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THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-EIGHTH REPORT

UNDERTAKINGS BY MINISTERS

MEMBERS OF THE COMMITTEE

Senator I.A.C. Wood (Chairman)

Senator the Hon. J.L. Cavanagh

Senator S.J. Collard

Senator G. Georges

Senator A.J. Missen

Senator S.M. Ryan

Senator the Hon. R.C. Wright

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-EIGHTH REPORT

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

UNDERTAKINGS BY MINISTERS TO AMEND  
REGULATIONS AND ORDINANCES

- 2 The Committee in its scrutiny of regulations and ordinances has adopted, with the approval of the Senate, the principle that its duty is to scrutinise regulations and ordinances to ensure
- (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.
- 3 The Senate will be aware as a result of previous reports of the Committee that when the Committee discovers provisions in regulations and ordinances which it regards as offending against these criteria, when appropriate it often submits the matter to the responsible Minister. The Minister often gives an undertaking that he will have the offending provisions amended so as to overcome the Committee's objections, and the Committee if it considers it appropriate accepts this undertaking and sometimes allows the time for giving notice of motion for disallowance to pass without taking any further action.
- 4 Recently the Committee has been disturbed by the inordinate delays in the carrying out of these undertakings given by

Ministers. The schedule of this report lists those undertakings still outstanding at the time of the preparation of the report. Some are more than a year old. It should be a matter of concern to the Senate that provisions which the Committee regards as trespassing unduly upon individual rights and liberties, or otherwise offending against its criteria, remain in force for such long periods notwithstanding that the responsible Minister has agreed that those provisions should be altered. Moreover, once the Committee has allowed the time for disallowance to pass on the basis of a Minister's promise, the Committee and the Senate are powerless to change the regulations or ordinances in question.

- 5 To avoid this situation in the future, the Committee has decided that it will accept undertakings by Ministers only if a firm assurance is given that the amendments promised will be made with reasonable promptness. If this condition is not met a report will be made to the Senate and it will then be the responsibility of the appropriate Minister in the Senate to explain the matter to the Senate's satisfaction.

IAN WOOD  
Chairman

## SCHEDULE

## OUTSTANDING UNDERTAKINGS BY MINISTERS

Regulations or Ordinances and nature of provisions	Minister	Date of Undertaking
<u>1975</u>		
A.C.T. Court of Petty Sessions Ordinance: prosecution procedures in relation to motor traffic offences where onus of proof is reversed.	Attorney-General	15 April 1975 not yet confirmed by present Attorney-General 1
Postal Services Regulations: provisions allowing opening of mail by officers.	Post and Telecommunications	5 November 1975 confirmed 5 May 1976 2
<u>1976</u>		
Regulations under the Customs Act: absence of rights of appeal against administrative acts controlling trade.	Business and Consumer Affairs	16 March 1976 3
Family Law Regulations: absence of protection of rights of persons subject to garnishment orders and other matters.	Attorney-General	30 March 1976
A.C.T. City Area Leases Ordinance: criminal sanctions against lessees and other matters.	Capital Territory	16 August 1976 and 16 September 1976 4
A.C.T. Long Service Leave Ordinance: criminal penalties for non-compliance with provisions.	Capital Territory	22 September 1976 4
Christmas Island Industrial Relations Ordinance: power of arbitrator to bind parties to agreement without hearing.	Administrative Services	8 November 1976 5
A.C.T. Remand Centres Ordinance: powers of officers over detainees and other matters.	Capital Territory	17 November 1976 4

1977

Defence Force Financial Regulations: discretionary power to determine allowances	Defence	20 January 1977	
A.C.T. Lakes Ordinance: powers of entry of premises without warrant.	Capital Territory	16 March 1977	4
A.C.T. Sewerage and Water Supply Regulations: absence of right of appeal where tradesmen refused licences.	Capital Territory	28 June 1977	4
A.C.T. Consumer Affairs Ordinance: power of officers to compel documents; self-incrimination of persons supplying information; immunity of officers from court orders and legal proceedings.	Capital Territory	17 August 1977	4

NOTES

- 1 On 26 February 1976 the Committee wrote to the Attorney-General in the new government and asked whether he would confirm the undertaking of his predecessor. A reply was received only on 4 October 1977, indicating that the matter was still under consideration.
- 2 On 17 March 1977 the Minister asked that this undertaking be deferred pending consideration by the Law Reform Commission; the Committee agreed to this providing there was no undue delay.
- 3 The Minister undertook to refer the question of appeals to the Administrative Review Council; the Minister in the previous government had agreed that appeals should be provided.
- 4 The Minister for the Capital Territory refers proposed amendments of A.C.T. legislation to the A.C.T. Legislative Assembly.
- 5 The Minister indicated that he would consult the Arbitrator before making these amendments.