



Queensland

# Funeral Benefit Business Regulation 2010

## Subordinate Legislation 2010 No. 271

made under the

*Funeral Benefit Business Act 1982*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Funeral Benefit Business Regulation 2010*.

### **2 Definitions**

The dictionary in schedule 2 defines particular words used in this regulation.

## **Part 2 Board for part 3 corporations**

### **3 Application of pt 2**

This part applies to a part 3 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, repealed section 139.

*Note—*

The repealed section 139 commenced on 1 December 2003.

### **4 Representative of corporations—Act, s 9(3)(d)**

- (1) To assist the Minister in recommending to the Governor in Council an appointment to the board under section 9(3)(d) of the Act, the Minister may request each corporation to submit to the Minister the names of at least 3 persons for consideration for recommendation for appointment.
- (2) The Minister may disregard a submission if the submission—
  - (a) is not given within the times stated in the Minister's request; or

- (b) does not include the names of at least 3 persons.
- (3) Two or more corporations may make a joint submission to the Minister.

## **5 Duties of secretary**

The duties of the secretary of the board are to—

- (a) keep minutes of meetings of the board; and
- (b) issue notices of meetings; and
- (c) attend to correspondence of the board; and
- (d) perform the other duties stated under this regulation.

## **6 Chairperson to preside at meetings**

- (1) The chairperson is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, another member must preside over the meeting if—
  - (a) the member is chosen by consent of all the members present; and
  - (b) there are enough members present to form a quorum.

## **7 Holding of ordinary meetings**

An ordinary meeting of the board must be held at least once a month.

## **8 Notice of ordinary meeting**

Each member of the board must be given at least 7 days written notice of—

- (a) the time and place of a proposed ordinary meeting of the board; and
- (b) the business for the meeting.

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## **9 Business to be transacted at ordinary meeting**

The business for an ordinary meeting of the board is—

- (a) the business stated in the notice of meeting; and
- (b) any other business raised by members at the meeting.

## **10 Quorum**

- (1) A quorum for a meeting of the board is 3 members.
- (2) However, if a quorum is not present at the notified time for the meeting to begin, 15 minutes must be allowed after the notified time to form a quorum.
- (3) If a quorum is—
  - (a) formed within the 15 minutes—the meeting is taken to have begun; or
  - (b) not formed within the 15 minutes—the meeting lapses and the secretary must record the lapse and the names of the members present in the minute book.

## **11 Special meetings of board**

- (1) A special meeting of the board—
  - (a) may be called by the chairperson on the chairperson's initiative; or
  - (b) must be called by the chairperson if 2 board members give the chairperson a written notice asking for a special meeting and the notice—
    - (i) is signed by the 2 members; and
    - (ii) states the business for the special meeting.
- (2) Each member of the board must be given at least 7 days written notice of—
  - (a) the time and place of the meeting; and
  - (b) the business for the meeting.

- (3) Only business stated in the notice may be transacted at the meeting.

## **12 Voting at meetings**

- (1) At meetings of the board, all questions must be decided by a majority of votes of the members present at the meeting.
- (2) Voting must be open voting unless the chairperson calls for a secret ballot.
- (3) If the votes are equal, the chairperson has a second or casting vote.
- (4) If a member abstains from voting, the member's vote must be counted as a 'no' vote.

## **13 Order of business at ordinary meeting**

The order of business at a meeting of the board, other than a special meeting, is as follows—

- (a) recording of attendances and apologies;
- (b) reading the minutes;
- (c) reading the correspondence;
- (d) consideration and payment of claims;
- (e) other business.

# **Part 3 Existing agreements with part 3 corporations**

## **14 Application of pt 3**

This part applies to a part 3 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the

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*Second-hand Dealers and Pawnbrokers Act 2003*, repealed section 139.

*Note—*

The repealed section 139 commenced on 1 December 2003.

