

South Australia

# Legislative Instruments Act 1978

An Act relating to the making and publishing of certain legislative instruments; and for other purposes.

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### Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Legislative Instruments Act 1978*.

#### 4—Interpretation

In this Act, unless the contrary intention appears—

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

#### 7—Amendment of Acts Interpretation Act

- (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.

#### 9—Application of Act

- (1) The Governor may, by proclamation, declare that a provision of this Act that is expressed as applying only to regulations applies, in addition, to other legislative instruments of a kind specified in the proclamation.
- (2) A proclamation may be made under this section in relation to a legislative instrument made under an Act regardless of whether that Act was passed before or after the commencement of this section.

### Part 2—Making of regulations etc

#### 10—Making of regulations

- (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.

#### **10AA—Commencement of regulations**

- (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 or time 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, or at an earlier time, 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 or at an earlier time; 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 or time 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.

#### **10A—Regulations to be referred to Legislative Review Committee**

- (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.

## 11—Publishing of regulations

Every regulation shall, forthwith after it is made, be published in the Gazette or under the *Legislation Revision and Publication Act 2002*.

## 13—Numbering of regulations

- (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.

## Part 3A—Expiry of regulations

### 16A—Regulations to which this Part applies

This Part applies in relation to all regulations except—

- (a) regulations that are not required to be laid before Parliament; and
- (ab) by-laws made under the *Local Government Act 1934*; 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 prescribed for the purposes of this section; and
- (e) a regulation under the *Landscape South Australia Act 2019*—
  - (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) amending or repealing a regulation referred to in subparagraph (i); and

- (eb) regulations under the *Southern State Superannuation Act 2009*; and
- (ec) regulations under Schedule 1A clause 1(1) of the *Superannuation Act 1988* (including regulations in force when this paragraph comes into operation); and
- (ed) regulations operating pursuant to savings provisions or transitional arrangements under an Act (where the Act under which the regulations were made has been repealed); and
- (f) regulations made by a person, body or authority other than the Governor.

### **16B—Expiry of regulations to which this Part applies**

- (1) Subject to this Part, a regulation to which this Part applies will, unless it has already expired or been repealed, 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;
  - (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 or on the day on which it was first published under the *Legislation Revision and Publication Act 2002* (whichever occurs first).

### **16C—Postponement of expiry**

- (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 3B—Commencement of other legislative instruments**

### **16D—Commencement of legislative instruments other than regulations**

- (1) A legislative instrument other than a regulation—
- (a) may come into operation at a date or time specified in the instrument; but
  - (b) may not come into operation earlier than the date on which it is made, approved or adopted unless that earlier operation is authorised by the Act under which the instrument is made, approved or adopted.
- (2) A legislative instrument other than a regulation that contains no provision fixing the date or time of its commencement comes into operation on the day on which it is made, approved or adopted.

## **Part 4—Miscellaneous**

### **16E—General provisions relating to all legislative instruments**

- (1) All conditions and preliminary steps required for the making of a legislative instrument must be presumed to have been satisfied and performed, in the absence of evidence to the contrary.
- (2) If an Act authorises or requires a matter to be regulated by a legislative instrument, the power may be exercised by prohibiting the matter or any aspect of the matter.
- (3) If a legislative instrument may be made in relation to a matter, the legislative instrument may provide for the matter by applying, adopting or incorporating (with or without modification) a provision of any of the following:
- (a) an Act or a legislative instrument of this or any other jurisdiction, as in force at a particular time or as in force from time to time;
  - (b) an instrument of a legislative character made under an Act of this or any other jurisdiction, as in force at a particular time or as in force from time to time;
  - (c) any other document, as in force at a particular time.

### **16F—Disallowance of repealing legislative instrument revives repealed instrument**

If a legislative instrument that repeals another legislative instrument, or part of another legislative instrument, is disallowed under this or any other Act, the legislative instrument or part sought to be repealed revives.

### **16G—Time of disallowance**

If a legislative instrument is disallowed under this or any other Act, the legislative instrument continues to have effect until the end of the day on which it is disallowed.

