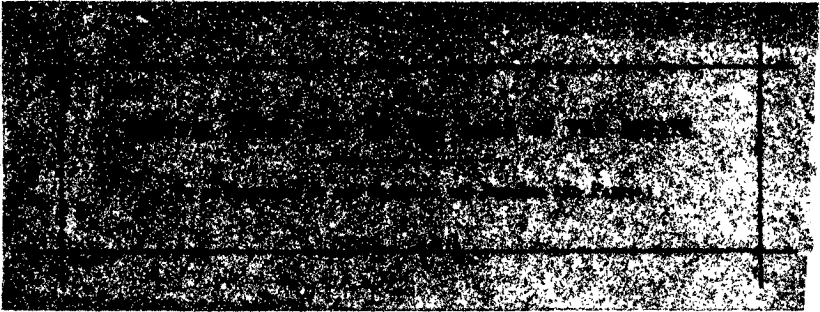


1948 - 49.

DEPT. OF THE SENATE
No. 2051
Presented 6 OCT 1949
John Edwards
CLERK OF THE SENATE

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

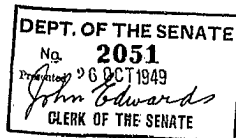


on

REGULATIONS AND ORDINANCES

(BEING THE FIRST REPORT OF THE 1948-49 SESSION, AND THE SEVENTH REPORT SINCE THE FORMATION OF THE COMMITTEE).

1948 - 49.



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE.

SEVENTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(BEING THE FIRST REPORT OF THE 1948-49 SESSION, AND THE SEVENTH REPORT SINCE THE FORMATION OF THE COMMITTEE).

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES.

SEVENTH REPORT OF THE COMMITTEE.

The Standing Committee on Regulations and Ordinances has the honour to report to the Senate as follows:-

1. Since the presentation of the Committee's last Report, dated 20th April, 1947, and which was adopted by the Senate on 29th May, 1947, it has dealt with all regulations and ordinances, also regulations under ordinances, as follows:-

Year	Statutory Rule	Ordinances of Australian Capital Territory, Northern Territory, Papua and New Guinea, and Norfolk Island.	Regulations under Ordinances.
1947	142	41	9
1948	166	33	11
1949 (to date)	71	27	13

LEGAL ADVISER TO COMMITTEE.

2. As mentioned in its previous Report the Committee has had the assistance of a Legal Adviser, Mr. J. A. Spicer, K.C., and his reports on each regulation and ordinance referred to the Committee have materially assisted in the carrying out of the duties entrusted to it. Unfortunately, Mr. Spicer's services will not be available to the Committee after the close of the present Session of Parliament, he having been nominated as a candidate at the forthcoming Senate Elections. Any recommendation as to the filling of this important position will be left to the incoming Committee to determine.

TABLING OF STATUTORY RULES IN PARLIAMENT.

3. On several occasions during the period covered by this Report the Committee noted that certain regulations had not been laid on the Table of both Houses of the Parliament within the time prescribed by Section 48 of the Acts Interpretation Act, thus rendering them void and of no effect. The Departments concerned were requested to re-make the regulations and table them in accordance with the Statute.

4. The Committee became concerned at the laxity of some Departments in not ensuring that regulations were tabled within the prescribed period, and the matter was taken up with the Solicitor-General with a view to changing the system whereby each Department was responsible for the tabling of

regulations administered by it. The Solicitor-General agreed that his Department should take over this responsibility as from 31st May, 1947. Since that date all regulations have been tabled within the prescribed period.

DRAFTING OF AMENDING REGULATIONS.

5. The Committee gave careful consideration to a suggestion put forward by Senator O'Flaherty when speaking to the motion for the adoption of its Sixth Report on 29th May, 1947, to the effect that when making amendments to a regulation, such regulation should be repealed and re-enacted in its amended form rather than by the substitution, addition or omission of certain words.

