

Committee Practice Note

Exemptions

- **Dating certificates.** The Subcommittee has occasionally been presented with undated exemption certificates. The Subcommittee expects all certificates to be dated.
- **Reasons for exemption.** The Subcommittee has occasionally received regulations or legislative instruments exempted under section 8 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 8(3) of the Act that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(e)(iii) and 5A(1) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the Act. The Subcommittee expects details of the 'special circumstances' to be contained in the section 5A(1) certificate itself as required by the Act.
- **Using appropriate exemption categories.** Departmental and agency officers need to be careful when determining which category to use when exempting regulations or legislative instruments from the Regulation Impact Statement process.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

Extension of time

The Subcommittee is often presented with regulations which require an extension of time for a period of twelve months. Such regulations are accompanied by a section 5A(1) certificate of special circumstances which outlines the particular reasons for the extension. It is difficult for the Subcommittee to know whether any particular regulation has been accompanied by a previous extension of time certificate. Ongoing extensions of time in respect of a particular regulation are clearly matters upon which the Subcommittee would make adverse comment.

The Subcommittee expects that in the event that a second or subsequent extensions of time are sought for a regulation (in addition to an initial request), the Minister inform it that this is the case.

Explanatory memoranda

One copy of the explanatory memorandum for each statutory rule or legislative instrument must be provided to the Subcommittee. The Subcommittee expects explanatory memoranda to comply with page 43 of the Subordinate Legislation Act 1994 Guidelines (the Guidelines).¹ As stated in paragraph 196, an explanatory memorandum should be brief and generally contain:

- a brief outline of the statutory rule;
- an explanation of the changes effected by each provision;
- a statement of the reasons for making the statutory rule;

¹ See <<https://content.vic.gov.au/sites/default/files/2023-09/Subordinate-Legislation-Act-1994-Guidelines-September-2023.pdf>>.

- where applicable, the reasons no RIS was prepared;
- a statement as to whether consultation has taken place, and if it has not taken place, an explanation as to why a decision was made not to consult; and
- where a statutory rule amends fees in an existing statutory rule, a table comparing the proposed and existing fees (including the percentage increase or decrease for each fee).

Fee increases

An exemption certificate may be issued under sections 8(1)(d) or 12F(1)(c) of the Act on the basis that the proposed statutory rule or legislative instrument only increases fees in respect of a financial year by an amount not exceeding the annual rate approved by the Treasurer in relation to the State Budget. For each financial year a percentage increase is set by the Treasurer. The Treasurer notifies the Subcommittee in writing of the relevant percentage increase.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it must fall within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. Page 28, paragraph 124 of the Guidelines provides that:

A statutory rule can set a package of fees, often known as a 'basket approach'. An example is the Prevention of Cruelty to Animals Regulations 2020 (discussed above) which set about 40 fees for approvals for therapeutic electronic devices, approvals for the use of traps and fees related to rodeos. Where there is to be an increase in one or more individual fees within a basket of fees exceeding the Treasurer's annual rate, but the increase to the basket of fees as a whole is within that rate, then this exemption can apply.

Sections 8(2) and 12F(2) of the Act validate the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered insignificant when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

Description	Current Fee	Proposed Fee	% Increase
Application for	\$100.00	\$105.00	5.0
Application for ...	\$320.00	\$325.00	1.6

Consultation certificates

Section 6 and 12C of the Act states that the responsible Minister must ensure that where the Guidelines require consultation:

- there is consultation in accordance with the guidelines with any other Minister whose area of responsibility may be affected by a proposed statutory rule or legislative instrument so as to avoid any overlap or conflict with any other existing or proposed statutory rule, legislative instrument or other legislation;
- there is consultation in accordance with the guidelines with any sector of the public on which a significant economic or social burden may be imposed by a proposed statutory rule or legislative instrument so that the need for, and the scope of, the proposed statutory rule or legislative instrument is considered;

- (c) a certificate of consultation in accordance with the guidelines is issued for the proposed statutory rule or legislative instrument.

The Guidelines provide that, where a legislative instrument has been exempted under section 12F(1)(a) of the Act, initial consultation should be undertaken to enable the responsible Minister to obtain sufficient evidence to form a view as to whether the proposed statutory rule imposes a significant burden.

Departments should ensure that consultation certificates are issued under section 6(b) or 12C(b) if required under the Guidelines.

Provision of documents to the Committee

Pursuant to sections 15A and 16C of the Act, the responsible Minister is required to send the Committee all required documentation within 10 working days after the regulation or legislative instrument has been made. The Subcommittee has a limited time within which to review regulations. The Subcommittee notes in most cases the required documentation is provided to the Committee within 10 working days after the statutory rule or legislative instrument has been made. However, there has been a recent increase in documentation being provided outside the statutory timeframe.

If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation or legislative instrument being tabled in Parliament. Prior to the Committee moving a motion for disallowance, the Subcommittee corresponds and negotiates with the particular Minister. Accordingly, the Subcommittee needs sufficient time for this process to take place.

Additionally, the Committee receives all documentation electronically to sarc@parliament.vic.gov.au. However, in the event of a large number of documents the Committee would appreciate hard copies sent c/o SARC Secretariat, Parliament House, Spring Street, East Melbourne VIC 3002.