

# **SUBORDINATE LEGISLATION ACT 1989 No. 146**

## **NEW SOUTH WALES**



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**SUBORDINATE LEGISLATION ACT 1989 No. 146**

**NEW SOUTH WALES**



**Act No. 146, 1989**

An Act relating to the making and staged repeal of subordinate legislation. [Assented to 31 October 1989]

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The Legislature of New South Wales enacts:

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Subordinate Legislation Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

"principal statutory rule" means a statutory rule that contains provisions apart from:

- (a) direct amendments or repeals; and
- (b) provisions that deal with its citation and commencement;

"Regulation Review Committee" means the committee for the time being constituted under the Regulation Review Act 1987;

"responsible Minister", in connection with a statutory rule, means the Minister administering the Act under which the statutory rule is or is proposed to be made;

"statutory rule" means a regulation, by-law, rule or ordinance:

- (a) that is made by the Governor; or
- (b) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor,

but does not include any instruments specified or described in Schedule 4.

- (2) In this Act, a reference to a direct amendment is a reference to an amendment that inserts, adds, amends or substitutes matter.

**PART 2 - REQUIREMENTS REGARDING THE MAKING OF  
STATUTORY RULES**

**Guidelines**

4. Before a statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, the guidelines set out in Schedule 1 are complied with.

**Regulatory impact statements**

5. (1) Before a principal statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, a regulatory impact statement complying with Schedule 2 is prepared in connection with the substantive matters proposed to be dealt with by the statutory rule.

(2) Before a principal statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, the following provisions are complied with:

- (a) A notice is to be published in the Gazette and in a daily newspaper circulating throughout New South Wales and, where appropriate, in any relevant trade, professional, business or public interest journal or publication:
  - (i) stating the objects of the proposed statutory rule; and
  - (ii) advising where a copy of the regulatory impact statement may be obtained or inspected; and
  - (iii) advising whether, and (if so) where, a copy of the proposed statutory rule may be obtained or inspected; and
  - (iv) inviting comments and submissions within a specified time, but not less than 21 days from publication of the notice.
- (b) Consultation is to take place with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule.
- (c) All the comments and submissions received are to be appropriately considered.

(3) The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are to be commensurate with the impact likely to arise for consumers, the public, relevant interest

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groups, and any sectors of industry or commerce from the making of the statutory rule.

(4) In the event that the statutory rule is made, a copy of the regulatory impact statement and all written comments and submissions received are to be forwarded to the Regulation Review Committee within 28 days after it is published in the Gazette.

(5) Comments and submissions received within one week before the statutory rule is submitted to the Governor (or at any time afterwards) need not be considered or forwarded to the Regulation Review Committee.

(6) Section 75 of the Interpretation Act 1987 does not apply to notices required to be published under this Act.

**Regulatory impact statements not necessary in certain cases**

6. (1) It is not necessary to comply with section 5 to the extent that:

- (a) the responsible Minister certifies in writing that, on the advice of the Attorney General or the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3; or
- (b) the Attorney General (or a Minister for the time being nominated by the Attorney General for the purpose) certifies in writing that, in his or her opinion in the special circumstances of the case, the public interest requires that the proposed statutory rule should be made without complying with section 5; or
- (c) the responsible Minister certifies in writing that:
  - (i) the proposed statutory rule has been or is to be made by a person or body (other than the Governor) who or which is not expressly subject to the control or direction of the responsible Minister; and
  - (ii) it was not practicable, in the circumstances of the case, for the responsible Minister to comply with section 5.

(2) If a statutory rule is made in the circumstances mentioned in subsection (1) (b), the responsible Minister is required to ensure that the relevant requirements of section 5 (with any necessary adaptations) are complied with within 4 months after the statutory rule is made.

(3) A certificate under this section may relate to either or both of the following:

- (a) all or any specified requirements of section 5;
- (b) all or any specified aspects of the statutory rule concerned.

