

TASMANIA

**SUBORDINATE LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2009**

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**SUBORDINATE LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2009**

(Brought in by the Honourable Ruth Jane Forrest)

A BILL FOR

An Act to amend the *Acts Interpretation Act 1931*, the *Subordinate Legislation Act 1992* and the *Subordinate Legislation Committee Act 1969*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Subordinate Legislation (Miscellaneous Amendments) Act 2009*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

PART 2 – ACTS INTERPRETATION ACT 1931 AMENDED

3. Principal Act

In this Part, the *Acts Interpretation Act 1931* is referred to as the Principal Act.

4. Section 47 amended (Regulations)

Section 47 of the Principal Act is amended by inserting the following subsections after subsection (3A):

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(3B) If regulations are not laid before each House of Parliament within the first 10 sitting days of the House as provided by subsection (3)(c), those regulations are taken to have expired on the expiration of that period.

(3C) The expiration of regulations under subsection (3B) does not affect the validity of anything done under those regulations during the period of 10 sitting days mentioned in subsection (3)(c).

5. Schedule 1 amended (Savings and transitional provisions)

Clause 16 of Schedule 1 to the Principal Act is amended by adding the following subclause after subclause (2).

(3) Section 47 as amended by section 4 of the *Subordinate Legislation (Miscellaneous Amendments) Act 2009* applies to regulations made after the commencement of that Act and so applies whether the Act under which they are made was passed before or after that commencement, and section 47 (as in force before that commencement) continues to apply to regulations made before that commencement as if section 4 of the *Subordinate Legislation (Miscellaneous Amendments) Act 2009* had not been enacted.

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

6. Principal Act

In this Part, the *Subordinate Legislation Act 1992* is referred to as the Principal Act.

7. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of "Consumer Price Index":

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"Committee" means the Parliamentary Standing Committee on Subordinate Legislation established by the *Subordinate Legislation Committee Act 1969*;

(b) by inserting the following definitions after the definition of "Consumer Price Index":

"guidelines" means the guidelines issued under section 3A or, as the case may be, having effect under Schedule 1;

"relevant Act" means an Act under which it is intended to make subordinate legislation;

(c) by omitting "Act;" from paragraph (b)(ii) of the definition of "subordinate legislation" and substituting "Act.";

(d) by omitting the definition of "Subordinate Legislation Committee".

8. Section 3A amended (Guidelines)

Section 3A(2) of the Principal Act is amended as follows:

(a) by omitting subparagraph (iii) from paragraph (a); and

(b) by inserting the following paragraph after paragraph (a):

(ab) there will not be any inconsistency between those objectives and the objectives of other Acts, subordinate legislation or government policies; and

9. Section 4 amended (Compliance with guidelines)

Section 4 of the Principal Act is amended by omitting "issued under section 3A".

10. Section 6 amended (Regulatory impact statements not necessary in certain cases)

Section 6 of the Principal Act is amended by omitting "his or her" from paragraph (b) and substituting "the Treasurer's".

11. Section 7 amended (Examination of draft subordinate legislation by Chief Parliamentary Counsel)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting subsection (1); and
- (b) by omitting “Proposed” from subsection (2) and substituting “A draft of”.

12. Sections 8 and 9 repealed and sections 8, 9, 9A and 9B substituted.

Sections 8 and 9 of the Principal Act are repealed and the following sections are substituted:

8. Certain documents to be sent to Committee

If subordinate legislation is proposed, the responsible Minister must send to the Committee a copy of the advice given by the Chief Parliamentary Counsel under section 7 and –

- (a) if a certificate has been issued under section 6, a copy of that certificate; or
- (b) if no certificate has been issued under section 6 and it was not necessary to prepare a regulatory impact statement, 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; or
- (c) if no certificate has been issued under section 6 and it was necessary to prepare a regulatory impact statement, a copy of the certificate of the Secretary under section 5(1D) together with –
 - (i) a copy of the regulatory impact statement; and
 - (ii) a copy of the comments and submissions, if any, received under section 5(2)(a)(iv).

9. Examination of draft subordinate legislation by Committee

(1) A draft of subordinate legislation must, unless the Treasurer has granted a certificate under section 9A(1), be submitted to the Committee for examination as to whether it conforms with the guidelines.

