



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),
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Explanatory note

- (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.



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New South Wales

Subordinate Legislation Amendment (Regulatory Flexibility) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Subordinate Legislation Act 1989* and the *Regulation Review Act 1987* to promote regulatory flexibility; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Subordinate Legislation Amendment (Regulatory Flexibility) Act 1998*.

2 Commencement

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

3 Amendments

The Acts specified in Schedules 1 and 2 are amended as set out in those Schedules.

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**Schedule 1 Amendment of Subordinate
Legislation Act 1989 No 146**

(Section 3)

[1] Part 2A

Insert after Part 2:

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Part 2A Regulatory flexibility

9A Statutory rules to which Part applies

- (1) This Part applies to a principal statutory rule:
 - (a) in respect of which a regulatory impact statement complying with Schedule 2 is required to be prepared before the rule is made, and 10
 - (b) that has an appreciable cost impact on the business community or on the community as a whole, having regard to the assessment of the rule made in that regulatory impact statement. 15
- (2) This Part does not apply to any part of a statutory rule in respect of which such a statement is not required or that does not have such an appreciable cost impact.
- (3) If a statutory rule makes provision with respect to different matters, this Part applies separately to each such matter. Accordingly, a reference in this Part to a statutory rule includes a reference to the provisions of a statutory rule relating to each such matter. 20
- (4) This Part does not apply to a statutory rule made before the commencement of this Part or to a statutory rule in respect of which a regulatory impact statement was prepared before that commencement. 25

9B Statutory rules generally to be performance-based

- (1) The responsible Minister is required to ensure that a statutory rule to which this Part applies is performance-based. 30

- (2) The obligation under this section does not apply if the responsible Minister considers that a performance-based statutory rule:
- (a) is not appropriate having regard to the costs and benefits to the community as a whole, or 5
 - (b) is not reasonably practicable in the circumstances.
- (3) For the purposes of this Part, a statutory rule is ***performance-based*** if it imposes requirements by reference to the objective sought to be achieved by the statutory rule and enables the person required to comply with the statutory rule to choose any appropriate method of achieving that objective. 10
- (4) This section does not prevent a performance-based statutory rule from also prescribing requirements that are taken to comply with the objective of the statutory rule. 15

9C Statutory rules not performance-based generally to have alternative compliance provision

- (1) If a statutory rule to which this Part applies is not performance-based, the responsible Minister is required to ensure that an alternative compliance provision applies to the statutory rule. 20
- (2) The obligation under this section does not apply if the responsible Minister considers that the application of an alternative compliance provision:
- (a) is not appropriate having regard to the costs and benefits to the community as a whole, or 25
 - (b) is not reasonably practicable in the circumstances.
- (3) For the purposes of this Part, an ***alternative compliance provision*** is a provision of an Act, or of a statutory rule, that authorises the exemption of a person or thing from a statutory rule subject to compliance with alternative requirements to meet the objectives (express or implied) of the statutory rule and of the relevant provisions of the Act under which it is made. 30

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- (4) The Act that authorises the making of a statutory rule to which this Part applies is taken to authorise the making of an alternative compliance provision, including by declaring that section 9D applies to the statutory rule. This subsection does not preclude any other statutory rule from making or applying an alternative compliance provision. 5

9D Alternative compliance provision that may be adopted by a statutory rule

- (1) This section applies to a statutory rule that declares that this section applies to the statutory rule. 10
- (2) The responsible Minister may, by order published in the Gazette, exempt a person or thing from the statutory rule, subject to compliance with the requirements specified or described in the order, if the Minister is satisfied that: 15
- (a) compliance with the requirements of the order will be at least as effective as the requirements of the statutory rule in meeting the objectives of the statutory rule and of the relevant provisions of the Act under which it is made, and 20
- (b) the order will not cause an appreciable increase in risks to human health or safety or to the environment.
- (3) The person or thing is not exempt while the requirements of the order are not complied with. 25
- (4) An order may only be made under this section on the application of the person to whom it relates or on an application made with the written approval of that person.
- (5) The responsible Minister may, subject to the regulations, charge a reasonable fee for the administrative costs relating to an application under this section and any order made under this section. 30
- (6) The responsible Minister may refer an application for an order to the relevant government agency administering the statutory rule or to a specially constituted panel for advice on the making of the order. 35

- (7) The making of an order under this section is at the absolute discretion of the responsible Minister.
- (8) The responsible Minister may, subject to this section, vary or revoke an order under this section by further order published in the Gazette. 5
- (9) An order remains in force for the period specified in the order, unless the order is sooner revoked.
- (10) The responsible Minister may issue guidelines for the making of orders under this section and for the monitoring of compliance with the requirements of those orders. 10
- (11) The responsible Minister is to cause a register to be kept of orders that are made by the Minister under this section and in force. The register is to be open for public inspection without charge during office hours and copies of entries in the register are to be provided on request on payment of a reasonable charge determined by the Minister. 15
- (12) The regulations under this Act may make provision for or with respect to applications for orders and the making of orders under this section and, in particular, for or with respect to: 20
- (a) the fees payable under subsection (5), and
 - (b) the variation or revocation of an order under this section. 25

9E General provisions

- (1) An obligation imposed on a Minister by this Part with respect to the making of a statutory rule is, if the statutory rule is not made by the Minister, an obligation with respect to the statutory rule that the Minister recommends to the Governor-in-Council. 30
- (2) This Part does not authorise the making of a statutory rule that is inconsistent with, or exempts a person or thing from, a provision of the Act under which it is made. 35

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- (3) Failure to comply with any provision of this Part (other than subsection (2)) does not affect the validity of a statutory rule.

[2] Schedule 1 Guidelines for the preparation of statutory rules

Insert after clause 4:

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5. 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.

[3] Schedule 2 Provisions applying to regulatory impact statements

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Insert after clause 1:

- 1A. The regulatory impact statement must include an assessment of:

- (a) whether any of the provisions of the proposed statutory 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.

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[4] Schedule 3 Matters not requiring regulatory impact statements

Insert after clause 4:

- 4A. 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.

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**Schedule 2 Amendment of Regulation Review Act
1987 No 165**

(Section 3)

Section 9 Functions

Insert “, and Part 2A (Regulatory flexibility),” after “sections 4, 5 and 6” in section 9 (1) (b) (viii). 5