

[STATE ARMS]

New South Wales

Subordinate Legislation Amendment (Regulatory Flexibility) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to promote regulatory flexibility.

The Bill:

- (a) generally requires a principal statutory rule to be performance-based if it has an appreciable cost impact on the business community or on the community as a whole (that is, the rule should impose requirements by reference to the objective sought to be achieved by the rule and enable the person required to comply with the rule to choose any appropriate method of achieving that objective),
- (b) generally requires any such principal statutory rule that is not performance-based to have an alternative compliance provision (that is, a provision that authorises the exemption of a person or thing from the rule subject to compliance with alternative requirements to meet the objectives (express or implied) of the rule and of the relevant provisions of the Act under which it is made),
- (c) requires an assessment, in the regulatory impact statement for any relevant principal statutory rule, of whether the rule should be performance-based or should have an alternative compliance provision,
- (d) requires the objectives of a principal or amending statutory rule to be stated in the rule or in an explanatory note that accompanies the rule,
- (e) confers on the Regulation Review Committee the function of overseeing the proposed new requirements.

The Bill makes other minor or consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by

proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Subordinate Legislation Act 1989* set out in Schedule 1 and the amendments to the *Regulation Review Act 1987* set out in Schedule 2.

Schedule 1 Amendment of Subordinate Legislation Act 1989

Schedule 1 [1] inserts Part 2A into the Act (proposed sections 9A–9E).

Proposed section 9A specifies that the Part applies to principal statutory rules (or the relevant parts of them) in respect of which a regulatory impact statement is required to be prepared and that have an appreciable cost impact on the business community or on the community as a whole.

Proposed section 9B requires the responsible Minister to ensure that relevant principal statutory rules are performance-based, unless the Minister considers that it is not appropriate having regard to the costs and benefits to the community as a whole or it is not reasonably practicable in the circumstances.

Proposed section 9C requires the responsible Minister to ensure that an alternative compliance provision applies to a relevant principal statutory rule that is not performance-based, unless the Minister considers that it is not appropriate having regard to the costs and benefits to the community as a whole or it is not reasonably practicable in the circumstances. The proposed section authorises the statutory rule to make special provision for the alternative compliance provision or to adopt the standard provision in proposed section 9D.

Proposed section 9D provides a standard alternative compliance provision that can be adopted by a statutory rule. The provision enables the responsible Minister, by order published in the Gazette, to grant an exemption from the statutory rule (on application by the affected person) if the Minister is satisfied that:

- (a) compliance with the requirements of the order will be at least as effective as the requirements of the rule in meeting the objectives of the rule and of the relevant provisions of the Act under which it is made, and
- (b) the order will not cause an appreciable increase in risks to human health or safety or to the environment.

The proposed section also makes ancillary provisions relating to orders (including the charging of a reasonable fee for administrative costs and the keeping of a public register of exemptions).

Proposed section 9E makes general provisions, including provisions that make it clear that the proposed Part does not authorise exemptions from the requirements of an Act and that a failure to comply with any of the requirements of the proposed Part does not invalidate the statutory rule.

Schedule 1 [2] amends the guidelines for the preparation of principal or amending statutory rules so as to provide that the objectives sought to be achieved by a statutory rule should be stated in the statutory rule or in an explanatory note that is to accompany the statutory rule.

Schedule 1 [3] amends the requirements relating to the preparation of regulatory impact statements for proposed principal statutory rules so as to provide that any such statement must include an assessment of:

- (a) whether any of the provisions of the proposed rule that have an appreciable cost impact on the business community or on the community as a whole should be performance-based, and
- (b) if not, whether an alternative compliance provision should apply.

Schedule 1 [4] amends the list of exemptions from the requirement for the preparation of a regulatory impact statement for a proposed principal statutory rule so as to exempt matters involving the implementation of an intergovernmental agreement that have been the subject of regulatory assessment in accordance with principles approved by the Council of Australian Governments. Statutory rules that are substantially uniform or complementary with the legislation of the Commonwealth or other States are already exempt, but that exemption does not cover statutory rules made in New South Wales before the relevant legislation is introduced in the Commonwealth or other States and does not cover nationally agreed provisions that are implemented in New South Wales by statutory rules but by other means in the Commonwealth or other States.

Schedule 2 Amendment of Regulation Review Act 1987

Schedule 2 amends section 9 of the Act relating to the functions of the Regulation Review Committee. The amendment includes proposed Part 2A (Regulatory flexibility) of the *Subordinate Legislation Act 1989* in the relevant provisions of that Act that are subject to parliamentary oversight by the Committee.