Statutory Instruments (Tabling and Disallowance) Legislation Amendment Bill 1988

Date Introduced: 21 April 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose

To amend the tabling and disallowance provisions of the Acts Interpretation Act 1901 (the Principal Act), and of Acts relating to the external Territories. Consequential amendments to other Acts which apply the tabling and disallowance provisions of the Principal Act.

Background

Regulations, ordinances, and regulations made under the authority of an ordinance are required to be laid before each House of the Parliament within a prescribed time. Regulations must be laid before each House within 15 sitting days after the making of the regulation. Regulations not laid before both Houses are void and of no effect.

If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation disallowed ceases to have any effect.

Sub-section 48(5) of the Principal Act ensures that a motion of disallowance cannot be adjourned indefinitely. Unless the motion is withdrawn or defeated within 15 sitting days of notice being given, the regulation specified in the motion is deemed to have been disallowed. If a motion of disallowance has not been disposed of before a House is dissolved, the regulations are deemed to have been retabled when the House next sits.
Sub-section 48(6) of the Principal Act provides that disallowance has the same effect as a repeal. Sub-section 48(7) of the Principal Act provides that disallowance of regulations which repeal other regulations will revive those repealed regulations. Section 49 of the Principal Act provides that for six months after disallowance, no regulations can be made in substitution for those disallowed, unless the House that disallowed the regulations, by resolution, agrees to them being made.

The Senate Standing Committee on Regulations and Ordinances (the Committee) noted, that as the Principal Act stands, it is possible to circumvent parliamentary scrutiny of regulations in two ways. First, by not tabling regulations and remaking the regulations on the sixteenth sitting day after the expiration of the required 15 sitting days tabling period. By repeating this cycle, regulations could legally be kept in force indefinitely. Secondly, if regulations have been tabled and notice of a disallowance motion has been given, it is possible to repeal the regulations and immediately remake them. This has the effect of making the disallowance motion ineffective as there no longer would be regulations to which it could attach. New regulations could then be tabled and the cycle could be repeated each time notice of the disallowance motion had been given.

The Committee concluded that federal Parliament’s power to control the executive law-making process rested exclusively on the terms of the Principal Act, the Seat of Government (Administration) Act 1910, and other Acts which apply provisions from these Acts or independently provide for disallowance. Further, the Committee proposed that, as of these Acts do not provide an adequate foundation for the protection of personal rights, liberties, and the preservation of parliamentary proprieties, the provisions should be amended.

Main Provisions

Clause 6 amends the Principal Act to insert Sections 48A and 48B. Proposed sub-section 48A(1) provides that, where a regulation has been made, no regulation the same in substance as the original regulation can be made within the period specified in proposed sub-section 48A(2), without the prior agreement of both Houses of the Parliament. Proposed sub-section 48A(2) specifies the prohibition period for the purposes of sub-section 48A(1). This is the period starting on the day on which the original regulation was made and ending seven days after either the day of tabling or the expiration of the 15 day sitting period. Proposed sub-section 48A(3) provides that regulations made in contravention of proposed section 48A have no effect.

Proposed sub-section 48B(1) provides that where a notice of motion to disallow a regulation has been given, no regulation the same in substance as the original regulation can be made unless:
Qualified employee. This definition identifies those persons, subject to regulations, to be included in or excluded from the provisions of the Bill. The list of exclusions includes employees of the Northern Territory Government or an authority of the Northern Territory, persons who are members of superannuation schemes other than under the *Superannuation Act 1976*, persons who are members of, or have benefits from an employer sponsored fund, persons who are members of the Defence Forces, and members of the Parliament.

Sub-Clause 3(2) defines the conditions under which a former qualified employee is taken to have retired voluntarily.

Sub-Clause 3(4) provides that retrospective adjustments to salary are to be taken into account in calculating the annual rate of contribution and average annual rate of contribution.

The combined workings of Clause 4 and the exclusion in the definition of 'qualified employee', allow private sector employers to adopt the provisions of this Bill, but restrict application to instances where the employer does not already contribute to a superannuation fund for its employees.

Clause 5 provides for a qualifying period of service before eligibility for an interim benefit can be obtained. Once the qualifying period has been served, the interim benefit is calculated from the commencement of service or from 1 January 1988, which ever is the most recent. A person must complete a three month period of continuous service before they become eligible to receive the interim benefit.

Clause 6 specifies the circumstances under which an interim benefit becomes payable, and with respect to whom such an interim benefit is payable.

Sub-clause 6(1) provides that an interim benefit becomes payable, subject to Clause 5 and sub-clause 6(2), when a person ceases employment with an approved authority under the *Superannuation Act 1976*.

Sub-clause 6(2) specifies the circumstances under which an interim benefit would not be payable, even though employment may have ceased. Such circumstances include where a person takes up different employment as part of an interchange scheme and is expected to resume previous employment, or where a person is expected to be employed again by the person's employer in the same capacity within six months of ceasing that employment and becomes employed again by the person's employer within that period.
Sub-clause 6(3) provides that where a person has retired voluntarily on grounds of permanent incapacity or invalidity, or the amount of the benefit is less than $500, the interim benefit is to be paid directly to that person.

Sub-clause 6(4) provides that an interim benefit payable on the death of an eligible person, shall be paid to that person’s personal representative.

An interim benefit that is payable in respect of an eligible person, is payable by the person who was, immediately before the interim benefit became payable, the eligible person’s employer (Clause 7).

Clause 8 sets out the mathematical formula for the calculation of the amount of an interim benefit.

Clause 10 provides that the Governor-General may make regulations prescribing matters required or permitted by this Bill, or necessary or convenient to be prescribed for the carrying out or giving effect to this Bill.

References


For further information, if required, contact the Economics and Commerce Group.

7 July 1988

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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