

2.3 Substituting a regulation

Y Regulation 57 substituted

For regulation 57 of the Principal Regulations **substitute**—

"57 Payment of licence fee".

2.4 Substituting a subregulation

For regulation 57(3) of the Principal Regulations **substitute**—

"(3) The Minister may issue a notice.....".

2.5 Substituting a paragraph

For regulation 57(3)(c) of the Principal Regulations **substitute**—

"(c) the applicant's name and address; and".

2.6 Substituting a sub-paragraph

For regulation 57(3)(c)(iii) of the Principal Regulations **substitute**—

"(iii) the applicant's name and address; and".

2.7 Substituting a word or words

In regulation 57(3)(c) of the Principal Regulations, for "cat" **substitute** "dog or chicken".

2.8 Substituting words (multiple occurrences)

In regulation 57(3) of the Principal Regulations, for "cat" (where first occurring) **substitute** "dog or chicken".

In regulation 57(3) of the Principal Regulations, for "cat" (where secondly and thirdly occurring) **substitute** "dog or chicken".

In regulation 57(3) of the Principal Regulations, for "cat" (wherever occurring) **substitute** "dog or chicken".

2.9 Substituting a penalty provision

For the penalty at the foot of regulation 57(3) of the Principal Regulations **substitute**—

"Penalty: 20 penalty units."

2.10 Substituting a definition

In regulation 3(1) of the Principal Regulations, for the definition of "Director" **substitute**—

"Director means Director of Road Safety;"

2.11 Substituting a note

For the note at the foot of regulation 57(3) of the Principal Regulations **substitute**—

Note

See the definition of "duty" in regulation 3(1).'

2.12 Substituting an example

For the example at the foot of regulation 57(3) of the Principal Regulations **substitute**—

Example

An example of publication is publication on the Internet."

2.13 Substituting a heading

For the heading to Part 5 of the Principal Regulations **substitute**—

"PART 5—LICENCES".

For the heading to Division 3 of Part 5 of the Principal Regulations **substitute**—

"Division 3—Licence applications".

For the heading to regulation 57 of the Principal Regulations **substitute**—

"Payment of licence fee".

(existing regulation heading inserted on or after 1 January 2001)

3. REVOKING AND OMITTING

3.1 Revoking a Part

Part 5 of the Principal Regulations is **revoked**.

3.2 Revoking a Division

Division 3 of Part 5 of the Principal Regulations is **revoked**.

3.3 Revoking a regulation

Regulation 57 of the Principal Regulations is **revoked**.

3.4 Revoking a subregulation

Regulation 57(3) of the Principal Regulations is **revoked**.

3.5 Revoking a paragraph

Regulation 57(3)(c) of the Principal Regulations is **revoked**.

3.6 Revoking a subparagraph

Regulation 57(3)(c)(iii) of the Principal Regulations is **revoked**.

3.7 Omitting a word or words

In regulation 57(3)(c) of the Principal Regulations **omit** "dog or chicken".

3.8 Omitting words (multiple occurrences)

In regulation 57(3) of the Principal Regulations **omit** "cat" (where first occurring).

In regulation 57(3) of the Principal Regulations **omit** "cat" (where secondly and thirdly occurring).

In regulation 57(3) of the Principal Regulations **omit** "cat" (wherever occurring).

3.9 Revoking a penalty provision

The penalty at the foot of regulation 57(3) of the Principal Regulations is **revoked**.

3.10 Revoking a definition

In regulation 3(1) of the Principal Regulations, the definition of *Director* is **revoked**.

3.11 Revoking a note

The note at the foot of regulation 57(3) of the Principal Regulations is **revoked**.

3.12 Revoking an example

The example at the foot of regulation 57(3) of the Principal Regulations is **revoked**.

3.13 Revoking a heading

The heading to Part 5 of the Principal Regulations is **revoked**.

The heading to Division 3 of Part 5 of the Principal Regulations is **revoked**.

The heading to regulation 57 of the Principal Regulations is **revoked**.
(*regulation heading inserted on or after 1 January 2001*)

4. REFERENCES TO SCHEDULES AND TABLES

4.1 Reference to a Table in a regulation

In the Table in [or "to", *depending on language used in the regulation*] regulation 35 of the Principal Regulations, for "3204" **substitute** "3205".

4.2 Reference to a Table in a Schedule

In the Table, in [or "to"] Schedule 3 to the Principal Regulations, for "3204" **substitute** "3205".

4.3 Reference to a Part in a Schedule

In Part A of Schedule 3 to the Principal Regulations, for "3204" **substitute** "3205".

4.4 Reference to a clause in a Schedule

In clause 3 of Schedule 3 to the Principal Regulations, for "3204" **substitute** "3205".

4.5 If there are item numbers

Item 3 in the Table to regulation 6 of the Principal Regulations is **revoked**.

In item 3 in the Table to regulation 6 of the Principal Regulations, for "an assistant" **substitute** "an officer".

4.6 If there are no item numbers

In the entry relating to dogs in the Table in Schedule 1 to the Principal Regulations, for "orange and black" **substitute** "white, grey or black".