## 15 Certificate of contributions paid

- (1) This section applies to a contributor who has stopped making contributions under a funeral benefit agreement or on any benefit accruing to the contributor.
- (2) If the contributor has paid all contributions payable by the contributor, a corporation must promptly—
  - (a) send to the contributor at the contributor's last known address a certificate—
    - (i) in the approved form; and
    - (ii) stating the amount of contributions paid by the contributor; and
    - (iii) stating the benefits to which the contributor is entitled; and
  - (b) give a copy of the certificate to the registrar.

Maximum penalty—1 penalty unit.

## 16 Defined area

- (1) A corporation must ensure that its registered rules define an area (*defined area*) in which the corporation will provide a funeral benefit for a contributor or other person entitled to a funeral benefit under an agreement with the corporation.

Maximum penalty—1 penalty unit.

- (2) A corporation must ensure that its registered rules include provisions to the following effect—
  - (a) if a contributor or other person for whom or on whose behalf contributions have been made dies in the defined area, the corporation must, if asked by a person and



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subject to the rules and any terms agreed between the corporation and the contributor, provide a funeral benefit for the deceased person;

- (b) the corporation may, by notice approved by and filed with the registrar and published at least twice in a newspaper circulating in the area defined in the notice, notify that the defined area is extended to include the area stated in the notice;
- (c) if a contributor or other person for whom or on whose behalf contributions have been made dies outside the defined area, the corporation may, if asked by a person and subject to the rules and any terms agreed between the corporation and the contributor, provide a funeral benefit for the deceased person.

Maximum penalty—1 penalty unit.

## **17 Application for payment of benefit—Act, s 16(3)**

- (1) This section applies to an application under section 16(3) of the Act.
- (2) The application must be in the approved form and be made by a relevant applicant.
- (3) The trustees must pay out of the fund to the relevant applicant the surrender value of the benefit provided by the corporation.
- (4) In this section—

*relevant applicant* means—

- (a) the person who has paid or is liable to pay the funeral costs of the deceased person; or
- (b) the personal representative of the deceased person.

## **18 Claims for funeral benefits provided outside defined area**

A corporation must, when making a claim against the trustees for a funeral benefit provided outside the corporation's defined area, give to the registrar—

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- (a) a certificate in the approved form signed by—
  - (i) the funeral director who provided the funeral; and
  - (ii) the corporation; and
- (b) if the death happened outside Queensland—a copy of the certificate of death of the person for whom service was provided.

## **19 Corporation to apply money to pay funeral director**

- (1) This section applies to a corporation that received an amount from the trustees for a funeral benefit provided outside the corporation's defined area.
- (2) The corporation must apply each amount received to pay the funeral director who provided the funeral for the whole, or the unpaid balance, of the cost of the funeral.
- (3) Any amount remaining must be paid by the corporation to the person who paid part or all of the cost of the funeral to the funeral director.

## **20 Rules relating to certain agreements**

A corporation must state in its registered rules that for an agreement entered into with a contributor on or after the commencement of the Act—

- (a) if the agreement remains in force for at least 3 years and at least 3 years contributions have been paid under the agreement—a surrender value must be paid to the contributor if the contributor surrenders the agreement; and
- (b) the surrender value must be worked out by the State actuary.

Maximum penalty—1 penalty unit.

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## **Part 4                      Annual returns for registered corporations**

### **21            Documents to accompany annual returns for part 3 corporation—Act, s 19(1)**

The following documents are the prescribed documents that must accompany the annual return required under section 19(1) of the Act—

- (a) a copy of the corporation's benefits trust fund account showing particulars of receipts and payments received or made during the financial year;
- (b) a statement of the balance of the corporation's benefits trust fund as at the end of the financial year showing the names of all persons on whose behalf moneys are held and the amount held for each person;
- (c) a copy of the audit report under section 33.

