

STATUTORY INSTRUMENTS AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Title of the Bill

Statutory Instruments Amendment Bill 1998

Policy Objectives of the Bill

The objectives of this Bill are:

- to clarify the operation of the scheme of automatic expiry of subordinate legislation;
- to remove any doubt about the validity of exemptions from automatic expiry made by the *Statutory Instruments Amendment Regulation (No. 1) 1998*; and
- to make it clear that a range of instruments, issued under both prerogative and statutory powers, which, among other things, dissolve, prorogue, summon and open Parliament, and which exempt Ministers from the office of profit proscription applying to Members of the Legislative Assembly, are not subordinate legislation.

Reasons for the Bill

A scheme of automatic expiry of subordinate legislation ten years from its making was introduced by s54 of the *Statutory Instruments Act 1992*. This scheme came into effect on 30 June 1998. All subordinate legislation made before 30 June 1988 automatically expired on 1 July 1998 unless

specifically exempted by another Act or by regulation under the exemption provisions of s56.

Three grounds are provided for exemption by s56, namely:

- a replacement instrument is being drafted (s56(1)(a)—maximum exemption for 1 year);
- the instrument is not to be replaced (s56(1)(b)—maximum exemption for 1 year); or
- the instrument is substantially uniform or complementary with the legislation of another jurisdiction (s56(1)(c)—exemption for up to five years may be renewed).

The *Statutory Instruments Amendment Regulation (No. 1) 1998* provided exemptions under these three provisions for a wide range of subordinate legislation. During drafting of this regulation, it became clear that the term ‘replacement’ was capable of a range of interpretations. This ambiguity may give rise to some doubt about the validity of the exemptions conferred by the regulation. This legislation is intended both to clarify definitional issues and to remove any doubt about the validity of the exemptions conferred by the regulation.

The existing scheme of automatic expiry of subordinate legislation provides for instruments to expire on the tenth anniversary of their making. This presents some practical difficulties in that it requires meticulous annotations to be maintained, and conceivably will require numerous exempting regulations to be made each year on an ad hoc basis. In order to minimise the administrative costs of the scheme of automatic expiry, it is desirable that provision be made for all expiries to occur on one day of the year. The date of 1 September was selected because it is distant from key points in the budget and calendar cycles. Subordinate legislation expiring in the period July-December 1998 will be allowed to expire under the existing provision as the new provision will commence only from 1 January 1999.

A range of instruments are made to dissolve a Parliament, issue writs for an election of the Legislative Assembly and of the Senate of the Commonwealth, to bring into being a new Legislative Assembly, to appoint a person to carry on the administration of the State in the absence of the Governor, and to appoint Ministers as officers of the Crown who are nevertheless able to sit as Members of the Legislative Assembly. These instruments are made under both prerogative and statutory powers. It is not

clear under existing legislation whether they are subordinate legislation. If they were, they would be liable for automatic expiry and for disallowance by Parliament. Since neither of these outcomes is practicable, it is desirable to remove ambiguity about their status through amendment of the Act.

Estimated Cost for Government Implementation

There are no additional costs to Government, and some likely savings, arising from implementation of this Bill.

Consistency with Fundamental Legislative Principles

This Bill is consistent with Fundamental Legislative Principles as outlined in section 4 of the *Legislative Standards Act 1992*.

Although the validation of the *Statutory Instruments Amendment Regulation (No. 1) 1998* is retrospective in effect, this simply removes doubt about the validity of subordinate legislation which itself simply extends the life of a range of existing instruments. The rights and liberties of individuals or groups of citizens are in no way adversely affected, nor are obligations imposed retrospectively upon any person or group.

Consultation

The Queensland Parliamentary Counsel was consulted about the content of this Bill.

NOTES ON CLAUSES

Clause 1 sets out the short title of the Act—the *Statutory Instruments Amendment Act 1998*.

Clause 2 commences the amendment created by Clause 5 on 1 January 1999.

Clause 3 states that the Act amends the *Statutory Instruments Act 1992*.

Clause 4 amends s9(2)(c) of the principal Act to provide that the definition of ‘subordinate legislation’ excludes instruments listed in a new Schedule 1A (see Clause 8 below).

Clause 5 inserts words in s54(1) providing that subordinate legislation expires on the first 1 September occurring after the tenth anniversary on which the instrument was made.

Clause 6 inserts a new s56 replacing the former s56. The new section provides that exemption by regulation from automatic expiry for a maximum period of one year can be for either of the two reasons formerly provided in the deleted former s56. These reasons are that replacement subordinate legislation is being drafted or that the subordinate legislation is not to be replaced. The new wording means that the exempting regulation will not be required to distinguish between the two reasons, so that there will be no confusion where an instrument is to be partly replaced under the same principal legislation and other parts are to be included in some entirely new legislative regime. The word ‘replaced’ in s56(1)(b) is also defined to make clear that it refers only to instruments replaced under the same principal legislation under or in relation to which they were originally made or preserved. The wording ‘in relation to’ covers the case where an instrument has been preserved by an Act (such as the now repealed s21(2) of the *Acts Interpretation Act 1954*) other than the Act under which it was originally made. New s56(2) makes it clear that exemptions provided by regulation under s56(1) can not be extended beyond one year. New s56(3) makes provision for the exemption of uniform subordinate legislation as formerly provided in s56(1)(c). New s56(4) provides that the exemption of uniform subordinate legislation may be for renewable periods of up to five years. This, again, is the same regime as applied under the former section. New s5(5) defines ‘uniform subordinate legislation’ in the same terms as former s56(1)(c).

Clause 7 inserts a new Part 11—Declaratory Provision, which includes a new s63 validating the three exemption schedules inserted in the *Statutory Instruments Regulation 1992* by the *Statutory Instruments Amendment Regulation (No. 1) 1998*.

Clause 8 inserts a new schedule 1A to the principal Act defining a range of instruments made under the *Constitution Act 1867*, the *Constitution (Office of Governor) Act 1987*, the *Officials in Parliament Act 1896* and the *Senate Elections Act 1960* as being not subordinate legislation. These instruments deal with the dissolution of Parliament, the issue of writs for

elections, the appointment of a person to administer the State in the absence of the Governor, the appointment of Ministers as Members of the Legislative Assembly who may hold office of profit under the Crown, and the issue of writs for elections of the Senate of the Commonwealth.