

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 19 November 1986)

(SENATOR VIGOR)

A B I L L

FOR

**An Act to amend provisions in certain Acts relating to the
disallowance of delegated legislation**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I - PRELIMINARY

Short title

- 5 1. This Act may be cited as the Disallowance Provisions Amendment Act 1986.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

PART II - AMENDMENTS OF THE ACTS INTERPRETATION ACT 1901

Principal Act

3. The Acts Interpretation Act 1901 is in this Part referred to as the Principal Act.

Draft regulations

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4. Section 48 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

"(1A) Subject to sub-section (1C), regulations shall not be made under an Act unless a draft of the regulations has been notified and made available in accordance with sub-section 10 (1B) not less than 60 days before the day on which the regulations are made.

"(1B) Draft regulations under sub-section (1A) -

(a) shall be notified in the Gazette;

(b) shall be available to the public, by sale or otherwise, 15 at places specified in the notification, on and after the day of notification; and

(c) shall be laid before each House of the Parliament within 5 sitting days of that House after the day of notification. 20

"(1C) Where the Governor-General certifies, in writing, that it is necessary, by reason of circumstances of urgency, for regulations specified in the certificate to be made contrary to sub-section (1A), those regulations may be made accordingly. 25

"(1D) A certificate signed under sub-section (1C) -

(a) shall be published in the Gazette; and

(b) shall be laid before each House of the Parliament within 5 sitting days of that House after the day on which the certificate is signed."

Retrospective regulations

5. Section 48 of the Principal Act is amended by omitting from sub-section (2) "shall not be expressed to take effect" and substituting "shall not take effect, whether by express provision or otherwise,".

Effect of disallowance

6. Section 48 of the Principal Act is amended by omitting sub-sections (6) and (7) and substituting the following sub-sections:

"(6) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the regulation has the same effect as a repeal of the regulation.

"(7) Where -

(a) a regulation (in this sub-section referred to as the 'relevant regulation') is disallowed, or is deemed to have been disallowed, under this section; and

(b) the relevant regulation repealed, in whole or in part, another regulation that was in force immediately before the relevant regulation came into operation,

the disallowance of the relevant regulation has the effect of reviving that other regulation from and including the date of the disallowance as if the relevant regulation had not been made.

"(8) A reference in sub-section (7) to the repeal of a regulation includes a reference to - 5

- (a) a repeal effected by implication;
- (b) the abrogation or limitation of the effect of the regulation; and
- (c) the exclusion of the application of the regulation to 10 any person, subject-matter or circumstance."

Parts of regulations

7. The Principal Act is amended by inserting after section 49 the following section:

"49AA. In sub-sections 48(4), (5), (5A), (6), (7) and (8) 15 and section 49, a reference to regulations includes a reference to provisions in regulations and a reference to a regulation includes a reference to a provision in a regulation."

**PART III - AMENDMENTS OF THE SEAT OF GOVERNMENT (ADMINISTRATION) 20
ACT 1910**

Principal Act

8. The Seat of Government (Administration) Act 1910 is in this Part referred to as the Principal Act.

Draft Ordinances

9. Section 12 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

5 "(1A) Subject to sub-section (1C), an Ordinance shall not be made unless a draft of the Ordinance has been notified and made available in accordance with sub-section (1B) not less than 60 days before the day on which the Ordinance is made.

"(1B) Draft Ordinances under sub-section (1A) -

10 (a) shall be notified in the Gazette;

(b) shall be available to the public, by sale or otherwise, at places specified in the notification, on and after the day of notification; and

15 (c) shall be laid before each House of the Parliament within 5 sitting days of that House after the day of notification.

20 "(1C) Where the Governor-General certifies, in writing, that it is necessary, by reason of circumstances of urgency, for an Ordinance specified in the certificate to be made contrary to sub-section (1A), that Ordinance may be made accordingly.

"(1D) A certificate signed under sub-section (1C) -

(a) shall be published in the Gazette; and

25 (b) shall be laid before each House of the Parliament within 5 sitting days of that House after the day on which the certificate is signed."