### **22            Documents to accompany annual returns for part 4 corporation—Act, s 42(1)**

The following documents are the prescribed documents that must accompany the annual return required under section 42(1) of the Act for a part 4 corporation—

- (a) a copy of the audit report under section 33;
- (b) for its funeral benefit business trust fund account—a copy of the funeral benefit business trust fund account showing particulars of receipts and payments received or made during the financial year;
- (c) for its funeral benefit business trust fund—
  - (i) a copy of the funeral benefit business trust fund showing particulars of transfers into or out of that fund during the financial year; and

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- (ii) a statement of the corporation's investments for the funeral benefit business at the end of the financial year.

## **23 Extension of period for lodging annual return**

- (1) This section applies to a corporation requesting an extension under section 19 or 42 of the Act of the time within which to lodge its annual return.
- (2) The corporation must apply for the extension in writing and the application must be received by the registrar within 4 months after the end of the financial year.
- (3) The registrar must give the corporation written notice of the registrar's decision on the application.

# **Part 5 Accounts and funds for registered corporations**

## **24 Application of pt 5**

This part applies to a registered corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, repealed section 139.

*Note—*

The repealed section 139 commenced on 1 December 2003.

## **25 Trust account receipt book to be kept**

- (1) A registered corporation must—
  - (a) keep a trust account receipt book at its registered office and every other place at which it conducts a funeral benefit business; and

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- (b) record in the trust account receipt book the receipt of contributions or other money payable under the Act into its trust account.

Maximum penalty—1 penalty unit.

- (2) The receipt forms in the trust account receipt book must be consecutively machine numbered.
- (3) A registered corporation must give a receipt from the trust account receipt book immediately on the receipt of a contribution or other money payable under the Act into its trust account.

Maximum penalty—1 penalty unit.

- (4) When a registered corporation gives a receipt under subsection (3), it must also make a copy of the receipt.

Maximum penalty for subsection (4)—1 penalty unit.

## **26 Alternative to complying with s 25**

- (1) A registered corporation does not commit an offence against section 25 if the corporation—
  - (a) gives a receipt for a contribution or other money payable under the Act into its trust account by an accounting device; and
  - (b) complies with subsection (2).
- (2) The corporation must—
  - (a) give the receipt immediately after the contribution or money is received; and
  - (b) ensure the accounting device prints multiple copies of the receipt; and
  - (c) if the accounting device is an accounting machine or a cash register—ensure the audit strip of the receipt is pasted in a book kept by the corporation for that purpose; and

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- (d) if the accounting device is an accounting machine that prints the receipt in triplicate—ensure the triplicate of the receipt is kept in the records of the corporation.

## **27 Title and particulars for receipt**

A receipt given under section 25 or 26 must be titled '*Funeral Benefit Business Act 1982*' and the completed receipt form must contain the following particulars—

- (a) the name of the corporation by whom or on whose behalf the receipt is given followed by the words—
  - (i) if the corporation is a part 3 corporation—'benefits trust fund'; or
  - (ii) if the corporation is a part 4 corporation—'funeral benefit business trust fund account';
- (b) the date given;
- (c) the name of the person by whom or on whose behalf the contribution or payment is made;
- (d) the type of contribution or payment;
- (e) the amount of the contribution or payment received;
- (f) the signature of the person giving the receipt.

## **28 Trust account bank deposit book to be kept**

- (1) A registered corporation must keep a trust account bank deposit book at its registered office and every other place at which it conducts a funeral benefit business.

Maximum penalty—1 penalty unit.

- (2) The trust account bank deposit book may include loose-leaf pages but the loose pages must be securely filed in the records of the corporation.

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- (3) A registered corporation must, when entering the particulars of all moneys to be banked in the trust account bank deposit book, make a copy of the particulars.

Maximum penalty for subsection (3)—1 penalty unit.

## **29 Trust account cash book to be kept**

- (1) A registered corporation must keep a trust account cash book at its registered office and every other place at which it conducts a funeral benefit business.

Maximum penalty—1 penalty unit.