(2) If the Committee is of opinion that any draft subordinate legislation conforms with the guidelines, it must, as soon as practicable, report to the responsible Minister that opinion.

(3) If the Committee is of opinion that any draft subordinate legislation does not conform with the guidelines, it must, as soon as practicable, report to both Houses of Parliament and to the responsible Minister the reasons for that opinion.

9A. Successive drafts of similar subordinate legislation

(1) If –

(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; and

(c) 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 section 9, may certify in writing accordingly.

(2) A certificate by the Treasurer under subsection (1) has effect according to its tenor.

9B. Requirements before making subordinate legislation

A draft of subordinate legislation must not be submitted for making by the Governor, or for the approval, confirmation or consent of the Governor, unless there is submitted with the draft -

- (a) the advice given by the Chief Parliamentary Counsel under section 7; and
- (b) a certificate by the responsible Minister that, in the Minister's opinion, the guidelines have been complied with so far as is reasonably practicable; and
- (c) any certificate required under section 5(1D) or 6; and
- (d) if an examination of the draft is required by the Committee under sections 9 and 9A, a report given by that Committee that, in its opinion, the draft conforms with the guidelines.

13. Section 13 amended (Procedure when Committee not in office)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting "Subordinate Legislation";
- (b) by omitting "section 9" and substituting "section 8".

14. Section 14 amended (Regulations and orders)

Section 14 of the Principal Act is amended by omitting subsection (2).

15. Schedule 1 amended (Guidelines for the preparation of Subordinate Legislation)

Clause 2 of Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting subparagraph (iii) from paragraph (b); and
- (b) by inserting the following paragraph after paragraph (b):

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(ba) those objectives are to be checked to ensure that there will not be any inconsistency between those objectives and the objectives of other Acts, subordinate legislation or government policies; and

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

16. Principal Act

In this Part, the *Subordinate Legislation Committee Act 1969* is referred to as the Principal Act.

17. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of “Committee”:

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

(b) by inserting the following definition after the definition of “Committee”:

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

18. Section 3 amended (Constitution of Committee)

Section 3(4) of the Principal Act is amended by omitting “he” and substituting “the person”.

19. Section 4 amended (Vacancies)

Section 4 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

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(1) A member of the Committee may resign from office as a member by writing addressed to the Governor.

(b) by omitting “his” from subsection (2) and substituting “the member’s”;

(c) by omitting “subsection (2) of section three” and “by which he was appointed” from subsection (3) and substituting “section 3(2)” and “which made the appointment” respectively.

20. Section 5 amended (Quorum and procedure at meetings of the Committee)

Section 5 of the Principal Act is amended by omitting subsections (2) to (5) inclusive and substituting the following subsections:

(2) There is to be a chair and deputy chair of the Committee, who are to be elected by the members of the Committee at the first meeting of the Committee or as soon as practicable after that meeting.

(3) The chair, or, in the case of the absence or other disability of the chair, the deputy chair, must, when present, preside at all meetings of the Committee.

(4) At a meeting of the Committee at which a quorum is present, the members in attendance may, in the absence of the chair and deputy chair, appoint one of their number then present to be temporary chair, and the temporary chair has, during the absence of the chair and deputy chair, all the powers of the chair.

(5) At meetings of the Committee –

(a) the chair, or in the absence of the chair, the deputy chair has a deliberative vote only; and

(b) when the votes on a question are equal the question passes in the negative.

21. Section 7 amended (Secretary of Committee)

Section 7 of the Principal Act is amended as follows:

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- (a) by omitting “Notwithstanding subsection (1) of section twenty-one” from subsection (2) and substituting “Despite section 21(1)”;
- (b) by omitting “his” from subsection (2);
- (c) by omitting “of him” from subsection (3);
- (d) by omitting subsection (4).

22. Section 8 amended (Functions of Committee)

Section 8(1) of the Principal Act is amended as follows:

- (a) by omitting “regulation”, wherever occurring in subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) and where first occurring in subparagraph (v) of that paragraph, and substituting “draft regulation” in each case;
- (b) by omitting subsection (2).

23. Section 9 repealed (Report when Parliament not sitting)

Section 9 of the Principal Act is repealed.

24. Section 12 amended (Witnesses' expenses)

Section 12 of the Principal Act is amended by omitting “chairman or vice-chairman” and substituting “chair or deputy chair”.