6. This question was previously considered by the Committee and in its Second Report, presented to the Senate on 8th December, 1933, the following observations were made:-

"3. The frequent amendment of regulations makes it extremely difficult for those concerned to lay their fingers upon all the regulations that bind them. Your Committee suggests three means by which this evil might be mitigated.

4. The first is that where the regulations on a particular subject are numerous and extend over a number of years, a periodic consolidation of the regulations could be made.

5. The second is that when an amending regulation is promulgated, the dates or numbers of the original and all amending regulations be printed upon it.

6. The third is that when short paragraphs of previous regulations are amended by the omission or addition of certain words the whole original clause be repealed and the clause as it would read with the omissions or additions be re-enacted."

7. Following the adoption of the Second Report by the Senate on 2nd August, 1934, the Attorney-General's Department issued a series of instructions to all Departments for the guidance of officers engaged in the preparation of draft Statutory Rules, and these included the three recommendations quoted above.

8. The present Committee on re-examining the position has ascertained from the Attorney-General's Department that these instructions are still being carried out as far as it is practicable to do so. With regard to the drafting of amending regulations, the Parliamentary Draftsman has stated that while the Committee's recommendation was being carried out in all possible cases, it was not possible to lay down any hard and fast rule as to the form in which amendments should take. Each case must be considered in the light

of its own circumstances. For instance, if it were desired to make a small amendment in a long regulation the complete repeal and re-making of the regulation would probably not be justified. If, however, the regulation had previously been amended on a number of occasions the repeal and re-making of the regulation might, despite its length, be justified. Moreover, if a regulation is repealed, it is often necessary to provide for the saving of matters contained in the regulation. Such saving provisions not only add to the length of the amending Statutory Rule, but also add to the time necessary in its preparation. Further, an additional burden is placed upon the Government Printer who is already experiencing great difficulty in meeting all demands made upon him. However, it was pointed out to the Committee that the difficulty was to a large extent being overcome by the more frequent consolidation of the more important regulations. An officer of the Attorney-General's Department staff was now devoting a considerable portion of his time to the consolidation of regulations and the number now being issued was much greater than previously.

9. From its examination of the present position the Committee is satisfied that the recommendations previously made concerning the drafting of Statutory Rules are being given effect to as far as it is practicable to do so. It believes, however, that notwithstanding an improvement in the issue of regulations in consolidated form, the Attorney-General's Department should be asked to increase its efforts in that direction.

TABLING IN PARLIAMENT OF ORDINANCES AND REGULATIONS
UNDER ORDINANCES OF THE TERRITORIES OF THE COMMON-
WEALTH.

10. Appended to this report is a statement setting out the existing provisions relating to the tabling and disallowance of ordinances and regulations thereunder of the various Territories of the Commonwealth. They reveal a rather glaring lack of uniformity as between one Territory and another, and in some instances for no apparent reason.

11. Prior to the passing of Act No. 10 of 1937 the Acts Interpretation Act merely stipulated what action must be taken concerning the tabling of regulations after the making thereof, but made no mention as to whether such regulations still had the force of law if the conditions were not complied with. Act No. 10 of 1937

repealed the provisions of the Acts Interpretation Act 1904-1934 and somewhat similar provisions to the old Act concerning the tabling of regulations were inserted, but with the following additional provisions-

- (a) if the conditions concerning tabling are not complied with, the regulations are void and of no effect; and
- (b) if notice of motion is given in Parliament to disallow a regulation and such motion has not been withdrawn or otherwise disposed of within fifteen sitting days, the regulation shall be deemed to have been disallowed.

12. Section 48 of the Acts Interpretation Act now reads as follows:-

"48.- (1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly -

- (a) shall be notified in the Gazette;
- (b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and
- (c) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect -

- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; and
- (b) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1.) of this section, they shall be void and of no effect.

(4) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after any regulations have been laid before that House) disallowing any of those regulations, the regulation so disallowed shall thereupon cease to have effect.

