

19. Disallowance

Many Acts of Parliament delegate to the executive government the power to make detailed rules and regulations (*delegated* or *secondary legislation*) that supplement the parent Act and have the same legal force. Such rules and regulations are not passed directly by both Houses of the Parliament, as bills are, but either House may disallow (veto) them.

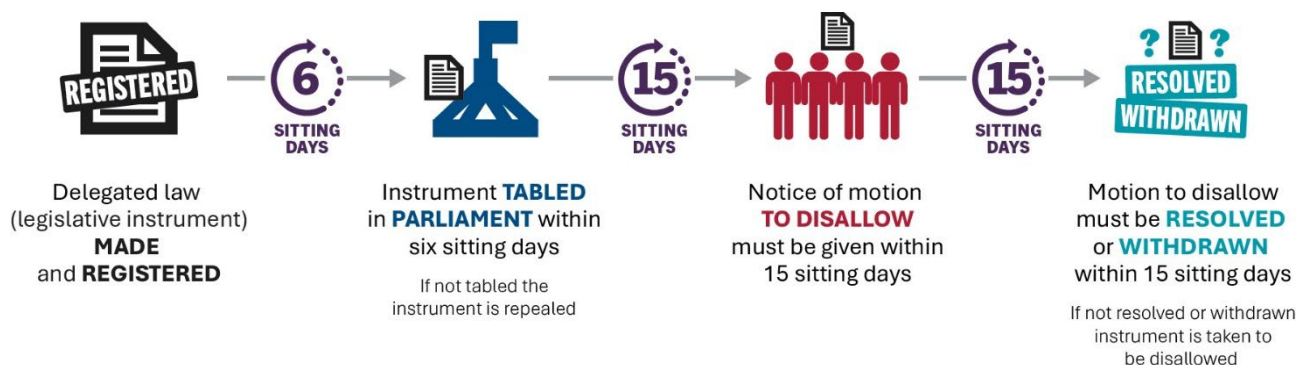
The disallowance of legislative instruments

The primary way that the Parliament maintains control over delegated legislation is through the disallowance process (discussed below). Delegated legislation may be referred to under different names (e.g. rules, determinations, guidelines, regulations) and are referred to generally as ‘legislative instruments’.

The *Legislation Act 2003* (the Act) facilitates the disallowance process. It does so by setting out the regime under which legislative instruments are made, registered, published online and tabled in the Parliament, and the effect of disallowance.

The disallowance process

The figure below sets out the standard disallowance process, which applies to most legislative instruments.



As soon as practicable after a legislative instrument has been made, the instrument-maker must lodge the instrument for with the [Federal Register of Legislation](#) for registration, together with its explanatory statement. All instruments are published online. The Office of Parliamentary Counsel must then arrange for the instrument to be tabled in each House within 6 sitting days of being registered.

A senator or member of the House of Representatives may give notice of a motion to disallow the instrument (or a part of the instrument) within 15 sitting days of the tabling of the instrument.

If the notice of motion is agreed to the instrument is disallowed. Alternatively, if the notice of motion has not been resolved or withdrawn within 15 sitting days of having been given, the instrument will be *taken* to have been disallowed.

Impact of disallowance

An instrument that is disallowed ceases to have effect from the time of disallowance. If a senator is unsure about the effect of disallowance in relation to a particular instrument, they may seek advice on that point (see below, under ‘Need assistance?’).

An instrument that is the same in substance as an instrument that has been disallowed may not be made within 6 months of disallowance without the authority of the house that disallowed the instrument.

Scrutiny of delegated legislation by committees

Two parliamentary committees review all legislative instruments and report to the Parliament on any concerns raised by an instrument. The [Scrutiny of Delegated Legislation Committee](#) reviews all instruments against a set of scrutiny principles that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight. The [Parliamentary Joint Committee on Human Rights](#) assesses instruments for compatibility with human rights. These committees are referred to as ‘legislative scrutiny committees’.

If a legislative scrutiny committee has concerns about an instrument the committee will try to resolve these concerns in consultation with the relevant minister. Should the matter not be addressed, the committee may give notice of motion to disallow the instrument.

For further information about the committees, see [chapter 15](#) of *Odgers’ Australian Senate Practice*, or the committees’ web pages.

The Senate’s legislation committees may also conduct an inquiry into a legislative instrument if the committee resolves to do so.

Exemptions and unusual disallowance provisions

Particular legislative instruments may not be subject to the disallowance process. Some legislative instruments also have unusual disallowance provisions so that for instance the time for giving notice or resolving a disallowance motion may vary. Senators can seek advice on whether a particular instrument is disallowable (see below, under ‘Need assistance?’).

Standing order 78 – a safety valve

No action of the Senate can extend the usual 15 sitting day period available for giving a disallowance notice. However, the Senate’s standing orders require a senator to give notice of their intention to withdraw a disallowance notice. This provides an opportunity for another senator to take over the disallowance notice even if the initial 15 days for giving notice has elapsed.

Senate disallowable instruments list and disallowance alert

To assist senators to keep track of the remaining time to give a notice of motion to disallow an instrument, the Senate Table Office publishes the [disallowable instruments list](#).

Information regarding instruments currently subject to a notice of motion to disallow in either house of the Parliament is maintained on the [disallowance alert](#).

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

For assistance with the drafting of notices of motion for the disallowance of legislation committee please contact the Clerk Assistant (Procedure).

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