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LEGISLATIVE RESEARCH SERVICE  
DEPARTMENT OF THE PARLIAMENTARY LIBRARY  
DISALLOWANCE PROVISIONS AMENDMENT BILL 1986  
(Private Senator's Bill)

Date introduced: 19 November 1986  
House: Senate  
Presented by: Senator the Hon. David Vigor

DIGEST OF BILL

**Purpose**

To clarify and extend the power to disallow delegated legislation.

**Background**

The power to disallow delegated legislation (e.g. regulations and ordinances) was reviewed by the Senate Standing Committee on Regulations and Ordinances in its eightieth report presented on 14 October 1986. The provisions of the **Acts Interpretation Act 1901** (the Principal Act) which provide for either House to disallow regulations were noted as was the potential weakness of the provisions of that the Principal Act that declare retrospective regulations to be void. As regards the latter matter, the Committee expressed the preference that the provisions be strengthened by legislation to prohibit retrospective regulations that prejudice the rights or interests of an individual unless this is expressly authorised by statute.[1]

The Committee also noted that the Parliaments power to disallow regulations was restricted to the disallowance of the whole of a regulation and that part of a regulation could not be disallowed. Due to the complexity of modern regulations this was seen as a defect.[2]

A further problem noted was the ability, since 1982 amendments to the Principal Act, for regulations that have not been tabled to have some effect. This is because before the amendment non-tabled regulations would be void ab initio whereas after the amendment they were only void after the

expiration of the time required for tabling (i.e. 15 days). The Committee recommended that this be altered to prevent the possible by-pass of Parliamentary scrutiny.[3]

### **Main Provisions**

Section 48 of the Principal Act will be amended to require draft regulations to be tabled 60 days before a regulation is made. However, where the Governor-General certifies that due to urgency it is necessary to by-pass this procedure, this requirement need not be complied with (clause 4).

Sub-section 48(2) of the Principal Act will be amended to ensure that prejudicial retrospective regulations are of no effect (clause 5).

A new section 49AA will be inserted into the Principal Act to allow part of a regulation to be disallowed (clause 7).

The **Seat of Government (Administration) Act 1910** will be amended to provide for draft Ordinances to be tabled 60 days before the Ordinance is made. Urgent Ordinances may be exempted in the same manner as clause 4 (clause 9).

The disallowance of an Ordinance due to a failure to table will have the same effect as its repeal (clause 11).

The following Acts will be amended in the same way as clause 11:

Ashmore and Cartier Islands Acceptance Act 1933  
Australian Antarctic Territory Act 1954  
Christmas Island Act 1958  
Cocos (Keeling) Islands Act 1955  
Coral Sea Islands Act 1969  
Heard Island and McDonald Islands Act 1953  
Norfolk Island Act 1979

For further information, if required, contact the Law and Government Group.

20 March 1987

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**References**

1. Senate Standing Committee on Regulations and Ordinances, Eightieth Report, p.12.
2. Ibid., p.15.
3. Ibid., p.17.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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