- (2) A registered corporation must immediately enter in its trust account cash book particulars of all money received and all payments made because of the funeral benefit business of the corporation.

Maximum penalty—1 penalty unit.

- (3) A registered corporation must ensure that its trust account cash book contains a complete record of all transactions with a financial institution, stating under the headings—

- (a) 'Receipts'—all money lodged to the credit of the trust account; and
- (b) 'Payments'—all cheques drawn against the trust account.

Maximum penalty—1 penalty unit.

- (4) At the end of each month a registered corporation must—

- (a) reconcile its trust account cash book with the financial institution's balance in the approved form; and
- (b) enter the reconciliation in the corporation's trust account cash book.

Maximum penalty—1 penalty unit.

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### **30 Trust account ledger to be kept**

- (1) A registered corporation must keep a trust account ledger at its registered office and every other place at which it conducts a funeral benefit business.

Maximum penalty—1 penalty unit.

- (2) A registered corporation must ensure that all entries made in its trust account cash book are immediately entered in its trust account ledger.

Maximum penalty—1 penalty unit.

### **31 Trust account records to be kept by registered corporation**

A registered corporation must—

- (a) keep full and accurate accounts of—
- (i) all money received by the corporation for any transaction under the Act; and
  - (ii) all payments made by the corporation; and
- (b) do all things necessary to enable the accounts to be audited, including—
- (i) keeping any accounts and records necessary; and
  - (ii) maintaining those accounts in a way that ensures they can be conveniently and properly audited; and
- (c) keep a separate book or register, created for the purpose, detailing—
- (i) a true and accurate record of the number of trust account receipt books obtained and held by the corporation during the period for which an audit is or is to be made; and
  - (ii) the serial numbers of the trust account receipt forms contained in the trust account receipt books; and



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- (d) keep and produce for the auditor making the audit of the trust account the copy of the previous audit report given to the corporation under section 33(1) by the previous auditor; and
  - (e) produce to the auditor engaged or employed by the corporation, if asked to by the auditor—
    - (i) all trust account books, accounts records and documents necessary to enable the auditing of the corporation's trust account; and
    - (ii) all contracts, agreements or other documents about the funeral benefit business conducted by the corporation necessary to enable the auditing of the corporation's trust account; and
  - (f) give the auditor any additional information the auditor reasonably requires.

Maximum penalty—1 penalty unit.

### **32 Audit of benefits trust fund of part 3 corporation**

A part 3 corporation must ensure that its benefits trust fund is audited at least once a year.

Maximum penalty—1 penalty unit.

### **33 Audit report**

- (1) An auditor appointed to audit a trust account or a funeral benefit business trust fund by a registered corporation must give to the corporation a report, in duplicate, of the result of the audit signed by the auditor.

Maximum penalty—1 penalty unit.

- (2) The report must state the following information—
  - (a) the name of the corporation;
  - (b) the addresses of the places of business to which the audit report relates;

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- (c) the period covered by the audit;
- (d) the name of the trust account;
- (e) the name of the financial institution at which the trust account was kept;
- (f) whether the auditor also audited the general accounts of the corporation;
- (g) whether the trust account or funeral benefit business trust fund has, in the auditor's opinion, been properly kept and is in order and correct;
- (h) whether the trust account or an individual contributor's account has been overdrawn;
- (i) particulars of all money and investments held in trust by the corporation and reconciled with the contributors' accounts and other accounts maintained in the trust account ledger on the last day of the audit period;
- (j) a reconciliation of the trust account cash book with the financial institution's balance at that date;
- (k) for a part 4 corporation—
  - (i) whether or not the corporation has at all times complied with section 40 of the Act; and
  - (ii) whether or not the investments held by the corporation at the end of the relevant financial year and set out in the statement mentioned in section 22(c)(ii) have been verified and are correctly shown;
- (l) the number of trust receipt books and the serial numbers of the trust receipt forms in the books in the possession of the corporation during the period to which the audit relates;
- (m) particulars of—
  - (i) the used trust receipt forms audited; and
  - (ii) the unused trust receipt forms on hand at the end of the last day of the audit period;

- (n) whether the auditor asked the corporation for permission to examine the general accounts of the corporation and was refused;
- (o) the date the trust account was examined under section 34.