## **17—Regulations**

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

## Legislative history

### Notes

- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Subordinate Legislation Act 1978*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1978	3	<i>Subordinate Legislation Act 1978</i>	23.2.1978	1.6.1978 ( <i>Gazette 11.5.1978 p1652</i> )
1983	41	<i>Acts Interpretation Act Amendment Act 1983</i>	16.6.1983	1.7.1983 ( <i>Gazette 30.6.1983 p1754</i> )
1987	28	<i>Subordinate Legislation Act Amendment Act 1987</i>	23.4.1987	23.4.1987
1991	50	<i>Parliamentary Committees Act 1991</i>	21.11.1991	11.2.1992 ( <i>Gazette 5.12.1991 p1668</i> )
1992	29	<i>Local Government (Reform) Amendment Act 1992</i>	21.5.1992	Sch (para (b))—21.5.1992 and Sch (para (a))—1.7.1992 ( <i>Gazette 21.5.1992 p1468</i> )
1992	31	<i>Subordinate Legislation (Expiry) Amendment Act 1992</i>	21.5.1992	1.8.1992 ( <i>Gazette 9.7.1992 p561</i> )
1994	21	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1994</i>	26.5.1994	7.7.1994 ( <i>Gazette 7.7.1994 p4</i> )
1997	35	<i>Statutes Amendment (Water Resources) Act 1997</i>	19.6.1997	Pt 7 (s 30)—2.7.1997 ( <i>Gazette 26.6.1997 p3052</i> )
2002	32	<i>Legislation Revision and Publication Act 2002</i>	28.11.2002	Sch (cl 3)—1.1.2003 ( <i>Gazette 19.12.2002 p4735</i> )
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	Sch 4 (cl 42)—1.7.2005 ( <i>Gazette 30.6.2005 p2093</i> )
2005	13	<i>Acts Interpretation (Miscellaneous) Amendment Act 2005</i>	21.4.2005	Sch 1 (cl 1)—3.10.2005 ( <i>Gazette 29.9.2005 p3547</i> )
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 29 (ss 61 & 62)—18.1.2007 ( <i>Gazette 18.1.2007 p234</i> )
2009	27	<i>Southern State Superannuation Act 2009</i>	11.6.2009	Sch 1 (cl 6)—1.8.2009 ( <i>Gazette 23.7.2009 p3282</i> )

2012	37	<i>Statutes Amendment and Repeal (Superannuation) Act 2012</i>	25.10.2012	Pt 6 (s 18)—19.11.2012 ( <i>Gazette</i> 15.11.2012 p5007)
2016	28	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2016</i>	16.6.2016	Pt 12 (s 28)—16.6.2016: s 2(1)
2019	33	<i>Landscape South Australia Act 2019</i>	21.11.2019	Sch 5 (cl 85)—1.7.2020 ( <i>Gazette</i> 25.6.2020 p3502)
2021	36	<b><i>Legislation Interpretation Act 2021</i></b>	<b>30.9.2021</b>	<b>Sch 1 (cll 15 to 22)—1.1.2022 (<i>Gazette</i> 23.12.2021 p4619)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	substituted by 32/2002 Sch cl 3(a) <b>amended by 36/2021 Sch 1 cl 15</b>	1.1.2003 <b>1.1.2022</b>
Pt 1		
s 1	<b>amended by 36/2021 Sch 1 cl 16</b>	<b>1.1.2022</b>
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2005
s 3	<i>amended by 28/1987 s 2</i> <i>deleted by 32/2002 Sch cl 3(b)</i>	23.4.1987 1.1.2003
s 4		
<i>authorised legal practitioner</i>	<i>deleted by 32/2002 Sch cl 3(c)</i>	1.1.2003
regulation	amended by 28/1987 s 3 amended by 29/1992 Sch para (a)	23.4.1987 1.7.1992
ss 5 and 6	<i>deleted by 32/2002 Sch cl 3(d)</i>	1.1.2003
s 7		
s 7(1) and (2)	<i>deleted by 32/2002 Sch cl 3(e)</i>	1.1.2003
s 8	<i>deleted by 32/2002 Sch cl 3(f)</i>	1.1.2003
s 9	<b>substituted by 36/2021 Sch 1 cl 17</b>	<b>1.1.2022</b>
Pt 2		
s 10		
s 10(2)	<i>deleted by 31/1992 s 3</i>	1.8.1992
s 10(3) and (4)	substituted by 21/1994 s 28(a)	7.7.1994
s 10(5)	deleted by 41/1983 s 28 inserted by 21/1994 s 28(a)	1.7.1983 7.7.1994
s 10(5a) and (5b)	inserted by 21/1994 s 28(a)	7.7.1994
s 10(6)	amended by 21/1994 s 28(b)	7.7.1994
s 10AA	inserted by 31/1992 s 4	1.8.1992
s 10AA(1)	amended by 13/2005 Sch 1 cl 1(1)	3.10.2005
s 10AA(2)	amended by 13/2005 Sch 1 cl 1(2), (3)	3.10.2005
s 10AA(3)	amended by 13/2005 Sch 1 cl 1(4)	3.10.2005