(5) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any regulation has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the regulation specified in the resolution shall thereupon be deemed to have been disallowed.

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

13. It is the opinion of the Committee that the various Territories of the Commonwealth should have followed, as far as practicable, the provisions of the Acts Interpretation Act, but this appears to have been done only in the case of ordinances made under the Papua and New Guinea Act. Briefly, the provisions relating to tabling of ordinances and regulations of the various Territories are as follows:-

14. Australian Capital Territory. Ordinances must be laid on the table of both Houses within thirty days of the making thereof, or, if Parliament is not then sitting, within thirty days after the next meeting of the Parliament. On the other hand, regulations made thereunder must be tabled in each House within fifteen sitting days of that House after the making of the regulations. In both cases if either House passes a resolution, of which notice has been given at any time within fifteen sitting days after the ordinances or regulations have been laid before such House, disallowing any ordinance or regulation, that ordinance or regulation shall cease to have effect.

15. It is pointed out that in some cases it would be most difficult, if not impossible, for the Department to comply with the provisions of the Act relating to the tabling of ordinances. For example, if an ordinance was made on the last day of a Parliamentary Session, and Parliament did not re-assemble for say two months, the thirty days allowed under the Act would have long expired before tabling could be effected.

16. Papua and New Guinea. The Papua and New Guinea Act 1949 provides for the establishment of a Legislative Council for Papua and New Guinea, but the Minister for the Army when moving the second reading of the Bill on 15th February, 1949, stated that the Council would not be constituted for at least one year after the proposed Act came into operation. Interim legislative powers were therefore included in this Act and, inter alia, provide that ordinances must be laid before each House within fifteen sitting days after making, and any such ordinances not so laid before each House shall be void and of no effect.

17. Under the Ordinances Interpretation Ordinance there is no provision for the tabling of regulations made under Papua and New Guinea ordinances, and the only power of disallowance of such regulat-

ions rests with the Governor-General.

18. It will be noted that the interim provisions in the Papua and New Guinea Act relating to the tabling and disallowance of ordinances are similar to those laid down in the Acts Interpretation Act for the tabling and disallowance of Statutory Rules. It is the only Territory which has included the provision that ordinances not tabled within the prescribed time shall be void and of no effect. On the other hand, it is the only Territory which has no provision for the tabling of regulations made under ordinances.

19. Norfolk Island. The Norfolk Island Act 1913-1935 provides that all ordinances must be tabled within thirty days after the making thereof if Parliament is then sitting, and if not, then within thirty days after the next sitting of the Parliament. Disallowance of such ordinances may be made by either House within thirty days after tabling. Regulations under ordinances must be tabled within fifteen sitting days and may be disallowed if notice is given within fifteen sitting days after tabling.

20. In its Fifth Report to the Senate, dated 17th September, 1942, it was suggested that the existing provision for the disallowance of ordinances "within thirty days" be amended to read "within fifteen sitting days" as the former period might lapse while Parliament is in recess and the opportunity to move for disallowance might be lost. Although the Government stated it was prepared to adopt the Committee's suggestion no action was taken, and in its Sixth Report, dated 29th April, 1947, the attention of the Government was again drawn to the matter. Speaking to the motion for the adoption of the Sixth Report the Leader of the Government in the Senate (Senate Ashley) stated -

"With respect to the Committee's observations on the Norfolk Island ordinances, the Norfolk Island Act has been noted for amendment when opportunity offers. No occasion to amend the Act has occurred since 1943, and a special amendment would be necessary for the purpose. The Act is being examined in order to see whether any other amendments are necessary or desirable."

Although a further period of over two years has elapsed no action appears to have been taken by the Department of External Territories to effect the necessary amendment. In fact it is over seven years since this matter was first brought under notice by the Committee. The Committee is strongly of the opinion that the necessary amendment

should be effected without further delay.