### **34 Examination on unscheduled visit**

- (1) This section applies unless a corporation has been registered for less than 6 months.
- (2) A registered corporation must ensure that the auditor appointed to audit its trust account or funeral benefit business trust fund examines the corporation's trust account or funeral benefit business trust fund on an unscheduled visit to the corporation.

Maximum penalty—1 penalty unit.

- (3) The visit must take place at least 4 months before the end of each financial year.

### **35 Auditor to advise registrar of particular matters**

An auditor appointed by a registered corporation to audit its trust account or funeral benefit business trust fund must promptly advise the registrar if—

- (a) the auditor is unable to certify that the trust account or funeral benefit business trust fund has been properly kept and is in order and correct; or
- (b) on an unscheduled examination of the trust account or funeral benefit business trust fund, the auditor considers that there is some irregularity in relation to the account or fund that should to be brought to the notice of the registrar; or
- (c) the auditor considers the registrar should be advised of any matter about the trust account or funeral benefit business trust fund.

Maximum penalty—1 penalty unit.

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**36 Auditor to advise registrar if request to examine other accounts is refused**

- (1) This section applies if—
  - (a) an auditor appointed by a registered corporation to audit its trust account or funeral benefit business trust fund considers that, to enable the auditor to decide whether the trust account or funeral benefit business trust fund has been properly kept and is in order and correct, it is necessary or desirable that the auditor should be permitted to examine another account of the corporation; and
  - (b) the auditor asks the corporation to produce for the auditor's examination the other account; and
  - (c) the corporation refuses the auditor's request.
- (2) The auditor must promptly advise the registrar of the refusal.  
Maximum penalty—1 penalty unit.

**37 Particular duties of part 4 corporation**

- (1) This section applies if a part 4 corporation—
  - (a) stops being registered under the Act to conduct a funeral benefit business; or
  - (b) stops conducting a funeral benefit business.
- (2) The corporation must within 2 months after stopping—
  - (a) ensure that its trust account is audited by an auditor—
    - (i) if an audit has been performed—for the period from the day when its trust account was last audited to the day of it stopping; or
    - (ii) if no audit has been performed—for the period from the day when it started to conduct a funeral benefit business to the day of it stopping; and
  - (b) obtain from the auditor a report of the audit; and

(c) send the report to the registrar.

Maximum penalty—1 penalty unit.

**38 Auditor's secrecy**

An auditor must not divulge to a person any information obtained by the auditor in the course of conducting an examination or audit under the Act.

Maximum penalty—1 penalty unit.

## **Part 6 General provisions for registered corporations**

**39 Application of pt 6**

This part applies to a registered corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, repealed section 139.

*Note—*

The repealed section 139 commenced on 1 December 2003.

**40 Prescribed benefit limit—Act, s 32(d)**

For section 32(d) of the Act, the prescribed amount is \$11000.

**41 Prescribed particulars to be entered in register of contributors—Act, s 47(1)(e)**

(1) The following particulars are prescribed for section 47(1)(e) of the Act—

(a) the name and address of the contributor's next of kin or other person nominated by the contributor to be

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contacted by the corporation in the absence of the contributor;

- (b) particulars of the amounts and dates of payment of contributions made by the contributor;
  - (c) particulars of the amounts and dates of payments made to or on behalf of the contributor;
  - (d) particulars of the value of service provided to or on behalf of the contributor and the date the services were provided.
- (2) In this section—  
*next of kin* includes spouse.

