

South Australia

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SUBORDINATE LEGISLATION ACT 1978

An Act relating to the making, printing and publishing of certain subordinate legislation; and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **1 January 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

SUBORDINATE LEGISLATION ACT 1978

being

Subordinate Legislation Act 1978 No. 3 of 1978
[Assented to 23 February 1978]¹

as amended by

Acts Interpretation Act Amendment Act 1983 No. 41 of 1983 [Assented to 16 June 1983]²
Subordinate Legislation Act Amendment Act 1987 No. 28 of 1987 [Assented to 23 April 1987]
Parliamentary Committees Act 1991 No. 50 of 1991 [Assented to 21 November 1991]³
Local Government (Reform) Amendment Act 1992 No. 29 of 1992 [Assented to 21 May 1992]⁴
Subordinate Legislation (Expiry) Amendment Act 1992 No. 31 of 1992 [Assented to 21 May 1992]⁵
Statutes Amendment (Attorney-General's Portfolio) Act 1994 No. 21 of 1994 [Assented to 26 May 1994]⁶
Statutes Amendment (Water Resources) Act 1997 No. 35 of 1997 [Assented to 19 June 1997]⁷
Legislation Revision and Publication Act 2002 No. 32 of 2002 [Assented to 28 November 2002]⁸

¹ Came into operation 1 June 1978: *Gaz.* 11 May 1978, p. 1652.

² Came into operation 1 July 1983: *Gaz.* 30 June 1983, p. 1754.

³ Came into operation 11 February 1992: *Gaz.* 5 December 1991, p. 1668.

⁴ Para. (b) of Sched. came into operation 21 May 1992, para. (a) of Sched. came into operation 1 July 1992: *Gaz.* 21 May 1992, p. 1468.

⁵ Came into operation 1 August 1992: *Gaz.* 9 July 1992, p. 561.

⁶ Came into operation 7 July 1994: *Gaz.* 7 July 1994, p. 4.

⁷ Part 7 (s. 30) came into operation 2 July 1997: *Gaz.* 26 June 1997, p. 3052.

⁸ **Sched. (cl. 3) came into operation 1 January 2003: *Gaz.* 19 December 2002, p. 4735.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

- 1. Short title
- 2. Commencement
- 4. Interpretation
- 7. Amendment of Acts Interpretation Act
- 9. Application of this Act to other subordinate legislation

**PART 2
MAKING OF REGULATIONS ETC**

- 10. Making of regulations
- 10AA. Commencement of regulations
- 10A. Regulations to be referred to Legislative Review Committee
- 11. Publishing of regulations
- 13. Numbering of regulations

**PART 3A
EXPIRY OF REGULATIONS**

- 16A. Regulations to which this Part applies
- 16B. Expiry of regulations to which this Part applies
- 16C. Postponement of expiry

**PART 4
MISCELLANEOUS**

- 17. Regulations

**APPENDIX
LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *Subordinate Legislation Act 1978*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

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Interpretation

4. In this Act, unless the contrary intention appears—

"**regulation**" means any regulation, rule or by-law made under an Act.

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Amendment of Acts Interpretation Act

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(3) Where in any Act passed before the commencement of this Act a reference express or implied is made to section 38 of the *Acts Interpretation Act 1915*, as in force from time to time, that reference shall, on and after that commencement, be read as a reference to section 10 of this Act.

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Application of this Act to other subordinate legislation

9. The Governor may, by proclamation, declare that this Act or any specified provision of this Act shall, in addition to applying to regulations, apply to and in relation to any other enactment of a legislative character made pursuant to any Act, whether that Act was passed before, on or after the commencement of this Act, and this Act shall apply and have effect accordingly and the Governor may by a subsequent proclamation amend, vary or revoke any such declaration.

Subordinate Legislation Act 1978

Part 2—Making of regulations etc

Making of regulations

10. (1) Where, by any Act passed after the sixteenth day of December, 1915, it is provided that regulations shall or may be made and it is not provided by whom such regulations shall or may be made, any regulation made under, or by virtue of, such provision, shall be made by the Governor.

* * * * *

(3) Except as is expressly provided in any other Act, every regulation must be laid before each House of Parliament within six sitting days of that House after it has been made.

(4) A failure to have a regulation laid before both Houses of Parliament in accordance with subsection (3) does not affect the operation or effect of that regulation.