21. Northern Territory. The Northern Territory (Administration) Act 1947 provides for the tabling of ordinances in Parliament as soon as may be after the assent of the Administrator or the Governor-General. There is no provision for the disallowance of ordinances by Parliament. That power is given to the Governor-General who may do so within six months of the Administrator's assent.

22. But with regard to regulations, these may be made by either the Administrator or the Minister. Where made by the Administrator they must be tabled in the Legislative Council of the Northern Territory on the first sitting day after making. The Minister may disallow any regulation within thirty days after making and the Legislative Council has similar power if notice is given within fifteen sitting days after tabling. Except those disallowed by either the Minister or the Legislative Council, all regulations made by the Administrator must be laid before Parliament within thirty sitting days after making and may be disallowed by Parliament if notice to that effect is given within fifteen sitting days after tabling.

23. In connection with regulations made by the Minister, these must be tabled in Parliament within fifteen sitting days after making and may be disallowed by Parliament if notice is given within fifteen sitting days. It seems illogical that, while Parliament has the power of disallowance in connection with Northern Territory regulations, it has no power of disallowance in respect of the ordinances under which such regulations are made.

24. In view of the inconsistencies which appear in the various Acts and Interpretation Ordinances of the Territories, the Committee submits the following suggestions for the consideration of the Government -

- (a) That the Seat of Government (Administration) Act 1910-1940 be amended to provide for the tabling of ordinances within fifteen sitting days.
- (b) That the Norfolk Island Act be amended to provide for the tabling of ordinances within fifteen sitting days and for their disallowance by Parliament if notice thereof is given within fifteen sitting days after tabling.

- (c) That, in the case of Territories with Legislative Councils and where the power to disallow ordinances has been taken away from Parliament, the same provisions should apply in relation to the tabling and disallowance of regulations as apply in relation to ordinances.
- (d) That, in the case of all Territories where the power to disallow ordinances remains with Parliament, provisions similar to sub-sections (3.), (5.) and (6.) of section 48 of the Acts Interpretation Act should apply with regard to both ordinances and regulations made thereunder.

AMENDMENTS BY REGULATION.

25. The Committee desires to draw the attention of the Senate to the following regulations which have been referred to it for consideration:-

Statutory Rules 1949, No. 42, made under the Social Services Consolidation Act 1947-1948;

Statutory Rules 1949, No. 60, made under the Defence Forces Retirement Benefits Act 1948-1949;

Statutory Rules 1949, No. 72, made under the Re-establishment and Employment Act 1945; and

Statutory Rules 1949, No. 59, made under the Supply and Development Act 1939-1948.

26. In the case of Statutory Rules 1949, Nos. 42, 60 and 72, the Committee has noted that, although empowered by the respective Acts to do so, they contain provisions which in its opinion should have been made the subject of legislative action. The Committee feels that in cases where regulation-making power is conferred by an Act to amend or over-ride that Act, such power should not be availed of except in cases of extreme urgency.

27. With regard to Statutory Rules 1949, No. 59, the Committee points out that the very wide powers conferred upon the Minister for Supply and Development, particularly during times of peace, might have been submitted to Parliament for approval by way of an amendment to the Supply and Development Act.

Joseph A. Coore

NORTHERN TERRITORY (ADMINISTRATION) ACT.

Ordinances.

Sections 4V, 4W, 4X, and 4Z of the Northern Territory (Administration) Act 1910-47 read -

"4V.- (1) An Ordinance made by the Council shall not have any force or effect until it has been assented to as provided in this Act.

(2) Every Ordinance passed by the Council shall be presented to the Administrator for assent.

(3) The Administrator shall thereupon declare, according to his discretion, but subject to this Act, that he assents thereto, or that he withholds assent, or that he reserves the Ordinance for the Governor-General's pleasure."

"4W.- Within six months from the Administrator's assent to any Ordinance the Governor-General may disallow the Ordinance, and, on notice of the disallowance being published by the Administrator in the Government Gazette of the Territory, the Ordinance shall be disallowed from the date of publication."