**Requirements before making statutory rules**

7. A proposed statutory rule must not be submitted for making by the Governor, or for the approval or confirmation of the Governor, unless the following are submitted together with the proposed statutory rule:

- (a) a copy of a certificate of the responsible Minister stating whether or not, in his or her opinion, the provisions of this Act relating to the proposed statutory rule have been complied with;
- (b) a copy of any relevant certificate under section 6;
- (c) a copy of the opinion of the Attorney General or the Parliamentary Counsel as to whether the proposed statutory rule may legally be made.

**Remaking of disallowed statutory rule**

8. (1) This section applies where a House of Parliament has disallowed a statutory rule under section 41 of the Interpretation Act 1987.

(2) No statutory rule, being the same in substance as the statutory rule so disallowed, may be published in the Gazette within 4 months after the date of the disallowance, unless the resolution has been rescinded by the House of Parliament by which it was passed.

(3) If a statutory rule is published in the Gazette in contravention of this section, the statutory rule is void.

**Compliance with Part**

9. (1) Except as provided by section 8, failure to comply with any provisions of this Part does not affect the validity of a statutory rule.

(2) The provisions of this Part regarding the requirements to be complied with before a statutory rule is made, approved or confirmed are in addition to, and do not affect, the provisions of any other Act.

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**PART 3 - STAGED REPEAL OF STATUTORY RULES**

**Staged repeal of statutory rules**

10. (1) Unless it sooner ceases to be in force, a statutory rule published before a date specified in Column 1 below is repealed on the date specified opposite in Column 2:

Column 1	Column 2
1 September 1941	1 September 1991
1 September 1964	1 September 1992
1 September 1978	1 September 1993
1 September 1986	1 September 1994
1 September 1990	1 September 1995

(2) Unless it sooner ceases to be in force, a statutory rule published on or after 1 September 1990 is repealed on the fifth anniversary of the date on which it was published.

**Postponement of repeal in specific cases**

11. (1) The Governor may, by order published in the Gazette, from time to time postpone by one year the date on which a specified statutory rule is repealed by section 10.

(2) Such an order is effective to postpone the repeal of the statutory rule, provided the order is published before the repeal would otherwise take effect.

(3) The repeal of a particular statutory rule may not be postponed on more than 2 occasions.

**Machinery provisions regarding repeal**

12. (1) A statutory rule is, for the purposes of this Part, to be taken to have been published on the following date:

- (a) if the statutory rule was required to be published in the Government Gazette or any other official gazette - the date on which it was originally so published;
- (b) if the statutory rule was not required to be so published but was required to be made, approved or confirmed by the Governor - the date on which it was so made, approved or confirmed;

(c) in any other case - the date on which it was made.

(2) The repeal of a statutory rule by this Part extends to any direct amendments (whenever made) of the statutory rule and to so much of any statutory rule as makes any such amendments.

(3) A set of regulations, by-laws, rules or ordinances constituting a single instrument is, for the purposes of this Part, to be taken to be a single statutory rule.

(4) If an instrument made under one Act is by law to be treated as a statutory rule made under another Act, the date of publication is, for the purposes of this Part, the date it was originally published.

(5) The Mines Inspection General Rules 1901 under the Mines Inspection Act 1901 are, for the purposes of this Act, to be taken to have been originally published on 29 June 1979.

#### **PART 4 - MISCELLANEOUS**

##### **Procedure when Regulation Review Committee not in office**

13. If the Regulation Review Committee is not in office when material is required to be forwarded to it under section 5, the material is to be forwarded to a person nominated by the Clerk of the Legislative Assembly, for the attention of the Committee after its appointment.

##### **Regulations**

14. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may, after consultation with the Regulation Review Committee, be made amending or replacing Schedule 3 or 4.

