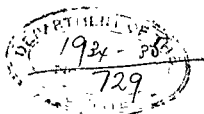


1934-35.

Brought up by
Senr. Deacon-Hughes
Presented in Senate
to Government
Cmty. 10. 35



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE

THIRD REPORT

from the

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES.

(being the first Report of the 1934-35 Session,
and the third Report since the formation
of the Committee).

(Brought up and ordered to be printed,
31st October, 1935).

1934-35.

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES.

THIRD REPORT OF THE COMMITTEE.

17/11/35
The Standing Committee on Regulations and Ordinances has the honor to report to the Senate as follows :-

1. The motion for disallowance of Statutory Rules 1935, No. 29 (Amendments of the Dried Fruits Export Control Regulations), moved by Senator J. G. Duncan-Hughes in his personal capacity in the Senate on 22nd October, 1935, and carried, was moved by him with the unanimous prior endorsement and approval of the members of the committee.

2. The principle in the disallowed regulations is an important one, as in the committee's opinion they were in direct contravention of the law as laid down in the Acts Interpretation Act 1904-1934, and as decided by the High Court in the case of the Broadcasting Company of Australia Ltd. v. the Commonwealth (52 C.L.R. 52), to the effect that regulations containing a provision that they should be deemed to have commenced on a certain date, which was prior to the date of notification in the Gazette, were void. The Senate by its vote endorsed the committee's view.

3. Among the 1935 regulations considered by the Committee recently are the following, each of which appears to infringe the provisions of the Acts Interpretation Act by a retrospective clause of a similar type :-

Statutory Rules 1935, No. 6 (Amendment of Naval Financial Regulations) - notified in the Gazette on 31st January, 1935, containing a provision deemed to have come into operation on 1st March, 1934, and another on 1st November, 1934.

Statutory Rules 1935, No. 7 (Amendment of Australian Soldiers' Repatriation Regulations) - notified in the Gazette on 7th February, 1935, deemed to have come into operation on ~~various~~ dates going back to 9th August, 1934.

Statutory Rules 1935, No. 9 (Amendment of Waterside Workers Regulations) - notified in the Gazette on 14th February, 1935, containing a provision for payment of certain fees for attendance at meetings held after 12th April, 1934.

Statutory Rules 1935, No. 27 (Amendment of Naval Financial Regulations) - notified in the Gazette on 21st March, 1935, containing a provision dating back to 1st November, 1934.

Statutory Rules 1935, No. 42 (Amendment of Naval Establishments Regulations) - notified in the Gazette on 2nd May, 1935, deemed to have come into operation on various dates going back to 6th June, 1934.

Statutory Rules 1935, No. 43 (Amendment of Financial and Allowance Regulations for the Australian Military Forces and Senior Cadets) - notified in the Gazette on 9th May, 1935, made to operate "as if it were notified in the Gazette on the 21st day of April, 1935".

Statutory Rules 1935, No. 51 (Amendments of the Sales Tax Regulations) - notified in the Gazette on 30th May, 1935, containing a provision operating "at any time prior to the 15th day of March, 1934".

Statutory Rules 1935, No. 54 [Amendments of Commonwealth Public Service (Parliamentary Officers) Regulations] - notified in the Gazette on 6th June, 1935, containing a provision dating from 1st July, 1931.

Statutory Rules 1935, No. 72 (Amendments of Commonwealth / Public Service Regulations) - notified in the Gazette on 1st August, 1935, containing a provision that certain of the amendments shall be deemed to have come into operation on 1st July, 1935.

Statutory Rules 1935, No. 86 (Amendment of Naval Financial Regulations) - notified in the Gazette on 12th September, 1935, deemed to have come into operation on various dates going back to 25th January, 1935.

Statutory Rules 1935, No. 87 (Amendment of Naval Reserve Regulations) - notified in the Gazette on 12th September, 1935, containing a provision that certain of the amendments shall be deemed to have come into operation on 1st April, 1935.

In addition to the cases above set out, attention is drawn to another case of a slightly different nature, as follows :-

Statutory Rules 1935, No. 58 (Amendment of the War Service Homes Regulations) - notified in the Gazette on 20th June, 1935, containing a provision applying to proceedings instituted either before or after the commencement of the regulation.

