

## SUBORDINATE LEGISLATION BILL 1989

### NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill (which is based on the Bill recommended by the Regulation Review Committee) is to reform procedures relating to the making and continuance of subordinate legislation ("statutory rules") by:

- (a) establishing new requirements regarding the making of statutory rules, including a requirement to comply with statutory guidelines as to the making of such rules, a requirement to prepare regulatory impact statements, a requirement to consult affected persons and a requirement to publish information relating to proposed statutory rules; and
- (b) repealing (with limited exceptions) statutory rules made before 1 September 1990 in 5 stages, ending on 1 September 1995, and providing that any statutory rule made on or after 1 September 1990 is to be repealed 5 years after it is made.

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#### PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 defines expressions used in the proposed Act.

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

Clause 4 requires the Minister responsible for administering the Act under which a statutory rule is proposed to be made (referred to in the Bill as "the responsible Minister") to ensure that the guidelines set out in Schedule 1 (relating to the preparation of statutory rules) to the proposed Act are complied with.

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**Clause 5** requires the responsible Minister to ensure that a regulatory impact statement is prepared for a proposed statutory rule. The responsible Minister is also required to publish a notice in the Gazette, a major newspaper and any relevant business or other journal or publication containing information relating to any proposed statutory rule and giving not less than 21 days for comments and submissions. Relevant consumer, industry and other groups must also be consulted. After a statutory rule is made, the regulatory impact statement, and any written comments and submissions received, are to be forwarded to the Regulation Review Committee.

**Clause 5 (6)** provides that section 75 of the Interpretation Act does not apply to notices required to be published under the proposed Act. That section would permit a mere summary of the notice, or a mere statement that the notice is published in the Gazette, to be published in a newspaper or journal.

**Clause 6** sets out the circumstances in which any one or more of the requirements of proposed section 5 need not be complied with.

**Clause 7** prohibits a proposed statutory rule from being submitted to the Governor for making or for approval or confirmation unless certain documents are also submitted. The documents required to be submitted are copies of a certificate by the responsible Minister stating whether the provisions of the proposed Act have been complied with, any relevant certificate under proposed section 6 and the usual opinion as to whether the proposed statutory rule may legally be made.

**Clause 8** provides that a failure to comply with the provisions of proposed sections 4 - 7 will not affect the validity of a statutory rule and that the provisions of proposed Part 3 are in addition to, and do not affect, the provisions of any other Act.

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

**Clause 9** repeals, in 5 stages, all statutory rules made before 1 September 1990. The repeals commence on 1 September 1991 and end on 1 September 1995. Any statutory rule made on or after 1 September 1990 is to be repealed 5 years after it is published. The clause does not apply to the instruments described in Schedule 4: they are excluded from the definition of "statutory rule".

**Clause 10** enables the repeal of a statutory rule to be postponed for a period of 1 year (on not more than 2 occasions) by order of the Governor published in the Gazette before the repeal would otherwise take effect.

**Clause 11** sets out machinery provisions relating to the repeal of statutory rules by the proposed Act.

### **PART 4 - MISCELLANEOUS**

**Clause 12** provides for the manner of forwarding of material to the Regulation Review Committee if the Committee is not in office.

**Clause 13** contains a regulation-making power, including a power, after consultation with the Regulation Review Committee, to make regulations amending or replacing Schedule 3 or 4.

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Clause 14 amends section 9 (Functions) of the Regulation Review Act 1987 to enable the Regulation Review Committee to consider whether to draw the attention of Parliament to a regulation on the ground that requirements of the proposed Act have not been complied with.

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

This Schedule contains guidelines for the preparation of proposed statutory rules. The guidelines require the objectives of a rule to be formulated, to be checked as to reasonableness and other matters and any alternatives to be explored, as well as the making of an evaluation of the economic and social costs and benefits of the proposal. The guidelines set out principles for determining whether an administrative decision should be implemented by the making of a statutory rule. Any statutory rule made is to be expressed plainly and unambiguously, consistently with the language of the enabling Act.

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

This Schedule sets out the matters to be included in a regulatory impact statement relating to a proposed statutory rule, including a statement of objectives, a statement of alternative options, an assessment of economic and social costs and benefits of all options and a statement of the proposed consultation program.

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

This Schedule sets out the matters dealt with by proposed statutory instruments for which regulatory impact statements will not be required.

**SCHEDULE 4 - EXCLUDED INSTRUMENTS**

This Schedule sets out statutory rules to which the proposed Act will not apply.

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