

THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-SEVENTH REPORT

GENERAL REPORT 1976

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MEMBERS OF THE COMMITTEE

Senator I.A.C. Wood (Chairman)
Senator W.W.C. Brown ¹
Senator J.L. Cavanagh ²
Senator S.J. Collard
Senator D.M. Devitt ¹
Senator P.D. Durack ¹
Senator G. Georges ²
Senator A.J. Missen ²
Senator S.M. Ryan
Senator R.C. Wright

1 Discharged 18 August 1976

2 Appointed 18 August 1976

Function of the Committee Since 1932, when the Committee was first established, the principle has been followed that the function of the Committee is to scrutinise regulations and ordinances to ascertain -

- (a) that they are in accordance with the statute;
- (b) that they do not trespass unduly on personal rights and liberties;
- (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative rather than upon judicial decisions; and
- (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-SEVENTH REPORT

GENERAL REPORT 1976

The Standing Committee on Regulations and Ordinances has the honour to present its Fifty-seventh Report to the Senate.

- 2 The purpose of this Report is to acquaint the Senate with the Committee's consideration of certain regulations and ordinances during 1976.

STATUTORY RULES AND BY-LAWS

Family Law Regulations

- 3 The principal regulations made under the Family Law Act, as contained in Statutory Rules 1975 No. 210, consisted of some 175 regulations extending to 70 pages, a substantially greater volume than the Act itself, and provided for a wide variety of matters to give effect to the Act. There were three matters which gave the Committee concern, as touching upon the rights and liberties of individuals.

- 4 Regulation 134 provided that an employer, being the garnishee subject to a garnishment order, would be guilty of an offence and subject to a substantial penalty if he failed to notify the court of the new employer and earnings from the new employer of a respondent to an order who left his employment. The Committee considered that it ought to be made clear in the regulation that the garnishee is liable only if the matters required to be notified are within his knowledge. The Attorney-General agreed to amend the regulation to this effect.

Regulation 135 enabled the court to order the seizure of all or any of the personal property of a person who failed or refused to comply with certain orders of the court, without any exemption of property such as means of livelihood. The Attorney-General agreed to amend the regulation so as to include some such exemption.

Regulation 136 allowed sequestration of estates and their administration by officers of the court as a means of enforcing the orders of the court, without exemption of any property and without provision for the manner of administration. The Attorney-General agreed to amend the regulation so as to include an exemption of property as for regulation 135, and to allow parties to a case or creditors to apply to the court for orders regarding the administration of an estate.

Defence Force Regulations

- 5 The Committee has consistently taken the view that where regulations or ordinances confer important powers upon ministers or officials and allow the delegation of those powers, there ought to be some restriction of the classes of persons to whom the delegation may be made. Where the powers are far-reaching and impinge upon the rights and liberties of persons, the delegation ought to be restricted to officers of a high rank or persons in positions of responsibility.
- 6 A case in point was provided by the amendments of these regulations contained in Statutory Rules 1976 No. 52. These amendments contained a provision (regulation 34) empowering the Minister for Defence virtually to confiscate any private land for the purpose of testing war material. (This power was accepted by the Committee only because the regulations provided a right of compensation for any loss or damage caused by anything done in pursuance of the regulation.) The regulations allowed this power of the Minister to be delegated to any commissioned officer of the Defence Force or any public servant of the third division. The Minister agreed to amend the regulations so as to restrict the delegation to officers of a high rank.

Australian Rifle Club Regulations

- 7 The amendments of these regulations contained in Statutory Rules 1976 No. 37 contained a provision exempting rifle clubs, which are conducted under the Defence Act, from the liquor licencing laws of States or Territories. The exemption was originally intended to apply only to canteens conducted in connection with rifle shoots conducted by rifle clubs. The Committee drew this to the attention of the Minister for Defence, and the regulations have now been amended so as to properly limit the exemption.

Air Navigation Regulations

- 8 The amendments of these regulations contained in Statutory Rules 1976 No. 67 were intended to protect Qantas against price cutting by other airlines and travel agents marketing travel schemes. The Committee was not concerned with the policy of the regulations, but two provisions appeared to infringe the rights and liberties of individuals.

- 9 The first provision was a requirement that persons marketing travel keep very detailed records without limitation of time. The second provision empowered officers to enter at all reasonable times the business premises of such persons for the purpose of inspecting records. The Committee considered that the requirement to keep records should be limited to a particular time, and that the power to enter premises should be subject to a requirement that there be a reasonable belief that an offence against the regulations had occurred. The Minister for Transport agreed to amend the regulations to that effect.

