

Effect of the federal election 2007 on disallowable delegated legislation

The federal election affects the parliamentary scrutiny of delegated legislation in the following ways.

Tabling of instruments

Subsection 38(1) of the *Legislative Instruments Act 2003* requires all legislative instruments registered on the Federal Register of Legislative Instruments to be laid before each House of the Parliament within 6 sitting days of that House after the registration of the instrument.

Subsection 46B(9) of the *Acts Interpretation Act 1901* requires disallowable non-legislative instruments to be laid before each House of the Parliament within 6 sitting days after an instrument has been made.

If a legislative instrument or a disallowable non-legislative instrument is required to be tabled at the time when the House of Representatives is dissolved and the 6 sitting days have not expired, the remainder of those days carries over into the next Parliament.

Example:

Instrument CASA EX40/07 was made on 18 September 2007 and registered on the Federal Register of Legislative Instruments on 20 September 2007. The instrument was not tabled in either House before the House of Representatives was dissolved on 17 October 2007. The instrument would need to be tabled in both Houses of the Parliament within six sitting days of the beginning of the 42nd Parliament.

Notices of motion to disallow

This same principle applies to the giving of notices of motion to disallow a legislative instrument or a disallowable non-legislative instrument: that is, the time for giving notice of a disallowance motion continues to run into the next Parliament.

Example: 1 – instrument tabled on different days in the Houses of Parliament

The *Declared Hearing Services Amendment Determination 2007 (No. 2)* was tabled in the Senate on 10 September 2007 and in the House of Representatives on 11 September 2007. A Senator or Member has 15 sitting days in which to give a notice of motion to disallow the instrument after it is tabled. Seven sitting days passed in the Senate and six sitting days passed in the House of Representatives before the dissolution of the House of Representatives on 17 October 2007. The days remaining continue into the 42nd Parliament – that is, 8 sitting days in the Senate and 9 sitting days in the House of Representatives from the beginning of that Parliament.

Example: 2 – instrument tabled on the same day in both Houses of the Parliament

The *Radiocommunications (Charges) Amendment Determination 2007 (No. 3)* was tabled in both Houses of the Parliament on 20 September 2007. This was the last sitting day before the House of Representatives was dissolved on 17 October 2007. The time for the giving of a notice of motion to disallow the instrument continues into the 42nd Parliament – that is, 15 sitting days in both Houses from the beginning of that Parliament.

The disallowable instruments lists for the Senate (http://www.aph.gov.au/senate/committee/regord_ctte/disallow_insts.htm) and the House of Representatives (<http://www.aph.gov.au/house/info/disallow/disallow.pdf>) provide details on all tabled instruments that are still subject to the disallowance period, together with the time remaining in which notices of motion to disallow may be given.

Unresolved notices of motion to disallow a legislative instrument or a disallowable non-legislative instrument

Subsection 42(3) of the *Legislative Instruments Act 2003* provides a mechanism for dealing with notices of motion to disallow legislative and non-legislative instruments that are unresolved at the time an election is announced.

If, before the expiration of 15 sitting days after a notice of motion to disallow a legislative instrument or a non-legislative instrument has been given in a House of the Parliament:

- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called or, moved and seconded and has not been withdrawn or otherwise disposed of;

the legislative instrument or non-legislative instrument is taken, for the purposes of subsections 42(1) and (2), to have been laid before the first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.

In the next Parliament an instrument that is the subject of subsection 42(3) will be treated as if it had been tabled for the first time in the House in which the lapsed notice had been given. Any senator (or member if the notice was given in that House) will have 15 sitting days after the first sitting day of that House in which to give a notice of motion to disallow the instrument.

There were 18 unresolved notices of motion to disallow instruments in the Senate when the Parliament was prorogued on 15 October 2007. There were no unresolved notices in the House of Representatives when it was dissolved on 17 October 2007. (NB: There were no sitting days between the prorogation of the Parliament and the dissolution of the House of Representatives.) The unresolved notices in the Senate concerned the following 17 instruments which are deemed to be tabled in the Senate on the first sitting day of the next Parliament allowing the time for giving notice of motion to disallow them to begin anew:

- Australian Passports Amendment Determination (No. 4) made under section 57 of the *Australian Passports Act 2005*
- Corporations Amendment Regulations 2007 (No. 9), Select Legislative Instrument 2007 No. 227
- Family Law (Child Abduction Convention) Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 213
- Financial Transaction Reports Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 214
- Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2007 (No. 5), Select Legislative Instrument 2007 No. 224
- Instrument number CASA 222/07 – Direction – number of cabin attendants made under regulation 208 of the *Civil Aviation Regulations 1988*
- Instrument number PB 52 of 2007, Determination under paragraph 98C(1)(b) of the *National Health Act 1953*
- Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 217
- Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007 (No. 2) made under section 8 of the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007*
- Radiocommunications Taxes Collection Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 142
- Safety, Rehabilitation and Compensation (Revocation of Declaration and Specification) Notice 2007 (No. 1), Notice No. 1 of 2007, made under the *Safety, Rehabilitation and Compensation Act 1988*
- Therapeutic Goods (Emergency) Exemption 2007 (No. 3) made under subsection 18A(1) and paragraph 18A(2)(a) of the *Therapeutic Goods Act 1989*
- Trade Practices Amendment Regulations 2007 (No. 4), Select Legislative Instrument 2007 No. 228
- Variation to the Statement of Conditions under subsection 38A(3) of the *Defence Service Homes Act 1918*
- Vehicle Standard (Australian Design Rule 23/02 – Passenger Car Tyres) 2007 made under subsection 7(1) of the *Motor Vehicle Standards Act 1989*
- Workplace Relations Amendment Regulations 2007 (No. 2), Select Legislative Instrument 2007 No. 183
- Workplace Relations Amendment Regulations 2007 (No. 3), Select Legislative Instrument 2007 No. 216