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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE

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CLERK OF THE SENATE

FIFTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the First Report of the 1940-41-42 Session,  
and the Fifth Report since the formation of  
the Committee)

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STANDING COMMITTEE ON REGULATIONS AND ORDINANCES.

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FIFTH REPORT OF THE COMMITTEE.

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

1. Since its last report, which was presented to the Senate on 23rd June, 1938, the Committee has met from time to time while the Senate has been in Session, for the purpose of considering Regulations and Ordinances which have been laid on the Table of the Senate and which were referred to it under Standing Order 36A. While the Committee since its last report has not recommended the disallowance of regulations or ordinances, it has on numerous occasions communicated with the Departments responsible or with the Attorney-General's Department in order to satisfy itself as to the legality of regulations or as to other matters upon which it desired further information. Enquiries, for instance, have been made as to whether the industries affected by certain regulations were consulted when they were being framed, and stress has been laid upon the necessity of consulting interested bodies wherever practicable.

2. Advances to Settlers Regulations.- Correspondence extending over a period of approximately seven months took place in 1938 and 1939 between the Committee and the Minister for Commerce on the subject of tabling in Parliament particulars of cases in which the Minister for Commerce exercised the power granted to him under the Advances to Settlers Regulations to vary the provisions for payment of purchase money or instalments payable by settlers in respect of advances for the purchase of wire netting. Notwithstanding previous ministerial approval for the tabling of this information, the decision was reversed by the Assistant Minister for Commerce who stated that he considered it was not desirable for such particulars to be laid before Parliament, but that he was willing to furnish, for the information  
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of the Committee, a quarterly statement of variations made by him. As a result of further representations by the Committee, the matter was reviewed and the previous decision to table such particulars was allowed to stand.

3. Numbering of Regulations made under Ordinances.- On 7th September, 1939, the Committee resolved that, in its opinion, all regulations made under Ordinances should be numbered consecutively from the beginning of each year in respect of each Territory. The Committee considered that this was most desirable in view of the difficulty experienced in making adequate reference to these regulations, and that greater facility and certainty of reference by all concerned would result if the regulations were numbered in the manner suggested. The Committee's resolution was conveyed to the Attorney-General who concurred in the suggestion and gave instructions that steps should be taken to implement the Committee's proposal. As a result, the system of numbering such regulations was brought into operation as from the commencement of 1940.

4. Norfolk Island Ordinances.- The attention of the Senate is directed to those provisions of the Norfolk Island Act which fix the period within which Ordinances of the Territory of Norfolk Island may be disallowed. Under section 8 of the Norfolk Island Act these Ordinances are subject to disallowance within 30 days after being laid on the Table, whereas Ordinances of the Australian Capital Territory and the Northern Territory are subject to disallowance within 15 sitting days after being laid on the Table. On the other hand, regulations made under Ordinances of the Territory of Norfolk Island are subject to disallowance within the latter period, viz.- 15 sitting days after being laid on the Table. The Committee suggests that the existing provision for the disallowance of Ordinances "within 30 days" be amended to read "within 15 sitting days", as the former period might lapse while Parliament is in recess and the opportunity to move for disallowance might be lost particularly when ordinances are tabled towards the end of a Session and Parliament rises before there is adequate time to consider them. Such an alteration would also have the /advantage

advantage of bringing the provisions as to the disallowance of Ordinances and Regulations into line.

5. Legislation made under the National Security Act.- Since the outbreak of war the Committee has been confronted with the heavy task of examining an ever increasing volume of Regulations and Orders made under the National Security Act. Section 5 of the National Security Act empowers the Governor-General to make regulations for securing the public safety and the defence of the Commonwealth and the Territories of the Commonwealth, and the regulations may empower such persons, or classes of persons, as are prescribed, to make orders, rules or by-laws for any of the purposes for which regulations are authorized by the National Security Act to be made. Such of these orders, rules and by-laws as are of a legislative and not an executive character are required by the above section to be laid on the Table of both Houses and may be disallowed by either House. Since the outbreak of war the subordinate legislation under the National Security Act which has been laid on the Table of the Senate comprises :-

654	Statutory Rules
7,050	Orders
59	Rules
13	By-laws
148	Miscellaneous items

From 1st January, 1942, to 16th September, 1942, the particulars are :-

288	Statutory Rules
5,152	Orders
37	Rules
1	By-law
45	Miscellaneous items

In addition, since the outbreak of war, Statutory Rules, Ordinances and Regulations made under other Acts, which have been laid on the Table of the Senate, comprise :-

467	Statutory Rules
266	Ordinances
70	Regulations under Ordinances

In August, 1940, the Committee, faced with the difficulty of dealing satisfactorily with such a vast volume of regulations, authorized the Chairman (Senator the Hon. A.J. McLachlan) to direct the attention of the Senate to the position that had arisen and to state that it was impossible without further skilled assistance to give adequate consideration to the regulations. In order to assist the Committee, the Government offered to make available the services of a legal officer of the Attorney-General's Department. The Committee, however, while appreciating this offer decided that this was not a satisfactory solution of the problem, as it was of the opinion that legal assistance from outside the Commonwealth Public Service was preferable. The Government, however, was not prepared to agree to any alternative proposal and further consideration of the matter was postponed.