Remuneration and Allowances Regulations

- 10 The amendment of these regulations contained in Statutory Rules 1976 No. 179 provided, with retrospectivity of some 18 months, that a Royal Commissioner who was formerly a member of the Grants Commission should be paid at the rate of a permanent head of the public service.
- 11 It was explained to the Committee that the amendment applied to only one person, a former permanent head who was a Grants Commissioner and a Royal Commissioner, and who resigned from the Grants Commission. The Committee was told that it was desirable that this person, while a full-time Royal Commissioner, should continue to enjoy the salary of a permanent head, though no reason was offered why this should be so. The Committee trusts that it will not see too many regulations designed to confer greater benefits upon particular individuals than they would otherwise receive.

Telecommunications By-laws

- 12 Amendment no. 6 of these by-laws was intended, amongst other things, according to the explanatory memorandum, to prohibit "hoax calls" on the telephone system. The relevant provision made it an offence to
- "send over a telecommunications service a fictitious order, instruction or message, or any false information or message knowing the same to be false".
- 13 Such a provision would prohibit not only what are usually described as "hoax calls", but would also make it an offence for any person who correctly identifies himself to tell a lie in the course of a telephone conversation. The Committee considers that it is not the function of the law to police the truthfulness of genuine telephone calls. The Telecommunications Commission agreed to amend the by-law so as to restrict it to its stated purpose.

Australian Tourist Commission Regulations

- 14 These regulations, as contained in Statutory Rules 1976 No. 208, provide for the payment of certain allowances with retrospectivity of almost two years, due to delay in the making of the regulations. The Minister for Industry and Commerce informed the Committee that payments of the allowances had been made prior to the making of the regulations. At the request of the Committee the Minister has reminded his Department that payments ought not to be made without authority and that retrospectivity ought to be avoided as far as possible.

Conciliation and Arbitration Regulations

- 15 The amendments of these regulations contained in Statutory Rules 1976 No. 187 contained a provision relating to elections making it a criminal offence for any person to refuse to comply with a direction of a returning officer, who was empowered to give any directions which he considers necessary for the purposes of the regulations, without any requirement that the directions be reasonably necessary for the purposes of the regulations.
- 16 Although the Conciliation and Arbitration Act contains a similar provision, the Committee considered that it ought to be made clear in the regulations that a person may not be convicted of an offence if the direction concerned was an arbitrary or unreasonable one. The Minister has agreed to amend the regulation so that the offence will be stated to be failure to comply with the returning officer's directions without reasonable excuse.

TERRITORY LEGISLATIONA.C.T. Surveyors Ordinance

- 17 An amendment of this ordinance contained in Ordinance No. 27 of 1975 repealed a provision allowing persons to apply to the Surveyors Board for a review of surveyors' charges. The Committee considered that the amendment took away a valuable right of the citizen, a right which still existed in relation to the charges of other professions. The Minister for the Capital Territory agreed with the Committee's view, and gave an undertaking that the ordinance would be amended so as to provide a right of review.

A.C.T. Flammable Liquids Ordinance

- 18 This ordinance, as contained in Ordinance No. 2 of 1976, provided in section 10 that an inspector could destroy or render harmless any flammable liquid or dangerous goods where he considered it necessary in the public interest to do so, with the consent of the Minister, or in case of imminent danger, without the Minister's consent. Section 12 protected an inspector against any legal action in respect of things done in good faith in his capacity as an inspector.
- 19 The Committee considered that these provisions conferred a power to destroy property without any opportunity to challenge the use of that power in the courts, because the inspector's opinion was the only criteria governing the exercise of the power. The Committee considered that the inspector's powers should be exercisable only where he believed on reasonable grounds that it was necessary to take action under the ordinance. The Minister for the Capital Territory agreed to have the ordinance amended to this effect.

A.C.T. Land Rent and Rates
(Deferment and Remission) Ordinance

- 20 This ordinance, as contained in Ordinance No. 10 of 1976, allows the Minister for the Capital Territory to determine the "notional unimproved value" of land in a lease for the purpose of granting deferment or remission of rates. The Committee considers that all such determinations of value should be subject to appeal. The Minister has acceded to this view and agreed to amend the ordinance accordingly.