4. Among the foregoing regulations perhaps the most conspicuously retrospective provisions are contained in Statutory Rules Nos. 54 and 58, the first of which goes back four years, while the second contains an undesirable provision, authorizing a new form of evidence in any proceedings instituted by or on behalf of the War Service Homes Commissioner whether before or after the commencement of this regulation. Other regulations

3.

are only retrospective for periods varying from months down to a few days, but the committee feels that it is not within its province to draw distinctions on that account, when the strict legal position is the same.

5. The committee considers that these regulations are void or voidable, in whole or in part, and would be held so to be if contested in the courts, in view of the decision of the High Court mentioned above. In some of the Statutory Rules enumerated above the retrospective regulations appear to be separable from other regulations to which they have no reference.

6. In such circumstances, and especially considering the large number of the regulations affected, the question of procedure becomes important. The Committee is of opinion that it should not be the duty of its members or of other private members of the Senate to move for the disallowance of these regulations one by one, thereby throwing the responsibility on them and also involving much unnecessary waste of the Senate's time. The duty of seeing that the law is complied with obviously falls on the Government, one of whose members admitted in the Senate that in his opinion the retrospective provision in Statutory Rules No. 29 was invalid.

7. The committee submits therefore that the Government should withdraw and cancel such of the regulations set out in paragraph 3 above as are invalid, or alternately should move in the Senate for their disallowance within the prescribed time.

8. The committee, further, draws attention to the provisions contained in Statutory Rules 1935, No. 93 (Amendment of the Telephone Regulations), by paragraph 2 whereof a new regulation (16A) is inserted. Under these provisions the onus of proof is not only shifted from the Department on to the person doing certain acts or suffering them to be done, that he acted without the authority of the Department: but further, in any prosecution for an offence under this regulation, the averment of the prosecutor that the proprietor of the land or building

upon or within which an offence is committed by any other person permitted or suffered that person to commit the offence, shall be deemed to be proved in the absence of proof to the contrary. There appears to be no authority in the Act enabling the Department to so alter the burden of proof. In the opinion of the committee such a provision trespasses unduly on personal rights and liberties, and should only be brought into force (if at all) by Parliamentary enactment.

9. The Committee draws attention to the fact that cases have occurred in the past and are still occurring where regulations have not been laid before Parliament within the prescribed time. A notable instance of this is the case of the Motor Omnibus Regulations of the Territory ^{for} of the Seat of Government. Under section 5 of the Interpretation Ordinance 1914-1930 of the Territory for the Seat of Government, regulations made under an Ordinance must be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations. The regulations in question were made on 6th June, 1934, and were not laid on the Table of the Senate until 2nd October, 1935 (38 sitting days afterwards). Other instances could be cited.

10. The committee refers again to two matters mentioned in its earlier Reports, viz.:-

(1.) The lack of an adequate Act covering the Air Defence Forces (mentioned in the Committee's second report presented to the Senate on 8th December, 1933). The present Act (No. 33 of 1923) consists only of three sections applying portion of the Defence Act and Regulations; otherwise all provisions governing the Air Defence Forces are prescribed by regulation. The committee maintains that such provisions are not confined to administrative detail, but that they amount to substantive legislation which should be a matter of Parliamentary enactment; and re-affirms, particularly in view of the growing importance of the Air Forces, that there appears to be no valid reason why a distinction should be made in this respect between them and the Naval and Military Forces.

(2) The lack of an Act relating to the censorship of cinematograph films (mentioned in the committee's first report presented to the Senate on 18th May, 1932). This matter, also, it is claimed, should be dealt with by legislation and not controlled solely by administrative regulations under the Customs Act. No attempt has been made to obtain authority for such legislation by Referendum.

The committee acknowledges that most of the recommendations contained in its second report have been given effect to, but repeats its previous recommendations with regard to these two matters.

11. The committee again expresses its appreciation of the assistance which Departments generally have given it by the provision of explanatory statements accompanying regulations and ordinances.



Chairman.

Senate Committee Room,
30th October, 1935.