

14. DELEGATED LEGISLATION—DISALLOWANCE AND APPROVAL

Delegated (also known as subordinate) legislation is legislation not made directly by an Act of the Parliament, but made under the authority of an Act which has delegated limited law-making powers to the Executive Government. Examples of delegated legislative authority, most of which are referred to collectively as legislative instruments, include regulations, orders, rules, determinations, principles, declarations, by-laws, notices and plans of management. Most (but not all) delegated legislation is governed by the *Legislative Instruments Act 2003*, which commenced on 1 January 2005.

Legislative instruments must be registered in the Federal Register of Legislative Instruments (FRLI) maintained by the Attorney-General's Department (and are not enforceable if not registered). Once registered they are given an FRLI (known as 'frilly') number.

Legislative instruments must also be tabled in each House of Parliament, where, in most cases, they can be disallowed by either House (the Legislative Instruments Act lists categories of instrument that are not subject to parliamentary disallowance). In addition some forms of delegated legislation must be actively approved by the Parliament before coming into effect.

Disallowance

In accordance with the Legislative Instruments Act, legislative instruments must be forwarded by the Attorney-General's Department for tabling within six sitting days of being registered. They cease to have effect if not tabled within this period.

The standard processes are that within 15 sitting days of a disallowable instrument being tabled, any Member may give notice of a motion to disallow it. If the motion has not been withdrawn or otherwise dealt with (that is, passed or rejected) at the end of 15 sitting days after the notice was given, the instrument is deemed to have been disallowed.

If the House is dissolved or expires or the Parliament is prorogued before the disallowance motion has been dealt with, the instrument is taken to have been tabled on the first sitting day of the next session, and the disallowance notice must be given again to be effective.

In practice the tabling and disallowance periods may extend for some time, even when no dissolution, expiry or prorogation occurs, as a long adjournment could intervene between sitting days. Also the tabling day and the sitting days may be different in the two Houses.

Where an instrument has been disallowed or is deemed to have been disallowed, no instrument which is the same in substance may be made within six months after the date of disallowance unless the House concerned has rescinded its resolution of disallowance or approved the re-making of the instrument.

Disallowance procedures in the House

Items of delegated legislation are usually ‘deemed documents’—that is, deemed to have been tabled in the House on the day on which their receipt is recorded in the Votes and Proceedings (*see p. 89*). Occasionally a legislative instrument may be tabled by a Minister. A motion to take note of the document may be moved to enable debate to take place, but this is unusual.

Disallowance notices given by private Members are listed on the Notice Paper with other items of private Members’ business. However, as the Selection Committee does not include them in its determinations for debate during the private Members’ business period on Mondays, and in view of the fact that disallowance will automatically occur unless the notice is called on and dealt with within the specified time, the general practice is for standing orders to be suspended to permit them to be moved and debated during government business time. Notices appear in the Notice Paper with a note showing the number of sitting days remaining before the regulation concerned is deemed to be disallowed.

Disallowable Instruments List

Each sitting day the Table Office produces a Disallowable Instruments List. This is a listing of instruments which have been tabled and which are subject to possible disallowance, showing the number of sitting days remaining for Members to give notice of disallowance. The list is publicly available via the House of Representatives website (<http://www.aph.gov.au/house/info/disallow/disallow.pdf>).

Approval

Some Acts provide for the Houses of Parliament to approve, and possibly amend, certain legislative instruments (variously described as statements, charters, agreements, etc.). The conditions for approval and amendment depend on the provisions of the particular Act.

If one House amends such an instrument the other House is informed by message, and when the message is considered, the motion put—for example, ‘That the House approves the form of agreement . . . as amended by the Senate and conveyed in Senate Message No. . . .’. The motion can be amended to amend the amendments or make further amendments.

While notices of motions of approval, moved by Ministers, are taken as government business, motions of amendment would normally be moved by opposition Members and be subject to the usual private Members' business procedures.