



New South Wales

PARLIAMENTARY COUNSEL'S OFFICE

Information Sheet on the Staged Repeal of Statutory Rules

This information sheet is to be read subject to Premier's Memorandum M2008-01 (set out in Appendix A to this sheet).

Under section 10 (2) of the *Subordinate Legislation Act 1989*, a statutory rule officially published on or after 1 September 1990 is repealed on the fifth anniversary of the date on which it was published (in the case of a statutory rule published on 1 September in any year), or on 1 September following the fifth anniversary of the date on which it was published (in any other case).

Around September each year the Parliamentary Counsel's Office sends a letter to the head of the Department or Statutory Authority that administers each statutory rule due for automatic repeal on 1 September in the following year advising that the statutory rule is due to be repealed on that date.

A number of options are available in relation to each such statutory rule.

1. **Allow the rule to lapse automatically** if it is no longer needed. If this option is chosen, no further action is required other than advising the Parliamentary Counsel of that decision by 1 December in the year before the rule is due to be repealed.
2. **Arrange for the postponement of the repeal of the rule** by an order under section 11 of the *Subordinate Legislation Act 1989*. If this option is chosen, the Parliamentary Counsel needs to be advised of the intention by 1 December in the year before the rule is due to be repealed. In addition, the Minister responsible for the rule needs to write to the Premier requesting the making of such an order, including the reasons for the request. The letter must be received by the Premier no later than 31 January in the year that the rule is due to be repealed. See Premier's Memorandum M2008-01 in relation to postponements.

It should be noted that section 11 (4) of the *Subordinate Legislation Act 1989* provides that the repeal of a statutory rule may not be postponed on a third, fourth or fifth occasion unless the responsible Minister has given the Legislation Review Committee at least one month's written notice of the proposed postponement.

A statutory rule may not be postponed more than 5 times under section 11 (3) of the *Subordinate Legislation Act 1989*. If further postponements of the repeal of a rule are required, this can be done in the Statute Law revision Bill which is ordinarily passed in each session of Parliament. An application for the inclusion of a matter in the Statute Law revision Bill needs to be made to the Parliamentary Counsel by 1 October for inclusion in the Bill to be introduced in the spring session of Parliament and 1 May for inclusion in the Bill to be introduced in the budget session of Parliament. The application should be made by or on behalf of the Minister responsible for the statutory rule.

3. **Remake the rule with or without changes.** If this option is chosen, the Parliamentary Counsel needs to be advised of the decision by 1 December in the year before the rule is due to be repealed and provided with drafting instructions for the replacement rule by that date.

The remaking of a rule, even if it is to be remade without changes, generally requires the preparation of a regulatory impact statement and a period of public consultation in accordance with section 5 of the *Subordinate Legislation Act 1989*. It should be noted that while section 5 (2) (a) (iv) of the *Subordinate Legislation Act 1989* requires a public consultation period of at least 21 days, the Premier has required that period to be at least 28 days (see Premier's Memorandum M2008-05 (set out in Appendix B to this sheet) and the Guide to Better Regulation, referred to in that Memorandum).

A regulatory impact statement and a period of public consultation may not be required under the *Subordinate Legislation Act 1989* if the Parliamentary Counsel advises that the statutory rule comprises or relates to matters set out in Schedule 3 to that Act (set out in Appendix C to this sheet). The Parliamentary Counsel may, and in the case of an application under clause 6 of Schedule 3 to that Act will, require reasons to be provided by the relevant agency before giving such advice.

It should be noted that, in addition to the requirements of the *Subordinate Legislation Act 1989*, other Government requirements may apply to the remaking of a statutory rule. For example, there may be a need to prepare a Better Regulation Statement or public consultation may be required. The Better Regulation Office can provide further guidance as to what may be required in a particular case (see www.betterregulation.nsw.gov.au or phone (02) 9228 5414).

Further information on the matters dealt with in this information sheet may be obtained by contacting the Parliamentary Counsel's Office at:

Phone: (02) 9321 3333
Fax: (02) 9232 4796
Email: parliamentary.counsel@pco.nsw.gov.au
Web: www.legislation.nsw.gov.au or www.pco.nsw.gov.au
Address: GPO Box 4191
SYDNEY NSW 2001

August 2008

Appendix A: Premier's Memorandum M2008-01 Staged Repeal of Statutory Rules



New South Wales Government

Department of Premier and Cabinet

M2008-01 Staged Repeal Of Statutory Rules

Status: current

This Memorandum explains arrangements for statutory rules (including regulations) due for staged repeal under the *Subordinate Legislation Act 1989* on 1 September each year. It replaces Premier's Memorandum No.98-34. Under the program of staged repeal, regulations which are due for repeal, may:

- Be re-made with major or minor amendments; or
- Be allowed to lapse; or
- Have their repeal postponed.