##### **Amendment of Regulation Review Act 1987 No. 165, sec. 9 (Functions)**

15. The Regulation Review Act 1987 is amended:

(a) by omitting from section 9 (1) (b) (vi) the word "or" where lastly occurring;

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- (b) by omitting from section 9 (1) (b) (vii) the word "and" and by inserting instead the following:
    - ; or
    - (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation; and
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**SCHEDULE 1 - GUIDELINES FOR THE PREPARATION OF  
STATUTORY RULES**

(Sec. 4)

1. Wherever costs and benefits are referred to in these guidelines, economic and social costs and benefits are to be taken into account and given due consideration.
2. Before a statutory rule is proposed to be made:
  - (a) The objectives sought to be achieved and the reasons for them must be clearly formulated.
  - (b) Those objectives are to be checked to ensure that they:
    - . are reasonable and appropriate; and
    - . accord with the objectives, principles, spirit and intent of the enabling Act; and
    - . are not inconsistent with the objectives of other Acts, statutory rules and stated government policies.
  - (c) Alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered.
  - (d) An evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the statutory rule.

**SCHEDULE 1 - GUIDELINES FOR THE PREPARATION OF  
STATUTORY RULES - *continued***

- (e) If the statutory rule would impinge on or may affect the area of responsibility of another authority, consultation must take place with a view to ensuring in advance that (as far as is reasonably practicable in the circumstances):
  - . any differences are reconciled; and
  - . there will be no overlapping of or duplication of or conflict with Acts, statutory rules or stated government policies administered by the other authority.
- 3. In determining whether and how the objectives should be achieved, the responsible Minister is to have regard to the following principles:
  - (a) Administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.
  - (b) Implementation by means of a statutory rule should not normally be undertaken unless the anticipated benefits to the community from the proposed statutory rule outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce, that may be affected.
  - (c) The alternative option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the range of alternative options available to achieve the objectives.
- 4. A statutory rule must be expressed plainly and unambiguously, and consistently with the language of the enabling Act.

**SCHEDULE 2 - PROVISIONS APPLYING TO REGULATORY  
IMPACT STATEMENTS**

(Sec. 5)

- 1. A regulatory impact statement must include the following matters:
  - (a) A statement of the objectives sought to be achieved and the reasons for them.

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**SCHEDULE 2 - PROVISIONS APPLYING TO REGULATORY  
IMPACT STATEMENTS - *continued***

- (b) An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
- (c) An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.
- (d) An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- (e) An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- (f) A statement of the consultation program to be undertaken.

2. (1) Wherever costs and benefits are referred to in this Schedule, economic and social costs and benefits, both direct and indirect, are to be taken into account and given due consideration.

(2) Costs and benefits should be quantified, wherever possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.

**SCHEDULE 3 - MATTERS NOT REQUIRING REGULATORY  
IMPACT STATEMENTS**

(Sec. 6)

- 1. Matters of a machinery nature.
- 2. Direct amendments or repeals.
- 3. Matters of a savings or transitional nature.
- 4. Matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.
- 5. Matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.

**SCHEDULE 4 - EXCLUDED INSTRUMENTS**

(Sec. 3)

1. Standing Rules and Orders of the Legislative Council and Legislative Assembly.
2. Rules of court.
3. Regulations under the Constitution Act 1902.
4. Regulations under the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981, the Companies (Application of Laws) Act 1981, the Securities Industry (Application of Laws) Act 1981 or the Futures Industry (Application of Laws) Act 1986.
5. By-laws under the Anzac Memorial (Building) Act 1923.
6. By-laws under the Australian Jockey Club Act 1873.
7. By-laws under the Colleges of Advanced Education Act 1975.
8. By-laws under the Farrer Memorial Research Scholarship Fund Act 1930.
9. Rules under the McGarvie Smith Institute Incorporation Act 1928.
10. By-laws under the New South Wales State Conservatorium of Music Act 1965.
11. By-laws under the Private Irrigation Districts Act 1973.
12. Rules under the Sporting Injuries Insurance Act 1978.
13. By-laws under the State Bank Act 1981.
14. By-laws under the Sydney Turf Club Act 1943.
15. By-laws under the Technical Education Trust Funds Act 1967.
16. By-laws of a university.
17. By-laws under the Wellington Show Ground Act 1929.
18. An instrument containing matters of a savings or transitional nature (provided the only other provisions contained in the instrument are provisions dealing with its citation and commencement).

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[*Minister's second reading speech made in -  
Legislative Assembly on 2 August 1989  
Legislative Council on 10 October 1989*]