"4X.- An Ordinance reserved for the Governor-General's pleasure shall not have any force or effect unless and until within six months from the day on which it was presented to the Administrator for the Governor-General's assent, the Administrator publishes in the Government Gazette of the Territory a notification that it has received the Governor-General's assent."

"4Z.- Every Ordinance assented to by the Administrator or by the Governor-General shall, as soon as may be after being assented to, be laid before each House of the Parliament."

Regulations under Ordinances.

The Interpretation Ordinance 1931-1948 provides -

15.- (1.) Where an Ordinance confers power on the Administrator to make Regulations, or where an Ordinance of North Australia confers upon the Government Resident power to make Regulations, and that power is, by virtue of section eight of this Ordinance, exercisable in the Northern Territory by the Administrator, all Regulations made accordingly shall, unless the contrary intention appears -

(a) be notified in the Gazette of the Northern Territory;

(b) take effect from the date of notification, or from a later date specified in the Regulations;

(c) be forwarded to the Minister forthwith; and

(d) shall be laid before the Legislative Council on the first sitting day of that Council after the making of the Regulations.

(2.) The Minister may, within thirty days after the making of any regulations, by notice in the Commonwealth of Australia Gazette, disallow any regulation, and the regulation so disallowed shall cease to have effect from the date of the publication in the Commonwealth of Australia Gazette of a NOTIFICATION OF ITS DISALLOWANCE.

(2A.) If the Legislative Council passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the Council disallowing any regulation, that regulation shall thereupon cease to have effect.

(3.) All regulations, except those disallowed by the Minister or by the Legislative Council, shall be laid before each House of the Parliament within thirty sitting days of that House after the making of the regulations.

(4.) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation, that regulation shall thereupon cease to have effect.

16.- (1.) Where an Ordinance confers power on the Minister to make regulations, all regulations made accordingly shall, unless the contrary intention appears -

- (a) be notified in the Commonwealth of Australia Gazette;
- (b) take effect from the date of notification, or from a later date specified in the regulations; and
- (c) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2.) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation, that regulation shall thereupon cease to have effect.

PAPUA AND NEW GUINEA ACT.

Ordinances.

Sections 49, 50 and 53 of the Papua and New Guinea Act 1949 provide -

"49.- (1) An Ordinance passed by the Legislative Council shall not have any force until it has been assented to as provided in this Division.

(2) Every Ordinance passed by the Legislative Council shall be presented to the Administrator for assent.

(3) The Administrator shall thereupon declare, according to his discretion, to be exercised subject to this Act, that he assents thereto, or that he withholds assent, or that he reserves the Ordinance for the Governor-General's pleasure."

"50.- (1) Within six months after the Administrator's assent to an Ordinance, the Governor-General may disallow the Ordinance or any part thereof.

(2) The disallowance shall, upon publication of notice thereof in the Government Gazette, have the same effect as a repeal of the Ordinance, or of the part thereof, as the case may be, except that, if any provision of the Ordinance or of the part thereof, as the case may be, amended or repealed a law in force immediately before the coming into operation of that provision, the disallowance shall revive the previous law from the date of the publication of the notice of the disallowance as if the disallowed provision had not been made."

"53. Every Ordinance assented to by the Administrator or by the Governor-General shall, as soon as practicable after that assent, be laid before both Houses of the Parliament."

NOTE.- The above legislation will not apply until the proclamation constituting the Legislative Council has been issued. In the meantime the following interim legislative powers are given to the Governor-General.

"54.- (1) Until the date fixed by Proclamation under section thirty-five of this Act, the Governor-General may, subject to this Act, make Ordinances for the peace, order and good government of the Territory.