s 10A	inserted by 50/1991 Sch Pt 2	11.2.1992
s 10A(1a)	inserted by 31/1992 s 5	1.8.1992
s 11	amended by 32/2002 Sch cl 3(g)	1.1.2003
	<b>amended by 36/2021 Sch 1 cl 18</b>	<b>1.1.2022</b>
s 12	<i>deleted by 32/2002 Sch cl 3(h)</i>	<i>1.1.2003</i>
Pt 3	<i>deleted by 32/2002 Sch cl 3(i)</i>	<i>1.1.2003</i>
Pt 3A	inserted by 28/1987 s 4	23.4.1987
s 16A	amended by 29/1992 Sch para (b)	21.5.1992
	amended by 31/1992 s 6(a), (b)	1.8.1992
	(b) deleted by 31/1992 s 6(a)	1.8.1992
	amended by 35/1997 s 30	2.7.1997
	amended by 34/2004 Sch 4 cl 42	1.7.2005
	(d) deleted by 44/2006 s 61	18.1.2007
	amended by 27/2009 Sch 1 cl 6	1.8.2009
	amended by 37/2012 s 18(1), (2)	19.11.2012
	(d) inserted by 28/2016 s 28	16.6.2016
	amended by 33/2019 Sch 5 cl 85(1)	1.7.2020
	(ea) deleted by 33/2019 Sch 5 cl 85(2)	1.7.2020
	<b>amended by 36/2021 Sch 1 cl 19(1), (2)</b>	<b>1.1.2022</b>
s 16B		
s 16B(1)	substituted by 31/1992 s 7	1.8.1992
	<b>amended by 36/2021 Sch 1 cl 20(1)</b>	<b>1.1.2022</b>
s 16B(2)	<b>amended by 36/2021 Sch 1 cl 20(2)</b>	<b>1.1.2022</b>
s 16C	inserted by 31/1992 s 8	1.8.1992
Pt 3B	<b>inserted by 36/2021 Sch 1 cl 21</b>	<b>1.1.2022</b>
Pt 4		
ss 16E—16G	<b>inserted by 36/2021 Sch 1 cl 22</b>	<b>1.1.2022</b>
s 17		
s 17(2)	<i>deleted by 32/2002 Sch cl 3(j)</i>	<i>1.1.2003</i>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Justice Portfolio) Act 2006*

#### 62—Transitional provision

- (1) Subject to this section, Part 3A of the Act as amended by section 61 of the *Statutes Amendment (Justice Portfolio) Act 2006* applies in relation to a regulation that was, immediately before the commencement of that section, exempt from expiry under that Part because of the repealed provision.

- (2) A regulation to which this subsection applies will, unless it has already expired or been revoked, be taken to expire under Part 3A of the Act on 1 September of the year following the year in which section 61 of the *Statutes Amendment (Justice Portfolio) Act 2006* commences (and section 16C of the Act applies in relation to the expiry of such a regulation in the same way as it applies to the expiry of any other regulation under Part 3A of the Act).
- (3) Subsection (2) applies to the following regulations:
- (a) *Criminal Investigation (Extraterritorial Offences) Regulations 1986*;
  - (b) *Prisoners (Interstate Transfer) Regulation 1984*.

**Note—**

These regulations have not expired under Part 3A of the Act prior to the commencement of this section because of the application of the repealed provision.

- (4) In this section—

*Act* means the *Subordinate Legislation Act 1978*;

*repealed provision* means section 16A(d) of the Act.

## Historical versions

Reprint No 1—15.1.1992

Reprint No 2—11.2.1992

Reprint No 3—1.7.1992

Reprint No 4—1.8.1992

Reprint No 5—7.7.1994

Reprint No 6—2.7.1997

Reprint No 7—1.1.2003

1.7.2005

3.10.2005

18.1.2007

1.8.2009

19.11.2012

16.6.2016

1.7.2020