In view of the increasing volume of regulations and other subordinate legislation which is now being made, the Committee has given further consideration to the question as to how it should deal with regulations, &c., made under the National Security Act, and whether, having regard to the principles which the Committee has heretofore applied when examining regulations, any practical advantage is derived from its examination of regulations under the National Security Act. The principles referred to are set out in paragraph 2(d) of the Committee's Fourth Report and are repeated hereunder:-

- (a) Regulations must be in accordance with the Statute under which they are made;
- (b) They should not trespass unduly on personal rights and liberties;
- (c) They should not unduly make the rights and liberties of citizens dependent upon administrative rather than upon judicial decisions;
- (d) They should be concerned with administrative detail and should not amount to substantive legislation which is more properly a matter for Parliamentary enactment.

These principles, though they have not been formally endorsed by the Senate, provide a sound guide in peace time to the problems with which this Committee is concerned, and it is upon this basis that the Committee has always carried on in its examination of regulations. With regard to subordinate legislation made under the National Security Act, this angle of approach has little, if any, practical value. The powers of the executive under that Act are so wide that the legality of regulations can seldom be questioned and war renders necessary an interference with personal rights and liberties which would not be tolerated in times of peace. Furthermore, Parliament itself has conferred powers on the executive to make substantive legislation in this way, so that no question of confining regulations to administrative details arises. The practical question which arises in relation to such regulations is one of policy, but the Committee decided as early as June, 1933, that questions of policy were matters for the Government and did not properly fall within the terms of reference of the Committee. The Committee still adheres to this view. In these circumstances it is felt that no useful or practical purpose will be served by the Committee continuing to review regulations and other subordinate legislation made under the National Security Act.

Although the functions of this Committee do not in our opinion extend to a consideration of matters of policy, we think in existing circumstances it would be useful if a Committee, possibly of both Houses, were constituted for the express purpose of regularly considering the practical application of regulations made under the National Security Act, and reporting to Parliament thereon. Such a Committee would have to be authorized to sit during Recess and to undertake at frequent intervals a review of regulations which are made from time to time, with a view to directing attention to such as may be thought to be unwise or to require amendment. Objections have been raised on a number of occasions to the/detailed

detailed provisions of regulations rather than to the main purpose and in cases of this kind it would be convenient to refer motions for disallowance to the Committee to report and if thought necessary recommend amendments thereto.

6. Manual of National Security Legislation - Issue at more frequent intervals.- The attention of the Senate is drawn to the difficulty experienced by the public in keeping up to date with the war legislation owing to the volume and frequency of issue of the Statutory Rules, Orders, Rules and By-laws made under the National Security Act. In April, 1941, a Manual of National Security Legislation was issued containing Statutory Rules and certain orders,&c., as amended to the 1st April, 1941. Another such Manual has just been issued. This publication provides access to regulations and certain orders and rules in a convenient and accessible form, but its usefulness depends upon the frequency with which it is published. The Committee strongly urges that the volume should be issued at more frequent intervals.

There is now being published supplementary annotations to the manual, which provides references to amendments to the regulations,&c. We understand it is proposed to issue this supplement every three months. It will provide a useful addition to the manual, but we think, in view of the frequency with which regulations are amended, that its publication monthly would be justified.

7. Consideration by Committee of Regulations and Ordinances after notification in Gazette.- As the Committee is empowered under Standing Order 36A to consider regulations and ordinances only after they have been laid on the Table of the Senate, and as such legislation may be laid on the Table at any time within 15 sitting days after the making thereof, it is possible that a considerable period might ~~xxxxx~~ elapse between the date of notification in the Gazette and the date regulations and ordinances are laid on the Table, during which period they

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may have been subject to much discussion both in Parliament and the Press, while the Committee charged with the duty of examining them is, owing to the operation of the Standing Order referred to, not authorized to consider them. It is suggested, therefore, that the Committee be empowered, by an appropriate amendment of the Standing Orders, to deal with all Regulations and Ordinances as soon as they have been notified in the Gazette.

*J. A. Spier*  
CHAIRMAN.

Senate Committee Room,  
17th September, 1942.