Following the recent reallocation of the Act to provide for the joint administration of the Act by myself and the Minister for Regulatory Reform, the Minister will now have principal carriage of the staged repeal process and will determine responses to requests for postponement, supported by Legal Branch in the Department of Premier and Cabinet. Requests for postponement, however, should continue to be made to me.

Advice to the Parliamentary Counsel

Parliamentary Counsel's Office co-ordinates the staged repeal program and each year writes to those agencies with regulations due for repeal on 1 September in the following year, requesting notification by **1 December** of their Ministers' intentions with respect to those regulations. Notifications must be received by this date. If the regulation is to be re-made, the agency is also to provide drafting instructions for replacement instruments by 1 December.

Agencies that have not yet provided this information to the Parliamentary Counsel's Office for the current year should do so immediately.

Requests for postponement

Consistent with the Government's commitment to remove red tape, as outlined in the State Plan, requests for postponement will be carefully scrutinised. Requests for postponement must be made to me by the Minister within whose administration the regulation falls by **31 January** in the year the regulation is due for automatic repeal.

It is essential that requests for postponement are made by this date to ensure that the Minister for Regulatory Reform is able to properly consider postponement requests, and provide a response to Ministers with sufficient time to remake regulations if a request is refused.

If a request for postponement is not received by the 31 January deadline, the regulation must be re-made or allowed to lapse. Agencies will be advised of this immediately following 31 January. Requests for postponement made after this date will generally not be considered unless the Minister is able to demonstrate a **significant change in circumstances after 31 January** which will prevent the regulation being remade by 1 September. A copy of any such request should be sent to the Parliamentary Counsel. Where regulations due for repeal have already been postponed on five previous occasions, it is not possible for further postponements to be granted under the *Subordinate Legislation Act 1989*.

Notice to Legislation Review Committee

Section 11(4) of the *Subordinate Legislation Act 1989* stipulates that the Legislation Review Committee is to be given at least one month's notice of the Minister's intention before the repeal of a regulation can be postponed on a third, fourth or fifth occasion. Ministers are requested to ensure that the Committee is advised of proposed postponements as early as possible.

Exceptional circumstances required for postponement

Requests for postponement must state the number of previous postponements and demonstrate that exceptional circumstances exist. Requests should be supported by a proposed timetable detailing dates for Ministerial and, if required, Cabinet approval of the new regulation; release of exposure drafts; preparation and advertisement of the regulatory impact statement; the conduct of public consultation and a proposed commencement date.

While the following criteria are not exhaustive, generally, consideration will only be given to requests for postponement where:

1. The principal legislation under which the regulations are made is subject to a statutory five year review, or Cabinet or the Premier has otherwise approved a review, of either the principal legislation and/or the regulations themselves. *(Please note, where Cabinet has endorsed a review of legislation that extends over several years, agencies will still be required to seek any necessary postponements on a year by year basis).*
2. The regulations to be reviewed are particularly lengthy and complex. In this case, postponement will be considered only where the proposed timetable for review will allow new regulations to be in place well within the 12 month extension.
3. The principal legislation or the regulations themselves or both, are the subject of a national review of legislation, and the timetable for replacement regulations does not extend beyond 1 September in the following year.

Where a request for postponement has been made, Ministers will be advised by 31 March as to whether or not the request has been granted.

Other review regimes

The fact that reviews of legislation and associated regulations are required under a number of review regimes will be considered during the assessment of the requests for postponement. However, Ministers are requested to co-ordinate the conduct of those reviews to avoid, as far as possible, unnecessary duplication or delay.

Advice to Department of Premier and Cabinet of replacement regulations

Relevant Executive Council papers, including the replacement regulations, together with the Regulatory Impact Statement (where relevant) should be submitted to Cabinet Secretariat in the Department of Premier and Cabinet as soon as they have been settled with the Parliamentary Counsel and signed by the Minister, to enable sufficient time for consideration before they are formally submitted to the Governor.

Regulatory Impact Statements

Section 5(1) of the *Subordinate Legislation Act 1989* generally requires a Regulatory Impact Statement (RIS) to be prepared before a principal statutory rule is made. The RIS contains substantial background information regarding the proposed regulation.