(2) Notice of the making of every Ordinance made under this section shall be published in the Commonwealth of Australia Gazette, and every such Ordinance shall, unless the contrary intention appears in the Ordinance, take effect from the date of publication of the notice

"55.- (1) Every Ordinance made under this Division shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance, and any such Ordinance which is not so laid before each House of the Parliament shall be void and of no effect.

(2) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after an Ordinance has been laid before that House) disallowing that Ordinance or any part thereof, the Ordinance or part so disallowed shall thereupon cease to have effect.

(3) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any such Ordinance or part of any such Ordinance has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the Ordinance or part, as the case requires, shall thereupon be deemed to have been disallowed.

(4)

(5)

Regulations under Ordinances.

The Ordinances Interpretation Ordinance 1949 provides -

"37.- (1) Regulations or orders made or given under an Ordinance, unless the contrary intention appears in the Ordinance -

(a) shall be published in the Gazette; and

(b) shall, subject to this section, take effect from the date of publication, or where another date is specified in the regulations, from the date specified.

(2)

(3) Regulations shall be subject at any time to disallowance in whole or in part by the Governor-General, and a regulation so disallowed shall cease to have effect from the date of publication in the Gazette of notice of the disallowance.

(4) "

AUSTRALIAN CAPITAL TERRITORY.

Ordinances.

Section 12 of the Seat of Government (Administration) Act 1910-1940 reads -

"12.- (1) The Governor-General may make Ordinances having the force of law in the Territory.

(2) Every such Ordinance shall -

(a) be notified in the Gazette;

(b) take effect -

- (i) from the date of notification;
- (ii) where another date (whether before or after the date of notification) is specified in the Ordinance, from the date specified; or
- (iii) where the Ordinance so provides, from such date as is fixed by the Minister by notice in the Gazette; and

(c) be laid before both Houses of the Parliament within thirty days of the making thereof, or, if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(2A) A notice in the Gazette of any such Ordinance having been made, and of the place where copies of the Ordinance can be purchased, shall be sufficient compliance with the requirement of paragraph (a) of the last preceding sub-section."

" (3) If either House of the Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after any such Ordinance has been laid before the House, disallowing the Ordinance, the Ordinance shall thereupon cease to have effect."

Regulations under Ordinances.

The Interpretation Ordinance (No. 29 of 1937) provides -

"16.- (1) Where an Ordinance confers power to make regulations, all regulations made accordingly shall unless the contrary intention appears -

- (a) be notified in the Gazette;
- (b) take effect from the date of notification, or from a later date specified in the regulations; and
- (c) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House) disallowing any regulation, that regulation shall thereupon cease to have effect.

(3) Where a regulation is disallowed under this section, the disallowance of the regulation shall have the same effect as a repeal of the regulation.

(4)

(5)"

NORFOLK ISLAND.

Ordinances.

Section 8 of the Norfolk Island Act 1913-1935 reads -

"8.- (1) Subject to this Act the Governor-General may make Ordinances for the peace, order, and good government of Norfolk Island.

(2) to (10)

(11) Ordinances made by the Governor-General shall be published in Norfolk Island in the manner directed by the Governor-General, and shall come into force at a time to be fixed by the Governor-General, not being before the date of their publication in Norfolk Island.

(12) Every Ordinance made by the Governor-General shall be laid before both Houses of the Parliament within thirty days after the making thereof if the Parliament is then sitting, and if not, then within thirty days after the next sitting of the Parliament.

(13) If within thirty days after any Ordinance has been laid before it, either House of the Parliament passes a resolution disagreeing with the Ordinance or any part of it, the Ordinance or part, as the case requires, shall cease to have effect."

Regulations under Ordinances.

The Interpretation Ordinance 1915-1940 provides -

"8.- (1) Where an Ordinance confers power to make regulations, all Regulations made accordingly shall, unless the contrary intention appears -

"(a) be notified in the Gazette;

(b) take effect from the date on which a copy of the Regulations is affixed on or near to the Court House, Norfolk Island; and

(c) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation, that regulation shall thereupon cease to have effect."