(5) The Legislative Review Committee of the Parliament may report a failure to comply with subsection (3) to each House of Parliament.

(5a) Subject to this section, where—

(a) a regulation has been laid before each House of Parliament in accordance with subsection (3); or

(b) a report has been made in respect of a regulation by the Legislative Review Committee of the Parliament in accordance with subsection (5),

that regulation may be disallowed by resolution of either House of Parliament and will cease to have effect.

(5b) A resolution is not effective for the purposes of subsection (5a) unless—

(a) in the case of a regulation that has been laid before the House in accordance with subsection (3)—the resolution is passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the regulation was laid before the House; or

(b) in the case of a regulation that has been the subject of a report by the Legislative Review Committee of the Parliament in accordance with subsection (5)—the resolution is passed in pursuance of a notice of motion given within six sitting days (which need not fall within the same session of Parliament) after the report of the Legislative Review Committee of the Parliament has been made to the House.

(6) When a resolution referred to in subsection (5a) of this section has been passed, notice of that resolution shall forthwith be published in the *Gazette*.

(7) Notwithstanding anything in this section, where in any Act, whether passed before or after the commencement of this Act, it is provided that any regulation shall be made by an authority other than the Governor and that that regulation shall be confirmed by the Governor or some other authority before it shall have the force of law, that regulation shall not take effect unless it has been confirmed as required.

Commencement of regulations

10AA. (1) Subject to this and any other Act, a regulation that is required to be laid before Parliament comes into operation four months after the day on which it is made or from such later date as is specified in the regulation.

(2) A regulation that is required to be laid before Parliament—

(a) may come into operation on an earlier date specified in the regulation if the Minister responsible for the administration of the Act under which the regulation is made certifies that, in his or her opinion, it is necessary or appropriate that the regulation come into operation on an earlier date; but

(b) may not come into operation earlier than the date on which it is made unless that earlier operation is authorised by the Act under which the regulation is made.

(3) Subject to any other Act, a regulation that is not required to be laid before Parliament comes into operation on the day on which it is made or from such later date as is specified in the regulation.

(4) A document appearing to be a certificate under subsection (2) will, in the absence of proof to the contrary, be accepted as such in any legal proceedings.

(5) A certificate under subsection (2) cannot be called in question in any legal proceedings.

Regulations to be referred to Legislative Review Committee

10A. (1) Every regulation that is required to be laid before Parliament is, when made, referred by force of this section to the Legislative Review Committee of the Parliament.

(1a) If a Minister issues a certificate under section 10AA(2) in relation to a regulation, the Minister must cause a report setting out the reasons for the issue of the certificate to be given to the Committee as soon as practicable after the making of the regulation.

(2) The Committee must inquire into and consider all regulations referred to it.

(3) The Committee must consider all regulations as soon as conveniently practicable after they are referred to the Committee and, if Parliament is then in session, must do so before the end of the period within which any motion for disallowance of the regulations may be moved in either House of Parliament.

(4) If the Committee forms the opinion that any regulations ought to be disallowed—

(a) it must report the opinion and the grounds for the opinion to both Houses of Parliament before the end of the period within which any motion for disallowance of the regulations may be moved in either House; and

(b) if Parliament is not in session, it may, before reporting to Parliament, report the opinion and the grounds for the opinion to the authority by which the regulations were made.

Publishing of regulations

11. Every regulation shall, forthwith after it is made, be published in the *Gazette*.

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Subordinate Legislation Act 1978

Numbering of regulations

13. (1) For the purposes of this section the Governor may by proclamation appoint a day.

(2) Regulations (other than regulations made by an authority other than the Governor) made on and after the day appointed under subsection (1) of this section shall be numbered consecutively as nearly as may be in the order in which they were made beginning with the number "1" in each year.

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Part 3A—Expiry of regulations

Regulations to which this Part applies

16A. This Part applies in relation to all regulations except—

- (a) regulations that are not required to be laid before Parliament; and
- (ab) any of the following made under the *Local Government Act 1934*:
 - (i) by-laws;
 - (ii) regulations made by the Local Government Superannuation Board; and
- * * * * *
- (c) regulations amending an Act; and
- (d) regulations made pursuant to an agreement for uniform legislation between this State and the Commonwealth or other States or Territories of the Commonwealth; and
- (e) a regulation under the *Water Resources Act 1997*—
 - (i) declaring a watercourse, lake or well to be a prescribed watercourse, lake or well or declaring that part of the State is a surface water prescribed area; or
 - (ii) appointing a body to be a catchment water management board; or
 - (iii) varying or revoking a regulation referred to in subparagraphs (i) or (ii); and
- (f) regulations made by a person, body or authority other than the Governor.