A.C.T. City Area Leases Ordinance

- 21 The amendment of this ordinance contained in Ordinance No. 12 of 1976 repealed and remade, in modified form, the provisions in the principal ordinance which make it a criminal offence for a lessee to use his lease for a purpose not specified in the lease.
- 22 The Committee recalled the opinion which it expressed some years ago, when criminal penalties were inserted in the ordinance, that breach of lease purpose is a civil matter and is not appropriate for the criminal jurisdiction. In relation to the present ordinance, the Committee considered the provisions objectionable in that a person who committed a merely technical or trivial breach of a lease purpose in relation to a residential lease would be subject to the penalties provided by the ordinance. It was considered that such a person ought to have a defence, for example, something to the effect that the breach he committed did not disturb the planning of the city. The Committee also considered that another provision in the ordinance was unnecessarily harsh. This was a provision whereby a lessee would be guilty of an offence if he failed to furnish a statement in response to a notice requiring him to state the name of a person using or occupying a lease.
- 23 The Minister for the Capital Territory considered the views of the Committee, and gave an undertaking that the ordinance would be amended so that the question of breach of lease purpose would be transferred from the criminal law to the civil law. Where it is considered that a lessee has used his lease for a purpose not authorised by the lease, an application may be made to the courts for an order directing the lessee to take such action as may be necessary to stop the unauthorised use of the land. In the event of non-compliance with a court order, the court will be empowered to impose a penalty.
- 24 The Committee considers that these proposed amendments will properly safeguard the rights and liberties of lessees, and put leases back into the civil law where they belong. The Committee deprecates the tendency to introduce criminal penalties into areas, such as contracts, which properly belong to the civil law.
- 25 The Committee also directed its attention to another provision in the principal ordinance which is harsh and arbitrary. Section 22 allows the Minister to determine a lease without any appeal by the lessee except to the Minister. The Minister gave an assurance that he will have the whole of the ordinance reviewed so that the Committee will have a further opportunity to consider the ordinance.

- 26 It should be pointed out that the difficulties involved with the ordinance arise from the decision, which apparently was taken very many years ago, to use lease purpose clauses as an instrument of town planning, instead of a proper town plan in the form of a law to which all citizens must conform.

Norfolk Island Administration Ordinance

- 27 The amendments of this ordinance contained in Ordinance No. 5 of 1975 contained a provision to the effect that the Administrator of the Territory might declare any building or other place to be a gaol, prison or house of detention.
- 28 It appeared to the Committee that there was nothing in the ordinance to limit such a declaration to public buildings or places or to prevent a declaration being made in respect of private property without the consent of the owner or lessee. The Minister for Administrative Services agreed with this view, and agreed to amend the ordinance so that no declaration may be made in respect of private property without the consent of the owner or lessee.

Christmas Island Industrial Relations Ordinance

- 29 The Committee was concerned with a number of provisions in this Ordinance, as contained in Christmas Island Ordinance No. 1 of 1976, relating to the powers of the arbitrator to be appointed under the Ordinance and the rights of persons appearing before the arbitrator or liable to be bound by his decisions. The Committee had correspondence with the Minister for Administrative Services and took evidence from officers of the Department of Administrative Services and the Department of Employment and Industrial Relations. These inquiries have satisfied the Committee in relation to the Ordinance, except with regard to one provision. The Minister has agreed in principle to amend a section of the Ordinance so that persons may not be bound by the arbitrator's decisions without being given an opportunity to be heard. The Minister has also taken administrative action to give effect to this principle.

A.C.T. Remand Centres Ordinance

- 30 This Ordinance, as contained in A.C.T. Ordinance No.48 of 1976, provides for the conduct of remand centres in the Territory for detaining remanded and in some cases convicted persons. The Ordinance contains commendable safeguards of the rights of detainees but there were two matters which caused the Committee concern.
- 31 Section 17 of the Ordinance makes it an offence, with a very heavy penalty, for a detainee to be in possession of any thing capable of being used for an unlawful purpose. It was put to the Committee that as any thing may be capable of being used for an unlawful purpose this section may be oppressive. The Committee considered that this particular offence ought to be limited to being in possession of a thing intended to be used for an unlawful purpose.

Section 21 of the Ordinance empowers the Superintendent to confine detainees to their sleeping quarters and to deprive them of entitlements where he considers it necessary for the maintaining of security, discipline, order, or the health of a detainee. The Committee considered that in order to prevent the possibility of the misuse of this very wide power the section ought to empower the Superintendent to take the action specified where he reasonably believes that it is necessary for the purposes stated in the section.

The Minister for the Capital Territory has agreed to amend these two sections of the Ordinance accordingly.

PREVIOUS REPORT

- 32 In presenting the general report for 1975 (Fifty-first Report) the Chairman stated that the Committee would take up with Ministers of the new Government the undertakings given by Ministers of the previous Government to amend regulations and ordinances. All of the undertakings referred to in that report were confirmed by the new Ministers, with the exception of that relating to prosecution procedures under the A.C.T. Motor Traffic Ordinance, which is still under consideration by the Attorney-General. All of the remainder of the undertakings have been carried out, with the exception of that relating to the opening of mail. The Committee has been advised that the necessary amendments to give effect to this undertaking are being drafted and are being treated as urgent by the Attorney-General's Department.

IAN WOOD
Chairman

Senate Committee Room,
Thursday, 2 December 1976