Acts Interpretation (Ministerial Undertakings) Amendment Bill 1991
(Private Senator’s Bill)

Date Introduced: 9 April 1991
House: Senate
Presented by: Senator Janet Powell

Purpose
To ensure that undertakings to repeal or amend delegated legislation given by Ministers or subordinate lawmakers to the Senate Committee on Regulations and Ordinances are implemented within six months.

Background
The Senate Standing Committee on Regulations and Ordinances (the Committee) was established in 1932 and has six members, with a government chairperson and opposition deputy chairperson. The Committee examines Commonwealth delegated legislation to ensure that it is in accordance with its enabling statute; that it does not trespass unduly on personal rights and liberties; that it does not unduly make the rights and liberties of citizens dependent on administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal; and that it does not contain provisions which are more appropriate for parliamentary enactment (the principles of the Committee). In 1988-89, the Committee considered 1352 pieces of delegated legislation, including 398 statutory rules; 386 public service and defence legislation determinations; and 265 ACT and other territory ordinances, regulations, determinations and notices.

Where the Committee finds delegated legislation which appears to infringe its principles it may write to Ministers, heads of statutory authorities and other executive law makers pointing out where, in its view, a particular provision offends and request that they explain the need for the provision. If the response is not to the Committee's satisfaction it may ask that the provision be amended or replaced. Where a request is not met, the Committee chairperson, on behalf of the Committee, may report the facts to the Senate and recommend disallowance of the provision.

Disallowance is uncommon. Normally, requests of the Committee are met by Ministers giving an undertaking to meet the Committee's concerns. An ‘undertaking’ is a promise, given in writing, by a Minister to the Committee to the effect that the concerns of the Committee about a piece of delegated legislation will be allayed. Undertakings are important because they can be the sole reason a motion for disallowance is withdrawn from the Senate and once withdrawal of a motion has occurred the Senate, after 15 days, loses its ability to disallow the delegated legislation.

The Committee for many years has expressed concern about a perceived delay in implementing undertakings. In the Committee's opinion, excessive delay in implementing undertakings undermines the whole basis of parliamentary honour on which the undertaking convention is based and is a discourtesy to the Senate and the Committee. The Committee argues that it is a discourtesy to the Senate because the Senate has consented to the withdrawal of a motion which would otherwise have resulted in disallowance, and a discourtesy to the Committee because, having received an undertaking, it in effect publicly vouches for a Minister's bona fides by withdrawing a motion of disallowance (in other words the Committee is suggesting that due to the Minister's inactivity defective delegated legislation remains valid). Proposals the Committee has considered to remedy the problem of delay in implementing undertakings include, that in the absence of compelling justification, where undertakings are not implemented within six months, Ministers should be invited to explain to the Senate why it is necessary for rights and liberties to remain in jeopardy when promises have been given to safeguard them and the development of legislative procedures to provide for the retabling of unamended delegated legislation six months after a motion of disallowance has been withdrawn in response to an undertaking.
Main Provisions
Clause 3 of the Bill provides that undertakings given by a Minister or subordinate lawmaker to the Committee to repeal or amend delegated legislation are to be implemented within six months of the making of the undertaking. Where an undertaking has not been made within six months the delegated legislation to which it relates will be deemed to have been laid before each House of the Parliament (the effect of which will be to grant either House the opportunity to disallow it).

References
3. Ibid.

For further information, if required, contact the Law and Government Group on 06 2772430.

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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