Section 5(4) of the *Subordinate Legislation Act 1989* requires Ministers to forward a copy of any RIS and any submissions received in relation to the proposed regulation to the Legislation Review Committee within 14 days of the regulation's publication in the Gazette. I would appreciate it if you would ensure that your agencies comply with this requirement.

A number of additional tabling requirements should also be met.

The following procedures must be undertaken when making principal statutory rules:

- Ministers are requested to table a copy of the RIS in the same sitting week as Parliament is given notice of the making of a new regulation, or as soon as possible afterward. Explanatory notes or a background paper should be tabled with the RIS if the final regulation is substantially different from the draft regulation that was released for public comment.
- Ministers are encouraged to table other documents, in addition to the RIS, if the documents would aid Members of Parliament in understanding the background or substance of a new statutory rule. Examples of other relevant material that might be tabled include incorporated material such as codes of practice, guidelines, standards or other publications related to the regulation.

Morris Iemma
Premier

Issued: Legal Branch, Department of Premier and Cabinet
Contact: Anthony Lean, Policy Manager, (02) 9228-5543
Email: anthony.lean@dpc.nsw.gov.au
Date: 3 January 2008

This Memorandum has superseded Memoranda No. 2004-13, 1998-34 and 1998-15.

Appendix B: Premier's Memorandum M2008-05 Guide To Better Regulation



New South Wales Government

Department of Premier and Cabinet

M2008-05 Guide To Better Regulation

Status: current

The NSW Government has released its Guide to Better Regulation, which is available on the Better Regulation Office's website at www.betterregulation.nsw.gov.au.

This Memorandum explains arrangements for best practice regulation making including how to comply with the requirements in the Guide to Better Regulation and for Regulatory Impact Statements under the *Subordinate Legislation Act 1989*. It replaces the requirements set out in Premier's Memorandum 2006-17 and Policy Statement 'Final Government Response to IPART's *Investigation into the Burden of Regulation and Improving Regulatory Efficiency: Recommendations 1 – 16*' issued on 13 February 2007.

The Guide to Better Regulation

The Guide is a key document to support the delivery of State Plan Priority P3: Cutting Red Tape. It has been produced to help agencies apply the seven better regulation principles to avoid the creation of red tape in new regulatory proposals and to reduce existing red tape as legislation is reviewed. It also provides information about the roles of the Minister for Regulatory Reform and the Better Regulation Office.

The Guide to Better Regulation reinforces many aspects of regulatory development that are already practised by NSW Government agencies. However, some new concepts and processes have been introduced to improve regulatory development.

What's New?

Applying the Better Regulation Principles

All new and amended regulation (Bills, Regulations and Statutory Instruments) must demonstrate compliance with the better regulation principles. If the Minister for Regulatory Reform has concerns about a regulatory proposal, the Minister may ask the Premier to defer consideration of the regulatory proposal until the concern is resolved.

Assessing the impacts of regulatory proposals

The Guide to Better Regulation emphasises the need to understand the impacts of a regulatory proposal. This can be achieved by quantitative and qualitative analysis, as well as consultation with stakeholders.

New and amended regulations must minimise the costs of compliance for business and administration costs for government. For significant proposals, a Better Regulation Statement must be prepared which identifies and justifies compliance and administrative costs and shows action which has been taken to minimise those costs.

Planning for implementation, compliance, enforcement and monitoring must be done as part of regulatory development so it informs regulatory design and does not impose unnecessary compliance costs.

Consultation

Earlier consultation is required to assist the development of regulatory proposals and to help government thoroughly understand their impact. The Guide includes a new consultation policy for regulatory proposals.

Regular Review

Regular review is required so regulation remains relevant, continues to meet its policy objectives and does not impose unnecessary regulatory burdens as circumstances change.

Timing

The requirements in the Guide to Better Regulation will apply from **1 June 2008**.

A transitional period will apply for proposals submitted between **1 June and 30 June 2008**. If a proposal to be submitted in the transitional period is so far advanced that it will not be possible for an agency to apply all the requirements of the Guide, the agency may contact the Better Regulation Office to determine the best way to demonstrate application of the better regulation principles.

What is Required?

Better Regulation Statements

A Better Regulation Statement will be required for “significant” new and amending Bills and Regulations and must be certified by the Minister for Regulatory Reform.

