

Every year over 200 laws are passed by the Federal Parliament, on subjects ranging from agriculture to workplace relations. These laws are presented to Parliament as bills. When agreed to by both Houses and assented to by the Governor-General, these bills become Acts. However, another form of legislation, known as delegated or subordinate legislation (or legislative instruments) vastly outnumbers these Acts. In recent years, between 1,500 and 2,000 items of delegated legislation have been made annually, for the most part with little public attention.

## Legislation can be delegated

As its name implies, delegated legislation is legislation that is not made directly by an Act of Parliament, but rather under the authority of an Act of Parliament. The Parliament, in passing the enabling legislation, delegates to the Executive (Ministers), or some other body, limited power to make regulations under Acts. Once Parliament has by statute laid down the principles of a new law, the Executive, through delegated legislation, works out the application of the law in greater detail, within but not exceeding those principles.

Delegated legislation is used for a number of reasons, including to:

- allow legislation to be made to accommodate rapidly changing or uncertain situations or cases of emergency;
- reduce the pressure on parliamentary time; and
- avoid legislation being too technical or detailed for parliamentary consideration.

Delegated legislation comes in many forms, but the most common types are regulations, rules, by-laws, ordinances, declarations, determinations and orders.

While delegated legislation does not go through the same stages of parliamentary scrutiny as Acts of Parliament, there is a process by which the Parliament scrutinises these legislative instruments. Much of the delegated legislation is subject to the provisions of the *Acts Interpretation Act 1901*.

Under the *Acts Interpretation Act*, once a regulation has been made, that regulation must be notified in the *Commonwealth Gazette* and laid before each House of Parliament within 15 sitting days of having been signed. If it is not tabled within the specified period, the regulation is void. Once tabled, the regulation is subject to disallowance by either House.

The two Houses of Parliament have different mechanisms for dealing with scrutiny of delegated legislation. In the House of Representatives, any Member may give notice of a motion disallowing a tabled regulation. This notice of motion must be made within a specified period of time (usually within 15 sitting days of the regulation being tabled in Parliament). If the motion is not called on for debate within 15 days of the notice being lodged, the regulation is deemed to have been disallowed. The onus is therefore on the Government to bring the disallowance motion on for debate. If the motion is debated and voted against, the regulation continues in effect. Should the motion be agreed to, the regulation is disallowed and no regulation in the same terms may be made within six months of the disallowance.

Each sitting day, delegated legislation received by the House is recorded in the *Votes and Proceedings* (the record of decisions made in the House) for that day. The House of Representatives

Table Office produces a document called the *Disallowable Instruments List*, which lists all of the items of delegated legislation subject to disallowance and the time remaining before they are through the period when a motion to disallow can be made.

There are some exceptions to this process. Some Acts set periods of time ranging from 5 to 20 days, rather than 15 sitting days, for subordinate legislation made under them to be disallowed. In some cases, the Houses have to take positive action to approve a regulation before it has effect. As requirements for tabling and disallowance vary considerably, it is advisable to consult the appropriate Act to determine the specific requirements that apply to a particular piece of delegated legislation.

The Senate examines delegated legislation through its Standing Committee on Regulations and Ordinances. The Committee does not consider the policy merits of delegated legislation, but rather engages in technical legislative scrutiny against a number of criteria.

If the Senate Regulations and Ordinances Committee has concerns about a particular instrument, it writes to the relevant Minister seeking clarification, further information, or amendment. If those concerns are not addressed, the Committee has the power to recommend to the Senate that a particular instrument be disallowed. More detail on the work of the Committee can be found on the Internet at: [www.aph.gov.au/senate/committee/regord\\_cttee](http://www.aph.gov.au/senate/committee/regord_cttee)

The use of delegated legislation is not without its critics, particularly with the growth of this form of legislation. Concerns have been raised about the proliferation in the number and types of delegated legislation; the poor quality of the drafting of some; and the difficulties many people have in accessing this type of legislation.

In response to these concerns, there have been a number of attempts since 1994 to have the Legislative Instruments Bill passed into law. The bill proposed a comprehensive regime governing drafting standards and procedures for the making, registration, publication, scrutiny and sunseting (ending) of delegated legislation. It was heavily amended by the Senate on a number of occasions, but these amendments were rejected by the House and the bill was laid aside.

The Government has indicated that the Legislative Instruments Bill 2000 will be introduced in the Spring sittings of Parliament.

### For further information on delegated legislation

See the *Disallowable Instruments List* and other documents relating to activities in the House: [www.aph.gov.au/house/pubs](http://www.aph.gov.au/house/pubs)

Check the Federal Register of Legislative Instruments (a database maintained by the Attorney-General's Department): <http://frli.law.gov.au>