**42 Prescribed particulars to be entered in register of contributors—Act, s 47(3)(e)**

- (1) This section applies if a contributor pays all the contributor's contributions to the corporation.
- (2) The following particulars are prescribed for section 47(3)(e) of the Act—
  - (a) the contributor's contributions are fully paid;
  - (b) the date they were fully paid.

**43 Prescribed information to be given by registered corporation—Act, s 51(4)(c)**

For section 51(4)(c) of the Act, the prescribed information is the total amount of the contributions paid by the contributor up to the date the corporation asks for cancellation of registration.

**44 Amendment to rules—Act, s 61(4)**

For section 61(4) of the Act, an application to amend the registered rules of a corporation must be accompanied by a copy of the proposed amendment signed by its chairperson and secretary.

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**45 Registration of amendment to rules**

An amendment to the rules of a corporation is registered when an acknowledgement of registration in the approved form is written on the copy mentioned in section 44.

**46 Disputes**

- (1) An application to refer a dispute to the registrar for settlement under section 62(1) of the Act must be in the approved form.
- (2) The registrar must forward a copy of the application to each person, other than the applicant, stated in the application as a party to the dispute.
- (3) The registrar must give notice, in the approved form, of the hearing of the dispute to each of the parties to the dispute not less than 14 days before the hearing.
- (4) An award made by the registrar must be—
  - (a) in the approved form; and
  - (b) given promptly to the parties to the dispute.

**47 Fees**

The fees payable under the Act are stated in schedule 1.

## **Part 7 Repeal and transitional provisions**

**48 Repeal of Funeral Benefit Business Regulation 2000**

The Funeral Benefit Business Regulation 2000, SL No. 220 is repealed.

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**49 Previous certificate of contributions paid and benefits to which contributor is entitled**

Section 15 does not apply in relation to a contributor who has stopped making contributions under a funeral benefit agreement or on any benefit accruing to the contributor after the contributor has stopped making contributions if—

- (a) the contributor stopped making contributions before the commencement of this section; and
- (b) the corporation has complied with section 15 of the repealed regulation in relation to the contributions.

**50 Existing extension of period for lodging annual return**

If the registrar has given an extension of the period for lodging an annual return under section 28 of the repealed regulation and on the commencement of this section the extension has not expired, the extension continues under this regulation until the end of the unexpired term of the extension.



## Schedule 1      Fees

### section 47

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1 Application to amend registered rules (Act, s 61)—	
(a) for each rule to be amended. . . . .	14.90
(b) maximum total fee. . . . .	88.55
2 Inspection of registered rules and documents relating to registration of a corporation. . . . .	10.80
3 Certified copy of certificate of registration of a corporation to conduct a funeral benefit business. . . . .	10.80
4 Copy of, or extract from, a document lodged with the registrar—	
(a) for the first page. . . . .	7.20
(b) for each additional page. . . . .	1.24
5 Certified copy of, or certified extract from, a document lodged with the registrar—	
(a) for the first page. . . . .	10.80
(b) for each additional page. . . . .	1.24
6 Notification of change in situation of nominated office of a registered corporation (Act, s 59(2)) . . . . .	12.85
7 Notification of change in secretary of a registered corporation (Act, s 60(2)) . . . . .	12.85
8 Notification of change of name of a registered corporation (Act, s 63), in addition to a fee under item 1 . . . . .	12.85
9 Approval of registrar for an advertisement by a registered corporation (Act, s 70(1)) . . . . .	24.70

## Schedule 2 Dictionary

### section 2

***accounting device*** means—

- (a) an accounting machine; or
- (b) a cash register; or
- (c) a computer.

***auditor*** means an authorised accountant.

***board*** means the Board of Trustees established under section 9(2) of the Act.

***defined area*** see section 16.

***trust account*** means the benefits trust fund or the funeral benefit business trust fund account of a registered corporation.

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#### ENDNOTES

- 1 Made by the Governor in Council on 30 September 2010.
- 2 Notified in the gazette on 1 October 2010.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Employment, Economic Development and Innovation.

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