

CLAUSE NOTES FOR THE SUBORDINATE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2009

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Clause 1 (Short title) states the short title as the *Subordinate Legislation (Miscellaneous Amendments) Act 2009*.

Clause 2 (Commencement) provides for the provisions of the proposed Act to commence on a day or days to be proclaimed so that departments and agencies will have time to become familiar with the new procedures.

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PART 2 – ACTS INTERPRETATION ACT 1931 AMENDED

Clause 3 (Principal Act) defines the *Acts Interpretation Act 1931* for the purposes of this Part,

Clause 4 amends section 47 (Regulations) of the *Acts Interpretation Act 1931* to provide that any regulations not laid before each House of Parliament within the 10 sitting days of the House will expire on the expiration of that period.

However under new subsection (3C) the expiration of regulations under (3B) will not affect the validity of anything done under those regulations during that period under 47(3)(c).

Clause 5 amends Schedule 1 (Savings and transitional provisions) of the *Acts Interpretation Act 1931* to make it clear that the proposed amendments will apply only to regulations made after this Bill becomes law whether the Act under which they are made was passed before or after that commencement. The existing section 47 will continue to apply to regulations made before that commencement.

**PART 3 – SUBORDINATE LEGISLATION ACT 1992
AMENDED**

Clause 6. (Principal Act) defines the *Subordinate Legislation Act 1992* as the Principal Act for the purposes of this Part

Clause 7 amends section 3 (Interpretation) of the *Subordinate Legislation Act 1992* by adding 3 new definitions:

"**Committee**" is defined as the Parliamentary Standing Committee on Subordinate Legislation established by the *Subordinate Legislation Committee Act 1969*;

"**guidelines**" is defined as the guidelines issued under section 3A or, as the case may be, having effect under section 19 because, until the Treasurer makes new guidelines under section 3A, the guidelines set out in Schedule 1 will be effective.

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"**relevant Act**" is defined as an Act under which it is intended to make subordinate legislation;

This definition already exists in the *Subordinate Legislation Act 1992* but is transferred to section 3 so that it will have general application to all provisions of that Act.

Clause 8. (Guidelines) amends section 3A(2) of the *Subordinate Legislation Act 1992* to remove the awkward double negative "not inconsistent" in subparagraph (iii) of paragraph (a). The new paragraph (ab) states that there should not be any inconsistency between those objectives of the proposed regulations and the objectives of other Acts, subordinate legislation or government policies.

The term "inconsistency" will indicate that the check is to be for inconsistencies rather than consistencies. Regulations will often be on completely different subjects and inconsistencies, if any, will be more apparent than consistencies.

Clause 9 amends section 4 (Compliance with guidelines) of the *Subordinate Legislation Act 1992* by omitting "issued under section 3A" as these words are now unnecessary.

Clause 10 amends section 6 (Regulatory impact statements not necessary in certain cases) of the *Subordinate Legislation Act 1992* omits "his or her" from paragraph (b) and substitutes "the Treasurer's" in view of the modern impersonal, non-gender specific drafting practice.

Clause 11 amends section 7 (Examination of draft subordinate legislation by Chief Parliamentary Counsel) of the *Subordinate Legislation Act 1992*

- (a) by omitting subsection (1) as the definition of "relevant Act" will be transferred to section 3;
- (b) by changing "Proposed" in subsection (2) to read "A draft of". This term is considered appropriate as the Committee will have before it a draft and will not be proposing any change to the law.

Clause 12 will repeal sections 8 and 9 of the *Subordinate Legislation Act 1992* and will substitute sections 8, 9, 9A and 9B.

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The new section 8 (Certain documents to be sent to Committee) follows the existing subsection (1A) of section 9, the existing subsection (2) being inappropriate in view of the proposed functions of the Committee. However the new section 8(b) will require production of a copy of the certificate of the responsible Minister certifying that, in the opinion of the Minister, the proposed subordinate legislation conforms with the guidelines. Subsection (1) of the existing section 9, which excludes certain subordinate legislation, is not replicated and therefore the new section will require all subordinate legislation to be sent to the Committee.

