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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE.

SIXTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the First Report of the 1946-47 Session, and the  
Sixth Report since the formation of the Committee).

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(Brought up and ordered to be printed,

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SIXTH REPORT OF THE COMMITTEE

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

1. Following the presentation of its last report on 17th September, 1942, a motion for its adoption was moved on 25th February, 1943, but was not proceeded with and finally lapsed with the dissolution of the 16th Parliament on 7th July, 1943.
2. In that report the Committee drew attention to the difficulties experienced in its examination of legislation made under the National Security Act and expressed the opinion that no useful or practical purpose would be served by the Committee continuing to review regulations and other subordinate legislation made under that Act. It further expressed the view that a Committee, possibly of both Houses, be constituted for the express purpose of regularly considering the practical application of regulations made under the National Security Act, and reporting to Parliament thereon. Speaking to the motion for the adoption of this report the then Leader of the Government in the Senate stated that after the report had been adopted he proposed to move for the appointment of such a Committee. As the motion for the adoption of the report was not proceeded with, no action was taken along the lines indicated. However, in June 1944, a Committee, consisting of Mr. A.D. Fraser, M.P., (Chairman), Mr. David Maughan, K.C., Mr. J.V. Barry, K.C., (now Mr. Justice Barry), and Dr. Frank Louat, Barrister-at-law, was appointed by the Attorney-General to --
  - (a) consider the question of review, repeal or modification, in the light of the changing circumstances of the war, of existing regulations and other subordinate legislation under the National Security Act;
  - (b) tender advice to the Government on such proposed National Security regulations and orders as might be referred to the Committee by the Attorney-General.

This Committee, known as the Regulations Advisory Committee, actively functioned until the end of the war.

3. With the re-appointment of the Regulations and Ordinances Committee at the commencement of the 17th Parliament, consideration was again given to the question of obtaining outside legal advice, particularly

in view of the fact that, unlike previous Committees, no lawyer was available to undertake the duties of Chairman. The appointment of such an adviser had been advocated on various occasions. After consultation with the President of the Senate representations were made to the Leader of the Government in the Senate and an amount of £250 was provided in the Estimates for 1944/45 to cover the payment of a retaining fee to an outside legal man to be selected who could examine and report on all regulations and ordinances submitted to the Committee. The Committee then recommended that ex-Senator J.A. Spicer, a former Chairman of the Committee, should be appointed as Legal Adviser for a period of six months as from 1st January, 1945, at a fee of 200 guineas per annum, and this was approved by the President of the Senate. Mr. Spicer's term of appointment was extended for an indefinite period as from 1st July, 1945, and he continued to act as Legal Adviser until his resignation which took effect as from 30th April, 1946.

4. The new Committee appointed at the commencement of the 18th Parliament, for reasons similar to that expressed by the previous Committee, decided that the re-appointment of a Legal Adviser was desirable in the interests of the efficient working of the Committee, and the President of the Senate has again approved of Mr. Spicer's re-appointment for an indefinite period, subject to termination by either party at any time.

5. Since the presentation of the Committee's last report, it has dealt with all regulations (with the exception of a small number issued in 1943 under the National Security Act) and ordinances, also regulations under ordinances, as follows:-

Year	Statutory Rules	Ordinances of A.C.T., N.T., Papua-New Guinea, Norfolk Is., Nauru.	Regulations under Ordinances
1943	317	19	13
1944	192	11	6
1945	205	24	7
1946	198	35	11

6. Following the appointment of the Legal Adviser as from 1st January, 1945, the Committee has not only had before it for consideration

the actual regulations and ordinances with an accompanying departmental explanatory memorandum setting out the reasons for the promulgation of the particular regulation or ordinance, but also a separate report on each, prepared by the Legal Adviser. These reports have been of great value to the Committee, and it is of the opinion that the present arrangement should continue.

7. It has <sup>not</sup> been found necessary to submit special reports to the Senate on any particular regulation or ordinance. However, on several occasions consideration has been deferred pending receipt of additional information from the Department concerned. On two occasions it was found that regulations had not been laid on the Table of both Houses of the Parliament within the prescribed fifteen sitting days, in accordance with section 48 of the Acts Interpretation Act, thus rendering them void and of no effect. The two regulations in question were subsequently re-made, laid on the Table of both Houses and, in due course, passed by the Committee.

8. In its consideration of Statutory Rules 1945, No. 181, the Committee drew the Attorney-General's attention to the powers contained in section 137 (2) of the Re-establishment and Employment Act 1945, whereby regulations may be made providing for the repeal, amendment or the addition to any of the provisions of the Act and expressed the opinion that as the emergencies of war do not now exist, consideration might be given to the repeal of the regulation and the enactment of appropriate legislation in its stead. While agreeing that a power to make regulations amending or repealing the provisions of any Statute is unusual and should not be given except under special circumstances, the Attorney-General stated that in this case it was thought that the methods for re-establishment and employment laid down in the Act, being to some extent of an experimental nature, might need urgent revision from time to time in the light of experience and, for that reason, the regulation-making power which is usual to most Acts had been extended. He also pointed out that any regulations made under this special power would automatically cease to operate on the termination of the wars in which His Majesty was engaged. This would necessitate the overhaul of the Act at the termination of the war and would enable full consideration to be given by Parliament to those amendments which have been made and which, as above stated, are only of a temporary operation.

While appreciating the view expressed by the Attorney-General, the Committee suggests that the special regulation power conferred under the Re-establishment and Employment Act be availed of only in emergency cases and that wherever practicable any amendments of the Act be made through the medium of legislative action.

9. With regard to Statutory Rules 1945, No. 47, made under the National Security Act, the Committee noted that the method which was adopted to give effect to the amendments was somewhat unsatisfactory in that many regulations were affected and particulars of the amendments could only be found in the Schedules to this Statutory Rule. It appears to the Committee that it would have been more satisfactory if the particular regulations which were amended were so amended by the issue of separate Statutory Rules.

10. The attention of the Senate is again drawn to the following paragraph which appeared in the Committee's Fifth Report:-

"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 fifteen 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:- fifteen 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 fifteen 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 of bringing the provisions as to the disallowance of ordinances and regulations into line."

Speaking to the motion for the adoption of that Report the then Leader of the Government in the Senate stated that the Government was prepared to introduce a bill for that purpose. To date this matter has not been finalised.



R. H. NASH,  
Chairman.