The purpose of a Better Regulation Statement is to provide Portfolio Ministers, the Premier and Cabinet, with sufficient information to enable them to make an informed decision about whether to approve the proposal. It should be a succinct document so it can be readily assessed by decision makers.

The Better Regulation Statement should be submitted with the relevant Cabinet Minute for consideration by Cabinet or submitted with the Executive Council papers lodged with Cabinet Secretariat. The Statement will then be reviewed by the Better Regulation Office. The Portfolio Minister is responsible for determining whether a Bill or a Regulation is significant. This is discussed further in the Guide to Better Regulation.

Better Regulation Statements will not be required for certain types of legislation such as police powers and regulation relating to the public service. For a description of legislation that is exempt, refer to Section 2 of the Guide to Better Regulation.

Better Regulation Statements will also not be required for proposals that implement decisions taken through external processes (such as intergovernmental harmonisation processes) where those processes demonstrate the elements of good quality regulatory development (including impact assessment and consultation).

Publication

It is expected that Better Regulation Statements will be made available to the public after a Bill is introduced into Parliament or after a Regulation is published in the Gazette, unless the Government determines otherwise. If a Minister wishes to submit that a Better Regulation Statement should not be made public, the Minister will need to provide reasons for this, which should be set out in the Cabinet Minute or letter to the Minister for Regulatory Reform.

Applying the better regulation principles for non-significant regulatory proposals

For non-significant proposals, Portfolio Ministers will need to demonstrate that the better regulation principles have been applied. Where a proposal is going to Cabinet, the principles should be addressed in the Cabinet Minute. For Regulations or other Statutory Instruments, the principles should be addressed in a letter to the Minister for Regulatory Reform, submitted with the Executive Council Minute.

Relationship with the Subordinate Legislation Act

The *Subordinate Legislation Act* continues to require the preparation of a regulatory impact statement for all new or remade statutory rules in NSW.

Where new regulations are significant, the regulatory impact statement should address the better regulation principles as well as be consistent with the requirements under the *Subordinate Legislation Act*. In these cases the regulatory impact statement will replace the need for a separate Better Regulation Statement. The final Regulatory Impact Statement should be submitted to the Minister for Regulatory Reform once consultation is complete and before the Government makes a decision on the regulatory proposal. Agencies must also ensure the other requirements under Section 5 of the *Subordinate Legislation Act* and Premier's Memorandum 2008-01 are met.

Further Information

The Better Regulation Office is available to provide agencies with assistance and advice. Agencies working on significant regulatory proposals should consider approaching the Better Regulation Office early in the development process to prevent delays in gaining approval. The Better Regulation Office's details are below.

www.betterregulation.nsw.gov.au
GPO Box 5341, SYDNEY NSW 2000
betterregulation@dpc.nsw.gov.au

Morris Iemma
Premier

Issued: Better Regulation Office, Department of Premier and Cabinet
Contact: Georgina Beattie, Assistant Director, (02) 9228-5414
Email: georgina.beattie@dpc.nsw.gov.au
Date: 2 April 2008

This Memorandum has superseded [Memorandum No. 2006-17](#).

Appendix C: Schedule 3 to the Subordinate Legislation Act 1989 No 146

Subordinate Legislation Act 1989 No 146

Current version valid from 1 July 2008 to date (accessed 28 August 2008 at 11:04)

[Schedule 3](#)

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Schedule 3 Matters not requiring regulatory impact statements

(Section 6)

- 1 Matters of a machinery nature.
- 2 Direct amendments or repeals.
- 3 Matters of a savings or transitional nature.
- 4 Matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.
- 4A Matters involving the substantial implementation of Agreed Reforms, within the meaning of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* entered into by the Commonwealth and each of the States and Territories (which came into effect on 15 January 2004), being Reforms that have been progressed in accordance with clause 11 of that Agreement.
- 5 Matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.
- 6 Matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public, having regard to any assessment of those issues by the relevant agency after the consideration and application of relevant guidelines set out in Schedule 1 to this Act.
- 7 A management plan for a share management fishery or a supporting plan made under the *Fisheries Management Act 1994*.
- 8 Matters arising under the *Protection of the Environment Operations Act 1997*:
 - (a) that implement protection of the environment policies under that Act or national environment protection measures under the *National Environment Protection Council (New South Wales) Act 1995*, or
 - (b) that have undergone a public consultation process that is similar to or no less rigorous than the public consultation process for the making of such policies.
- 9 A zoning plan for a marine park under the *Marine Parks Act 1997*.