The new section 9 (Examination of draft subordinate legislation by the Committee) which follows existing section 8 is a key provision providing for the Committee to report to the responsible Minister if it is of opinion that any draft subordinate legislation conforms with the guidelines. If not of that opinion, the Committee must report to both Houses of Parliament and to the responsible Minister. However this new section will not apply in a case where the Treasurer has granted a certificate under the new section 9A(1).

The new section 9A (Successive drafts of similar subordinate legislation) deals with a case where -

(a) the Committee has, within a period of 3 months, twice reported that, in its opinion, a draft of subordinate legislation containing substantially similar provisions does not conform with the guidelines; and

(b) a third draft of the subordinate legislation is submitted to the Committee.

If the Solicitor-General certifies in writing that the third draft contains substantially similar provisions to the previous drafts, the Treasurer, if satisfied that the public interest requires that the proposed subordinate legislation should be made without complying with the new section 9, will be empowered to certify in writing accordingly.

Under the new subsection (2) the certificate by the Treasurer will have effect according to its tenor which means that the proposed subordinate legislation can then be made without further delay.

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The new section 9B (Requirements before making subordinate legislation) follows existing section 8 and provides for the documents to be submitted to the Governor before the proposed subordinate legislation can be made. Again the certificate by the responsible Minister must state that, in the Minister's opinion, the guidelines have been complied with so far as is reasonably practicable.

Clause 13 amends section 13 (Procedure when Committee not in office) to remove an unnecessary reference to “Subordinate Legislation” and to make an amendment consequential on the new order of provisions.

Clause 14 amends section 14 (Regulations and orders) by omitting subsection (2) which is now of historical interest only.

Clause 15 amends Schedule 1 (Guidelines for the preparation of Subordinate Legislation). It removes the awkward double negative “not inconsistent” in subparagraph (iii) of paragraph (b). The new paragraph (ba) states that there should not be any inconsistency between those objectives of the proposed regulations and the objectives of other Acts, subordinate legislation or government policies.

The term “inconsistency” will indicate that the check is to be for inconsistencies rather than consistencies. Regulations will often be on completely different subjects and inconsistencies, if any, will be more apparent than consistencies.

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**PART 4 – SUBORDINATE LEGISLATION COMMITTEE ACT 1969
AMENDED**

Clause 16 (Principal Act) defines the *Subordinate Legislation Committee Act 1969* as the Principal Act for the purposes of this Part.

Clause 17 amends section 2 (Interpretation) by adding 2 new definitions:

“**chair**” means the member elected as such under section 5(2);

“**deputy chair**” means the member elected as such under section 5(2);

Clause 18 amends section 3 (Constitution of Committee) to reflect modern impersonal, non gender specific drafting practice.

Clause 19 amends section 4 (Vacancies) to reflect modern impersonal, non gender specific drafting practice. It also substitutes “section 3(2)” for the outdated wording “subsection (2) of section three”.

Clause 20 amends Section 5 (Quorum and procedure at meetings of the Committee) by revising subsections (2) to (5) inclusive to refer to the impersonal, non gender specific terms “chair” and “deputy chair”

Clause 21 amends section 7 (Secretary of Committee) to reflect modern impersonal, non gender specific drafting practice.

It also deletes the outmoded term “Notwithstanding”

Subsection (4) is deleted as, in view of the proposed functions of the Committee, it will be pointless for the secretary of the Committee to obtain from the Government Printer copies of all regulations as soon as they are notified.

Clause 22 amends section 8 (Functions of Committee) by substituting “draft regulation” for “regulation”, where appropriate, because the subordinate legislation would only be in draft form when considered by the Committee.

Subsection (2) is omitted as it is now of historical interest only.

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Clause 23 repeals section 9 (**Report when Parliament not sitting**) as it will inappropriate, in view of the proposed functions of the Committee, for it to examine subordinate legislation after it is made.

Clause 24 amends section 12 (**Witnesses' expenses**) to substitute the impersonal terms “chair” and “deputy chair” for the terms “chairman” and “vice-chairman”.