

Delegated Legislation

- Not reviewable under *ADJR* as not an enactment under s 3(1)
 - However, once decision has been made delegated legislation can be reviewable on the basis of no legal authority – that the delegated legislation was unlawful

Steps

_____ can challenge the validity of the regulations as delegated legislation under s 39B(1A)(c) of the *Judiciary Act 1903* as being any laws made by Parliament. These regulations fall under legislative instrument (*Legislation Act 2003* s 8 _____)

_____ The courts conduct a three step process as outlined by Brennan J in *SA v Tanner*.

1. Can challenge validity under s 39B(1A)(c) of the *Judiciary Act*
2. Regulations fall under legislative instrument (s 8 *Legislation Act 2003*) (interpretation act 1987; sub-ordinate legislation act for NSW)

6. _____)

Three step test (*SA v Tanner*)

1. How has Parliament conferred power to make the regulation?
 - a. Look at the legislation and the words
2. What is scope and legal effect of the regulation?
 - a. Look at the regulations
3. Is the regulation within the ambit of power?
 - a. Look at everything and draw analogies

Legislative schemes

1. *Subordinate Legislation Act 1989* (NSW)
 - a. Automatically remade after 5 years
2. *Legislation Act 2003* (Cth)
 - a. Section 8(4) An instrument is a **legislative instrument** if:
 - i. (a) the instrument is made under a power delegated by the Parliament; and
 - ii. (b) any provision of the instrument:

1. (i) determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and
2. (ii) has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

[REDACTED]

Legislative character

- Difference between rules having general application and those applying to special cases (*Tooheys*)

Challenging delegated legislation

1. Parent act unconstitutional (*Dignan*)

[REDACTED]

2. Delegated legislation outside scope

[REDACTED]

Examples of delegated legislation

- Parent act allowed regulation, prohibition and controlling of reducing water pollution in certain zones (*SA v Tanner*)
 - Power valid when it prohibited construction of piggeries, zoos and feedlots
 - Was OK to interpret the word prohibiting broadly
 - Reasonably proportionate

Parent act intended misbehaviour to mean serious things, and this was very minor

[REDACTED]