Expiry of regulations to which this Part applies

16B. (1) Subject to this Part, a regulation to which this Part applies will, unless it has already expired or been revoked, expire as follows:

- (a) a regulation made before 1 January 1976, and all subsequent regulations amending that regulation, will expire on 1 September 1992;
- (b) a regulation made on or after 1 January 1976 but before 1 January 1980, and all subsequent regulations amending that regulation, will expire on 1 September 1993;
- (c) a regulation made on or after 1 January 1980 but before 1 June 1982, and all subsequent regulations amending that regulation, will expire on 1 September 1994;
- (d) a regulation made on or after 1 June 1982 but before 1 April 1984, and all subsequent regulations amending that regulation, will expire on 1 September 1995;
- (e) a regulation made on or after 1 April 1984 but before 1 June 1985, and all subsequent regulations amending that regulation, will expire on 1 September 1996;
- (f) a regulation made on or after 1 June 1985 but before 1 January 1987, and all subsequent regulations amending that regulation, will expire on 1 September 1997;

Subordinate Legislation Act 1978

- (g) a regulation made on or after 1 January 1987, and all subsequent regulations amending that regulation, will expire on 1 September of the year following the year in which the tenth anniversary of the day on which the regulation was made falls.

(2) For the purposes of this section, a regulation will be taken to have been made on the day on which it was published in the *Gazette*.

Postponement of expiry

16C. (1) The regulations may postpone the expiry of a regulation under this Part for a period or periods not exceeding two years at a time and not exceeding four years in aggregate.

(2) If a regulation postponing the expiry of another regulation is disallowed, that other regulation ceases to have effect—

- (a) on the date on which the notice of disallowance is published in the *Gazette*; or
- (b) on the date of expiry,

whichever occurs last.

Part 4—Miscellaneous

Regulations

17. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

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Subordinate Legislation Act 1978

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	substituted by 32, 2002, Sched. cl. 3(a)
Section 3:	amended by 28, 1987, s. 2; repealed by 32, 2002, Sched. cl. 3(b)
Section 4:	definition of "authorised legal practitioner" repealed by 32, 2002, Sched. cl. 3(c) definition of "regulation" amended by 28, 1987, s. 3; 29, 1992, Sched.
Sections 5 and 6:	repealed by 32, 2002, Sched. cl. 3(d)
Section 7(1) and (2):	repealed by 32, 2002, Sched. cl. 3(e)
Section 8:	repealed by 32, 2002, Sched. cl. 3(f)
Section 10(2):	repealed by 31, 1992, s. 3
Section 10(3) and (4):	substituted by 21, 1994, s. 28(a)
Section 10(5):	repealed by 41, 1983, s. 28; inserted by 21, 1994, s. 28(a)
Section 10(5a) and (5b):	inserted by 21, 1994, s. 28(a)
Section 10(6):	amended by 21, 1994, s. 28(b)
Section 10AA:	inserted by 31, 1992, s. 4
Section 10A:	inserted by 50, 1991, Sched. Pt. 2
Section 10A(1a):	inserted by 31, 1992, s. 5
Section 11:	amended by 32, 2002, Sched. cl. 3(g)
Section 12:	repealed by 32, 2002, Sched. cl. 3(h)
	Part 3 comprising ss. 14 - 16 and heading repealed by 32, 2002, Sched. cl. 3(i)
	Part 3A comprising ss. 16A, 16B and heading inserted by 28, 1987, s. 4
Section 16A:	amended by 29, 1992, Sched.; 31, 1992, s. 6(a), (b); 35, 1997, s. 30
Section 16A(b):	repealed by 31, 1992, s. 6(a)
Section 16B(1):	substituted by 31, 1992, s. 7
Section 16C:	inserted by 31, 1992, s. 8
Section 17(2):	repealed by 32, 2002, Sched. cl. 3(j)