Ordinances

10. Section 12 of the Principal Act is amended by omitting from sub-section (2) "Every such Ordinance" and substituting "Each Ordinance made under this section".

Effect of disallowance

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11. Section 12 of the Principal Act is amended by omitting sub-sections (6) and (6A) and substituting the following sub-sections:

"(6) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance. 10

"(6A) Where -

(a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and 15

(b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made. 20

"(6AA) A reference in sub-section (6A) to the repeal of an Ordinance includes a reference to -

- (a) a repeal of any law of the Territory;
- (b) a repeal effected by implication;
- (c) the abrogation or limitation of the effect of the law;
and
- 5 (d) the exclusion of the application of the law to any
person, subject-matter or circumstance."

**PART IV - AMENDMENTS OF THE ASHMORE AND CARTIER ISLANDS
ACCEPTANCE ACT 1933**

Principal Act

10 12. The Ashmore and Cartier Islands Acceptance Act 1933 is in
this Part referred to as the Principal Act.

Tabling of Ordinances

15 13. Section 10 of the Principal Act is amended by omitting
sub-sections (5) and (5A) and substituting the following
sub-sections:

"(5) Where an Ordinance is disallowed, or is deemed to have
been disallowed, under this section, the disallowance of the
Ordinance has the same effect as a repeal of the Ordinance.

"(5A) Where -

- 20 (a) an Ordinance (in this sub-section referred to as the
'relevant Ordinance') is disallowed, or is deemed to
have been disallowed, under this section; and
- (b) the relevant Ordinance repealed, in whole or in part,
another Ordinance that was in force immediately before
25 the relevant Ordinance came into operation,

the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made.

"(5AA) A reference in sub-section (5A) to the repeal of an Ordinance includes a reference to - 5

(a) a repeal of any law of the Territory;

(b) a repeal effected by implication;

(c) the abrogation or limitation of the effect of the law; and 10

(d) the exclusion of the application of the law to any person, subject-matter or circumstance.".

**PART V - AMENDMENTS OF THE AUSTRALIAN ANTARCTIC TERRITORY ACT
1954**

Principal Act 15

14. The Australian Antarctic Territory Act 1954 is in this Part referred to as the Principal Act.

Tabling of Ordinances in Parliament

15. Section 12 of the Principal Act is amended by omitting sub-sections (4) and (4A) and substituting the following sub-sections: 20

"(4) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance.

"(4A) Where -

(a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and

5 (b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

10 the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made.

"(4AA) A reference in sub-section (4A) to the repeal of an Ordinance includes a reference to -

(a) a repeal of any law of the Territory;

15 (b) a repeal effected by implication;

(c) the abrogation or limitation of the effect of the law; and

(d) the exclusion of the application of the law to any person, subject-matter or circumstance."

20 **PART VI - AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958**

Principal Act

16. The Christmas Island Act 1958 is in this Part referred to as the Principal Act.

Tabling of Ordinances in Parliament

17. Section 10 of the Principal Act is amended by omitting sub-sections (4) and (4A) and substituting the following sub-sections:

"(4) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance. 5

"(4A) Where -

(a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and 10

(b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made. 15

"(4AA) A reference in sub-section (4A) to the repeal of an Ordinance includes a reference to - 20

(a) a repeal of any law of the Territory;

(b) a repeal effected by implication;

(c) the abrogation or limitation of the effect of the law; and

(d) the exclusion of the application of the law to any person, subject-matter or circumstance." 25

PART VII - AMENDMENTS OF THE COCOS (KEELING) ISLANDS ACT 1955

Principal Act

18. The Cocos (Keeling) Islands Act 1955 is in this Part referred to as the Principal Act.

5 **Laying of Ordinances before the Parliament**

19. Section 13 of the Principal Act is amended by omitting sub-sections (4) and (4A) and substituting the following sub-sections:

10 "(4) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance.

"(4A) Where -

15 (a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and

(b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

20 the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made.

"(4AA) A reference in sub-section (4A) to the repeal of an Ordinance includes a reference to -

- (a) a repeal of any law of the Territory;
- (b) a repeal effected by implication;
- (c) the abrogation or limitation of the effect of the law;
and
- (d) the exclusion of the application of the law to any person, subject-matter or circumstance." 5

PART VIII - AMENDMENTS OF THE CORAL SEA ISLANDS ACT 1969

Principal Act

20. The Coral Sea Islands Act 1969 is in this Part referred to as the Principal Act. 10

Tabling of Ordinances

21. Section 7 of the Principal Act is amended by omitting sub-sections (5) and (5A) and substituting the following sub-sections:

"(5) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance. 15

"(5A) Where -

- (a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and 20
- (b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made.

5 "(5AA) A reference in sub-section (5A) to the repeal of an Ordinance includes a reference to -

(a) a repeal of any law of the Territory;

(b) a repeal effected by implication;

(c) the abrogation or limitation of the effect of the law;
and

(d) the exclusion of the application of the law to any person, subject-matter or circumstance."

PART IX - AMENDMENTS OF THE ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974

5 **Principal Act**

22. The Environment Protection (Impact of Proposals) Act 1974 is in this Part referred to as the Principal Act.

Orders to be notified and may be disallowed

23. Section 7 of the Principal Act is amended by omitting sub-sections (6) and (7) and substituting the following sub-sections:

10 "(6) Where an order is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the order has the same effect as a repeal of the order.

"(7) Where -

(a) an order (in this sub-section referred to as the 'relevant order') is disallowed, or is deemed to have been disallowed, under this section; and

(b) the relevant order repealed, in whole or in part, another order that was in force immediately before the relevant order came into operation,

the disallowance of the relevant order has the effect of reviving that other order from and including the date of the disallowance as if the relevant order had not been made.

"(7A) A reference in sub-section (7) to the repeal of an order includes a reference to -

(a) a repeal effected by implication;

(b) the abrogation or limitation of the effect of the order; and

(c) the exclusion of the application of the order to any person, subject-matter or circumstance."

PART X - AMENDMENTS OF THE HEARD ISLAND AND McDONALD ISLANDS ACT 1953

Principal Act

24. The Heard Island and McDonald Islands Act 1953 is in this Part referred to as the Principal Act.

Laying of Ordinances before the Parliament

25. Section 11 of the Principal Act is amended by omitting sub-sections (4) and (4A) and substituting the following sub-sections:

5 "(4) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance.

 "(4A) Where -

10 (a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and

 (b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

15 the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made.

20 "(4AA) A reference in sub-section (4A) to the repeal of an Ordinance includes a reference to -

 (a) a repeal of any law of the Territory;

 (b) a repeal effected by implication;

 (c) the abrogation or limitation of the effect of the law; and

25 (d) the exclusion of the application of the law to any person, subject-matter or circumstance."

PART XI - AMENDMENTS OF THE NORFOLK ISLAND ACT 1979

Principal Act

26 The Norfolk Island Act 1979 is in this Part referred to as the Principal Act.

Laying of certain Ordinances before the Parliament

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27. Section 28 of the Principal Act is amended by omitting sub-sections (6) and (7) and substituting the following sub-sections:

"(6) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the Ordinance has the same effect as a repeal of the Ordinance. 10

"(7) Where -

(a) an Ordinance (in this sub-section referred to as the 'relevant Ordinance') is disallowed, or is deemed to have been disallowed, under this section; and 15

(b) the relevant Ordinance repealed, in whole or in part, another Ordinance that was in force immediately before the relevant Ordinance came into operation,

the disallowance of the relevant Ordinance has the effect of reviving that other Ordinance from and including the date of the disallowance as if the relevant Ordinance had not been made. 20

"(7AA) A reference in sub-section (7) to the repeal of an Ordinance includes a reference to -

- (a) a repeal of any law of the Territory;
- (b) a repeal effected by implication;
- (c) the abrogation or limitation of the effect of the law;
and
- (d) the exclusion of the application of the law to any
person, subject-matter or circumstance."

